

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 WILLIAM DEAN WHINERY, SR.;)
 JANET S. WHINERY; STATE OF)
 OKLAHOMA ex rel. DEPARTMENT)
 OF HUMAN SERVICES; COUNTY)
 TREASURER, Creek County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Creek County,)
 Oklahoma,)
)
 Defendants.)

FILED

JAN 15 1988

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

CIVIL ACTION NO. 87-C-788-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15 day
of January, 1988. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Creek County, Oklahoma, and
Board of County Commissioners, Creek County, Oklahoma, appears
not, having previously filed their Disclaimer; the Defendant,
State of Oklahoma ex rel. Department of Human Services, appears
not, having previously filed its Disclaimer; and the Defendants,
William Dean Whinery, Sr. and Janet S. Whinery, appear not, but
make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, William Dean Whinery, Sr.
and Janet S. Whinery, acknowledged receipt of Summons and
Complaint on October 15, 1987; that Defendant, County Treasurer,

Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on September 28, 1987; and that Defendant, Board of County Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on September 28, 1987.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Disclaimer herein on October 9, 1987; that Defendant, State of Oklahoma ex rel. Department of Human Services, filed its Disclaimer herein on October 30, 1987; and that the Defendants, William Dean Whinery, Sr. and Janet S. Whinery, 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 Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Nine (9), Block Nine (9), Lazy "H" ADDITION, an Addition to the City of Sapulpa, Creek County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on May 28, 1982, the Defendants, William Dean Whinery, Sr. and Janet S. Whinery, 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 \$27,000.00, payable in monthly installments, with interest thereon at the rate of fifteen and one-half percent (15.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, William Dean Whinery, Sr. and Janet S. Whinery, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated May 28, 1982, covering the above-described property. Said mortgage was recorded on June 1, 1982, in Book 119, Page 134, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, William Dean Whinery, Sr. and Janet S. Whinery, 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, William Dean Whinery, Sr. and Janet S. Whinery, are indebted to the Plaintiff in the principal sum of \$26,771.61, plus interest at the rate of fifteen and one-half percent (15.5%) per annum from October 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, State of Oklahoma ex rel. Department of Human Services and County Treasurer and Board of County Commissioners, Creek County, Oklahoma, disclaim any right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, William Dean Whinery, Sr. and Janet S. Whinery, in the principal

sum of \$26,771.61, plus interest at the rate of fifteen and one-half percent (15.5%) per annum from October 1, 1986 until judgment, plus interest thereafter at the current legal rate of 7.14 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, State of Oklahoma ex rel. Department of Human Services and County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, William Dean Whinery, Sr. and Janet S. Whinery, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with 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.

S/ THOMAS B. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL
Assistant United States Attorney

PP/css

FILED

MAY 15 1983

C. S. Clark, Clerk
DISTRICT COURT

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

SERVICE DRILLING CO., et al.)
)
 Plaintiff,)

v.)

UNITED GAS PIPE LINE COMPANY,)
)
 Defendant.)

CASE NO. 86-C-166-E
(All Consolidated Under
This Number)

J.R. MACE, an individual,)
)
 Plaintiff,)

v.)

UNITED GAS PIPE LINE COMPANY,)
)
 Defendant.)

CASE NO. 86-C-861-E

W.O. PETTIT, an individual,)
)
 Plaintiff,)

v.)

UNITED GAS PIPE LINE COMPANY,)
)
 Defendant.)

CASE NO. 86-C-860-E

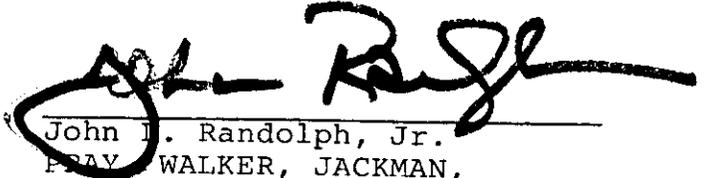
STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff, W.O. Pettit, and the Defendant, United Gas Pipe Line Company, hereby file their Joint Stipulation of Dismissal, and each dismisses its claims against the other with prejudice to the refiling thereof.

DATED this 15th day of January, 1988.

W.O. PETTIT

By:

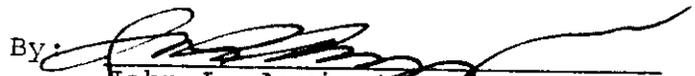


John L. Randolph, Jr.
FRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR

Attorneys for Plaintiff

UNITED GAS PIPE LINE COMPANY

By:



John L. Arrington, Jr.
HUFFMAN, ARRINGTON, KIHLE,
GABERINO & DUNN

Attorneys for Defendant

FILED

1986

Clayton, Clerk
DISTRICT COURT

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

SERVICE DRILLING CO., et al.)
)
 Plaintiff,)
)
 v.)
)
 UNITED GAS PIPE LINE COMPANY,)
)
 Defendant.)
)
 J.R. MACE, an individual,)
)
 Plaintiff,)
)
 v.)
)
 UNITED GAS PIPE LINE COMPANY,)
)
 Defendant.)
)
 W.O. PETTIT, an individual,)
)
 Plaintiff,)
)
 v.)
)
 UNITED GAS PIPE LINE COMPANY,)
)
 Defendant.)

CASE NO. 86-C-166-E
(All Consolidated Under
This Number)

CASE NO. 86-C-861-E

CASE NO. 86-C-860-E

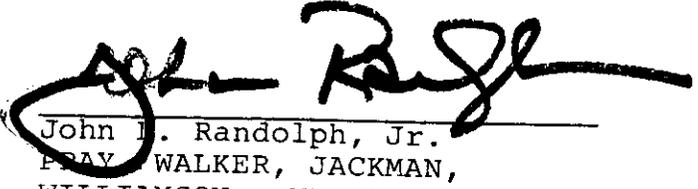
STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff, W.O. Pettit, and the Defendant, United Gas Pipe Line Company, hereby file their Joint Stipulation of Dismissal, and each dismisses its claims against the other with prejudice to the refiling thereof.

DATED this 15th day of January, 1988.

W.O. PETTIT

By:


John L. Randolph, Jr.
FRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR

Attorneys for Plaintiff

UNITED GAS PIPE LINE COMPANY

By:


John L. Arrington, Jr.
HUFFMAN, ARRINGTON, KIHLE,
GABERINO & DUNN

Attorneys for Defendant

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

FILED

JAN 15 1988

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

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

Case No. 85-C-590-C

JOURNAL ENTRY OF DEFAULT JUDGMENT

Now on this 14 day of January, 1988, the above-styled cause comes on before the Court upon Application of the Plaintiffs, the Estate of James Littleton Daniel, Jr., John D. McCartney and David S. James ("Plaintiffs") for Entry of Default Judgment against the Defendants, Bernard J. Grenrood, Jr. ("Grenrood") and Township Corporation ("Township") pursuant to Rules 16(f) and 55 of the Federal Rules of Civil Procedure and Rules 17(e) and 36(b) of the Local Rules of the United States District Court for the Northern District of Oklahoma. Upon considering Plaintiffs Request for Default Judgment for Failure to Appear at Pretrial Conference filed October 30, 1987, and Plaintiffs Application for Entry of Default Judgment filed January 11, 1988, the Court has determined that Grenrood and Township are in default and that the Plaintiffs are entitled to judgment as prayed for in their Complaint.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs should be and hereby are awarded judgment against Grenrood and Township, jointly and severally, for damages in the principal sum of \$19,414,902.00, plus pre-judgment and post-judgment interest at the statutory rate, for the costs of this action and for a reasonable attorney's fee in an amount to be determined upon application.

S/H. Dale Cook
H. DALE COOK
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 WELCH LIVESTOCK EXCHANGE,)
 a/k/a WELCH SALE BARN; LARRY)
 DAVIS; and LEON McCOIN,)
)
 Defendants.)

FILED

JAN 15 1988

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

CIVIL ACTION NO. 87-C-545-B

ORDER OF DISMISSAL

Pursuant to the Joint Stipulation of the parties and for good cause shown it is hereby ORDERED that this action is dismissed with prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Dated this 15 day of January, 1988.

~~S/ THOMAS R. BRETT~~
THOMAS R. BRETT
United States District Judge

APPROVED AS TO FORM AND CONTENT:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

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


DONALD K. SWITZER
Counsel for Defendant Leon McCain
101 South Wilson Street
Vinita, Oklahoma 74301
(918) 256-7511

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MICHAEL LEROY FRENCH; BILLIE JO)
FRENCH; COUNTY TREASURER,)
Ottawa County, Oklahoma; and)
BOARD OF COUNTY COMMISSIONERS,)
Ottawa County, Oklahoma,)
)
Defendants.)

FILED

JAN 15 1988

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

CIVIL ACTION NO. 87-C-660-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15th day of January, 1988. 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, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, appear by David L. Thompson, District Attorney, Ottawa County, Oklahoma; and the Defendants, Michael Leroy French and Billie Jo French, appear by their attorney Ben Loring.

The Court being fully advised and having examined the file herein finds that the Defendant, County Treasurer, acknowledged receipt of Summons and Complaint on August 13, 1987.

It appears that the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, filed their Answer herein on

September 1, 1987; and that the Defendants, Michael Leroy French and Billie Jo French, have failed to answer but agree to this Judgment of Foreclosure in the following particulars.

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

Lots 133 and 134 of the Belmont Addition, to the City of Miami, Ottawa County, State of Oklahoma.

The Court further finds that on November 12, 1984, Michael Leroy French and Billie Jo French 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 \$14,500.00, payable in monthly installments, with interest thereon at the rate of thirteen percent (13%) per annum.

The Court further finds that as security for the payment of the above-described note, Michael Leroy French and Billie Jo French executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated November 12, 1984, covering the above-described property. Said mortgage was recorded on November 14, 1984, in Book 436, Page 873, in the records of Ottawa County, Oklahoma.

The Court further finds that the Defendants, Michael Leroy French and Billie Jo French, 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, Michael Leroy French and Billie Jo French, are indebted to the Plaintiff in the principal sum of \$14,687.49, plus interest at the rate of thirteen percent (13%) per annum from June 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

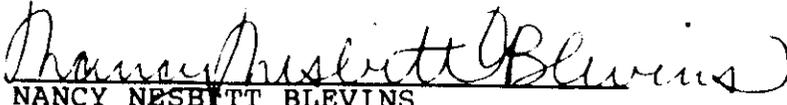
The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Michael Leroy French and Billie Jo French, in the principal sum of \$14,687.49, plus interest at the rate of thirteen percent (13%) per annum from June 1, 1986 until judgment, plus interest thereafter at the current legal rate of 7.14 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, Ottawa County, Oklahoma, have no right, title, or interest in the subject real property.

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney


BEN LORING
Attorney for Defendants,
Michael Leroy French
and Billie Jo French


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

NNB/css

FILED

JUL 1 1988

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

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

CARMEN EUGENE RUGGERI,)	
)	
Plaintiff,)	
)	
vs.	)	No. 86-C-90-E
)	
SUN REFINING AND MARKETING,)	
)	
Defendant.)	

ORDER

This matter comes before the Court on Defendant's Motion for Summary Judgment. After review of the authorities, the exhibits, the arguments of counsel, and being fully advised, the Court finds Defendant's Motion should be sustained for the following reasons.

The EEOC Charge of Discrimination Was Untimely Filed

The Court must conclude that Ruggeri's EEOC Charge of Discrimination was untimely filed. Title VII and the ADEA require aggrieved persons to file a charge of employment discrimination within 180 days of the unfavorable employment decision, or in a "deferral" state such as Oklahoma, within 300 days of the unfavorable employment decision. 42 U.S.C. §2000e-5(e)(1982); 29 U.S.C. §626(d)(1982). Ruggeri's notification on February 6, 1984 that he would be terminated is without doubt the allegedly unlawful employment practice of which he complains. The parties do not dispute this fact,¹ and agree also that

¹Agreed Pretrial Order, para. III, subpara. 0, at p. 3.

Ruggeri's charge of age and sex discrimination was not filed with the EEOC until April 18, 1985.² Because more than 300 days passed from the date of the allegedly discriminatory act until Ruggeri filed his charge, the charge was untimely.

The United States Supreme Court has considered the question when the filing limitations period begins to run and has held that the limitations period begins to run on the date of the discriminatory act. Delaware State College v. Ricks, 499 U.S. 250 (1980). The Court expressly rejected the argument that the time should begin to run from the date the discriminatory act becomes effective. Id. at 258. Ricks was a case in which the denial of tenure was alleged to be the unlawful act. The Court reiterated its holding a year later in which the termination of employment was alleged to be unlawful. Chardon v. Fernandez, 454 U.S. 6 (1981).

Further, Sun's later rejection of Ruggeri for the position of Crude Scheduler does not constitute an act that would start the limitations period running anew. A request for relief from the discriminatory act will not renew the running of the limitations period, see Janikowski v. Bendix Corp., 823 F.2d 945 (6th Cir. 1987). Ruggeri does not allege that the rejection differs in any material way from the initial discriminatory act.³

²Agreed Pretrial Order, para. III, subpara. H, at p. 2.

³Because the Court finds the Title VII and ADEA claims time-barred it is unnecessary to address Sun's argument that Ruggeri cannot establish a prima facie case of discrimination under Title VII or the ADEA.

Defendant is Entitled to Summary Judgment on
Plaintiff's Second Claim for Relief for Wrongful Discharge

Oklahoma does not recognize a claim for relief for wrongful discharge. Plaintiff's second claim for relief for wrongful discharge sounding in tort is not recognized by Oklahoma law. The Oklahoma Supreme Court recently reaffirmed this rule in Hinson v. Cameron, 742 P.2d 549 (1987). Although the Court noted several recognized exceptions⁴ carved from the rule for public policy reasons, the Court found no facts in Hinson that would fit within a recognized exception to give the terminated employee an actionable claim. The Hinson court, nevertheless, did not expressly adopt the recognized exceptions. There are no facts present in the case that suggest Ruggeri's claim falls within an exception, even if those exceptions were to be recognized in Oklahoma.

There are no facts to support a claim for wrongful termination based on contract. Hinson refused to recognize a duty in at-will employment relationships to terminate only for good cause. 742 P.2d at 554. There is, thus, no implied duty in Ruggeri's employment at-will relationship with Sun that would

⁴Claims recognized by certain jurisdictions are those by employees dismissed for (a) refusing to participate in an illegal activity; (b) performing an important public obligation; (c) exercising a legal right or intent; (d) exposing some wrongdoing by the employer; and (e) performing an act that public policy would encourage or, for refusing to do something that public policy would condemn, when the discharge is coupled with a showing of bad faith, malice or retaliation. 743 P.2d at 552-53 (citations omitted).

create an issue of fact, even if the Court were to assume that Sun acted in bad faith in terminating Ruggeri.

Further, the facts in the record do not rise to the level of a genuine issue whether Ruggeri had a contract of employment with Sun. He admits he did not. (Deposition of Plaintiff, at 108, 132). There were no other promises of continued employment made to Plaintiff for recognized consideration.

Defendant is therefore entitled to judgment as a matter of law on Plaintiff's Second Claim for Relief.

There Are No Facts To Support Plaintiff's
Fourth Claim for Relief for Fraud

The facts urged by Plaintiff in support of his action for fraud do not rise to the level of genuine issues of fact that would support a fraud claim. Fraud is established by the following elements: (1) a material misrepresentation; (2) known by the declarant to be false when made, or made recklessly and without any knowledge of its truth; (3) made with intention that the other party act in reliance upon the statement; (4) reliance by the other party upon the misrepresentation; and (5) injury to the other party as a result of his reliance. State ex rel. Southwestern Bell Telephone Co. v. Brown, 519 P.2d 491, 495 (Okla. 1974).

Plaintiff alleges that Defendant, through its agent, Carl Ingram, M.D., fraudulently induced Plaintiff to apply for a non-existent employment opportunity within Sun, and be removed from disability status. Plaintiff himself testified that he believed that Dr. Ingram himself believed what he had told Plaintiff about

a temporary job within Sun, either that Plaintiff would get the job or, at least, that the job was available and someone else would call him about it. Assuming for these purposes that Dr. Ingram told Plaintiff he would get the available job this statement does not constitute fraud. It is merely a statement, made in good faith, concerning a future event over which Dr. Ingram had no control. That is not fraud under the definition provided in Southwestern Bell Telephone, 519 P.2d at 495. Further, Plaintiff could do nothing in reliance upon Dr. Ingram's statement except to apply for the position; Plaintiff had no control over his own disability status. The removal of Plaintiff from disability status cannot form the basis of Plaintiff's alleged reliance upon Dr. Ingram's supposed fraud.

The Facts As Alleged Do Not Rise to the Level
Required To State a Claim for
Intentional Infliction of Emotional Distress

Assuming all of Plaintiff's allegations to be true as to his fifth claim for relief, the Court must conclude that the facts do not state a claim for relief for intentional infliction of emotional distress. Although adverse employment decisions by their nature involve emotional distress, and courts have unhesitatingly recognized this, an employer's action is not cognizable unless the action can be characterized as so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as intolerable in a civilized community. Eddy v. Brown, 715 P.2d 74, 76 (Okla. 1976). Termination alone cannot form the basis for a claim for

relief.

Plaintiff alleges merely that his termination humiliated him, distressed him, and that he suffered physically because of his termination and his concern for his financial wellbeing. The Court finds these facts insufficient to sustain a claim for relief and concludes, therefore, that Defendant is entitled to judgment as a matter of law on Plaintiff's Fifth Claim for Relief.

IT IS THEREFORE ORDERED that Defendant's Motion for Summary Judgment is sustained.

ORDERED this 15th day of January, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

LUCILLE FRANCES RAME,)
)
 Petitioner,)
)
 v.)
)
 LARRY FIELDS, et al,)
)
 Respondents.)

87-C-725-B

FILED

JAN 14 1988

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

ORDER

The court now has before it defendants' Motion to Dismiss Lucille Rame's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254. Petitioner challenges the validity of her conviction in the District Court of Craig County, Oklahoma.

Petitioner was convicted of Conspiracy to Commit Murder and First Degree Murder in Craig County District Court, Case No. CRF-81-24. She was sentenced to life imprisonment. She filed a direct appeal of her conviction to the Oklahoma Court of Criminal Appeals, Case No. F-82-28. That court affirmed the conviction. Petitioner filed two applications for post-conviction relief, pursuant to 22 O.S. §1080, et seq. (1981), and both applications were denied. (Case No. PC-84-575 and Case No. PC-84-807). The denials were appealed to the Court of Criminal Appeals and both were affirmed. Petitioner also sought a new trial based on newly discovered evidence, and the Court of Criminal Appeals denied this request on March 19, 1985.

In her first petition for federal habeas corpus relief on April 15, 1985 (#85-C-392-B), petitioner raised the following seven grounds for relief: (1) a government witness, Carol Wolfe, changed her testimony after being given immunity; (2) the

state failed to question and bring to court an individual, Leroy Dearmond, who was at the scene of the crime and should have been charged as an accomplice or accessory; (3) the state presented perjured testimony on eight occasions during the trial; (4) the state failed to disclose evidence favorable to the petitioner; (5) the state used an unlawful identification procedure to identify suspects and cars seen at the scene of the crime; (6) the district court permitted the prosecutor to reopen the state's case to read the opening information in the case; and, (7) two jurors perjured themselves by telling the court they were not acquainted with petitioner. The court addressed each issue on its merits and entered an order on January 6, 1986, denying the petition. Petitioner then again sought post-conviction relief and the application was summarily dismissed. (Case No. PC-86-143). The Court of Criminal Appeals affirmed the denial.

Having reviewed the pleadings and the applicable law in this case, the court finds as follows.

Rame is seeking federal habeas relief on the following four grounds: (1) that the trial judge exhibited biased and prejudicial conduct toward petitioner by allowing a government witness to change her testimony after being granted immunity; (2) that she was denied effective assistance of counsel; (3) that Judge Whistler "denied petitioner her day in court" to produce new evidence which would have exonerated her of the crimes charged; and, (4) that the prosecutor knowingly used perjured

testimony in the state's case and withheld evidence favorable to petitioner.

Title 28 U.S.C. §2244(b) provides that when a person in custody has been denied release from custody or another remedy on an application for a writ of habeas corpus:

a subsequent application for a writ of habeas corpus in behalf of such person need not be entertained by a court ... unless the application alleges and is predicated on a factual or other ground not adjudicated on the hearing of the earlier application for the writ, and unless the court, justice or judge is satisfied that the applicant has not on the earlier application deliberately withheld the newly asserted ground or otherwise abused the writ.

Rule 9 of the Rules Governing Section 2254 Cases in the United States District Courts states that a second (successive) petition may be dismissed if the judge finds that it does not allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the petitioner's failure to assert those grounds in a prior petition was an abuse of the writ.

Congress adopted §2244 in light of the need "to weigh the interests of the individual prisoner against the sometimes contrary interests of the State in administering a fair and rational system of criminal laws." Kuhlmann v. Wilson, 477 U.S. ___, 106 S.Ct. 2616, 2625, 91 L.Ed.2d 364, 378 (1986). Justice requires a federal court to entertain a successive petition "only where the prisoner supplements his constitutional claim with a colorable showing of factual innocence". Id. at 2627.

In Sanders v. United States, 373 U.S. 1, 18, 83 S.Ct. 1068, 1078, 10 L.Ed.2d 148, 163 (1963), the Supreme Court found that successive petitions could be dismissed by the court because "[n]othing in the traditions of habeas corpus requires the federal courts to tolerate needless piecemeal litigation, to entertain collateral proceedings whose only purpose is to vex, harass, or delay." Sanders, 373 U.S. at 18. In Queen v. Page, 362 F.2d 543 (10th Cir. 1966), the court cited Sanders in ruling that the "ends of justice" would not be served by reaching the merits of a second habeas corpus application containing grounds asserted in a first application.

The court finds that petitioner is attempting to file needless piecemeal litigation in this second habeas corpus action. Many of the issues raised by her petition were raised in her first federal habeas action and were disposed of on the merits and she fails to explain why she withheld her other claims from the first action. In addition, the court finds that she has not supplemented her claims with any strong showing of her factual innocence.

For the foregoing reasons, the court finds that defendants' Motion to Dismiss should be and hereby is granted.

Dated this 13 day of January, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Anthony D. Joyner, in the amount of \$731.95, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from July 25, 1983, \$.68 per month from January 1, 1984, \$.67 per month from February 1, 1985, \$.63 per month from February 1, 1986, and \$.70 per month from February 1, 1987, until judgment, plus interest thereafter at the current legal rate of 7.22 percent per annum until paid, plus the costs of this action.

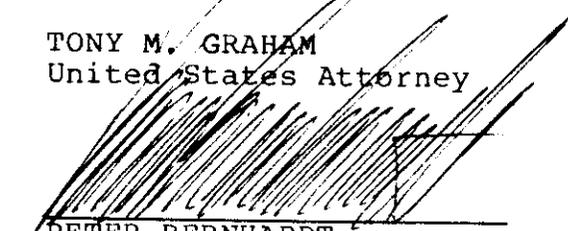
(Signed) M. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


PETER BERNHARDT
Assistant U.S. Attorney


ANTHONY D. JOYNER

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

IN RE:)	
)	
MID-REGION PETROLEUM, INC.)	
)	
Debtor,	)	Case No. 87-C-563-C
)	
W. SCOTT MARTIN, Trustee)	
	)	Case No. 83-01871
Plaintiff,	)	(Chapter 11)
)	
APEX OIL COMPANY,	)	Adversary No. 85-0029
Defendant,)	
)	
and)	
	)	FILED
APEX HOLDING COMPANY, APEX)	
ALASKA, INC., AIC S.A. and)	
AIC CORPORATION,)	
)	
Additional Defendants.	)	Jack C. Silver, Clerk U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Defendants, Apex Oil Company, Apex Holding Company, Apex Alaska, Inc., AIC S.A. and AIC Corporation having filed petitions in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

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

It is so ORDERED this 13 day of January, 1988.

H. Dale Cook

H. DALE COOK
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 HOWARD BURTNETT, a/k/a HOWARD O.)
 BURTNETT; RAMCO INVESTMENT)
 COMPANY; COUNTY TREASURER,)
 Ottawa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Ottawa County, Oklahoma,)
)
 Defendants.)

CIVIL ACTION NO. 87-C-649-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of July, 1988. 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, Ottawa County,
Oklahoma, and Board of County Commissioners, Ottawa County,
Oklahoma, appear by David L. Thompson, District Attorney, Ottawa
County, Oklahoma; and the Defendants, Howard Burtnett a/k/a
Howard O. Burtnett and Ramco Investment Company, appear not, but
make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Ramco Investment Company,
acknowledged receipt of Summons and Complaint on September 2,
1987; and that Defendant, County Treasurer, Ottawa County,
Oklahoma, acknowledged receipt of Summons and Complaint on
August 10, 1987.

The Court further finds that the Defendant, Howard Burtnett a/k/a Howard O. Burtnett, was served by publishing notice of this action in the Miami News-Record, a newspaper of general circulation in Ottawa County, Oklahoma, once a week for six (6) consecutive weeks beginning October 7, 1987, and continuing to November 11, 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, Howard Burtnett a/k/a Howard O. Burtnett, 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, Howard Burtnett a/k/a Howard O. Burtnett. 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 his 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.

It appears that the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, filed their Answer herein on September 1, 1987; and that the Defendants, Howard Burtnett a/k/a Howard O. Burtnett and Ramco Investment Company, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Two (2) in Block Fourteen (14) in the MIAMI HEIGHTS ADDITION to the City of Miami, Ottawa County, Oklahoma according to the recorded plat thereof.

The Court further finds that on April 5, 1985, Howard Burtnett executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, his mortgage note in the amount of \$18,500.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Howard Burtnett executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated April 5, 1985, covering the above-described property. Said mortgage was recorded on April 5, 1985, in Book 440, Page 488, in the records of Ottawa County, Oklahoma.

The Court further finds that the Defendant, Howard Burtnett a/k/a Howard O. Burtnett, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Howard Burtnett a/k/a Howard O. Burtnett, is indebted to the Plaintiff in the principal sum of \$1,944.80, plus interest at the rate of twelve and one-half percent (12.5%) per annum from December 1, 1985 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

The Court further finds that the Defendant, Ramco Investment Company, is in default and has 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 Defendant,

Howard Burtnett a/k/a Howard O. Burtnett, in the principal sum of \$1,944.80, plus interest at the rate of twelve and one-half percent (12.5%) per annum from December 1, 1985 until judgment, plus interest thereafter at the current legal rate of 7.25 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, Ramco Investment Company and County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that 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 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.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney


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

NNB/css

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

THE ESTATE OF JAMES
LITTLETON DANIEL, JR.;
JOHN D. McCARTNEY and
DAVID S. JAMES,

Plaintiffs,

vs.

BOWDEN ATHERTON, et al.,

Defendants.

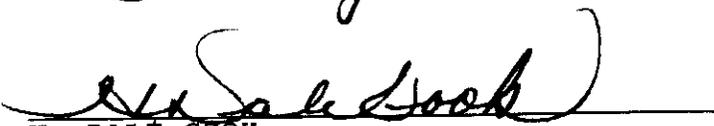
Case No. 85-C-590-C

FILED
JAN 13 1988
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
MUSKOGEE

ORDER OF DISMISSAL PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 41(A)(2)

Upon Motion of the Plaintiffs, The Estate of James Littleton Daniel, Jr., John D. McCartney and David S. James ("Plaintiffs"), the Court, being fully advised in the premises herein, and finding that there is no objection, orders, pursuant to Federal Rule of Civil Procedure 41(a)(2), that the claims of the Plaintiffs shall be dismissed without prejudice as against Defendants Bowden Atherton, H. Winfield Atherton, Jr., Mike O'Grady, Paragon Financial Corporation, Paragon Planning Corporation, Paragon Equities Corporation, Paragon Interests, Inc., and Paragon Trust Company, each party to bear its own costs and attorneys' fees.

IT IS SO ORDERED THIS 13th DAY OF January, 1988.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

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

WAYNE RICHISON d/b/a WAYNE)
RICHISON EQUIPMENT COMPANY,)
)
Plaintiff,)
)
v.)
)
TOKHEIM CORPORATION,)
)
Defendant.)

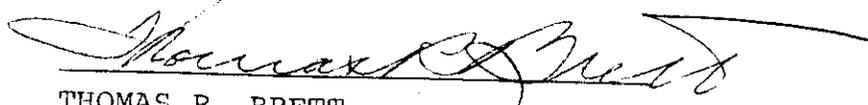
No. 85-C-623-B

FILED
JAN 14 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

In keeping with the Order Sustaining the Defendant Tokheim Corporation's motion for summary judgment filed this date, Judgment is hereby granted in favor of the Defendant Tokheim Corporation, and against the Plaintiff, Wayne Richison d/b/a Wayne Richison Equipment Company, with costs assessed against the Plaintiff. The parties are to pay their own respective attorney fees.

DATED this 13th day of January, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

OATIS R. HADDER,
PLAINTIFF,
VS.
JANOUSH TOWING, INC.,
a corporation,
DEFENDANT.

NO: 86-C-677-B

FILED
JAN 14 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

For good cause shown, and upon Stipulation of the
Parties, this action is dismissed with prejudice.

Dated this 13 day of January, 1988.

by Thomas R. Brett
UNITED STATES DISTRICT JUDGE
THOMAS BRETT

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

FILED

JAN 14 1988

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

WARREN AMERICAN OIL COMPANY,)
a Texas corporation, and)
EGJ OIL INTERESTS, INC.,)
a Texas corporation,)

Plaintiffs,)

v.)

Case No. 87-C-527-B

ARKLA, INC., d/b/a ARKANSAS)
LOUISIANA GAS CO., a Delaware)
corporation,)

Defendant.)

ADMINISTRATIVE CLOSING ORDER

. The parties herein having requested the Court continue this action for twenty-one (21) days pending the final settlement.

IT IS HEREBY ORDERED that the Clerk administratively terminate this action in his records without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order or for any other purpose required to obtain a final determination of this litigation.

If by February 6, 1988, the parties have not reopened the proceedings for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 13 day of January, 1988.

S/ THOMAS J. ...
UNITED STATES DISTRICT JUDGE

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

WAYNE RICHISON d/b/a WAYNE)
RICHISON EQUIPMENT COMPANY,)
)
Plaintiff,)
)
v.)
)
TOKHEIM CORPORATION,)
)
)
Defendant.)

No. 85-C-623-B

FILED

JAN 14 1988

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

ORDER SUSTAINING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

Before the Court for decision is the motion for summary judgment of the Defendant, Tokheim Corporation ("Tokheim"), pursuant to Rule 56, Fed.R.Civ.P. The record developed follows extensive discovery, the case having been filed two and one-half years ago. On July 28, 1986, the Court sustained Defendant's motion to dismiss Plaintiff's pendent contract and tort claims, and directed Plaintiff to amend his complaint concerning alleged antitrust violations. Supported by the analysis hereafter, the Defendant's motion for summary judgment is sustained.

Plaintiff's amended complaint filed August 15, 1986, sets forth sweeping broadside alleged antitrust violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), Section 3 of the Clayton Act (15 U.S.C. §14), and Section 2(e) of the Clayton Act (Robinson-Patman Act, 15 U.S.C. §13). More specifically, the amended complaint alleges the following by Plaintiff, a recently terminated Tokheim distributor, against the equipment manufacturer, Tokheim:

- (1) Tokheim and one or more of its other distributors conspired to eliminate Plaintiff, a price cutter, thereby enabling Tokheim's higher equipment list prices to prevail;
- (2) Tokheim discriminated against Plaintiff in favor of other distributors in the relevant market in both facilities and services;
- (3) In violation of the Sherman Act, §§ 1 and 2, and Clayton Act §§ 2(e) and 3, the Defendant has unlawfully conspired and attempted to monopolize and restrain trade as follows:
 - (A) Tokheim products can be bought only through authorized distributors or Tokheim direct;
 - (B) Tokheim prevents distributors from selling its products outside specified geographic territories;
 - (C) Tokheim has wrongfully allocated markets and territories, excluding other distributors;
 - (D) Following Plaintiff's termination as a distributor of Defendant, Defendant directed its remaining distributors to not sell Tokheim products to Plaintiff, under threat of termination;
 - (E) Defendant, following Plaintiff's termination, advised customers that Plaintiff could not sell them Tokheim products;
 - (F) Tokheim required Plaintiff's distributorship to rebate money to Tokheim following sales to certain customers;
- (4) The foregoing acts were committed by Tokheim in combination with others to improperly monopolize and to limit competition in the petroleum marketing equipment business;
- (5) Plaintiff's exclusive dealing contract with Defendant Tokheim had a substantial adverse effect upon competition in the relevant market;
- (6) Tokheim unlawfully engaged in tying arrangements requiring distributors to purchase less desirable products for the privilege of selling more desirable Tokheim products, and also by requiring distributors to maintain a service and installation department along with their sales department.

HISTORY OF THE DISTRIBUTORSHIP AGREEMENT

Tokheim Corporation ("Tokheim") is a leading manufacturer of gasoline dispensing equipment, such as pumps, meters and other related products for the petroleum industry. The Plaintiff, Wayne Richison, d/b/a Wayne Richison Equipment Company ("Richison"), was a sole proprietor serving as a distributor of Tokheim equipment. Tokheim and Richison entered into an agreement entitled "Manufacturer's Representative Contract" (Exhibit A to the Amended Complaint) on December 1, 1969. That document appointed Richison as a Tokheim distributor with an area of primary responsibility, including certain counties in Eastern Oklahoma and Western Arkansas.

In the mid-1970s Tokheim's major equipment line, gasoline dispensers, underwent substantial technological change. The evolution was from a relatively simple mechanical piece of equipment to a more expensive and complex electronic and computerized mechanism. Tokheim believed that the significant technological changes in its products required corresponding changes in the distributorship network in order to service the increased technical needs of its customers and maintain its reputation for quality in the marketplace. With the increased cost and complexity of its primary product line, Tokheim concluded that distributors should increase their investments in their operations by providing technical assistance and service capabilities to Tokheim customers and carry larger inventory levels.

During most of the time the Plaintiff was a Tokheim manufacturer's representative, he was a one-man operation concentrating only in the area of sales from his home. Richison eventually relocated his business in a small office but did not maintain a service or installation department or what could be considered a display area for Tokheim products. Throughout the latter years of the distributorship agreement, Tokheim repeatedly asked the Plaintiff to develop a full service capability and inventory so he could better respond to customer needs. Other distributors throughout the country complied with Tokheim's requests to carry out the new marketing strategy but Richison refused and chose to remain in sales only and occasionally for rather brief periods would hire another employee. As a result of Richison's low capital investment and overhead, he was often able to undersell other distributors who maintained full service distributorships in keeping with the request of Tokheim. Tokheim asserts that it ultimately decided to terminate the Plaintiff as a distributor because of his refusal to upgrade his distributorship and also because Plaintiff's sales had begun to lag. Pursuant to the "Manufacturer's Representative Contract", Tokheim gave Richison fifteen days' written notice on June 14, 1983, and terminated the contract on July 1, 1983.

UNDISPUTED MATERIAL FACTS

Undisputed facts stated by the Defendant, Tokheim, and supported by the record are as follows: (Defendant's Memorandum in Support of Motion for Summary Judgment, pp. 5-21, filed

November 2, 1987, and Plaintiff's Brief in Opposition filed December 3, 1987, pp. 6-9)

- (1) The Defendant in this action is Tokheim Corporation ("Tokheim"), which has its home office in Fort Wayne, Indiana. [Amended Complaint, paragraph 5.]
- (2) Tokheim is a national manufacturer of petroleum marketing equipment, including such things as gasoline service station pumps, dispensers and related equipment, hand pumps, submerged pumps, and various types of meters used in measuring the flow of petroleum and other liquid products. [Rowan Dep.; Heisey dep.; Richison dep.]
- (3) To a limited extent, Tokheim markets its products by means of a "dual distribution system." That is, Tokheim makes direct sales to certain high volume customers, such as major oil companies and some governmental organizations. [Richison dep., pp. 145-147.]
- (4) However, with the exception of these national accounts, or "house" accounts, Tokheim does not normally sell directly to the end users of its product. Rather, the great majority of its products are marketed through independent distributors located throughout the United States. [Rowan dep., p. 25.]

- (5) In 1983, Tokheim had approximately 150 distributors. It presently has approximately 160. [Rowan dep. p. 13.]
- (6) The Plaintiff in this action is Wayne Richison, d/b/a Wayne Richison Equipment Company ("Richison"), located in Tulsa, Oklahoma. Richison is primarily a sales organization specializing in the sale of petroleum marketing equipment and related products, such as underground tanks, commercial lighting fixtures, plastic piping, gauges, etc., to independent oil jobbers and end users such as convenience store chains. [Richison dep., pp. 180-182; Amended Complaint, ¶2.]
- (7) Wayne Richison formed Richison Equipment Company in 1969. Richison Equipment Company is a sole proprietorship. [Richison dep., p. 11.]
- (8) That same year, Richison was appointed by Tokheim as a Manufacturer's Representative to sell, or solicit orders for, Tokheim's products, excluding service parts, in designated counties in northeastern Oklahoma and western Arkansas. [Richison dep., p.11; Amended Complaint, ¶7, Ex. A.]
- (9) At the time Richison was appointed a Manufacturer's Representative, Richison entered into a written contract with Tokheim for that purpose. A

copy of the contract, as amended from time to time, is attached as an exhibit to Richison's Amended Complaint in this action and is also attached as an exhibit to the portions of Richison's deposition appearing in the accompanying appendix. Certain of the counties surrounding the Tulsa metropolitan area were assigned to Richison on a "closed basis." Amended Complaint, ¶7, Ex. A.]

- (10) Other adjacent perimeter counties, and the counties in Arkansas, were assigned to Richison on an "open basis." Amended Complaint, ¶7, Ex. A.]
- (11) As used in the written agreement, the term "open basis" meant that Tokheim could appoint additional Manufacturer's Representatives, and later "distributors," in those areas. "Closed basis" meant that Tokheim would not appoint other Manufacturer's Representatives in those designated areas. [Amended Complaint, ¶7, Ex. A; Heisey dep., pp. 72-73; Wehrenberg dep., pp. 49-51.]
- (12) In 1974, the written agreement was amended to appoint Richison a "distributor" of Tokheim products. By the terms of the written agreements, a distributor was permitted to purchase a product directly from Tokheim and resell it to its customers on such terms as it deemed best. By the

terms of the Manufacturer's Representative Contract, all orders and their terms were to be first approved and then accepted by Tokheim in Fort Wayne. [Amended Complaint, ¶7, Ex. A.] By its terms, the Manufacturer's Representative Contract (hereinafter referred to as the "Distributor Agreement") could be terminated without cause on 15 days' written notice. [Amended Complaint, ¶7, Ex. A; Richison dep., p. 151.]

(13) Tokheim gave Richison notice of termination of the Distributor Agreement on or about June 15, 1983, and Richison's Distributor Agreement was terminated, effective July 1, 1983. [Richison dep., p. 30.]

(14) During the entire time Richison was a Tokheim distributor, Richison's business was essentially a one-man operation. [Richison dep., pp. 40-46.]

(15) For the seven or eight year period after Richison became a Tokheim distributor, he operated out of his home, with a small ten foot by twenty foot rented storage space. [Richison Dep., pp. 40-41.]

(16) During that time, Richison employed only a single employee, a retired gentleman by the name of Mr. Wise, and he assisted Mr. Richison in sales for a period of only one year. [Richison dep., p. 41.]

- (17) During the remaining time Richison continued as a Tokheim distributor, the only employees Richison ever had were his son, for a period of approximately six months, and his daughter, also for a period of only approximately six months. [Richison dep., pp. 42-45.]
- (18) Richison eventually moved his business address from his home to a small office at 5200 South Yale in Tulsa, keeping the small rented storage space. He remained at that location for approximately two years. [Richison dep., pp. 43-44.]
- (19) From there, he moved to his present location at 4522 South 51st Street in Tulsa, where he has a small office and a small adjoining storage space of approximately 800 square feet. [Richison dep., p. 44.]
- (20) Except for the assistance of the just-mentioned employees, Richison has personally handled all of his own sales work. He handled all of his own office work, including all ordering and invoicing. During the times he was out on the road, he utilized an answering service. [Richison dep., pp. 40-46.] During the entire time Richison operated as a Tokheim distributor, he never maintained a service department, he never maintained a display area to display Tokheim

products, he never maintained a sales force, he never employed anyone to work the counter to handle customer sales or inquiries, he never employed anyone to offer technical assistance to customers or prospective customers, he never maintained any substantial inventory of Tokheim products, and he never maintained any capability to install the products he sold. [Richison dep., pp. 40-46, 103, 123-126.] (Plaintiff points out that the evidence establishes that he used independent authorized service representatives or independent contractors to install and/or service Tokheim products that he sold. Page 7, Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment filed December 3, 1987).

(21) Between the time Richison was first appointed a Tokheim distributor and the time his distributorship was terminated in July of 1983, Tokheim's product line underwent substantial changes. [Rowan dep., pp. 10-13; Richison dep., pp. 95-99, 130-135.]

(22) Beginning in the mid-1970s, Tokheim's retail service station gasoline pumps ("gasoline dispensers") began an evolution from a relatively simple mechanical operation to a more complex

- electronic operation. [Rowan dep., pp. 10-11; Richison dep., pp. 95-98.]
- (23) The new equipment was more complex, involved more computerization, and was much more expensive. [Richison dep., pp. 97-98, 130-135; Rowan dep., pp. 10-13.]
- (24) Tokheim believed that the changes in its products required corresponding changes in its distributorship network in order for Tokheim to service the increased technical needs of its customers and to maintain its reputation for quality in the marketplace. [Rowan dep., pp. 10-13; 14-15.]
- (25) With the dramatically increased cost and complexity of its primary products, Tokheim believed that, whereas distributors may have been able to satisfactorily operate as a small, sales-only operation prior to the changes, after the changes it was preferable, indeed necessary, for its distributors to increase their investments in their operations by expanding their technical staffs in order to provide technical assistance and full-service capability to Tokheim customers, to offer installation services where possible, to carry sufficient inventory levels, etc. [Rowan dep., pp. 10-15, 22-25, 27-28, 88-91; Wehrenberg

dep., pp. 65-66; Walker dep., p. 20; Richison dep., pp. 95-99, 123-124, 130-135].]

(26) Tokheim believed that its products would be best represented in the marketplace by having its distributor sales organizations combined with the required service functions in one organization in order to avoid "fingerpointing" if something were to go wrong and to avoid situations where a distributor having service facilities would respond to its own customers before responding to the customers of those distributors not having service capabilities. [Rowan dep., pp. 88-91.]

(27) By 1983, Tokheim management had become convinced that a one-man distributorship operation could no longer perform the type of services Tokheim wanted to have performed by companies operating as Tokheim distributors. [Rowan dep., pp. 10-15, 22-25, 27-28, 88-91; Wehrenberg dep., pp. 65-66; Richison dep., pp. 123-124; Walker dep., p. 20.]

(In reference to undisputed facts 24-27, the Plaintiff reminds that his written distributorship agreement did not require him to maintain a service component or invest a certain sum of capital and/or maintain a specified inventory. Plaintiff testified that early on in his distributorship it was agreed he was to have a

sales distributorship only. Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment, pp. 7-8).

- (28) Beginning in the mid-1970s, and through the entire remaining time Richison remained a Tokheim distributor, Tokheim repeatedly encouraged and requested Richison to develop full-service capabilities in order to provide Tokheim customers with the type of services Tokheim desired of its distributors. [Richison Dep., pp. 102-103, 106-107, 123-124, 130-135; Rowan dep., p. 28-29.]
- (29) During that time, Richison was fully aware that Tokheim wanted him to expand his operation to provide a service department, technical assistance, and increased sales force, etc. [Richison dep., pp. 102-103, 106-107, 123-124, 130-134; Rowan dep., pp. 23-25, 28.]
- (30) Notwithstanding Tokheim's stated preferences and policies, Richison refused to expand his operation on the grounds that he was entitled to remain a one-man "sales-only" distributor and because he did not want the "headaches" of a service department. [Richison dep., pp.101-107.]
- (31) Further, Richison did not want to offer expanded facilities and services because it would have caused his overhead costs to increase and it would

have caused his cost of sales to increase and it would have reduced his profit margin and it would have inhibited his ability to compete on the basis of price only, as he preferred to do. [Richison dep., pp. 123-125, 130-135.]

(32) In 1983, at the time Richison's Distributor Agreement was terminated, Tokheim divided the continental United States into five separate regions for purposes of its marketing organization. Each region was headed by a Regional Sales Manager. [Heisey dep., pp. 5-7.]

(33) Each region is further divided into districts, headed by a District Sales Manager. [Wehrenberg Dep., pp. 6-8.]

(34) At the time of Richison's Distributor Agreement with Tokheim, Richison was located in the Tulsa district, including all of Oklahoma, the Texas Panhandle (namely, Amarillo and Lubbock) and several western Arkansas counties. [Wehrenberg dep., pp. 10-11.]

(35) During the time Richison was a Tokheim distributor, the Tulsa District Manager was David Wehrenberg. At the time of the termination of Richison's distributorship, the Regional Sales Manager for the region which included the Tulsa district was Mr. Huffman Heisey. Mr. Heisey

reported to Mr. David Rowan, General Sales Manager of Tokheim's Petroleum Equipment Division. Mr. Rowan in turn reported to Mr. Harry McKensie, Vice-President of U. S. Marketing. [Wehrenberg dep., pp. 11-14.]

- (36) In 1983, there were five Tokheim distributors in the Tulsa district. They were: Atchley's Service Company, Tulsa; Holt Pump and Supply, Oklahoma City; White's Pump Service and Supply, Lubbock; Willborne Brothers Company, Amarillo; and Richison, in Tulsa. [Wehrenberg dep., pp. 16-20.]
- (37) In 1983, Tokheim had a number of direct competitors in the manufacture and sale of retail service station petroleum dispensing equipment. Among them were Gilbarco, Bennett, Wayne (a Dresser Industries company), Southwest and Gas Boy. [Richison dep., pp. 69-80.]
- (38) Each of these competitors sold through distributors who directly competed with Richison in the area serviced by Richison. [Richison dep., pp. 69-80.]
- (39) As mentioned above, each Tokheim distributor was assigned an area of primary responsibility. These areas were often referred to as the distributor's "territory." [Richison dep., pp. 11-26; Heisey dep., 72-73; Wehrenberg dep., pp. 47-51.]

- (40) Tokheim preferred its distributors to concentrate their sales efforts in their assigned territories in order to fully develop customers and sales within each distributor's respective territory. [Heisey dep., pp. 54-56, 59-60; Richison dep., pp. 101-106; Walker dep., pp. 29-30.]
- (41) Tokheim wanted each distributor to focus its efforts on its individual territory in order to increase Tokheim's market share in relation to the market shares held by Tokheim's competitors. [Heisey dep., pp. 54-56, 59-60; Richison dep., p. 10; Walker dep., pp. 29-30; Wehrenberg dep., pp. 69-70.]
- (42) Tokheim therefore actively encouraged, requested, and attempted to persuade its distributors to confine their sales efforts to their assigned areas of primary responsibility, or territories. [Heisey dep., pp. 130-146; Wehrenberg dep., pp. 47-50, 69-70.]
- (43) However, while Tokheim's policy was to encourage or "jawbone" its distributors to confine their efforts in their own territories, Tokheim did not prohibit its distributors, including Richison, from making sales outside of their assigned territories. [Rowan dep., pp. 17, 42, 101-103; Heisey dep., pp. 72-73; Richison dep., pp. 59-60;

Wehrenberg dep., pp. 47-50.] (Plaintiff denies undisputed fact No. 43 but his deposition testimony (pp. 59-60) is to the contrary).

- (44) Aside from its attempts to persuade, the only tool used by Tokheim to further its policy of territory sales focusing was to refuse to "dropship" products sold by one distributor into another distributor's assigned territory. [Rowan dep., p. 76; Richison dep., p. 61; Wehrenberg dep., pp. 50-51.]
- (45) Richison was fully aware of Tokheim's policy regarding the focusing of distributor sales in distributors' assigned territories; however, Richison continued to regularly sell outside of his territory. [Richison dep., pp. 56-60; Rowan dep., pp. 16-18.]
- (46) Mr. Richison believed that as long as he brought Tokheim products into his "stock" in Tulsa, he could sell to anybody that he wanted to, in spite of Tokheim's expressed preferences, and Richison continued to do that throughout the course of his association with Tokheim. [Richison dep., pp. 59-60.]
- (47) Thus, although Richison's "territory" consisted primarily of northeastern Oklahoma and adjoining western border counties of Arkansas, Richison

- regularly sold Tokheim products throughout the entire state of Oklahoma. [Richison dep., p.58.]
- (48) During the term of his contract with Tokheim, Richison also sold products to customers located in Arkansas, but not within the counties included in his area of primary responsibility. [Richison dep., pp. 56-67.]
- (49) Also during the terms of his contract, Richison sold products to customers located in Colorado [Richison dep., pp. 52-61], to customers located in Texas [Richison dep., p. 57]; Richison Answers to Tokheim's Request for Admissions, Nos. 29-31], to customers located in Kansas [Richison dep., p. 52; Richison Answers to Tokheim's Request for Admissions, Nos. 71-74], to customers located in Missouri [Richison dep., p. 56], and to customers located in Florida [Richison dep., p. 51.]
- (50) On occasion, Tokheim received complaints from other Tokheim distributors about Richison's practice of making sales into their assigned territories. [Wehrenberg dep., pp. 65-71, 98-99; Heisey dep., pp. 82-86; Rowan dep., pp. 16-18.]
- (51) Other Tokheim distributors located in the territories adjacent to Richison's territory, such as Willborne Brothers in Amarillo and Holt Pump and Supply in Oklahoma City, complained to Tokheim

that it was not fair for Richison to make use of his extremely low overhead to sell at lower prices than they could when they were abiding by Tokheim's expressed policies and investing more capital into their operations to provide the greater range of services required by Tokheim but which caused their cost of sales to be higher. [Wehrenberg dep., pp. 67-81; Heisey dep., pp. 92-97; Walker dep., pp. 8-17, 29-30.]

- (52) To the extent Richison sold Tokheim products outside of his territory, other full-service distributors would not receive the benefit of the sale but would be required to provide the needed support services for those products. [Richison dep., pp. 130-135; Walker dep., pp. 8-17, 29-30.] (While Plaintiff asserts that he disputes this fact, he actually does not, but explains that authorized service representatives or distributors outside the territory would be paid for any service rendered on products sold beyond the territory. Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment, p. 8. [This argument either ignores the distributor's capital investment in a service department or implies that all such expense is reimbursed. If the latter is true, a distributor should have no

economic basis to refuse to maintain a service department.])

- (53) Although Richison did not have a service department and had continually refused to provide a service department, Richison believed that it was the duty of those distributors having service departments to service Tokheim products sold into their territories. [Richison dep., p. 90.]
- (54) As the result of the above-mentioned changes in Tokheim's product line and Tokheim's policy of requiring its distributors to expand the capabilities of their operations, by 1983, almost all of Tokheim's distributors had developed the required full-service capability. [Rowan dep., pp. 10-13; Richison dep., pp. 86-89.] By 1983, all of the other Tokheim distributors in the Tulsa district had developed a full-service capability. [Richison dep., pp. 81-89.]
- (55) During the course of Tokheim's association with Richison, Tokheim published suggested retail prices, and Tokheim distributors received copies of the published suggested prices. [Wehrenberg dep., pp. 80-83; Richison dep., pp. 147-150.]
- (56) Although Tokheim believed that, because of its reputation for quality in the marketplace, its distributors should be able to sell at prices

close to Tokheim's suggested resale prices, and Tokheim at times attempted to persuade distributors to sell at prices close to the suggested resale prices, Tokheim at no time required any of its distributors to sell at any given price. [Rowan dep., p. 55, 63-64; Wehrenberg dep., pp.80-83; McKensie dep., pp. 35-37; Richison dep., pp. 56, 151-152; Walker dep., pp. 8-17.]

(57) All Tokheim distributors, including Richison and the other Tokheim distributors in the Tulsa district, purchased Tokheim products from Tokheim at the same discount off of Tokheim's suggested resale prices. [Richison dep., pp. 147-150; Wehrenberg dep., p. 83.]

(58) Richison did not agree with Tokheim's marketing philosophy that it was necessary for Tokheim's distributors to provide substantial inventory and a good service capability along with an expanded sales force because of the increasing complexity of Tokheim's products and that vendor service and support after the sale were at least as significant as a low price bid in order for Tokheim to effectively compete with its competitors. [Richison dep., pp. 122-125, 130-135.]

- (59) Despite Tokheim's repeated requests that he expand his operation, Richison adhered to his belief that "price is the most important thing there is" in marketing Tokheim products. [Richison dep., p. 134.]
- (60) Richison adjusted his price depending on what it took to get the business, and if he could sell something and make four percent, ten percent, twenty percent profit, he would do it. [Richison dep., pp. 56, 151-152.]
- (61) As mentioned above, Richison was able to sell at prices as low as four percent above cost due to his one-man operation and extremely low overhead. [Richison dep., pp. 123-125, 200-202.]
- (62) After Richison's Tokheim Distributor Agreement was terminated, Richison has continued to purchase Tokheim products from other Tokheim distributors for resale. [Richison dep., pp. 34-39, 173-175.]
- (63) Since his termination, Richison has had a very good relationship with Southern Company, a Tokheim distributor located in Little Rock, Arkansas, and he has continued to buy Tokheim products from that organization, among others. In 1986, Richison purchased approximately \$125,000 worth of products from Southern Company. [Richison dep., pp. 37-38.]

(64) During the time Richison was a Tokheim distributor, and subsequently, Tokheim designated certain of its distributors throughout the country as "service parts depots." A service parts depot served a different function than the service parts inventory normally carried by Tokheim distributors having full-service capability. A service parts depot was a parts depository that other distributors could draw from. It operated more or less as a kind of extended warehouse for Tokheim. [Richison dep., pp. 168-171; Rowan dep., pp. 40-41.] A parts depot served other distributors in the states surrounding its location, and the designated distribution was required to have a service department. [Richison dep., p.169; Rowan dep., pp. 40-41.]

(65) During the time Richison was a Tokheim distributor, United Pump and Supply, in Dallas, Texas, was the closest parts depot to Richison, and, subsequently, Holt Pump and Supply, in Oklahoma City, was made a parts depot in place of United Pump. [Richison dep., pp. 69-71.]

(66) Tokheim did not designate Richison as a parts depot, or parts warehouse for other distributors. [Richison dep., pp. 168-171.]

- (67) During the time Richison was a Tokheim distributor, Tokheim required its distributors to carry its full line of products, including such things as hand pumps, meters, commercial products, gasoline pumps, etc. [Richison dep., p. 179.]
- (68) Tokheim did not require its distributors to sell any particular dollar volume of its products. Although Tokheim had "quotas" for some of its products, these were for the purpose of determining a given distributor's participation in Tokheim incentive programs. Tokheim did not sanction any distributor if quotas were not met. [Richison dep., pp. 179-180.]
- (69) At the time Richison's Distributor Agreement was terminated, Tokheim was dissatisfied with its market share of the Tulsa market and wanted to attempt to regain its market with local independent companies such as Git-N-Go and QuikTrip. Git-N-Go and QuikTrip are convenience store chains. [Richison dep., pp. 183-185; Walker dep., pp. 22-23; Rowan dep., pp. 15-19.]
- (70) Richison does not know what percentage of the market for petroleum marketing equipment Tokheim or any of its above-mentioned competitors has in the areas Richison sold in while a Tokheim distributor and thereafter or in any other area.

[Richison dep., pp. 65-80.] Similarly, Richison cannot estimate Richison Equipment's market share for petroleum marketing equipment sold in the Tulsa district in 1982 in relation to distributors of competing brands of petroleum marketing equipment; nor can he get a figure for market share with respect to the entire State of Oklahoma. [Richison dep., p. 94.]

- (71) Richison cannot say if Tokheim's market share has increased or decreased since 1982. [Richison dep., p. 67.]
- (72) Finally, Mr. James Permenter, a retired Gas Boy distributor and the person designated as Richison's expert witness in this case, has neither an opinion about what relevant geographic area is applicable in this case nor what relevant product market is applicable in this case. [Permenter depo., pp. 140-144.]
- (73) In fact, Permenter indicated a lack of understanding as to the meaning or significance of those concepts in an anti-trust context. [Permenter dep., pp. 143-144.]
- (74) Further, Mr. Permenter was not able to opine as to the respective market shares of Tokheim or any of Tokheim's competitors in the area in which Richison operated during the time he was a Tokheim

distributor or thereafter [Permenter dep., p. 101].

(75) Mr. Permenter believes that all of Richison's damages flow from the fact that Richison is no longer a Tokheim distributor. [Permenter dep., p. 161.]

(76) Mr. Permenter knows of no evidence to support a monopolization claim against Tokheim. [Permenter dep., pp. 166-167.] (Concerning undisputed facts Nos. 72-76, Plaintiff argues that Mr. Permenter needed additional information from Tokheim which had been requested but not furnished to express an opinion concerning the relevant product market and geographic market. Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment, filed December 3, 1987, p. 9).

STANDARD - FED.R.CIV.P. 56 SUMMARY JUDGMENT

Fed.R.Civ.P. 56(c) in part states:

"... The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law...."

Rule 56 does not require the movant to support its motion with affidavits or other evidentiary materials that affirmatively negate or disprove material facts on which the nonmoving party will bear the burden of proof at trial. Celotex Corporation v.

Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant has met its initial Rule 56 burden of pointing out that there is an absence of evidence to support the opponent's case, the nonmoving party bears the burden of coming forward with evidence which would withstand a motion for directed verdict at trial; that is, evidence sufficient to allow the trier of fact to find in favor of the nonmoving party, taking into account the evidentiary standard of proof that applies. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Further, if the theory of the nonmovant's case is inherently implausible, to withstand a motion for summary judgment the nonmovant must come forward with more persuasive evidence to support the claim than would otherwise be required. Matsushita Electronic Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

As was pointed out recently in Instructional Systems Development Corp. v. Aetna Casualty and Surety Co., 817 F.2d 639 (10th Cir. 1987):

"Summary judgment may not be granted when a genuine issue of material fact is presented to the trial court. Exnicious v. United States, 563 F.2d 418, 423 (10th Cir. 1977). 'Where different ultimate inferences may properly be drawn the case is not one for summary judgment', Security National Bank v. Belleville Livestock Commission Co., 619 F.2d 840, 847 (10th Cir. 1979). Generally, summary judgment should be used sparingly in antitrust litigation. See Poller v. Columbia Broadcasting System Inc., 368 U.S. 464, 82 S.Ct. 486, 7 L.Ed.2d 458 (1962).

"However, allegations of restraint of trade must be supported by significant probative evidence in order to overcome a motion for summary judgment. See First National Bank v. Cities Service Co., 391

U.S. 253, 289-90, 88 S.Ct. 1575, 1592-93, 20 L.Ed.2d 569 (1968); Natrona Service, Inc. v. Continental Oil Co., 598 F.2d 1294, 1298 (10th Cir. 1979). 'A party resisting a motion for summary judgment must do more than make conclusory allegations, it must 'set forth specific facts showing that there is a genuine issue for trial.' Dart Industries, Inc. v. Plunkett Co., 704 F.2d 496, 498 (10th Cir. 1983) (quoting Fed.R.Civ.P. 56(e))."

For Tenth Circuit Court of Appeals recent cases regarding summary judgment, see, Williams v. Borden, 637 F.2d 731 (10th Cir. 1980), and Windon Third Oil and Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986).

THE CRUX OF THE DISPUTE

The undisputed material facts establish that for the fourteen years Plaintiff served as a distributor of Tokheim he was essentially a one-man sales representative who, not withstanding significant technical changes in the manufacturer's products and the marketplace, refused to make the changes of increased service, inventory and sales force required by the manufacturer. Richison did not agree with the contours of the distributorship organization chosen by Tokheim and insisted upon being a pure sales representative so he could compete on the basis of price only.

Following the teaching of Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36, 53 L.Ed.2d 568 (1977), and Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752, 79 L.Ed.2d 775 (1984), in Westman Commission Co. v. Hobart International, Inc., 796 F.2d 1216, 1225 (10th Cir. 1986), the Tenth Circuit Court of Appeals held that:

"[A] manufacturer generally should have wide latitude in determining the profile of its distributorships...."

Westman, 796 F.2d at 1227 continued:

". . . In the end, we are convinced that, when a manufacturer is left free to determine the profile of its distributorships, procompetitive incentives will lead it to make distribution decisions that ultimately benefit customers."

Id. Westman, 796 F.2d at 1227, concludes by stating:

"Finally, restricting distribution can reduce transactions costs by permitting a manufacturer to deal only with distributors with whom it believes it can develop an efficient working relationship."

Continental T.V. and Monsanto state that a manufacturer may request its distributors to undertake certain "costly nonprice restrictions" in order to provide the types of services the manufacturer believes its products require at the distributor level. Richison admits that the reason he was able to sell at a lower price than other Tokheim distributors was because of his refusal to provide the type of facilities and services that Tokheim desired. (Undisputed material fact No. 31.)

A fundamental premise is that "a manufacturer of course generally has a right to deal, or refuse to deal, with whomever it likes, as long as it does so independently." Monsanto Company v. Spray-Rite Service Corp., 465 U.S. 752, 79 L.Ed.2d 775, 783 (1984), citing United States v. Colgate & Co., 250 U.S. 300, 307, 63 L.Ed. 992 (1919). Monsanto states:

"A manufacturer and its distributors have legitimate reasons to exchange information about the prices and the reception of their products in the market. Moreover, it is precisely in cases in which the manufacturer attempts to further a particular marketing strategy by means of

agreements on often costly nonprice restrictions that it will have the most interest in the distributors' resale prices. The manufacturer often will want to ensure that its distributors earn sufficient profit to pay for programs such as hiring and training additional salesmen or demonstrating the technical features of the product, and will want to see that 'free-riders' do not interfere. See Sylvania, supra, at 55, 53 L.Ed.2d 568, 97 S.Ct. 2549. Thus, the manufacturer's strongly felt concern about resale prices does not necessarily mean that it has done more than the Colgate doctrine allows."

Monsanto, 465 U.S. at 764. Richison, an admitted free-rider, maintains that he has the legal right under his distributorship agreement with Tokheim to ignore Tokheim's "market strategy" and "nonprice" restrictions so he can be the price-cutting leader. However, it is clear under the undisputed facts herein that Tokheim has the right to terminate Richison on fifteen days' notice under the distributorship agreement if Richison refuses to implement Tokheim's preferred independently implemented "market strategy."

The evidence does not support Richison's assertion that Tokheim conspired with other distributors to terminate him in order to fix prices. Monsanto states that Plaintiff must be able to present "evidence that tends to exclude the possibility that [Tokheim] and nonterminated distributors were acting independently." Monsanto, 465 U.S. at 764. Richison concedes that while Tokheim may have expressed "strongly felt concerns" about retail prices, it "at no time required any of its distributors to sell at any given price." (Undisputed fact No. 56, Caskey dep., p. 17).

In essence, Richison asks the Court to infer a price-fixing conspiracy from the evidence before the Court. The Supreme Court in Monsanto concluded such an inference not justified and improbable when confronted with facts similar to those herein, and stated:

"... Permitting an agreement to be inferred merely from the existence of complaints, or even from the fact that termination came about 'in response to' complaints, could deter or penalize perfectly legitimate conduct. As [the manufacturer] points out, complaints about price cutters 'are natural -- and from the manufacturer's perspective, unavoidable -- reactions by distributors to the activities of their rivals.' Such complaints, particularly where the manufacturer has imposed a costly set of nonprice restrictions, 'arise in the normal course of business and do not indicate illegal concerted action.' ..."

Monsanto, 465 U.S. at 763.

Distributors complying with Tokheim's requirement of maintaining service and improved marketing facilities could be expected to complain about a price-cutting distributor who did not. Richison concedes that other such distributors did complain about his price cutting, which was an outgrowth of Richison's refusal to comply with Tokheim's market policies. (Undisputed fact No. 51). Monsanto acknowledges that such expected or normal response type conduct does not give rise to a price-fixing conspiracy inference. Further, the fact that Tokheim made prior arrangements for Holt Pump to replace Richison as a distributor upon his termination is not an antitrust violation. Dart Industries, Inc. v. Plunkett Company of Oklahoma, 704 F.2d 496, 498 (10th Cir. 1983).

THE ALLEGED ANTITRUST VIOLATIONS

Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 488, 97 S.Ct. 690, 697, 50 L.Ed.2d 701, 712 (1977) (quoting Brown Shoe Co. v. United States, 370 U.S. 294, 320, 82 S.Ct. 1502, 8 L.Ed.2d 510 (1962)), stated the basic premise that:

"... The antitrust laws, however, were enacted for 'the protection of competition, not competitors.'"

The Plaintiff must show more than injury to himself, and must establish that Tokheim's conduct injured competition by raising market entry barriers, increasing concentration, or allowing Tokheim to acquire or exercise market power. See, Midwest Underground Storage, Inc. v. Porter, 717 F.2d 493, 498 (10th Cir. 1983); Natrona Service, Inc. v. Continental Oil Co., 598 F.2d 1294, 1298 (10th Cir. 1979). The evidence herein establishes vertical nonprice intrabrand restraints, but not injury to competition. The evidence simply does not support Plaintiff's contention that Tokheim's policies and conduct created entry barriers or allowed Tokheim to acquire or exercise monopoly power. The effect of Tokheim's conduct would be to limit intrabrand competition among its distributors which, as previously demonstrated, is not an antitrust violation.

As is stated in Motive Parts Warehouse v. Facet Enterprises, 774 F.2d 380, 386-87 (10th Cir. 1985), a manufacturer's decision to replace an inadequate distributor has no effect on competition:

"Indeed, a company may contract with a new distributor and as a consequence terminate its relationship with a former distributor without running afoul of the Sherman Act, even if the

effect of the new contract is to seriously damage the former distributor's business. Dart Industries, Inc. v. Plunkett Co. of Oklahoma, 704 F.2d 496 (10th Cir. 1983); Burdett Sound, Inc. v. Altec Corp., 515 F.2d 1245 (5th Cir. 1975)."

Dart Industries, 704 F.2d at 499, points out that substituting one exclusive distributor for another does not adversely affect competition, and to hold otherwise would require a manufacturer to permit a gap in its distribution system and this would not serve the procompetitive aims of the antitrust laws.

Section 4 (15 U.S.C. §15) of the Clayton Act provides that "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws" may recover treble damages. To recover under this section, a plaintiff must establish that he has suffered antitrust injury. Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489, 50 L.Ed.2d 701, 712 (1977); Matsushita Electronic Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 89 L.Ed.2d 538 (1986). In Brunswick, the Court stated an award of damages under §4 of the Clayton Act must not be inimical to the purposes of the antitrust laws. Id. at 488, 50 L.Ed.2d at 712.

In the case of Local Beauty Supply, Inc. v. Lamaur, Inc., 787 F.2d 1197 (7th Cir. 1986), a case similar to the instant matter, the Seventh Circuit Court of Appeals held that a distributor, terminated for free-riding off other full-service distributors, had not suffered any antitrust injury and was thus precluded from recovering damages under §4 of the Clayton Act. See also, Reazin v. Blue Cross and Blue Shield of Kansas, Inc., 635 F.Supp. 1287, 1310 (D.Kan. 1986).

The essence of the Plaintiff's antitrust allegations are nonprice vertical restrictions implicating the Rule of Reason analysis. Normally, a Rule of Reason analysis requires a definition of the relevant product and geographic market and an evaluation of the market impact. See, Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752, 79 L.Ed.2d 775 (1984), and Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36, 53 L.Ed.2d 568 (1977). Plaintiff complains that Tokheim wanted him to maintain a service facility and sell Tokheim products within a specified territory, neither of which Plaintiff desired to do. However, such a market analysis is unnecessary herein because the evidence in the record is insufficient to establish that Tokheim's actions caused injury to competition, antitrust injury to the Plaintiff, or that a conspiracy in violation of the antitrust laws existed. Were it necessary herein, the record contains no evidence concerning the relevant geographic or product market and Plaintiff's counsel's explanation that further discovery in that regard is necessary is disingenuous as there has been ample time for such discovery. Plaintiff's expert, Mr. James Buchanan Permenter, was unfamiliar with the terms relevant geographic or product market. (Undisputed facts Nos. 72-76).

The evidence simply does not create an issue of fact concerning Plaintiff's numerous alleged antitrust violations of territorial restraints, price-fixing conspiracy, illegal exclusive dealing contracts, group boycott or concerted refusal to deal, tying arrangements, and discrimination in violation of the Robinson-Patman Act. Each will be discussed below.

Paragraph V of the Manufacturer's Representative Contract executed December 1, 1969, appointed Richison as a distributor with a "primary area of responsibility" of certain counties in the states of Oklahoma and Arkansas. The undisputed facts establish that Tokheim does not prevent distributors from selling outside their assigned territories, but Tokheim does not assist in such sales by drop shipping into another distributor's assigned territory. This policy does not violate the Sherman Act §1. Dart Industries, Inc. v. Plunkett Co. of Oklahoma, 704 F.2d 496, 498 (10th Cir. 1983). Assigning manufacturer's representatives an area of primary responsibility is not presumptively illegal. Dart Industries, Inc., supra; see also, White Motor Co. v. United States, 372 U.S. 253, 270-72, and note 12, 9 L.Ed.2d 738 (1963) (Brennan, J., concurring); Colorado Pump and Supply Co. v. Febco, Inc., 472 F.2d 637, 639-40 (10th Cir.), cert. denied, 411 U.S. 987, 36 L.Ed.2d 965 (1973).

Richison admits that he sold Tokheim products to customers throughout the state of Oklahoma and in other states of the United States outside his specified territory as did other Tokheim distributors. (Undisputed facts Nos. 43-49).

- As pointed out above, the evidence establishes that the more probable explanation for Richison's termination as a distributor for Tokheim was because of his refusal to develop a service department and otherwise expand his distributorship capabilities. The manufacturer chose to terminate its relationship with Richison because of his "free-riding." Monsanto Co. v.

Spray-Rite Service Corp., 465 U.S. 752, 79 L.Ed.2d 775 (1984); Continental T.V. Inc., v. GTE Sylvania Inc., 433 U.S. 36, 55, 53 L.Ed.2d 568, 583 (1977); Westman Com'n Co. v. Hobart Intern., Inc., 796 F.2d 1216, 1227 (10th Cir. 1986); Local Beauty Supply, Inc. v. Lamaur, Inc., 787 F.2d 1197, 1202, n. 2 (7th Cir. 1976).

Paragraph 14 of Plaintiff's amended complaint alleges that a representative of Tokheim distributor Holt Pump and Supply "urged" the Plaintiff to stop discounting from Tokheim's list prices, which Plaintiff refused to do. The record does not reveal that a Tokheim representative was present at this alleged discussion, nor that Tokheim directed the Holt Pump and Supply representative to contact the Plaintiff. The foregoing subheading "The Crux of the Dispute" discussed further the dearth of evidence in support of an alleged price-fixing conspiracy.

Paragraph 29 of Plaintiff's amended complaint alleges that the distributorship agreement entered into by Tokheim and the Plaintiff were illegal exclusive dealing arrangements. Exclusive dealing arrangements could theoretically violate §3 of the Clayton Act, §1 of the Sherman Act, and §2 of the Sherman Act. Tampa Electric Co. v. Nashville Coal Co., 365 U.S. 320, 5 L.Ed.2d 580, 591 (1961). Plaintiff's exclusive dealing claim is without merit because, as discussed in Tampa Electric Co., the evidence does not establish that the distributorship agreement excluded any of Tokheim's competitors from the market. See, Perington Wholesale, Inc. v. Burger King Corp., 631 F.2d 1369, 1374 (10th Cir. 1979); and Roland Machinery Co. v. Dresser Industries, Inc.,

749 F.2d 380, 394 (7th Cir. 1984). Neither does the evidence establish a causal relationship between the existence of the purported exclusive dealing distributorship agreement and any injuries suffered by the Plaintiff. See, Associates General Contractors of California, Inc. v. California State Council of Carpenters and the Carpenters of 46 Northern Counties Conference Board, 459 U.S. 519, 74 L.Ed.2d 723 (1983); Instructional Systems Dev. v. Aetna Cas. & Sur. Co., 817 F.2d 639, 650 (10th Cir. 1987). The Plaintiff produced no evidence that he desired to deal with any manufacturer other than Tokheim and further, the evidence established that Plaintiff profited from the distributorship agreement, thus contradicting any claim of injury.

Paragraph 24 of Plaintiff's amended complaint alleges that Tokheim "restricted and coerced" its distributors to prevent them from selling Tokheim products to the Plaintiff after his termination.

Paragraph 25 of the amended complaint alleges that Tokheim contacted various oil companies and told them that Plaintiff could not sell them Tokheim products. Implicit in such allegations is a claim that Tokheim engaged in a group boycott or concerted refusal to deal after the Plaintiff's termination as a distributor in violation of §1 of the Sherman Act. However, the evidence produced establishes that remaining Tokheim distributors continued to sell Tokheim products to the Plaintiff. (Undisputed Fact No. 62) (Tokheim memos H. R. Heisey's letter to P. N. Finnegan dated January 23, 1984, document No. 100040 [Heisey dep., pp. 130-146] and John Barrington's letter to P. N. Finnegan

dated April 9, 1984, document no. 100001 [Heisey dep., p. 78]).

No evidence supports Plaintiff's claim that Tokheim prevented major oil companies from purchasing Tokheim products from him. By the terms of the Plaintiff's representative contract, as conceded by Plaintiff, (Richison dep., p. 145), Tokheim reserved the right to sell directly to the large oil companies in the Tulsa area. (Exhibit A, paragraph 5 to the amended complaint). There is no evidence in the record that Tokheim distributors and major oil companies concertedly refused to deal with Plaintiff after his termination.

Paragraph 30 of Plaintiff's amended complaint alleges two tying arrangements required by Tokheim. The first, that Tokheim conditions its sale of gasoline dispensers to Plaintiff's purchase of "less desirable products" and that Tokheim attempted to tie the continuation of Plaintiff's representative contract to his implementation of a service department. The Plaintiff does not specifically allege the antitrust law violated but it is assumed the alleged tying arrangements may violate §§ 1 and 2 of the Sherman Act and §3 of the Clayton Act, as tying arrangements are per se illegal. See, Fox Motors, Inc. v. Mazda Distributors (Gulf), Inc., 806 F.2d 953 (10th Cir. 1986).

Three elements must be established in order to prove an illegal tying arrangement:

1. Purchases of the tying product must be conditioned upon purchases of a distinct tied product;

2. A seller must possess sufficient power in a tying market to compel acceptance of the tied product;
3. A tying arrangement must foreclose two competitors of the tied product a "not insubstantial" volume of commerce.

Fox Motors, Inc., 806 F.2d at 957. See also, Jefferson Parish Hospital Dist. No. 2 v. Hyde, 466 U.S. 2, 80 L.Ed.2d 2 (1984). Plaintiff's alleged tying arrangement claim fails because the record is devoid of evidence of these three elements.

The Plaintiff's Robinson-Patman claim is centered in Tokheim's refusal to designate him as one of Tokheim's "service parts depots." A parts depot is a type of extended warehouse from which other distributors can obtain products. (Undisputed facts Nos. 64-66). Service parts depot operators were required to have a service department. (Undisputed fact No. 64). The Plaintiff consistently refused to maintain a service department and therefore never met the basic qualifications to be considered for a service parts depot. The record does not reflect that Tokheim discriminated between similarly situated buyers of its products. F.T.C. v. Simplicity Pattern Co., 360 U.S. 55, 3 L.Ed.2d 1079 (1959); Bouldis v. U.S. Suzuki Motor Corp., 711 F.2d 1319 (6th Cir. 1983); Klamath-Lake Pharmaceutical Assn v. Klamath Medical Service Bureau, 701 F.2d 1276 (9th Cir. 1983).

For the reasons stated above, the motion for summary judgment of the Defendant Tokheim Corporation is hereby sustained. A separate Judgment in keeping with this order shall be filed contemporaneously herewith.

DATED this 13th day of January, 1988.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

BASHRI SHOKI and SHIRLEY ELAINE)
PARKER, now SHIRLEY ELAINE SHOKI,)
)
Plaintiffs,)

v.)

EDWIN MEESE, United States)
Attorney General,)
)
Defendant.)

No. 87-C-720-B

FILED

JAN 14 1988

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

ORDER

At the status conference held the 12th day of January, 1988, counsel for Plaintiffs, Mark LaBlang, advised the Court the Immigration Authority had accepted Plaintiffs' most recent filing. Therefore, Plaintiffs asked this Court to dismiss this case. Based upon this request, the Court hereby dismisses this matter.

IT IS SO ORDERED, this 13th day of January, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JAMES C. SEXTON,)
)
Defendant.)

JAN 14 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 87-C-732-B

DEFAULT JUDGMENT

This matter comes on for consideration this 13th day of January, 1988, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, James C. Sexton, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, James C. Sexton, was served with Summons and Complaint on November 9, 1987. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

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

James C. Sexton, for the principal sum of \$752.00, plus interest at the rate of 9 percent per annum and administrative costs of \$.63 per month from August 7, 1986, until judgment, plus interest thereafter at the current legal rate of 7.22 percent per annum until paid, plus costs of this action.

BY WILLIAM R. BRETT

UNITED STATES DISTRICT JUDGE

NNB/mp

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 14 1988

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 HERBERT M. THORN,)
)
 Defendant.)

CIVIL ACTION NO. 87-C-749-B

AGREED JUDGMENT

This matter comes on for consideration this 13th of ~~October~~ ^{January, 1988} 1987, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Herbert M. Thorn, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Herbert M. Thorn, acknowledged receipt of Summons and Complaint on October 6, 1987. The Defendant has not filed an Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that judgment may accordingly be entered against him in the amount of \$966.00, plus interest thereafter at the legal rate until paid, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Herbert M. Thorn, in the amount of \$966.00, plus interest thereafter at the current legal rate of 7.22 percent until paid, plus the costs of this action.

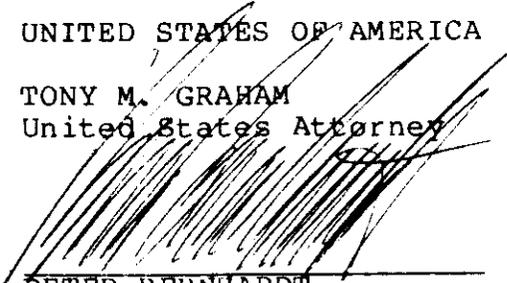
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

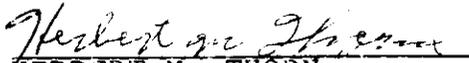
APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT
Assistant U.S. Attorney


HERBERT M. THORN

PB/cen

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

TAMARA MICHELLE FIELDS,)
(NEE': YOACHUM)
)
Plaintiff,)
)
vs.)
)
J.C. PITMAN COMPANY, INC.)
a New Hampshire corporation,)
d/b/a PITCO FRIALATOR, INC.)
a New Hampshire corporation,)
)
PITCO FRIALATOR, INC., a)
New Hampshire corporation,)
)
BASTIAN BLESSING FOOD SERVICE)
EQUIPMENT COMPANY, a division)
of the HUFFMAN FOOD SERVICE)
COMPANY, a Delaware corporation,)
)
HUFFMAN FOOD SERVICE COMPANY,)
a Delaware corporation,)
)
HUFFMAN GROUP, a Delaware)
corporation,)
)
Defendants.)

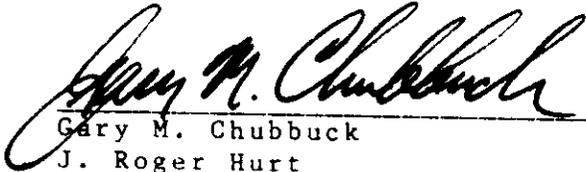
Case No. 86-C-939-E

STIPULATION OF DISMISSAL

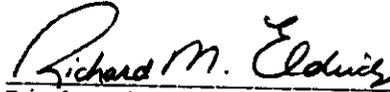
Pursuant to Rule 41(a)(1), all parties who have entered the within action stipulate to the dismissal of the defendants BASTIAN BLESSING FOOD SERVICE EQUIPMENT COMPANY, a division of the HUFFMAN FOOD SERVICE COMPANY, a Delaware corporation, HUFFMAN FOOD SERVICE COMPANY, a Delaware corporation, and HUFFMAN GROUP, a Delaware corporation as parties to this action. The remaining parties stipulate to the amendment of the style of the case to reflect this dismissal.



Wesley E. Johnson, OBA #4731
Sheldon E. Morton, OBA #12187
Attorneys for Plaintiff
201 West 5th, Suite 530
Tulsa, Oklahoma 74103
(918) 584-0822



Gary M. Chubbuck
J. Roger Hurt
P. O. Box 26350
Oklahoma City, OK 73126
Attorneys for J. C. Pitman
Company, Inc. and Pitco
Frialator, Inc.



Richard M. Eldridge
Rhodes, Hieronymus, Jones,
Tucker & Gable
2800 Fourth National Bank
Tulsa, OK 74119
Attorney for Bastian Blessing
Food Service Equipment
Company, Huffman Food Service
Company, and Huffman Group.

B I L L

B15/13

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

CENTRILIFT, a division of
Hughes Tool Company,

Plaintiff,

vs.

OIL SYSTEMS, INC.,

Defendant.

No. 87-C-839-B

STIPULATION OF DISMISSAL

Plaintiff, Centrilift, a division of Hughes Tool Company,
and defendant, Oil Systems, Inc., pursuant to Rule 41 of the
Federal Rules of Civil Procedure, hereby stipulate to the
dismissal of the above-styled and numbered cause, with prejudice.

BLACKSTOCK JOYCE POLLARD &
MONTGOMERY

By Brian J. Rayment
Brian J. Rayment, O.B.A. #7441
515 S. Main Mall
Tulsa, OK 74103
(918) 585-2751
ATTORNEYS FOR PLAINTIFF

John Forsyth
John Forsyth
P. O. Box 7
Cushing, OK 74033-0007
(918) 225-7033
ATTORNEYS FOR DEFENDANT

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

OXBOW SUPPLY, INC.

Plaintiff(s),

vs.

GENERAL TURBINE SYSTEMS, INC.

Defendant(s).

No. 87-C-27-C

FILED

Jan 14 1988

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

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 13th day of January, 19 88.


UNITED STATES DISTRICT JUDGE

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

FILED

NINTH DISTRICT PRODUCTION)
CREDIT ASSOCIATION,)
)
Plaintiff,)
)
v.)
)
BILLY GENE DOOLIN, et al.)
)
Defendants.)

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

Case No. 87-C-546 C

ORDER

THE COURT FINDS that defendants TXO Production Corp., Muggyown Johnson, Tally Johnson, Modena Johnson, Coyote Johnson and Ellouise Johnson have answered but make no counterclaim against the plaintiff, Ninth District Production Credit Association ("NDPCA"), and that defendants TXO Production Corp., Muggyown Johnson, Tally Johnson, Modena Johnson, Coyote Johnson and Ellouise Johnson will not be substantially prejudiced by their dismissal in the above-entitled action.

THE COURT FURTHER FINDS that counsel for defendants TXO Production Corp., Muggyown Johnson, Tally Johnson, Modena Johnson, Coyote Johnson and Ellouise Johnson have been consulted by counsel for NDPCA and counsel for such defendants have no objection to the dismissal of such defendants in the above-entitled action.

IT IS THEREFORE ORDERED that defendants TXO Production Corp., Muggyown Johnson, Tally Johnson, Modena Johnson, Coyote Johnson and Ellouise Johnson be, and hereby are, dismissed without prejudice in the above-entitled action, with each party

to bear its own costs, and that such dismissal is without prejudice to plaintiff's cause of action in any respect or against any other parties hereto.

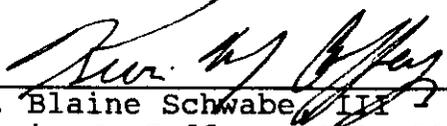
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

NINTH DISTRICT PRODUCTION
CREDIT ASSOCIATION

By:



G. Blaine Schwabe III - OBA 8001
Kevin M. Coffey - OBA #11791

Of the Firm:

MOCK, SCHWABE, WALDO, ELDER
REEVES & BRYANT
A Professional Corporation
Fifteenth Floor
One Leadership Square
211 North Robinson
Oklahoma City, OK 73102
Telephone: (405) 235-5500

ATTORNEYS FOR NINTH DISTRICT
PRODUCTION CREDIT ASSOCIATION

14/DOOLIN.OR

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 14 1988

UNITED STATES POSTAL SERVICE,

Plaintiff,

vs.

RONALD R. SMITH,
EXECU-SERVICES, INC.,
FEDERAL CONSUMER XPRESS, INC.,

Defendants.

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

88-C-28-B

Civil Action No.

TEMPORARY RESTRAINING ORDER

Upon consideration of Plaintiff's application for a Temporary Restraining Order, and it appearing to the Court from the Complaint for Injunctive Relief and the exhibits attached thereto that the United States Postal Service is pursuing an administrative proceeding in this matter pursuant to 39 U.S.C. § 3005, that Plaintiff lacks authority to withhold mail from Defendants during the pendency of this proceeding and that there is probable cause to believe that Defendants are engaged in conducting an unlawful activity through the mails and a scheme or device for obtaining money through the mail by means of false representations and by means of a lottery or gift enterprise in violation of 39 U.S.C. § 3005 and will continue to do so unless restrained by order of this Court maintaining the status quo, it is by the Court at 3:40 p.m. o'clock on this 14th day of January, 1988,

ORDERED that a Temporary Restraining Order be and it hereby is issued directing detention by Plaintiff of Defendants' incoming mail addressed to:

UPSTART PRODUCTIONS
and
FEDERAL CONSUMER XPRESS
6935 E. 38th Street
Tulsa, Oklahoma 74145

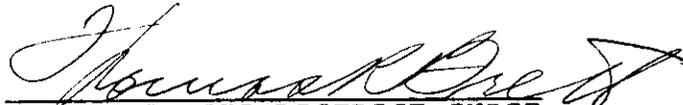
and

UPSTART PRODUCTIONS
and
STAR OF HOPE BONANZA
P.O. Box 700268
Tulsa, Oklahoma 74170-0268

pursuant to 39 U.S.C. § 3007 pending the conclusion of the
statutory administrative proceedings; and it is

FURTHER ORDERED that the detained mail may be examined
by the Defendants and that such mail be delivered to the
Defendants as is clearly not connected with the alleged unlawful
activity; and it is

FURTHER ORDERED that this order shall expire on the
25th day of January, 1988 at 3:40 PM
SIGNED this the 14th day of Jan, 1988.


UNITED STATES DISTRICT JUDGE

IT IS FURTHER ORDERED that this case is set for hearing on
Plaintiffs motion for preliminary injunction on Friday, January
22, 1988 at 8:30 a.m. and Parties are directed to file
suggested Findings of Facts & Conclusions of Law re: the issuance
of a preliminary injunction by January 21, 1988.

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

RICHARD G. TREBEL,)
)
 Plaintiff,)
)
 vs.)
)
 BORG-WARNER INDUSTRIAL)
 PRODUCTS, INC.,)
 a Delaware corporation,)
)
 Defendant.)

Case No. 87-C-553-C ✓

FILED

Jack C. [unclear] Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed the 22nd day of December, 1987, in which the Magistrate recommended that Defendant's Motion to Dismiss or, in the Alternative, Motion to Strike be granted. No exceptions or objections have been filed, and the time for filing such exceptions or objections has expired.

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

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss or, in the Alternative, Motion to Strike be granted as to Plaintiff's claim under the Age Discrimination in Employment Act (29 U.S.C. §621, et seq.), with leave granted to the Plaintiff to file an amended complaint within twenty (20) days.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss or, in the Alternative, Motion to Strike with regard to Plaintiff's

pendent state tort claim of wrongful discharge is granted and that said claim is hereby dismissed.

DATED this 13th day of Jan, 1988.

W. S. Cook
UNITED STATES DISTRICT JUDGE

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

FILED

JAN 16 1988

AMERICAN GENERAL LIFE and)
ACCIDENT INSURANCE COMPANY,)
a corporation,)

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

Plaintiff,)

vs.)

NO. 85-C-531-E

J. D. ROBINSON, et al.,)

Defendants,)

and)

IRVIN D. PENSE,)

Plaintiff,)

vs.)

NO. 86-C-385-E
(Consolidated)

AMERICAN GENERAL LIFE and)
ACCIDENT INSURANCE COMPANY,)

Defendant.)

ORDER OF DISMISSAL WITH PREJUDICE

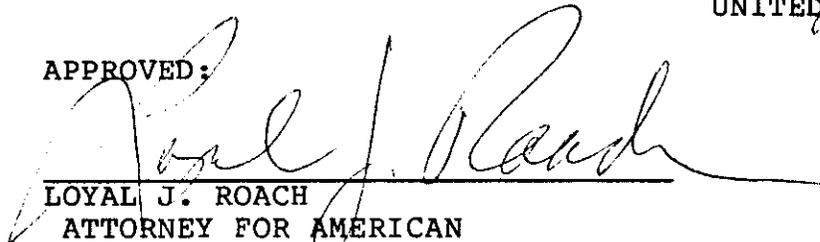
ON this 13TH day of JANUARY, 1988, the Court finds the Stipulations For Dismissal With Prejudice filed herein by the parties hereto should be enforced and an order should be entered herein dismissing the above consolidated actions with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that all claims and actions asserted herein by American General Life and Accident Insurance Company, Irvin D. Pense and Irvin D. Pense & Associates, Inc., are hereby dismissed with prejudice to

the bringing of any future action or actions thereon.


UNITED STATES DISTRICT JUDGE

APPROVED:

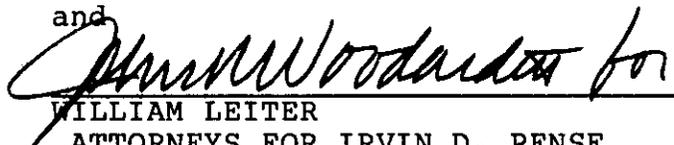


LOYAL J. ROACH
ATTORNEY FOR AMERICAN
GENERAL LIFE AND ACCIDENT
INSURANCE COMPANY



JOHN R. WOODARD, III

and



WILLIAM LEITER
ATTORNEYS FOR IRVIN D. PENSE
and IRVIN D. PENSE & ASSOCIATES,
INC.

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

FILED

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

INLAND CONSTRUCTION, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 SUN REFINING & MARKETING CO.,)
)
 Defendant.)

No. 86-C-899-E

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 13th day of Jan, 1988, there
comes on for consideration the Joint Stipulation of
Dismissal filed herein by the parties hereto, and for good
cause shown therein,

IT IS HEREBY ORDERED that this matter be dismissed
with prejudice, with each party to bear its own attorney
fees and costs.

S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

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

FILED

TAMI LUGENE MALONE,
Plaintiff,
vs.
CIRCLE K CORPORATION,
Defendant.

)
)
)
)
)
)
)
)
)
)

No. 85-C-822-E

ORDER OF DISMISSAL

NOW on this 13th day of January, 1987, upon the written application of the Plaintiff, Tami Lugene Malone, and the Defendant, Circle K Corporation, for a Dismissal with Prejudice as to all claims and causes of action of these parties involved in the Complaint of Malone vs. Circle K, and the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint, and have requested the Court to Dismiss said Complaint with prejudice, to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of said Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that all claims and causes of action of the Plaintiff, Tami Lugene Malone, and the Defendant, Circle K Corporation, be and the same hereby are dismissed with prejudice to any future action.

W. TAMM O. HUSON
JUDGE OF THE UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

ROBERT C. PAYDEN



Attorney for the Plaintiff

JOHN HOWARD LIEBER

Attorney for the Defendant

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

RAYMARK INDUSTRIES, INC.,)
)
 Plaintiff,)
)
 v.)
)
 GORDON A. STEMPLER, et al.,)
)
 Defendants.)

No. 87-C-775

FILED

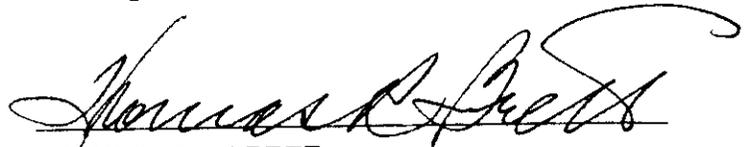
JAN 13 1988

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

O R D E R

Pursuant to the Memorandum and Order of Judge Patrick F. Kelly, United States District Judge for the District of Kansas, in the matter of In Re: Raymark Asbestos Exposure Cases, Carl Wells, on Behalf of Himself and Others Similarly Situated, Plaintiff, vs. Raymark Industries, Inc., Defendant, No. 87-1016-K, In the United States District Court for the District of Kansas, filed December 30, 1987, and received by this court on January 5, 1988, this case is hereby dismissed without prejudice. This case may be refiled in this court by Plaintiff within sixty (60) days following notice to Raymark Industries, Inc., of dismissal or final disposition of the similar action and dispute pending in said United States District Court for the District of Kansas.

IT IS SO ORDERED, this 13th day of January, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FILED
U.S. DISTRICT COURT
DISTRICT OF KANSAS

DEC 30 3 40 PM '87

RECEIVED

IN RE:

RAYMARK ASBESTOS EXPOSURE CASES

NOV 1988

RALPH DELOACH
CLERK
BY Thompson DEPUTY
ATTORNEY GENERAL

CARL WELLS, on Behalf of Himself
and Others Similarly Situated,

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

Plaintiff,

vs.

No. 87-1016-K

RAYMARK INDUSTRIES, INC.,

Defendant.

87-C-775-B ✓

MEMORANDUM AND ORDER

On November 20, 1987, the court took up hearing on certain motions, including those of defendant Raymark Industries, Inc. ("Raymark") for orders determining the appropriate disposition of certain funds, disqualification of certain counsel, and striking portions of certain affidavits; application of lead counsel for plaintiff's class for orders enforcing the settlement herein and enjoining Raymark from pursuing certain litigation; and the application of counsel for plaintiff/proposed intervenor Dimas D. Alonzo ("Alonzo") and of attorneys Richard Gerry and Gordon Stemple for orders permitting Alonzo to intervene and to enjoin Raymark from pursuing certain litigation.

The respective motions flow from the fact that within the recent past Raymark has filed at least 12 separate, but identical, actions in the federal courts within the states wherein certain claimants reside and wherein reimbursement and/or indemni-

fication of the settlement proceeds derived here is sought. These claims allegedly lie in fraud and seek relief against the principal attorneys, Mr. Gerry and Mr. Stemple of California, their local counsel, the consulting physicians, and the class member recipients within the given states. They additionally seek punitive damages. These actions are identified on Exhibit 1 (attached hereto).

By way of review, this action was commenced by the filing of a class action complaint on January 12, 1987. Pursuant to appropriate notices and hearing, this court certified a class and approved a settlement format for the resolution of approximately 20,000 claims of persons who allege exposure to Raymark asbestos-containing products and contraction of asbestos-related injuries. Between 5,000 to 6,000 of the class members allege exposure and injury as a result of employment in tire manufacturing plants located in Alabama, California, Georgia, Connecticut, Indiana, Iowa, Kansas, Oklahoma, Ohio, Pennsylvania, Tennessee and Texas, and these class members are referred to as the "tire workers". Virtually all of the tire workers were diagnosed with asbestos-related injuries by Drs. Clara Gelbard, Ramo Rao, and/or Krishan Bharadwaja. Virtually all of the tire workers are represented by attorneys Gerry and Stemple, as principal counsel, and by certain local counsel in the states in which the tire workers were employed.

The court has also taken up arguments of counsel with regard to their respective contentions. Consistent with the findings

and conclusions announced, the court has entered the following directives:

1. Alonzo's motion to intervene is granted.
2. Raymark's motion to disqualify Corinblit and Seltzer as counsel for Alonzo is denied.
3. Raymark's motion to strike portions of certain affidavits is denied.
4. Lead counsel's motion to enforce the settlement is denied.
5. Raymark's motion for direction concerning the appropriate disposition of certain funds is granted, and as a result counsel for Raymark and class counsel shall:

(a) Identify all tire worker class members who remain to be paid;

(b) Determine the amounts which are due to each unpaid tire worker and his/her attorney; and

(c) Prepare a form of order directing Bank IV to transfer the total amount due the unpaid tire workers and their attorneys, minus the three and one-third percent (3-1/3%) administrative fee due class counsel, to a separate, interest-bearing account; and to hold such funds until further order of this court, which will be entered following resolution of Raymark's claims concerning the propriety of the tire workers' claims.

6. Lead counsel and Alonzo's motion to enjoin Raymark from proceeding with the tire worker actions is conditionally granted, and as a result:

(a) Raymark, as well as its officers, directors, employees, attorneys and agents, shall take no further action to prosecute any of the tire worker actions;

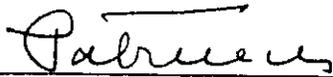
(b) Nor shall Mr. Gerry, Mr. Stemple and the tire workers, as well as their attorneys and agents, take any further action to defend any of the tire worker actions. In this regard, Corinblit and Seltzer, as attorneys for Alonzo and for Messrs. Gerry and Stemple, shall notify each of the tire worker doctors and the tire worker local counsel of this court's directive that neither they, nor their attorneys or agents, shall take any further action to defend any of the tire worker actions;

(d) This court will cause copies of this order to be delivered to the respective clerks of the district courts for timely delivery to the district judges to whom the tire worker actions have been assigned. In this regard, each of the foregoing district judges is advised that it is this court's view that if fraudulent and/or unprofessional conduct has been committed, it has been committed here; and that this court stands ready to proceed with whatever litigation may be forthcoming in the interest of ascertaining the propriety of the Raymark complaints. Moreover, the district judges

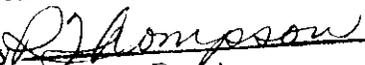
are advised of this court's desire that the respective tire worker actions now pending in their courts be placed on an inactive calendar or its equivalent, and that all parties be excused from taking further action with respect to those matters until further order of this court.

7. Raymark is at liberty to timely file with this court, either by motion or separate complaint, its complaint against attorneys Gerry and Stemple, setting forth its respective claims which are now embodied in the several tire worker actions.

IT IS SO ORDERED this 30 day of December, 1987.


PATRICK F. KELLY, JUDGE

ATTEST: A true copy
RALPH L. DeLOACH, Clerk

By 
Deputy

LIST OF RAYMARK ACTIONS

1. Raymark Industries, Inc. v. Gordon A. Stemple, et al., Case No. CV 87-G-1656-W
United States District Court for the Northern District of Alabama, Western Division
2. Raymark Industries, Inc. v. Gordon A. Stemple, et al., Case No. 87-1364 K (CM)
United States District Court for the Southern District of California
3. Raymark Industries, Inc. v. Gordon A. Stemple, et al., Case No. B87-635 WVE
United States District Court for the District of Connecticut
4. Raymark Industries, Inc. v. Gordon A. Stemple, et al., Case No. 87-166-Alb-AMER
United States District Court for the Middle District of Georgia (Albany Division)
5. Raymark Industries, Inc. v. Gordon A. Stemple, et al., Case No. F 87-00261
United States District Court for the Northern District of Indiana
6. Raymark Industries, Inc. v. Gordon A. Stemple, et al., Case No. 87-675-B
United States District Court for the Southern District of Iowa
7. Raymark Industries, Inc. v. Gordon A. Stemple, et al., Case No. 87-4253-R
United States District Court for the District of Kansas (Topeka Division)
8. Raymark Industries, Inc. v. Gordon A. Stemple, et al., Case No. C 872432
United States District Court for the Northern District of Ohio, Eastern Division
9. Raymark Industries, Inc. v. Gordon A. Stemple, et al., Case No. 87-C-775 B
United States District Court for the Northern District of Oklahoma

10. Raymark Industries, Inc. v. Gordon A. Stemple, et al., Case No. 87-5813
United States District Court for the Eastern District of Pennsylvania
11. Raymark Industries, Inc. v. Gordon A. Stemple, et al., Case No. 3-87-0739
United States District Court for the Central District of Tennessee
12. Raymark Industries, Inc. v. Gordon A. Stemple, et al., Case No. W 87CA218
United States District Court for the Western District of Texas (Waco Division)

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

FILED

11 13 1988

AMERICAN GENERAL LIFE and
ACCIDENT INSURANCE COMPANY,
a corporation,

Plaintiff,

vs.

J. D. ROBINSON, et al.,

Defendants,

and

IRVIN D. PENSE,

Plaintiff,

vs.

AMERICAN GENERAL LIFE and
ACCIDENT INSURANCE COMPANY,

Defendant.

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

NO. 85-C-531-E

NO. 86-C-385-E
(Consolidated)

ORDER OF DISMISSAL WITH PREJUDICE

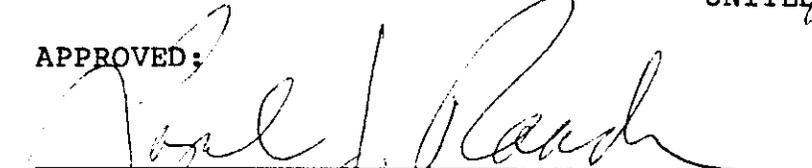
ON this 13TH day of JANUARY, 1988, the Court finds the Stipulations For Dismissal With Prejudice filed herein by the parties hereto should be enforced and an order should be entered herein dismissing the above consolidated actions with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that all claims and actions asserted herein by American General Life and Accident Insurance Company, Irvin D. Pense and Irvin D. Pense & Associates, Inc., are hereby dismissed with prejudice to

the bringing of any future action or actions thereon.


UNITED STATES DISTRICT JUDGE

APPROVED:


LOYAL J. ROACH
ATTORNEY FOR AMERICAN
GENERAL LIFE AND ACCIDENT
INSURANCE COMPANY


JOHN R. WOODARD, III

and


WILLIAM LEITER
ATTORNEYS FOR IRVIN D. PENSE
and IRVIN D. PENSE & ASSOCIATES,
INC.

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

FILED

JAN 17 1988

ARKOMA GAS COMPANY,
a Texas Corporation,

Plaintiff,

VS.

ARKLA, INC., a Delaware
Corporation (formerly
known as Arkansas Louisiana
Gas Company),

Defendant.

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

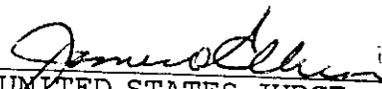
Case No. 86-C-1004-E

ORDER OF DISMISSAL

On this day came on to be heard Plaintiff's motion to dismiss the above action against Defendant. It appears to the Court that the motion is well taken and should be granted.

IT IS, THEREFORE, ORDERED that the above action be and it is hereby dismissed with prejudice to Plaintiff's right to reinstitute the same; that it is removed from the docket of the Court; and that all costs herein incurred be taxed against Defendant, Arkla, Inc.

SIGNED this 12th day of Jan, 1988.


UNITED STATES JUDGE

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

DYCO PETROLEUM CORPORATION,)
a corporation,)
)
Plaintiff,)
)
v.)
)
OKLAHOMA GAS & ELECTRIC)
COMPANY, a corporation,)
)
Defendant.)

Case No. 87-C-121-B

FILED

JAN 12 1988

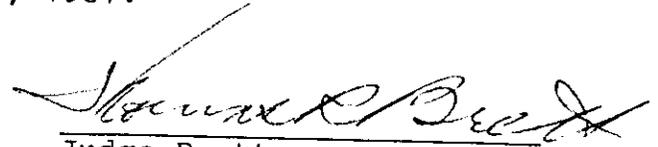
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

Having been apprised by counsel for the parties that a settlement agreement has been reached and the only remaining matter to be resolved is an audit which is anticipated to be completed on or before March 1, 1988, the Court hereby dismisses this action.

It is further ordered that in the event the settlement is not consummated, the court will place the case on the docket upon application by either party on or before March 1, 1988. In the event no request by either party is made to place the case on the docket on or before March 1, 1988, the case will be dismissed with prejudice on March 2, 1988.

Dated this 11 day of ~~December~~, ^{January} 1988, 1987.



Judge Brett

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

RUSSELL D. MISER,)
)
 Plaintiff,)
)
 v.)
)
 K. J. SAWYER, District)
 Director, JOHN PRESTON,)
 Revenue Officer, COMMISSIONER)
 OF THE INTERNAL REVENUE SER-)
 VICE, ad THE UNITED STATES OF)
 AMERICA,)
)
 and)
)
 DOES I THROUGH X INCLUSIVE,)
)
 Defendants.)

No. 87-C-830-B

E I L E D
JAN 12 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

Before the Court for review is Plaintiff's motion for voluntary dismissal pursuant to Rule 41(a), Fed.R.Civ.P. In support of his motion the Plaintiff asserts that upon discovery of certain materials produced by the Defendant United States Government it has become apparent that there is "no violation of clearly established law or intentional action upon the said Defendants." Therefore, pursuant to Fed.R.Civ.P. 41(a)(2), the Court hereby dismisses the above-entitled action with prejudice as to defendants K. J. Sawyer, John Preston and the case shall proceed against the defendant, United States of America.
IT IT SO ORDERED this 12th day of January, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 12 1988

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MYRTLE B. CHAMBERS,)
)
Defendant.)

CIVIL ACTION NO. 87-C-897-B

DEFAULT JUDGMENT

This matter comes on for consideration this 11th day of January, 1988, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Myrtle B. Chambers, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Myrtle B. Chambers, was served with Summons and Complaint on December 16, 1987. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

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

Myrtle B. Chambers, for the principal sum of \$736.20, plus interest from the date of judgment at the current legal rate of 7.22 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

PEP/cen

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

FILED

JAN 12 1985

NINTH DISTRICT PRODUCTION)
CREDIT ASSOCIATION,)
)
Plaintiff,)
)
v.)
)
BILLY GENE DOOLIN, et al.)
)
Defendants.)

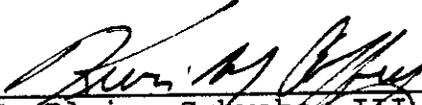
Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 87-C-546 C

NOTICE OF DISMISSAL OF CERTAIN DEFENDANTS

Plaintiff, Ninth District Production Credit Association, hereby gives notice of dismissal of the above-entitled cause as to defendants, Atlantic Richfield Co. and Garrett and Company, which have not filed an answer or motion for summary judgment in the above-entitled action, pursuant to Fed.R.Civ.P. 41(a)(1). Plaintiff gives notice of dismissal of said defendants without prejudice to its claims herein in any other respect or against any other defendants hereto.

NINTH DISTRICT PRODUCTION
CREDIT ASSOCIATION

By: 
G. Blaine Schwabe, III - OBA 8001
Kevin M. Coffey - OBA #11791

Of the Firm:

MOCK, SCHWABE, WALDO, ELDER
REEVES & BRYANT
A Professional Corporation
Fifteenth Floor
One Leadership Square
211 North Robinson
Oklahoma City, OK 73102
Telephone: (405) 235-5500

ATTORNEYS FOR NINTH DISTRICT
PRODUCTION CREDIT ASSOCIATION

CERTIFICATE OF MAILING

I hereby certify that on this 11th day of January, 1988, a true and correct copy of the above and foregoing instrument was mailed, first-class mail, postage prepaid, to the following:

John Mark Young
P. O. Box 1364
Sapulpa, OK 74067
Attorney for Virginia E.
Doolin, now Orr, Sara E.
Doolin, now Canfield, and
Susan L. Doolin

Rorschach, Pitcher, Castor
& Hartley
244 S. Scrapper
Vinita, Oklahoma 74301
Attorneys for KAMO Electric
Cooperative, Inc.

Clayton L. Badger
P. O. Box 1151
Drumright, OK 74030
Attorney for First State Bank
of Oilton

Heber Finch, Jr.
Finch & Finch
230 Wells Building
Sapulpa, OK 74066
Attorney for Defendants
Muggyown Johnson, Tally
Johnson, Modena Johnson,
Coyote Johnson and
Ellouise Johnson

Stephen H. Foster
P. O. Box 815
Bristow, OK 74010

W. C. Sellers
W. C. "Bill" Sellers, Inc.
P. O. Box 1404
Sapulpa, OK 74067-1404
Attorneys for Defendants Billy
Gene Doolin, Wallace J.
Doolin and Mark Lee Doolin

Kimberly A. Lambert
500 Oneok Plaza
100 West Fifth Street
Tulsa, OK 74103
Attorneys for Defendant TXO
Production Corp.

Carl A. Barnes
2727 East 21st, Suite 305
Tulsa, OK 74114
Attorney for Mid-America Gas
Line Corp.

Joseph J. McCain, Jr.
Tony L. Gehres
2400 First National Tower
Tulsa, OK 74103
Attorneys for Defendant Wood
Oil Company

Hanoco, Inc.
c/o Richard D. Hancock,
Service Agent
104 N. Ohio
Drumright, OK 74030

Stan Stroup
Norwest Bank Minneapolis, N.A.
8th and Marquett
Minneapolis, MN

Tony Michog
Norwest Bank Minneapolis, N.A.
370 17th Sreet, Suite 3560
Denver, CO 80202

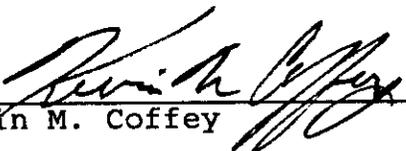
R.S. Garrett, General Partner
Garrett and Company
9701 N. Broadway Extension
Oklahoma City, OK 73114

Indian Electric Cooperative,
Inc.
c/o Dick Travis
P. O. Box 49
Cleveland, OK 74020

Atlantic Richfield Company
c/o The Corporation Company
(Agent for service)
735 First National Building
Oklahoma City, OK 73102

Mark A. Jones
TXO Production Corp.
Office of General Counsel
P. O. Box 689
Oklahoma City, OK 73101

Atlantic Richfield Co.
c/o Theodie Peterson
Legal Department
P. O. Box 1610
Midland, TX 79702



Kevin M. Coffey

14/pcadoo.cer

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

FRED THOMAS,

Plaintiff,

v.

HOPE LUMBER & SUPPLY
COMPANY, INC.,

Defendant.

No. 87-C-602-B

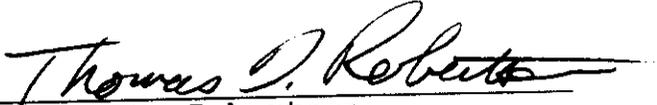
STIPULATION OF
DISMISSAL WITH PREJUDICE

COME NOW the parties hereto, by and through their attorneys of record, and pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), hereby stipulate that the captioned case is hereby dismissed, with prejudice. Each party is to bear his or its own attorney's fees.

For Fred Thomas:

For Hope Lumber & Supply
Company, Inc:


Anthony M. Laizure
Stipe, Gossett, Stipe, Harper,
Estes, McCune & Parks
Post Office Box 701110
Tulsa, Oklahoma 74170
(918) 745-6084


Thomas D. Robertson
Nichols, Wolfe, Stamper,
Nally & Fallis, Inc.
400 Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103
(918) 584-5182

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

FILED

JAN 12 1988

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate
capacity,

Plaintiff,

VS.

AUXANO, INC., et al.,

Defendants.

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

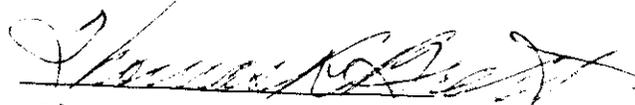
No. 87-C-628 B

JUDGMENT

The defendant, Auxano, Inc., having failed to plead or otherwise defend in this action and its default having been entered,

Now, upon application of the plaintiff and upon affidavit that defendant, Auxano, Inc., is indebted to plaintiff in the sum of \$275,171.96 plus interest at the contractual rate of \$20,615.28 that defendant, Auxano, Inc., has been defaulted for failure to appear, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff recover of defendant, Auxano, Inc., the sum of \$275,171.96 with interest at the contractual rate of \$20,615.28 and costs of this action. Attorney's fees will be awarded if properly applied for under the local rules. It is so ordered this 12th day of January, 1988.



Thomas R. Brett
U.S. District Judge

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

AIRLINES REPORTING CORPORATION,)
a Delaware corporation,)
)
Plaintiff,)
)
v.)
)
WORLD CLASS TRAVEL CO., INC.,)
d/b/a WORLD CLASS TRAVEL,)
an Oklahoma corporation,)
)
Defendant.)

Case No. 87-C-530-B

FILED

JAN 12 1988

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

ORDER OF DISMISSAL

Upon consideration of the Joint Stipulation of Dismissal executed and filed herein by the Plaintiff, AIRLINES REPORTING CORPORATION, and by the Defendant, WORLD CLASS TRAVEL CO., INC., d/b/a World Class Travel, it is hereby,

ORDERED that the Plaintiff's Complaint be, and the same is hereby dismissed without prejudice, with each party to bear its own costs and attorneys fees incurred herein.

DATED this 12 day of January, 1988.


UNITED STATES DISTRICT JUDGE

IT IS FURTHER ordered that the Plaintiffs motion to withdraw its motion for voluntary dismissal is granted.

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

FILED

JAN 12 1988

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its corporate)
capacity,)
Plaintiff,)
VS.)
AUXANO, INC., et al.,)
Defendants.)

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

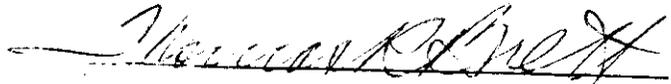
No. 87-C-628 B

JUDGMENT

The defendant, Gary R. Mercer having failed to plead or otherwise defend in this action and his default having been entered,

Now, upon application of the plaintiff and upon affidavit that defendant, Gary R. Mercer, is indebted to plaintiff in the sum of \$137,585.98 plus interest at the contractual rate of \$10,307.64, that defendant, Gary R. Mercer, has been defaulted for failure to appear and that defendant, Gary R. Mercer is not an infant or incompetent person, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff recover of defendant, Gary R. Mercer, the sum of \$137,585.98 with interest of \$10,307.64 and costs of this action. Attorney's fees will be awarded if properly applied for under the local rules. It is so ordered this 12th day of January, 1988.



Thomas R. Brett
U.S. District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 FIVE VEHICLES:)
 1987 CHEVROLET BLAZER,)
 1977 FORD STATION WAGON,)
 1976 CHEVROLET VAN,)
 1979 CHEVROLET 3/4 TON PICKUP,)
 1981 CHEVROLET SILVERADO)
 SUBURBAN,)
)
 Defendants.)

F I L E D

JAN 11 1988

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

Civil Action No. 86-C-820-C

O R D E R

The motion to dismiss filed by the United States, having been read and considered, and for good cause shown, the Court hereby dismisses this action without prejudice.

This 11th day of January, 1988.



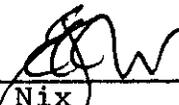
H. DALE COOK
UNITED STATES DISTRICT JUDGE

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

DAVID TAYLOR,)
)
 Plaintiff,)
)
 vs.) Case No. 87-C-783B
)
 INTERNATIONAL BROTHERHOOD OF)
 TEAMSTERS, et al.,)
)
 Defendants.)

NOTICE OF DISMISSAL WITHOUT PREJUDICE

The Plaintiff, by and through his attorney of record, Jeff Nix, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure hereby submits his Notice of Dismissal Without Prejudice in the captioned action.



Jeff Nix
815 South Denver - #106
Tulsa, Oklahoma 74119

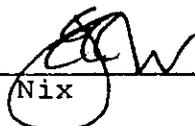
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11 day of January, 1988, a true and correct copy of the above and foregoing was hand delivered to:

Linda C. Martin
Doerner, Stuart, Saunders,
Daniel & Anderson
1000 Atlas Life Bldg.
Tulsa, Oklahoma 74103

and mailed, postage prepaid, to:

William W. Allport
Allport, Knowles, Miller & House
3700 Park East Drive
Cleveland, Ohio 44122



Jeff Nix

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

LAVONA BARGER,

Plaintiff,

v.

CONSUMERS MARKET, INC., and
SHIRLEY HOLFORD,

Defendants.

No. 87-C-643-C

FILED

JAN 11 1988

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

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 11 day of Jan, 1988, 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.

(Signed) H. [Signature]

United States District Judge

20-98/PTB/tjp

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

FILED

EVELYN L. BAKER, AMOS BAKER,)
BARBARA BAKER WILLIAMS, PAUL)
E. BAKER, JR., and the PAUL E.)
BAKER, JR. TRUST, d/b/a BAKER)
MANAGEMENT COMPANY, INC.,)

Plaintiffs,)

v.)

THE SHERWIN-WILLIAMS COMPANY,)

Defendant.)

OCT 14 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 86-C-431E

JOURNAL ENTRY OF JUDGMENT

After hearing on Plaintiffs' Motion for Summary Judgment held on October 23, 1987 before U.S. Magistrate John Leo Wagner, the following recommendations were made by the Magistrate:

"Plaintiffs' Motion for Summary Judgment be granted insofar as to percentage rents due and owing. Plaintiffs' Motion for Summary Judgment will be denied in all other respects."

By Order entered on May 5, 1987, the Honorable James O. Ellison, United States District Judge, affirmed and adopted Magistrate Wagner's findings.

After hearing on Defendant's Motion for Summary Judgment held on August 18, 1987, before U.S. Magistrate John Leo Wagner, the following recommendations were made by the Magistrate:

The Magistrate recommends that defendant's motion for summary judgment be denied and granted in parts. The Magistrate

finds that there was a valid sublease until 1985, at which time the defendant failed to renew. There was no lease after 1985, 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 in 1985, 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."

By Order entered on December 10, 1987, the Honorable James O. Ellison, United States District Judge, affirmed and adopted Magistrate Wagner's findings 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 agreed by the parties that the amounts of the "percentage rents" found to be due and owing are:

1. 1983: \$2,869.27
2. 1984: \$6,897.25
3. 1985: \$6,636.13

for a total of \$16,402.65.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED based upon the findings contained herein that:

1. Defendant owes Plaintiffs for percentage rents due and owing the sum of \$16,402.65.
2. Defendant is not liable for any percentage rents past 1985.
3. Defendant is not liable for any increased rent amounts as alleged in Plaintiff's Complaint.
4. As of February 28, 1986 Defendant became and remains a month-to-month tenant of the premises in question.
5. No damages are awarded either party.

IT IS SO ORDERED this 11th day of January, 198 .

JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

AGREED AS TO FORM:



Gary McSpadden
Baker, Hoster, McSpadden,
Clark, Rasure & Slicker

COUNSEL FOR DEFENDANT



C. Michael Barkley
Barkley, Rodolf, Silva & McCarthy

COUNSEL FOR PLAINTIFFS

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

MICKEY C. MILLER,)
)
 Plaintiff,)
)
 v.)
)
 UNITED PARCEL SERVICE, INC.)
 and CHAUFFEURS, TEAMSTERS AND)
 HELPERS UNION, LOCAL NO. 516)
 INTERNATIONAL BROTHERHOOD OF)
 TEAMSTERS, CHAUFFEURS,)
 WAREHOUSEMEN AND HELPERS,)
)
 Defendants.)

87-C-859-E

FILED

JAN 11 1988

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

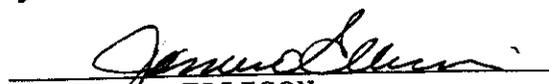
ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed December 16, 1987 in which the Magistrate recommended that the Defendant's Motion to Dismiss (#4) be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that the Defendant's Motion to Dismiss (#4) is granted.

Dated this 8th day of Jan, 1988.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JAN 11 1988

BRUCE BONNETT,
Plaintiff,
vs.
STANFIELD & O'DELL,
Defendants.

)
)
)
)
)
)
)
)
)
)

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

No. 85-C-1055-C

ORDER

Pursuant to the provision of Rule 41(a)(2), Federal Rules of Civil Procedure, the Court orders that this action be dismissed without prejudice to its being refiled, upon the following conditions:

In the event that Plaintiff refiles this action on a subsequent date, it is ordered that:

1. All discovery done by any of the parties to this action may be used in the subsequent refiled action as if it were done in that action, and;
2. In the event that the Defendant, Stanfield & O'Dell, should prevail in the subsequent action, fees and costs incurred in this first action shall be treated as if they were incurred in the subsequent action.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff's Motion to Dismiss Without Prejudice is granted, but with the express conditions set forth herein.


H. Dale Cook, Chief Judge
United States District Court
Northern District of Oklahoma

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

JAN 8 1988

SOUTHWEST SECURITIES, INC.,)
a Texas corporation,)
Plaintiff,)
vs.)
CHESTER L. MAINARD and TERRY)
L. MAINARD,)
Defendants.)

No. 87-C-935-E

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

DEFAULT JUDGMENT

THIS cause comes on this 7th day of Jan,
1988, before the undersigned Judge for entry of judgment
against the Defendant Terry L. Mainard. Having reviewed the
file and being fully advised in the premises, the Court
finds that judgment should be rendered as against Terry L.
Mainard, in favor of the Plaintiff, for the amount prayed
for.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the
Court that judgment is granted in favor of the Plaintiff,
Southwest Securities, Inc., against the Defendant Terry L.
Mainard, in the amount of \$15,034.50, plus interest
thereafter as provided in the Customer Agreement which forms
the basis of the transaction. Plaintiff's attorneys may make ap-
plication for attorney fees and costs in connection with this matter.


UNITED STATES DISTRICT COURT JUDGE

James R. Gotwals, OBA#3499
JAMES R. GOTWALS & ASSOCIATES, INC.
Attorneys for the Plaintiff,
Southwest Securities, Inc.
525 South Main, Suite 1130
Tulsa, OK 74103
(918) 599-7088

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

FILED

JAN 8 1983

John C. Oliver, Clerk
U.S. DISTRICT COURT

TIMOTHY L. OLIVER and VALCOM)
COMPUTER CENTERS, INC., OF)
TULSA, OKLAHOMA, an Oklahoma)
corporation,)

Plaintiffs,)

vs.)

VALMONT INDUSTRIES, INC., a)
Delaware Corporation; VALCOM)
INC., a Delaware Corporation;)
R. A. WAHL, JR.; BILL L.)
FAIRFIELD; MIKE PETERSON; PAT)
FITZGERALD; CRIS FREIWALD;)
JOSEPH P. WASZUT; JOYCE)
WASZUT; JOSEPH R. WASZUT;)
TERESA WASZUT; MICHAEL WASZUT;)
KYLE HITT; JOHN C. WRIGHT;)
DARREN WEBB; STAN HENDERSON;)
and JOY HENDERSON-BREHM,)

Defendants.)

Civil Action

Case No. 86-C-753-E

VOLUNTARY DISMISSAL BY STIPULATION
UNDER F.R.C.P. 41(a)(1)(ii)

COME NOW the Plaintiffs Timothy L. Oliver and Valcom Computer Centers, Inc., and hereby dismiss without prejudice the above entitled and numbered action against Joseph P. Waszut, Joyce Waszut, Joseph R. Waszut, Teresa Waszut, and Michael Waszut.

Pursuant to the provisions of F.R.C.P. 41(a)(1)(ii) voluntary dismissals may be made without order of the court by the filing of a stipulation of dismissal signed by all parties, who have appeared in the action. (All parties which are not a part of this stipulation have already been dismissed by the court or have not appeared.)

WHEREFORE, the above entitled and numbered action is hereby dismissed against Joseph P. Waszut, Joyce Waszut, Joseph R. Waszut, Teresa Waszut, and Michael Waszut, without prejudice by stipulation of all parties who have appeared and who remain as parties in this action pursuant to the provisions of F.R.C.P. 41(a)(1)(ii).

R. Kenneth King
R. Kenneth King
1302 S. Denver
Tulsa, OK 74119
(918) 587-3400

Attorney for Plaintiffs
Timothy L. Oliver and
Valcom Computer Centers,
Inc.

Novell J. Wilson
Novell J. Wilson
2424 Fourth National
Bank Building
Tulsa, OK 74119
(918) 583-2424

Attorney for Defendants,
Joseph D. Waszut, Joyce
Waszut, Joseph R. Waszut,
Teresa Waszut and Michael
Waszut

CERTIFICATE OF MAILING

I, R. Kenneth King, hereby certify that on this ___ day of September, 1987, I mailed a true and correct copy of the above and foregoing Dismissal to:

Novell J. Wilson
2424 Fourth National Bank Bldg.
Tulsa, OK 74119

R. Kenneth King

FILED

JAN 7 1988

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

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

IN RE:)	
)	
FRANK E. WOOD and BEVERLY J.	)	Bankruptcy No. 86-02242
WOOD d/b/a FRANKLIN INVESTMENTS,	)	Chapter 11 (JER)
FRANKLIN DEVELOPMENT CO., and)	
FRANKLIN WOODWORKS,)	
)	
Debtors,)	
)	
VIRGINIA BEACH FEDERAL SAVINGS)	
& LOAN ASSOCIATION,)	
)	
Appellant,)	
)	
vs.	)	District Court No.
	)	87-C-364-E
FRANK E. WOOD, BEVERLY J.)	
WOOD, and the UNSECURED	)	(Consolidated with Case Nos.
CREDITORS' COMMITTEE,	)	87-C-441-E and 87-C-514-E)
)	
Appellees.)	

ORDER DISMISSING APPEAL OF DEBTORS
IN CASE NO. 87-C-441-E ("WOOD II")

COMES ON before the Court the day below written the "Motion of Appellee Virginia Beach Federal Savings and Loan Association to Dismiss Appeal of Debtors In Case No. 87-C-441-E ("Wood II") (the "Motion") filed September 29, 1987 with an accompanying brief. The Court, having reviewed the file, finds that no response has been filed to the Motion and that, accordingly, the Motion is deemed confessed and should be granted.

IT IS THEREFORE ORDERED that the Debtor's appeal in case no. 87-C-441-E ("Wood II") be and hereby is dismissed.

DATED: June 6, 1989.

James Allison
U.S. District Judge

Submitted by:

Andrew R. Turner

Andrew R. Turner
of
CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Appellee and
Cross-Appellant VIRGINIA
BEACH FEDERAL SAVINGS AND
LOAN ASSOCIATION

Approved as to form:

Douglas S. Tripp

Douglas S. Tripp
of
ENGLISH, JONES & PAULKNER
1700 Fourth National Bldg.
Tulsa, Oklahoma 74119
(198) 582-1564

Attorneys for Debtors
FRANK E. WOOD and BEVERLY J.
WOOD

FILED

JAN 7 1988

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

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

IN RE:)	
)	
FRANK E. WOOD and BEVERLY J.	)	Bankruptcy No. 86-02242
WOOD d/b/a FRANKLIN INVESTMENTS,	)	Chapter 11 (JER)
FRANKLIN DEVELOPMENT CO., and)	
FRANKLIN WOODWORKS,)	
)	
Debtors,)	
)	
VIRGINIA BEACH FEDERAL SAVINGS)	
& LOAN ASSOCIATION,)	
)	
Appellant,)	
)	
vs.	)	District Court No.
	)	87-C-364-E
)	
FRANK E. WOOD, BEVERLY J.)	
WOOD, and the UNSECURED	)	(Consolidated with Case Nos.
CREDITORS' COMMITTEE,	)	87-C-441-E and 87-C-514-E)
)	
Appellees.)	

ORDER DISMISSING APPEAL OF DEBTORS
IN CASE NO. 87-C-441-E ("WOOD II")

COMES ON before the Court the day below written the "Motion of Appellee Virginia Beach Federal Savings and Loan Association to Dismiss Appeal of Debtors In Case No. 87-C-441-E ("Wood II") (the "Motion") filed September 29, 1987 with an accompanying brief. The Court, having reviewed the file, finds that no response has been filed to the Motion and that, accordingly, the Motion is deemed confessed and should be granted.

IT IS THEREFORE ORDERED that the Debtor's appeal in case no. 87-C-441-E ("Wood II") be and hereby is dismissed.

DATED: Jan 6, 1989.

James Allison
U.S. District Judge

Submitted by:

Andrew R. Turner
of
CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Appellee and
Cross-Appellant VIRGINIA
BEACH FEDERAL SAVINGS AND
LOAN ASSOCIATION

Approved as to form:

Douglas S. Tripp
of
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1700 Fourth National Bldg.
Tulsa, Oklahoma 74119
(198) 582-1564

Attorneys for Debtors
FRANK E. WOOD and BEVERLY J.
WOOD

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

JIMMIE J. JOHNSON,)
)
 Plaintiff,)
)
 vs.)
)
 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.)

FILED

JAN 7 1988

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

CASE NO. 86-C-183 *BE*

ORDER OF DISMISSAL

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

DATED this 6th day of Jan, 1988.

UNITED STATES DISTRICT JUDGE

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

FILED

JAN 6 1988

PROFESSIONAL INVESTORS INSURANCE)
GROUP, INC., and PROGRESSIVE)
ACCEPTANCE CORPORATION, Oklahoma)
corporations,)

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

Plaintiffs,)

vs.)

No. 87-C-837-B

THE EVANSTON BANK, an Illinois)
state chartered bank, and an)
Illinois corporation, of Evanston,)
Illinois,)

Defendant.)

Notice 06-

PLAINTIFF'S DISMISSAL

COMES NOW the plaintiffs in the above styled cause, and hereby dismiss the above action against defendant, The Evanston Bank.

Michael K. Huggins

Kevin W. Boyd OBA 1022
Michael K. Huggins OBA 4458
Attorneys for Plaintiffs
P. O. Box 2888
Tulsa, OK 74101

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing Dismissal was mailed this 4th day of January, 1988, to Robert E. Shapiro, 333 West Wacker Drive, Chicago, Illinois 60606 with proper postage prepaid.

Michael K. Huggins

Michael K. Huggins

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

OKLAHOMA WILDLIFE FEDERATION,)
a non-profit organization,)
)
Plaintiff,)
)
AND)
)
STATE OF OKLAHOMA, SPORTSMEN'S)
CLUBS OF TEXAS, INC., PRAIRIE &)
TIMBER AUDUBON SOCIETY,)
)
Intervenors,)
)
v.)
)
UNITED STATES ARMY CORPS OF)
ENGINEERS, JOHN MARSH, JR.,)
as Secretary of the Army of)
the United States, E. R. HEIBERG,)
III, as Chief of Engineers, U.S.)
ARMY CORPS OF ENGINEERS, TULSA)
DISTRICT, FRANK M. PATETE, as)
TULSA DISTRICT ENGINEER,)
)
Defendants,)
)
and)
)
NORTH TEXAS MUNICIPAL WATER)
DISTRICT, and GREATER TEXOMA)
UTILITY AUTHORITY,)
)
Intervenors.)

F I L E D

JAN 5 1983

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

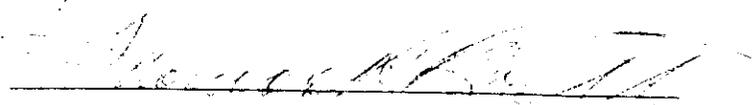
No. 87-C-237-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the Defendants, United States Army Corps of Engineers, John Marsh, Jr., as Secretary of the Army of the United States, E.R. Heiberg, III, as Chief of Engineers, U. S. Army Corps of Engineers, Tulsa District, Frank M. Patete, as Tulsa District Engineer, and Intervenors, North Texas Municipal Water District

and Greater Texoma Utility Authority, and against the Plaintiff, Oklahoma Wildlife Federation, a non-profit organization, and State of Oklahoma, Sportsmen's Clubs of Texas, Inc., and Prairie and Timbers Audubon Society, Intervenors. The Court determines herein and declares that the United States Army Corps of Engineers did not violate the National Environmental Policy Act in granting Permit No. TXR3001311; and further the injunction prayed for herein by Plaintiffs and Intervenors directing the United States Army Corps of Engineers to revoke or suspend issuance of said permit until and unless an Environmental Impact Statement on the project is completed is denied. Costs are hereby assessed against the nonprevailing Plaintiff and Intervenors and each party herein is to pay their own respective attorneys' fees.

DATED this 15 day of June, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

KERRY QUATTLEBAUM,)
)
 Plaintiff,)
)
 v.)
)
 MARY WOODEN AND "PETE" TROUT,)
)
 Defendants.)

87-C-536-B

FILED
JAN - 5 1987
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

Plaintiff's civil rights complaint is now before the court for consideration under 42 U.S.C. §1983. A motion to proceed in forma pauperis was filed on July 7, 1987, and plaintiff's complaint was thereafter filed. Plaintiff is incarcerated at the Conner Correctional Center at Hominy, Oklahoma. Defendants Mary Wooden and Pete Trout are the Trust Fund Officer and Law Library Supervisor at Conner Correctional Center. In his complaint plaintiff alleges that defendants denied him copies of legal documents because of his race and, thus, denied him access to the courts. Defendants have filed a Motion to Dismiss for failure to state a claim upon which relief can be granted.

The Supreme Court in Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 73 (1977), held that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with an adequate law library or adequate assistance from persons trained in the law. The Tenth Circuit has ruled that reasonable regulations are necessary to balance the legitimate interests of inmate litigants and budgetary considerations and to prevent abuse. Harrell v.

Keohane, 621 F.2d 1059, 1061 (10th Cir. 1980); Twyman v. Crisp, 584 F.2d 352, 359 (10th Cir. 1978). Thus, a prisoner's right to access to courts does not include the right to free unlimited access to a photocopying machine. Harrell v. Keohane, supra.

The court finds that allowing inmates to pay for and receive photocopies of legal materials required by the court is part of the meaningful access to the courts to which inmates are entitled, as discussed in Bounds v. Smith, supra.

In the present case plaintiff submitted a request to defendant Pete Trout, the Law Library Supervisor at Conner, asking for four copies of each of three original documents. Department of Corrections policy #OP-090201, entitled "Inmate Access to Courts", allows prison officials to provide copies to an inmate only if the inmate is indigent or if he has funds available to pay for the copies. An inmate is charged five cents per copy if his draw account has shown fifteen dollars or more for the thirty days prior to the photocopy request. If it appears that an inmate has intentionally depleted his resources, he is denied indigent status and the right to free copies.

Plaintiff's request was forwarded for processing to Mary Wooden, the Trust Fund Officer. Wooden denied the request on June 2, 1987, because Quattlebaum received \$41.52 on May 16, 1987, and as a result was ineligible to receive free copying. At the time Quattlebaum requested the photocopies, he did not have sufficient funds to pay for the copies. His request for copies was denied pursuant to OP-090201.

The court finds that the Department of Corrections regulation requiring inmates with funds available to pay for copies is reasonable. If an inmate is indigent, he is entitled to free photocopies. Non-indigent inmates are charged a reasonable fee. Federal courts use a similar approach in determining in forma pauperis status in inmate cases. In Re Stump, 449 F.2d 1297 (1st Cir. 1971); Collier v. Tatum, 722 F.2d 653 (11th Cir. 1983). When it appears that an inmate has intentionally depleted existing resources, such inmate may be denied in forma pauperis status by federal courts.

In this case plaintiff had more than fifteen dollars in his prison account seventeen days prior to his photocopy request, and thus was denied free copies, but at the time of the request did not have funds to pay for the copies. Defendants were required to deny Quattlebaum's request for photocopies pursuant to Corrections Policy #OP-090201. The denial was not a violation of any federal constitutional or statutory right to which plaintiff was entitled. He was not denied reasonable access to courts.

In order to state a cause of action under §1983, plaintiff must establish (1) that the conduct complained of was committed by a person acting under color of state law, and (2) that such conduct deprived plaintiff of some right, privilege, or immunity secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908 (1981).

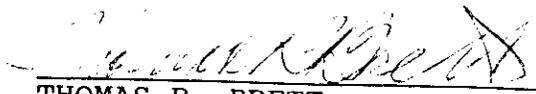
Although the conduct plaintiff complains of was done under color of state law, the court finds that defendants have not

deprived plaintiff of any right secured by the Constitution or laws of the United States.

The court also finds that Quattlebaum's conclusory allegations of racial discrimination are insufficient to state a cause of action. Facts well pled are taken as correct for the purposes of a motion to dismiss, but allegations of conclusions or of opinions are insufficient to state a cause of action when no facts are alleged by way of statement of the claim. Bryan v. Stillwater Board of Realtors, 578 F.2d 1319, 1321 (10th Cir. 1977). Although allegations in the petition will be liberally construed in favor of the plaintiff, a pleading will not be sufficient to state a claim under the Civil Rights Act if the allegations are mere conclusions. Sherman v. Yakahi, 549 F.2d 1287, 1290 (9th Cir. 1977).

Because plaintiff has not shown that as a result of defendants' conduct he has been deprived of a federally protected right, the court concludes that this action is frivolous and that plaintiff's claim is unsubstantial. Accordingly, it is hereby ordered that plaintiff's complaint is dismissed.

Dated this 15th day of January, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FARMERS NEW WORLD LIFE)
INSURANCE CO.,)
)
Plaintiff,)
)
v.)
)
CAROL ANN GABRIEL, MARLON)
DEAN GABRIEL, MARIA ANGELIC)
GABRIEL, and JOHN SCOTT)
GABRIEL,)
)
Defendants.)

No. 87-C-879-C

FILED

JAN 5 - 1988

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

ORDER FOR DISBURSEMENT

Upon Application for Order of Disbursement of Funds filed herein by the plaintiff, the Court finds as follows:

1. That defendants Marlon Dean Gabriel and Maria Angelic Gabriel have filed Disclaimers to the sums interplead herein.
2. That Linda Gabriel, as Guardian Ad Litem of John Scott Gabriel, a minor, has filed a Disclaimer to said insurance funds on behalf of John Scott Gabriel. That Defendant Carol Ann Gabriel is entitled to the entire sum interplead herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Clerk disburse the sum of \$24,562.52, previously deposited herein with the Court, plus any and all interest gained by said funds since the date of their deposit into an interest bearing account, less any penalty incurred for early withdrawal to Carol Ann Gabriel.

IT IS FURTHER ORDERED that, upon said disbursement of funds, this action be dismissed with prejudice.


H. DALE COOK,
United States District Judge

OK-NRM

Entered

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

FILED

JAN 5 1988

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

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

Case No. 86-C-477-B ✓

ORDER

This matter comes on before the Court upon the Motion for Approval of Settlement between Plaintiff Transwestern Mining Company and Defendant Kenneth L. Stainer, Trustee of the Bankruptcy Estate of Leon's Coal Company, a partnership. The Court finds that such Motion should be granted, and it is, therefore,

ORDERED that the foregoing Motion for approval of settlement is hereby granted.

IT IS FURTHER ORDERED that all of the claims of Plaintiff and Defendant Kenneth L. Stainer, Trustee, against each other are hereby dismissed with prejudice, with each party to bear his own costs and attorneys' fees.

Dated this 2nd day of November, 1987. *Rec.*

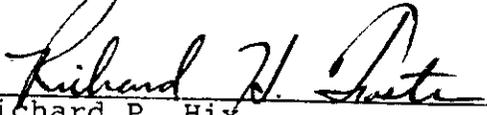
Thomas R. Brett
HONORABLE THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

168

APPROVED AS TO FORM & CONTENT:

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

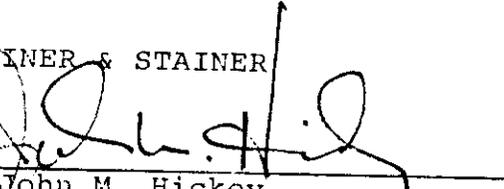
By:


Richard P. Hix
Richard H. Foster
1000 Atlas Life Building
Tulsa, Oklahoma 74103

Attorneys for Plaintiff
Transwestern Mining Company

STAINER & STAINER

By:


John M. Hickey
221 South Nogales
Tulsa, Oklahoma 74127

Attorneys for Defendant
Kenneth L. Stainer, Trustee
for the Bankruptcy Estate
of Leon's Coal Company,
a partnership

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DON D. SHERIFF a/k/a DONOVAN D.)
 SHERIFF, and INEZ P. SHERIFF,)
 a/k/a INA DONITA SHERIFF,)
 husband and wife; COUNTY)
 TREASURER and BOARD OF COUNTY)
 COMMISSIONERS of Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED
JAN - 5 1987
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 87-C-666-B

ORDER OF DISMISSAL

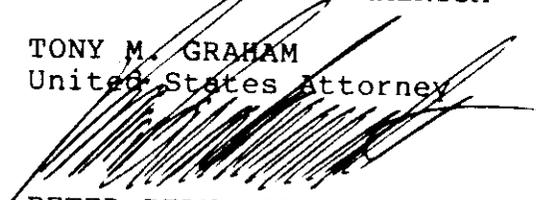
Pursuant to the Joint Stipulation of the parties and for good cause shown it is hereby ORDERED that this action is dismissed with prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Dated this 5 day of January, 1988.

THOMAS R. BRETT
THOMAS R. BRETT
United States District Judge

APPROVED AS TO FORM AND CONTENT:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


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

Entered

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

JUN 11 1987
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
✓

SHERYL A. WEBSTER,)
)
 Plaintiff,)
)
 v.) No. 87-C-718-B
)
 AVIS RENT-A-CAR SYSTEMS, INC.)
)
 Defendant.)

ORDER

This matter comes before the Court on Defendant's motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6). Plaintiff has objected to the motion. For the reasons set forth below, the motion is partially granted.

Plaintiff, a Black American female, was first employed by Defendant, Avis Rent-A-Car Systems, Inc. ("Avis"), on June 29, 1981. Plaintiff was promoted twice while employed there. Plaintiff was terminated July 29, 1985. Plaintiff claims she was continually discriminated against while working there. Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging violations of 42 U.S.C. §2000e. Plaintiff received a right-to-sue letter from the EEOC on June 1, 1987.

On August 28, 1987, Plaintiff filed the instant action against Defendant Avis asserting five claims for relief. Plaintiff's first cause of action alleges the violation of Title VII of the Civil Right Act of 1964, 42 U.S.C. §2000e et seq. Plaintiff's second cause of action is for breach of contract in

violation of Oklahoma's public policy against discrimination in employment based on race. Plaintiff's third cause of action is based on breach of contract. Plaintiff's fourth cause of action is for wrongful employment termination and her fifth cause of action is for intentional infliction of emotional distress. Defendant contends Plaintiff's second, fourth and fifth causes of action fail to state claims upon which relief may be granted under Oklahoma law.

To prevail on a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, Defendant must establish that Plaintiff can prove no set of facts in support of his or her claim that would entitle Plaintiff to relief. Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). All factual allegations should be construed to the benefit of the pleader. Gardner v. Toilet Goods Assn., 387 U.S. 167 (1967); Lee v. Derryberry, 466 F.Supp. 20 (W.D.Okla. 1978).

Plaintiff's second and fourth causes of action must be dismissed for failure to state a claim. Plaintiff alleges that Defendant has violated public policy. Hinson v. Cameron, 742 P.2d 549 (Okla. 1987), indicates at least in dicta that in an at-will employee discharge suit¹, public policy grounds might support a claim in tort. Claims that have been recognized are those by employees dismissed for "... exercising a legal right or

¹ Plaintiff claims she was told she would not be terminated except for just cause. However, this does not alter the employee's "at will" status. Freeman v. Chicago, Rock Island and Pacific Railroad Co., 239 F.Supp. 661 (W.D.Okla. 1965).

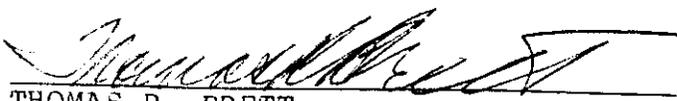
interest; ... performing an act that public policy would encourage ... when the discharge is coupled with a showing of bad faith ... or retaliation." Hinson at 552-553.

While public policy discourages racial discrimination, this Court need not carve out a public policy exception to the at-will doctrine where sufficient remedies are available by statute. The Plaintiff is limited to relief under Title VII and 25 Okla. Stat. Ann. §1302. Further, the Oklahoma Supreme Court has not yet recognized a tort cause of action for wrongful employment termination. Hinson v. Cameron, 742 P.2d 549 (Okla. 1987).

And finally, Oklahoma has yet to allow a cause of action for intentional infliction of emotional distress based on employer race discrimination. The allegations herein are not sufficiently extreme or outrageous. Eddy v. Brown, 715 P.2d 74 (Okla. 1986).

Therefore, Plaintiff's second, fourth and fifth cause of action are dismissed for failure to state a claim upon which relief can be granted.

IT IS SO ORDERED, this 14th day of January, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

F I L E D

JAN 5 - 1988

MOTOR CARRIER AUDIT & COLLECTION)
CO., A DIVISION OF DELTA TRAFFIC)
SERVICE, INC.)

87-C-887-C

Clark C. Silver, Clerk
DISTRICT COURT

vs.)

BRAY LINES, INC.)

ORDER OF DISMISSAL

Be it remembered that on the 5th day of January,
1988, came o for consideration the Plaintiff's Notice for
Dismissal and the Court, after considering the Notice and
pleadings filed therein, is of the opinion that the Plaintiff's
request for dismissal should be granted. It is, therefore,

ORDERED that the above-styled and numbered cause is
hereby dismissed with prejudice.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

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

FILED

DURABILITY, INC.,)
)
 Debtor,)
)
 JAMES R. ADELMAN, TRUSTEE,)
)
 Plaintiff,)
)
 v.)
)
 THE FOURTH NATIONAL BANK)
 OF TULSA and FRED I. PALMER, SR.,)
)
 Defendants.)

86-02594
(Chapter 7)

JAN - 4 1987

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

Adversary No. 86-0861

87-C-627-B

ORDER

This matter comes before the Court on the motion of Defendant, Fred I. Palmer, Sr., for leave to appeal an interlocutory order of the United States Bankruptcy Court for the Northern District of Oklahoma. The Motion for Leave to Appeal will be determined without oral argument pursuant to Bankruptcy Rule 8003(b).

On December 3, 1986, the Trustee for Durability, Inc. filed an adversary proceeding naming the Fourth National Bank and Trust Company ("FNB") and Fred I. Palmer, Sr. ("Palmer") as Defendants. On July 24, 1987, the Bankruptcy Court entered an order granting a partial summary judgment determining the validity and priority of secured claims. In its order the Bankruptcy Court held that FNB owns a valid perfected secured claim in the amount of \$1,618,331.80 which is prior and superior to any right, title, interest and Proof of Claim of Palmer. From this order Defendant Palmer now seeks leave to appeal.

Authority for the District Court to hear appeals from interlocutory orders is found at 28 U.S.C. Section 158, which provides in pertinent part:

(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under Section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving; and, ...

(c) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

Section 158 is silent as to what standard or considerations should be employed by the district court in determining whether leave to appeal should be granted.

Because bankruptcy appeals are to be taken in the same manner as appeals in civil matters generally, the court finds the statutory provision governing interlocutory appeals from district courts to appellate courts should be applied. 28 U.S.C. Section 1292(b). In re Ahearn, Jr, 78 B.R. 24 (S.D.N.Y. 1987). In general, exceptional circumstances must be present to warrant allowing an interlocutory appeal. Coopers & Lybrand v. Livesay, 437 U.S. 463, 475, 98 S.Ct 2454, 57 L.Ed.2d 351 (1978). Title 28 U.S.C. Section 1292(b) mandates three conditions requisite to an interlocutory appeal: (1) the existence of a controlling question of law; which (2) would entail substantial ground for differences of opinion; and (3) the resolution of which would

materially advance the ultimate termination of the litigation. In re Lady Madonna Industries, 76 B.R. 281, 285 (S.D.N.Y. 1987); In re Klein, 70 B.R. 378, 380 (N.D. ILL 1987).

FNB contends that the adversary proceeding appealed from involves multiple claims and multiple parties, that because of Bankruptcy Rule 7054(a), F.R.C.P. Rule 54(b) should apply requiring "an express determination that there is no just reason for delay and ... an express direction for the entry of judgment" before an appeal can be taken, and that the Bankruptcy Court made no such "determination and direction". As a result, FNB argues, this certification under F.R.C.P. Rule 54(b) is necessary to establish the court's jurisdiction of Palmer's appeal pursuant to 28 U.S.C. § 158(a). Were this not a bankruptcy appeal, the order would not be appealable as a "final order" without a F.R.C.P. Rule 54(b) certification. Bristol v. Fibreboard Corp, 789 F.2d 846, 848 (10th Cir. 1986).

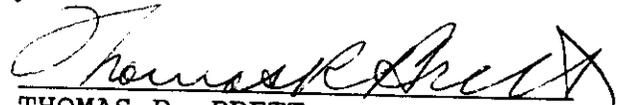
The finality requirement is less rigidly applied in bankruptcy than in ordinary civil litigation. In re Johns-Manville Corp., 824 F.2d 176, 179 (2nd Cir. 1987); 16 Wright, Miller & Cooper, Federal Practice and Procedure § 3926 (Supp. 1986). Where a court has considered the question, it has generally been held that an order allowing a claim or priority effectively settles the amount due the creditor. Consequently, the order is "final" even if the claim or priority may be adjusted by the disposition of other claims or priorities. In re Moody, 817 F.2d 365, 367 (5th Cir. 1987); In re Johns-Manville

Corp, 824 F.2d 176, 179-80 (2nd Cir. 1987); Matter of Morse Electric Co., Inc., 805 F.2d 262, 264 (7th Cir. 1986); In re Saco Local Development Corp, 711 F. 2d 441, 448 (1st Cir. 1983); In re Charter Co, 76 B.R. 191, 193 (M.D. Fla. 1987). Therefore, had Palmer's claim been the sole issue in the underlying adversary proceeding, Palmer would be permitted to appeal the order as a "final order".

Because the Bankruptcy Court determined only one of several claims among several parties when it determined Palmer's claim, FNB urges that Bankruptcy Rule 7054(a) requires the application of F.R.C.P. Rule 54(b). This argument was considered in In re Matter of Morse Electric Co., Inc., 805 F.2d 262 (7th Cir. 1986). In Morse, the court found that "the fact [appellants] joined this litigation as one of 21 parties in a separate adversary proceeding is unimportant Finality of the order comes from the fact that it resolves all of [appellants] claims against the estate." At 265. The Seventh Circuit Court of Appeals concluded Morse by holding that where the adversary proceeding is a core proceeding to value creditors' claims, "a resolution of one creditor's full position is 'final' ... without the need for a formal entry of a separate judgment under Rule 54(b)." At 265.

The Court finds the reasoning of Morse to be applicable here. Therefore, it is, the Order of this Court that Palmer may appeal the bankruptcy court order as of right, and therefore, Palmer's Motion for Leave to Appeal is moot.

ORDERED this 4 day of Jan., 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

ALCON SANDERS,)
)
 Plaintiff,)
)
 v.)
)
 MK&O COACH LINES, INC.,)
 an Oklahoma corporation,)
)
 Defendant.)

Case No. 86-C-111-B

FILED

JAN - 4 1988

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

ORDER OF DISMISSAL

NOW on this 4 day of January 1988, Plaintiff's Motion

to Dismiss the above-captioned action with prejudice comes on for consideration. The Court being advised that full and complete settlement of all issues in the case having been reached, the Court finds that the same should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's case is dismissed with prejudice.

S/ THOMAS R. BRETT

Thomas R. Brett
United States District Court

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

FILED
JAN -4 1988

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

BRUCE L. BONNETT,

Plaintiff,

vs.

FDIC, SUCCESSOR TO THE
FIRST NATIONAL BANK OF
SAPULPA,

Defendant.

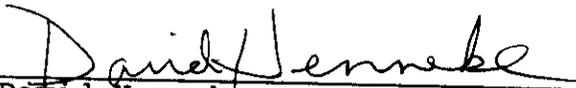
No. 87-C-228E
CJ-87-01138

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

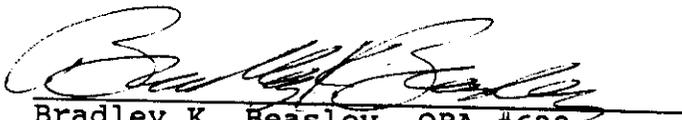
COMES NOW the Plaintiff, Bruce L. Bonnett, and the Defendant, FDIC, by and through their undersigned attorneys, and hereby stipulate that the above entitled action be dismissed without prejudice.

DATED this 4th day of January, 1988.

APPROVED BY:



David Henneke, OBA #4099
Post Office Box 3624
220 West Maple
Enid, Oklahoma 73702-3624
(405) 237-1600
Attorney for Plaintiff, Bruce L. Bonnett



Bradley K. Beasley, OBA #628
800 Oneok Plaza
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Tulsa, Oklahoma 74103
Attorney for Defendant, FDIC

ejj

OBA #5026

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

TERRY TURNER,)
)
Plaintiff,)
)
vs.)
)
EVANSTON INSURANCE COMPANY;)
ENGLISH AND AMERICAN INSURANCE)
COMPANY, LTD.,; and)
ST. KATHERINE'S INSURANCE)
COMPANY,)
)
Defendants.)

Case No. 86-C-1065-C

FILED

JAN 4 - 1988

C. Silver, Clerk
DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

On this 9th day of December, 1987, Defendant's Motion for Summary Judgment came on before the Court for hearing. The Court, upon reviewing the file, determined that no response had been filed by or on behalf of the Plaintiff. Pursuant to Local Rule 14(a), the failure to respond constitutes confession and acquiescence of Defendant's Motion. Defendant's Motion for Summary Judgment is sustained and judgment is entered for the Defendant.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Defendant's Motion for Summary Judgment is sustained and judgment is entered for the Defendant and against the Plaintiff, Terry Turner.

(Signed) H. Dale Cook

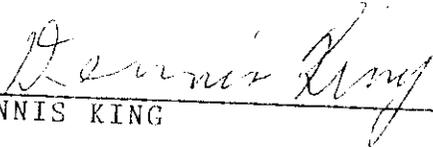
H. DALE COOK, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CERTIFICATE OF MAILING

I, DENNIS KING, hereby certify that on the 16 day of December, 1987, I mailed a true and correct copy of the above and foregoing JOURNAL ENTRY OF JUDGMENT with proper postage thereon fully prepaid to:

Terry Turner
1112 West Memphis
Broken Arrow, Oklahoma 74012

Jim Conatser
Attorney at Law
415 South Dewey
Suite 205
Bartlesville, Oklahoma 74003



DENNIS KING