

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MAX D. BENGE,)
)
Defendant.)

JAN 29 1988

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

CIVIL ACTION NO. 87-C-710-B

DEFAULT JUDGMENT

This matter comes on for consideration this 29th 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, Max D. Benge, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Max D. Benge, was served with Summons and Complaint on November 11, 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,

Max D. Benge, for the principal sum of \$866.14, plus interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from March 30, 1984, \$.67 per month from February 1, 1985, and \$.63 per month from January 1, 1986, until judgment, plus interest thereafter at the current legal rate of 7.14 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
BOBBY W. LAKIN,)
)
Defendant.)

JAN 29 1988

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

CIVIL ACTION NO. 87-C-918-B

DEFAULT JUDGMENT

This matter comes on for consideration this 29th 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, Bobby W. Lakin, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Bobby W. Lakin, acknowledged receipt of Summons and Complaint. 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,

Bobby W. Lakin, for the principal sum of \$1,004.67, less credits or cash payment of \$130.00, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from August 10, 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 7.14 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

GEORGE R. STINNETT,)
)
 Plaintiff,)
)
 vs.)
)
 HILLCREST MEDICAL CENTER,)
)
 Defendant.)

Case No. 87-C-912-C

FILED

JAN 28 1988

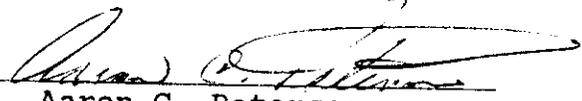
STIPULATION OF DISMISSAL WITH PREJUDICE

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

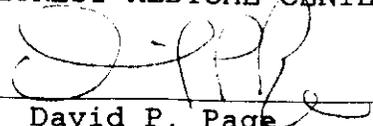
COME NOW the Plaintiff, George R. Stinnett, by and through his attorney, Aaron C. Peterson, and the Defendant, Hillcrest Medical Center, by and through its attorney, David P. Page, and hereby stipulate and agree to dismiss this action with prejudice pursuant to Rule 41(a) of the F.R.Civ.P., each party to bear its own costs.

Respectfully Submitted,

GEORGE R. STINNETT


By: Aaron C. Peterson
Attorney for Plaintiff
1611 South Harvard
Tulsa, Oklahoma 74112
(918) 745-0687

HILLCREST MEDICAL CENTER



By: David P. Page
Attorney for Defendant
500 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
(918) 587-0000

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DELBERT CONN; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

F I L E D

JAN 28 1988

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

CIVIL ACTION NO. 87-C-682-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day
of Jan, 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, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Doris L. Fransein, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendant, Delbert
Conn, appears not, but makes default.

The Court being fully advised and having examined the
file herein finds that Defendant, County Treasurer, Tulsa County,
Oklahoma, acknowledged receipt of Summons and Complaint on
August 20, 1987; and that Defendant, Board of County
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on August 19, 1987.

The Court further finds that the Defendant, Delbert Conn, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning October 13, 1987, and continuing to November 17, 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, Delbert Conn, 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, Delbert Conn. 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, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on September 3, 1987; and that the Defendant, Delbert Conn, has failed to answer and his default has therefore been entered by the Clerk of this Court.

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

Lot Eight (8), Block Four (4), EL' BRAD, an Addition in Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on March 11, 1983, Delbert Conn 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 \$35,000.00, payable in monthly installments, with interest thereon at the rate of twelve percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, Delbert Conn executed and delivered to the United States of America, acting on behalf of

the Administrator of Veterans Affairs, a mortgage dated March 11, 1983, covering the above-described property. Said mortgage was recorded on March 11, 1983, in Book 4674, Page 2730, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Delbert Conn, 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, Delbert Conn, is indebted to the Plaintiff in the principal sum of \$34,351.85, plus interest at the rate of twelve percent (12%) per annum from July 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$291.00, plus penalties and interest, for the year of 1987. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims 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, Delbert Conn, in the principal sum of \$34,351.85, plus interest at rate of twelve percent (12%) per annum from July 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 Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$291.00, plus penalties and interest, for ad valorem taxes for the year of 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

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

First:

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

Second:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$291.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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


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

NNB/css

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

JAMES ALFRED FULTNER, as guardian)
of the person and estate of ALFRED)
HENRY FULTNER, an incompetent, and)
JAMES ALFRED FULTNER and MARGARET)
J. GWIN, as Co-Administrators of)
the Estate of HESTER B. FULTNER,)
deceased,)

Plaintiff,)

vs.)

MARK ALAN MAYFIELD, LARRY G.)
McCONNELL, d/b/a M. T. FARMS, and)
GREAT WEST CASUALTY COMPANY, a)
foreign insurer,)

Defendants.)

FILED

JAN 28 1988

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

CASE NO. 87-C-548-B

O R D E R

Comes on for hearing the Joint Application of parties to dismiss the above styled action with prejudice to the refiling thereof for the reason that the same has been settled.

IT IS THEREFORE ORDERED that the above styled matter is dismissed with prejudice to the refiling thereof.

DATED this 28 day of January, 1988.

S/ THOMAS R. BRETT
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

STEVEN R. HICKMAN,
Attorney for James Alfred Fultner

GRAYSON RICE,
Attorney for Margaret J. Gwin

RICHARD C. HONN,
Attorney for Defendants

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

FILED
JAN 22 1988
M.D.L. Docket No. 153
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

IN RE HOME-STAKE PRODUCTION COMPANY
SECURITIES LITIGATION,

WILLIAM D. ROBERTSON, on behalf of
himself and all others similarly
situated,

Plaintiffs,

-vs-

McKEE, ATKINS & SCHULER, a
partnership,

Defendants.

No. 75-C-432

FILED

JAN 28 1988

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

ORDER

On November 2, 1987, all Motions filed came on for oral argument and hearing in accordance with Scheduling Order No. 7 and the Notice of Hearing dated October 19, 1987. The Plaintiffs appeared by their Committee of Counsel, to-wit: William H. Hinkle of Doerner, Stuart, Saunders, Daniel & Anderson; William A. Wineberg and Michael R. Simmonds of Broad, Schulz, Larson & Wineberg; Elihu Inselbuch and Ethan V. Finneran of Caplin & Drysdale, Chartered; Peter Van N. Lockwood and Scott Michel of Caplin & Drysdale, Chartered. Defendant McKee, Atkins & Schuler appeared by its attorneys, John R. Paul and Nancy Jane Siegel of Richards, Paul & Wood, and Allison Dabbs of Pray, Walker, Jackman, Williamson & Marljar. Defendant Robert S. Trippet appeared pro se. Counsel for other Defendants in connection with the M.D.L. 153,

Multi-District securities litigation, also appeared, and their appearances are noted by separate Order.

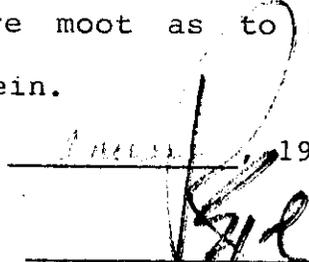
The Court, having reviewed the Motions and applicable Briefs filed herein, having heard the arguments of counsel, and being fully advised in the premises, found as follows:

1. As to McKee, Atkins & Schuler's motions with respect to the statute of limitations and lack of damages, there are disputed issues of fact, and such motions are denied.

2. The Motion for Summary Judgment by McKee, Atkins & Schuler is hereby granted, and judgment is hereby entered in favor of Defendant McKee, Atkins & Schuler and against Plaintiffs, and this action is dismissed with prejudice.

3. To the extent McKee, Atkins & Schuler has joined in Motions of Defendants in consolidated cases upon which the Court has not ruled, said Motions are moot as to McKee, Atkins & Schuler, and are not ruled on herein.

SO ORDERED this 22 day of August, 1988.



MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

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

IN RE HOME-STAKE PRODUCTION
COMPANY SECURITIES LITIGATION,

WILLIAM D. ROBERTSON, on
behalf of himself and all others
similarly situated,

Plaintiffs,

- vs -

McKEE, ATKINS & SCHULER, a
partnership,

Defendants.

FILED
M.D.L. Docket No. 153
JAN 22 1988
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT
BY

No. 75-C-432

FILED
JAN 23 1988

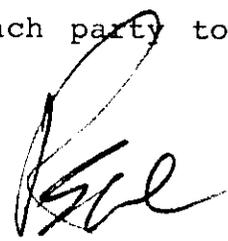
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Stipulation for Dismissal With Prejudice of Crossclaims comes on for consideration and decision before me, the undersigned United States District Judge, and the Court, being fully advised in the premises, finds that said Stipulation for Dismissal should be allowed, and IT IS THEREFORE

ORDERED, ADJUDGED AND DECREED that the Crossclaims and Third Party claims by and between McKee, Atkins & Schuler and Robert S. Trippet in the above referenced action should be and are hereby mutually dismissed with prejudice, each party to pay their own costs.

1-22-88



United States District Judge

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

IN RE HOME-STAKE PRODUCTION COMPANY SECURITIES LITIGATION,)
A.M. ANDERSON, et al.,)
Plaintiffs,)
- vs -)
HOME-STAKE PRODUCTION CO., et al.,)
Defendants.)

M.D.L. Docket No. 153

FILED

JAN 22 1988

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT

BY

No. 74-C-228

FILED

JAN 28 1988

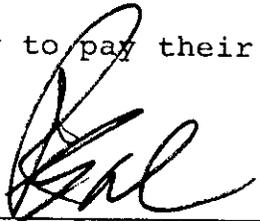
ORDER

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

The Stipulation for Dismissal With Prejudice of Crossclaims comes on for consideration and decision before me, the undersigned United States District Judge, and the Court, being fully advised in the premises, finds that said Stipulation for Dismissal should be allowed, and IT IS THEREFORE

ORDERED, ADJUDGED AND DECREED that the Crossclaims by and between McKee, Atkins & Schuler and Robert S. Trippet in the above referenced action should be and are hereby mutually dismissed with prejudice, each party to pay their own costs.

1-22-88



United States District Judge

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

IN RE HOME-STAKE PRODUCTION
COMPANY SECURITIES LITIGATION,

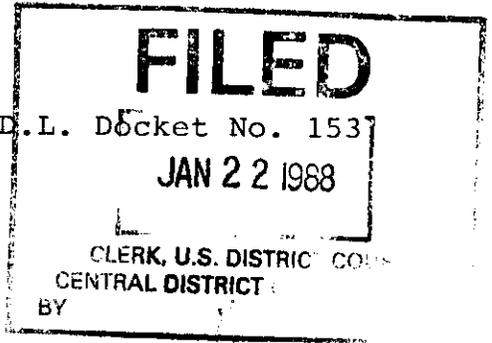
WILLIAM D. ROBERTSON, on
behalf of himself and all others
similarly situated,

Plaintiffs,

- vs -

McKEE, ATKINS & SCHULER, a
partnership,

Defendants.



No. 75-C-432

FILED

JAN 23 1988

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

ORDER

The Stipulation for Dismissal With Prejudice of Crossclaims comes on for consideration and decision before me, the undersigned United States District Judge, and the Court, being fully advised in the premises, finds that said Stipulation for Dismissal should be allowed, and IT IS THEREFORE

ORDERED, ADJUDGED AND DECREED that the Crossclaims and Third Party claims by and between McKee, Atkins & Schuler and Robert S. Trippet in the above referenced action should be and are hereby mutually dismissed with prejudice, each party to pay their own costs.

1-22-88

United States District Judge

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

F I L E D

JAN 23 1988

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

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

No. 86-C-281-B

ORDER

Now, upon Application of the parties, it being represented to the Court that this case has settled, the Court makes the following findings and enters its Order accordingly.

The Court finds, upon application of the parties that the interests of justice are served in (1) sealing the court file, and (2) protecting from disclosure, the terms of the settlement entered into by the parties. The sensitive nature of the case, together with the interests of both parties in maintaining confidentiality as to the terms of settlement appropriately warrant action by the Court, sealing the file and protecting the terms of settlement from disclosure.

IT IS, THEREFORE, ORDERED that the Court file in this case be sealed to the public, and that the only persons entitled to access thereto are court personnel and the parties or their representatives.

IT IS FURTHER ORDERED, that the terms of the settlement

are not to be disclosed or to be discussed with any person, except as between the parties and their representatives. Both parties may, upon inquiry, indicate that the case has been settled, but neither they, nor their representatives, may disclose the terms of the settlement reached.

Upon proper application, and upon notice to all parties, the Court will consider whether the terms of this order may be modified.

Done this 28th day of November, 1987.


THOMAS R. BRETT, UNITED STATES
DISTRICT JUDGE

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

YINGLING OIL, INC.,)
)
 Plaintiff,)
)
 vs.) CIV-87-C-324 B
) (No. C-87-186, District Court
 CHEVRON, U.S.A., INC.,) of Osage County, Oklahoma)
)
 Defendant.)

FILED

JAN 28 1988

CLERK
DISTRICT COURT

DISMISSAL ORDER

NOW on this 28th day of January, 1988, upon the Dismissal without Prejudice filed herein by Plaintiff, Yingling Oil, Inc., the above styled and numbered cause is hereby dismissed without prejudice.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

FILED

JAN 27 1988

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

MOTOR CARRIER AUDIT &)
COLLECTION CO., a division)
of DELTA TRAFFIC SERVICE, INC.,)
)
Plaintiff,)
)
vs.)
)
SOONER PIPE & SUPPLY CORP.,)
)
Defendant.)

Case No. 87-C-569-B

ORDER OF DISMISSAL

NOW ON THIS 27 day of January, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by Plaintiff and Defendant. Based upon the representations and requests of the parties as set forth in the foregoing Stipulation, it is

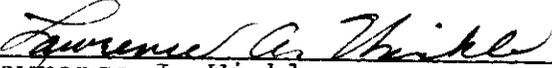
ORDERED that Plaintiff's Amended Complaint and claims for relief against Defendant be and the same are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that each party shall bear its own costs.

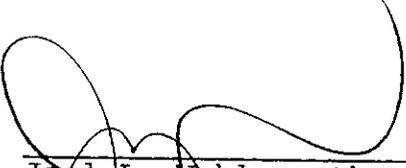
S/ THOMAS R. BRETT

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

APPROVED BY:


Lawrence J. Winkle
330 West Mockingbird Lane
700 Executive Tower
Dallas, Texas 75235

Attorneys for Plaintiff,
Motor Carrier Audit &
Collection Co.


Joel L. Wohlgemuth
NORMAN, WOHLGEMUTH & THOMPSON
909 Kennedy Building
Tulsa, Oklahoma 74103

Attorneys for Defendant,
Sooner Pipe & Supply Corp.

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

ROBERT A. ALEXANDER, JR.,)
)
 Plaintiff,)
)
 v.)
)
 CHARLES M. BLAIR, individually and)
 as Trustee of the Charles M. Blair)
 & Co., Inc., Employee Benefit Plans)
 Trust; and the CHARLES M. BLAIR)
 & CO., INC., EMPLOYEE BENEFIT PLANS)
 TRUST,)
)
 Defendants.)

No. 87-C-970-B

FILED
JAN 27 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court on Defendant Charles M. Blair and the Charles M. Blair & Co., Inc. Employee Benefit Plans Trust's motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(2) for lack of in personam jurisdiction. Plaintiff, by his complaint, alleges that he is a resident of the State of Oklahoma and that the Defendants are of diverse citizenship for purposes of this action. Plaintiff brings this an action for conversion arising from the sale of certain stock which was held as collateral by the Defendants to secure a \$150,000.00 promissory note entered into between the Plaintiff and the Defendants. Plaintiff's allegation of his Oklahoma citizenship is sufficient to show that venue is proper in this court. See, 28 U.S.C. §1391. Defendants' reply brief admits that venue is not an issue in this matter.

Defendants by their motion to dismiss argue that the Plaintiff has failed to show sufficient contacts with the State of Oklahoma to subject them to the jurisdiction of the Oklahoma courts. Plaintiff contends that the Court has personal jurisdiction over the Defendant by virtue of Oklahoma's long-arm statute, 12 Okl.St. Ann. §2004(f), which states the courts of the State of Oklahoma may exercise jurisdiction on any basis consistent with the constitution of this state and the constitution of the United States. The limitations of in personam jurisdiction consist of the requirement of "minimum contacts" enunciated by the Supreme Court in International Shoe Co. v. State of Washington, 326 U.S. 310 (1945). There, the Court stated:

"... due process requires that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' ..."

Id. at 316 [Citations omitted].

The Defendants assert the Plaintiff has alleged no acts in the complaint which would show that the Defendants have submitted themselves to the jurisdiction of the Oklahoma courts and that the mere allegations of the complaint are not sufficient to sustain personal jurisdiction.

When a jurisdictional question arises, the burden of proof is upon the party asserting that jurisdiction exists. Roberts v. Jack Richards Aircraft Co., 536 P.2d 353, 354 (Okla. 1975); Crescent Corporation v. Martin, 443 P.2d 111, 117 (Okla. 1968).

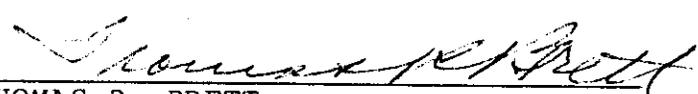
Plaintiff's complaint wholly fails to allege acts which would indicate that the Defendants transacted any business in Oklahoma, executed the subject promissory note in Oklahoma, or mailed or contacted the Plaintiff by telephone in the State of Oklahoma. Plaintiff's only attempt to show the Defendants' contacts with Oklahoma comes in the form of an affidavit of an attorney who is employed by the Plaintiff's law firm, Mr. Robert L. Bainbridge. Said affidavit was purportedly executed on behalf of the Plaintiff for the reason he was unable to execute an affidavit on his own behalf. The pertinent part of the affidavit relied upon by the Plaintiff to show that in personam jurisdiction is proper in this case is as follows:

"2. I personally conferred several times with Robert A. Alexander, Jr., the plaintiff in case number 87-C-970-B brought in the United States District Court for the Northern District of Oklahoma. Robert A. Alexander, Jr., stated to me that at all times mentioned in the Complaint he was a resident of Tulsa County, State of Oklahoma, and that the transactions between himself and Charles M. Blair concerning the causes of action brought in case number 87-C-970-B were by telephone or by letter or memorandum transmitted in the mail between Tulsa, Oklahoma and the defendant Charles M. Blair outside the State of Oklahoma."

Plaintiff's conclusory affidavit is insufficient to show that Defendant Charles M. Blair, individually, had sufficient contact with the State of Oklahoma that "he should reasonably anticipate being haled into court" in Oklahoma. World-Wide Volkswagen Corporation v. Woodson, 444 U.S. 286-287 (1980), nor do they even allude to the alleged contacts of the remaining Defendant Charles M. Blair & Co., Inc., Employee Benefit Plans Trust.

Plaintiff's response brief to the motion to dismiss cites considerable legal authority on what constitutes minimum contacts for purposes of in personam jurisdiction but is totally devoid of facts or allegations of the Defendants' contacts within the State of Oklahoma for purposes of in personam jurisdiction. Plaintiff has failed his burden to show that the Court has personal jurisdiction over the Defendants and therefore the Defendants' motions to dismiss are granted.

IT IS SO ORDERED, this 11th day of January, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 27 1983

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

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

Civil Action No. 86-C-281-B

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Glenn Lay, Linda Lay, and Laura Lay, by and through her parents and next of kin, by their attorneys of record, G. Steven Stidham and D. Gregory Bledsoe, and the Defendant, United States of America, acting on behalf of the Bureau of Alcohol, Tobacco and Firearms, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure stipulate that the Plaintiffs' Complaint in this action should be dismissed with prejudice to the refiling of the same.

Respectfully submitted,



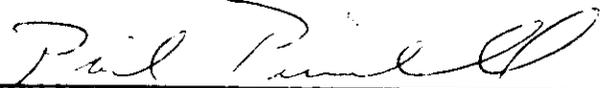
G. STEVEN STIDHAM
Sixth Floor
114 East Eighth Street
Tulsa, Oklahoma 74119
(918) 583-3145

and



D. GREGORY BLEDSOE
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(918) 599-8118

Attorneys for Plaintiffs



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

Attorney for Defendant

ldp

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

DARLENE P. GUILLEN,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
INTERNAL REVENUE SERVICE,)
COMMISSIONER OF INTERNAL)
REVENUE, R. E. BARNES,)
REVENUE OFFICER, and)
LOVE ENVELOPES, a corporation,)
)
Defendants.)

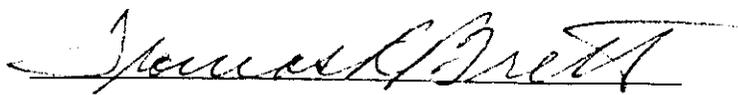
No. 83-C-987-B ✓

FILED
JAN 27 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

In accord with the Findings of Fact and Conclusions of Law entered this date, the Court hereby enters judgment in favor of Defendant United States Department of Justice, Tax Division, and against Plaintiff, Darlene P. Guillen, in the amount of Twenty Nine Thousand Seven Hundred Forty Four and 27/100 Dollars (\$29,744.27), with post-judgment interest to run at the rate of 7.14% per annum. Further, the Court enters judgment in favor of Defendant United States Department of Justice, Tax Division, and against attorney Robert A. Flynn in the amount of \$5,000.00, interest to run at the rate of 7.14% per annum, from the date of this judgment.

ENTERED this 27 day of January, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

20

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MILDRED O. STANDEFORD a/k/a)
MILDRED O. POPEJOY;)
JOHN ONTIVEROS, JR.; CAROLYN)
CAMILLE ONTIVEROS; BOISE)
CASCADE CORPORATION; BANK OF)
OKLAHOMA, LEWIS CENTER,)
formerly the Boulder Bank and)
Trust Company; COUNTY)
TREASURER, Tulsa County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

FILED

JAN 27 1988

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

CIVIL ACTION NO. 87-C-460-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27 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, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
Doris L. Fransein, Assistant District Attorney, Tulsa County,
Oklahoma; the Defendant, Bank of Oklahoma, Lewis Center, formerly
the Boulder Bank and Trust Company, appears not, having
previously filed its Disclaimer; and the Defendants, Mildred O.
Standeford a/k/a Mildred O. Popejoy, John Ontiveros, Jr., Carolyn
Camille Ontiveros, and Boise Cascade Corporation, appear not, but
make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Boise Cascade Corporation, acknowledged receipt of Summons and Complaint on July 28, 1987; that Defendant, Bank of Oklahoma, Lewis Center, formerly the Boulder Bank and Trust Company, acknowledged receipt of Summons and Complaint on June 22, 1987; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 16, 1987; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 16, 1987.

The Court further finds that the Defendants, Mildred O. Standeford a/k/a Mildred O. Popejoy, John Ontiveros, Jr., and Carolyn Camille Ontiveros, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning October 13, 1987, and continuing to November 17, 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 Defendants, Mildred O. Standeford a/k/a Mildred O. Popejoy, John Ontiveros, Jr., and Carolyn Camille Ontiveros, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any

other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known addresses of the Defendants, Mildred O. Standeford a/k/a Mildred O. Popejoy, John Ontiveros, Jr., and Carolyn Camille Ontiveros. 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 Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this court to enter the relief sought by the Plaintiff, both as the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on July 2, 1987; that the Defendant, Bank of Oklahoma, Lewis Center, formerly the Boulder Bank and Trust Company, filed its Disclaimer herein on June 24, 1987; and that the Defendants, Mildred O. Standeford a/k/a Mildred O. Popejoy, John Ontiveros, Jr., Carolyn Camille Ontiveros, and Boise Cascade Corporation, have failed to answer

and their default has therefore been entered by the Clerk of this Court.

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

Lot Two (2), Block One (1), VALLEY VIEW ACRES ADDITION, to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on November 28, 1967, the Defendant, Mildred O. Standeford, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, her mortgage note in the amount of \$9,500.00, payable in monthly installments, with interest thereon at the rate of six percent (6%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Mildred O. Standeford, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated November 28, 1967, covering the above-described property. Said mortgage was recorded on November 29, 1967, in Book 3830, Page 328, in the records of Tulsa County, Oklahoma.

The Court further finds that pursuant to a General Warranty Deed dated December 5, 1979, and filed of record on December 5, 1979, in Book 4445 at Page 329 in the records of the Tulsa County Clerk's Office, Tulsa County, Oklahoma, Mildred O.

Standeford a/k/a Mildred O. Popejoy, through her attorney in fact, Jesse C. Woodward, conveyed the above-described real property to John Ontiveros, Jr. and Carolyn Camille Ontiveros, who under the term of said General Warranty Deed agreed to assume and pay the above-described mortgage in favor of the Plaintiff.

The Court further finds that the Defendants, Mildred O. Standeford a/k/a Mildred O. Popejoy, John Ontiveros, Jr., and Carolyn Camille Ontiveros, 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, Mildred O. Standeford a/k/a Mildred O. Popejoy, John Ontiveros, Jr., and Carolyn Camille Ontiveros, are indebted to the Plaintiff in the principal sum of \$4,563.19, plus interest at the rate of six percent (6%) per annum from September 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 Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$175.00, plus penalties and interest, for the year of 1987. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real property.

The Court further finds that the Defendant, Bank of Oklahoma, Lewis Center, formerly the Boulder Bank and Trust Company, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendant, Boise Cascade Corporation, 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 Defendants, Mildred O. Standeford a/k/a Mildred O. Popejoy, John Ontiveros, Jr., and Carolyn Camille Ontiveros, in the principal sum of \$4,563.19, plus interest at the rate of six percent (6%) per annum from September 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 Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$175.00, plus penalties and interest, for ad valorem taxes for the year of 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Boise Cascade Corporation, Bank of Oklahoma, Lewis Center, formerly the Boulder Bank and Trust Company, and Board of

County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$175.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants

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

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL
Assistant United States Attorney


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

PP/css

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

DARLENE P. GUILLEN,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
INTERNAL REVENUE SERVICE,)
COMMISSIONER OF INTERNAL)
REVENUE, R. E. BARNES,)
REVENUE OFFICER, and)
LOVE ENVELOPES, a corporation,)
)
Defendants.)

No. 83-C-987-B ✓

FILED

JAN 27 1988 8

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

O R D E R

This matter comes before the Court on the Defendant Barnes' application for attorney's fees filed April 4, 1985. The instant action has recently returned from an appeal to the Tenth Circuit Court of Appeals. By an opinion filed June 3, 1987, the Tenth Circuit Court of Appeals affirmed this Court's directed verdict after a jury trial.

Plaintiff, Darlene P. Guillen, brought this suit for damages against Revenue Officer Robert E. Barnes, alleging that his conduct in authorizing and refusing to release a levy upon her wages in connection with a tax deficiency violated her constitutional due process right, defamed and libeled her character and reputation, and intentionally inflicted emotional distress.

A hearing on the instant application for attorney's fees was held September 3, 1985. While the Plaintiff objected to any

award of attorney's fees, she stipulated to the affidavit of one Robert G. Coberly which set forth as reasonable the Defendant's total attorney's fees and costs in defending this action in the amount of \$29,744.27. The Court, having heard the evidence and having reviewed the pleadings of the parties, concludes the Defendants are entitled to an award of attorney's fees against the Plaintiff personally and an award of sanctions against the Plaintiff's attorney. The Court makes the following Findings of Fact and Conclusions of Law in support of its determination.

FINDINGS OF FACT

1. Plaintiff, Darlene P. Guillen, brought this suit on November 30, 1983, in the United States District Court for the Northern District of Oklahoma, for damages against Revenue Officer Robert E. Barnes, alleging that his conduct in authorizing and refusing to release a levy upon her wages in connection with a tax deficiency violated her constitutional due process rights, defamed and libeled her character and reputation, and intentionally inflicted emotional distress.

2. This matter was heard by a jury on January 28, 29 and 30, 1985. At the close of the evidence the Court directed a verdict in favor of the Defendants. The directed verdict was affirmed by the Tenth Circuit Court of Appeals on July 16, 1987.

3. Plaintiff, Darlene P. Guillen, is an avowed member of a tax protest organization, The American Heritage Fellowship.

4. By her own testimony, Plaintiff subscribes to the philosophy that "wages are not income" and that "Federal Reserve Notes are not money." These notions are patently ludicrous. See, McKinney v. Reagan, 85-2 U.S.T.C. ¶9479 (N.D.La. 1984).

5. Plaintiff misrepresented her addresses to the Internal Revenue Service during tax years 1980 and 1981, and sent unsigned correspondence to the Internal Revenue Service. Both of these measures, as well as the employment of obscure and undecipherable material in her correspondence and on her tax returns, were clearly designed to disrupt the tax collection efforts of the Internal Revenue Service.

6. The initiation of this lawsuit was without any foundation whatsoever with respect to the Internal Revenue Service. As stated by the Tenth Circuit Court of Appeals:

"We state the uncontested factual history of this case in such detail to indicate the baseless nature of Guillen's original complaint in the district court and the frivolity of her further pursuit of this appeal. There is no showing in this case of any constitutional deprivation, nor any indication that Barnes was not acting in good faith."

Tenth Circuit Slip Op. 85-1773, pp. 3-4 (June 3, 1987).

7. Counsel for Plaintiff never adduced any testimony regarding improper issuance and mailing of a notice of deficiency to Plaintiff for either tax year 1980 or 1981.

8. The Defendant presented evidence at trial as represented in the proposed Pre-Trial Order that clearly established that the notices were properly issued and mailed to the Plaintiff. Counsel for Plaintiff presented no evidence to the contrary at trial.

9. Plaintiff's failure to present any evidence to suggest that Defendant Barnes' conduct was in violation of the Plaintiff's constitutional rights or the Internal Revenue Service's established procedure was a senseless waste of judicial resources.

10. Plaintiff's counsel continued to pursue the prosecution of this case over the Court's admonition that it lacked substance, and forced the Defendant to spend considerable amounts of money to defend the action unnecessarily.

11. Plaintiff's counsel wholly failed to adduce any evidence that Defendants acted at any time in a willful, wanton, malicious or oppressive manner as alleged in the complaint. Further, Plaintiff's counsel's allegation in the complaint that a \$500.00 penalty for filing of a false W-4 form in 1982 was libelous on its face and clearly exposed Plaintiff to hatred, contempt, ridicule and embarrassment, was a completely unfounded allegation. In addition, counsel for Plaintiff failed to adduce any testimony with regard to the "loss of reputation, shame, mortification, and injured feelings" as alleged in the complaint. The Court finds that Plaintiff's counsel's signature on the complaint constitutes a violation of Fed.R.Civ.P. 11, given the frivolous, vexatious, and baseless nature of the case from its inception.

12. The parties have stipulated to Defendant Barnes' reasonable attorney's fees and other costs in the amount of \$29,744.27 to defend this suit. (See Affidavit of Robert G. Coberly).

The above fees and costs were incurred by the United States of America by the Tax Division, United States Department of Justice, on behalf of Defendant Barnes.

13. The Court hereby adopts the Defendants' recitation of facts contained in its brief in support of application for attorney's fees, pages 2-11, as if fully set forth herein.

CONCLUSIONS OF LAW

1. Any Finding of Fact more properly deemed a Conclusion of Law is adopted as such.

2. The Court finds that the initiation of this lawsuit was without any foundation whatsoever with respect to the Internal Revenue Service and the conduct of the Plaintiff both before litigation commenced and in commencing this litigation constitutes "bad faith." See, Hall v. Cole, 412 U.S. 1 (1973); Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402 n. 4 (1968); and Bell v. Atkinson, 369 U.S. 527 (1962).

3. Under the so-called "American rule", attorneys fees in litigation are not recoverable from the adverse party, regardless of the outcome of the action. Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 247 (1975). However, attorneys' fees can be shifted where a statute explicitly provides, Nemeroff v. Abelson, 620 F.2d 339, 348 (2nd Cir. 1980), on remand 94 F.R.D. 136 (S.D.N.Y. 1982), 704 F.2d 652 (2nd Cir. 1983), or where the action has been commenced or conducted in bad faith, vexatiously, wantonly or for oppressive reasons, F. D. Rich Co. v. United States ex rel. Industrial Lumber Co., 417 U.S. 116, 129, Nemeroff v. Abelson, supra, 620 F.2d at 348.

4. A finding of bad faith in prosecution of an action requires a determination that there is clear evidence the claims are made entirely without color and made for reasons of harassment or delay or for other improper purposes. Browning Debenture Holders' Committee v. DASA Corp., 560 F.2d 1078 (2nd Cir. 1977).

5. A claim is tolerable when it has some legal and factual support, considered in light of the reasonable beliefs of the individual making the claim. Nemeroff v. Abelson, *supra*, 620 F.2d at 348.

6. Attorneys fees may be awarded against counsel for a party under 28 U.S.C. §1927, as follows:

"Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies proceedings in any case as to increase costs unreasonably and vexatiously may be required by the Court to satisfy personally such excess costs, expenses and attorneys' fees reasonably incurred because of such conduct."

See, Glass v. Pfeffer, 657 F.2d 252, 256 (10th Cir. 1981); Roadway Express, Inc. v. Piper, 447 U.S. 752, 757-62 (1980).

7. Fed.R.Civ.P. 11 provides further authority for imposition of attorney's fees, providing in part:

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

violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee."

8. The Court concludes Plaintiff's claims had no legal or factual support and were commenced and conducted in bad faith, vexatiously, wantonly or for oppressive reasons. (See, Tenth Circuit Court of Appeals slip op. 85-1773 (6-3-87)). The Court concludes the Plaintiff shall be required to pay Defendants' attorney's fees in the amount stipulated of \$29,744.27. The Court further concludes that Plaintiff's counsel by his actions in this matter is in clear violation of Fed.R.Civ.P. 11 and should be sanctioned in the amount of \$5,000.00, pursuant to 28 U.S.C. §1927 and Fed.R.Civ.P. 11, as and for attorney's fees. Said judgments are joint and several to the extent of the amount specified.

Therefore, the Defendants' motion for assessment of attorney's fees against Plaintiff and Plaintiff's counsel is granted in the amount of \$29,744.27, and \$5,000.00, respectively.

ENTERED this 27th day of January, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

SIGNED this 26 day of Jan, 1988.

(Signed) H. Dale Cook
H. Dale Cook
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 27 1988

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
CLIFTON SARTIN,)
)
Defendant.) CIVIL ACTION NO. 86-C-326-C

AGREED JUDGMENT

This matter comes on for consideration this 26
day of Jan, 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, Clifton Sartin, appearing by his
attorney, Timothy E. McCormick.

The Court, being fully advised and having examined the
file herein, finds that the Defendant, Clifton Sartin, filed his
answer in this case on August 14, 1987. The Court further finds
that the Defendant is indebted to the Plaintiff in the amount of
\$750.00 and that a judgment may accordingly be entered against
Clifton Sartin in the amount of \$750.00, repayable at the rate
of \$50.00 per month, with the first payment due on January 15,
1988, and each month thereafter.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Clifton Sartin, in the amount of \$750.00, payable at the rate of \$50.00 per month, with the first payment due on or before January 15, 1988.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney



PHIL PINNELL
Assistant U.S. Attorney



TIMOTHY E. McCORMICK
Attorney for Clifton E. Sartin

Therefore, since no response has been received to date herein, in accordance with Rule 14(a), the failure to comply constitutes a confession of the motion by the plaintiff.

Accordingly, it is the Order of the Court that the motion of the defendant to dismiss should be and hereby is GRANTED.

IT IS SO ORDERED this 26 day of January, 1988.


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

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

FILED

JAN 26 1988

KAISER-FRANCIS OIL COMPANY,)
a Delaware corporation,)
)
Plaintiff,)
)
v.)
)
PRODUCER'S GAS COMPANY,)
a Texas corporation,)
)
Defendant.)

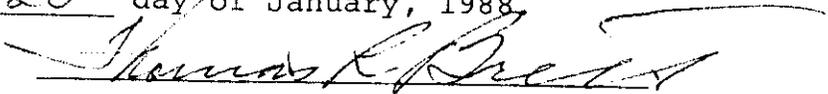
Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 87-C-584-B

O R D E R

This matter comes before the Court on Defendant's motion to dismiss for lack of subject matter jurisdiction. Plaintiff concedes this Court does not have jurisdiction. Therefore, this case is dismissed.

IT IS SO ORDERED, this 25 day of January, 1988


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

GLH/LAL/lc
11/09/87

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

FILED
6
U.S. DISTRICT COURT

BOBBY LEE BAUER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 ARMSTRONG WORLD INDUSTRIES, INC., et al.,)
)
 Defendants.)

No. 87-C-66-E

Notice of DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, Bobby Gene Williams and
Jacquelin Colleen Williams, and hereby dismiss with prejudice the
Defendant The Babcock & Wilcox Company, a corporation, from the
above-styled cause of action.

Law Offices of
JOHN W. NORMAN INCORPORATED
Attorneys for Plaintiffs

By: 
GINA L. HENDRYX - OBA #10330
JOHN W. NORMAN - OBA #6699
Renaissance Centre East
127 N.W. 10th
Oklahoma City, OK 73103-4903
405/272-0200

CERTIFICATE OF SERVICE

This is to certify that on this 25 day of _____, 1987, a true and correct copy of the above and foregoing document was mailed with postage prepaid thereon to:

CO-COUNSEL FOR PLAINTIFFS
Richard F. Gerry, Esq.
Casey, Gerry, Casey, Westbrook,
Reed & Hughes
110 Laurel Street
San Diego, CA 92101-1486

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ARMSTRONG WORLD INDUSTRIES, INC.,
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EAGLE-PICHER INDUSTRIES, INC.,
FLEXITALLIC GASKET COMPANY, INC.,
THE FLINTKOTE COMPANY,
H. K. PORTER COMPANY, INC.,
KEENE CORPORATION,
KEENE BUILDING PRODUCTS, INC.
NATIONAL GYPSUM COMPANY,
OWENS-CORNING FIBERGLAS CORPORATION,
PITTSBURGH CORNING CORPORATION, and
GAF CORPORATION
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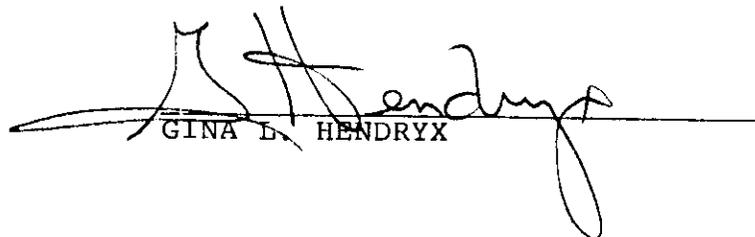
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ATTORNEYS FOR DEFENDANT, TULSA GASKET
MANUFACTURING COMPANY
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Keith D. Lapuyade, Esq.
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Tulsa, OK 74112

ATTORNEY FOR DEFENDANT, A. W. CHESTERTON COMPANY
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McGivern, Scott, Gilliard, McGivern & Robinson
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Tulsa, OK 74101-2619

ATTORNEY FOR DEFENDANT, THE HOLLOW CENTER PACKING COMPANY
Dennis King, Esq.
Knowles & King
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2431 East 51st Street
Tulsa, OK 74105


GINA D. HENDRYX

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

ROSA MAY SCRIVNER,)
)
 Plaintiff,)
)
 vs.) No. CIV 87-C-539-C
)
 WILLIAM HOWARD THOMPSON and)
 GABOR TRUCKING INC., a)
 corporation,)
)
 Defendants.)

JAN 7 1987

ORDER OF DISMISSAL

Upon application of the parties, on this 22 day of
Jan, 1987, and the Court being advised in the
premises,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this
cause be dismissed with prejudice.

H. DALE COOK
Chief Judge

RPR:gaw

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RICKY JOE GOLAY; GLENNA FAY)
 GOLAY; COLONIAL MORTGAGE)
 SERVICE COMPANY; COUNTY)
 TREASURER, Osage County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Osage County,)
 Oklahoma,)
)
 Defendants.)

FILED
JAN 25 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 87-C-780-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25th 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, Osage County, Oklahoma, and
Board of County Commissioners, Osage County, Oklahoma, appear by
Larry D. Stuart, District Attorney, Osage County, Oklahoma; and
the Defendants, Ricky Joe Golay, Glenna Fay Golay, and Colonial
Mortgage Service Company, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Ricky Joe Golay and Glenna
Fay Golay, were served copies of Summons and Complaint on
November 18, 1987; the Defendant, Colonial Mortgage Service
Company, acknowledged receipt of Summons and Complaint on
October 1, 1987 and on said receipt which was filed herein on

October 5, 1987 stated that Colonial Mortgage Service Company is now known as GMAC Mortgage Corporation of Pennsylvania; that Defendant, County Treasurer, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on September 24, 1987; and that Defendant, Board of County Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on September 25, 1987.

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer herein on September 28, 1987; and that the Defendants, Ricky Joe Golay, Glenna Fay Golay, and Colonial Mortgage Service 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 Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots Two (2), Three (3), Four (4), and Five (5), Block Two (2), FAIRVIEW SUBDIVISION to Burbank, Osage County, Oklahoma, according to the recorded plat thereof; LESS AND EXCEPT all oil, gas, coal, and other minerals which are owned by and reserved to the Osage Tribe of Indians by Acts of Congress.

The Court further finds that on February 2, 1981, the Defendants, Ricky Joe Golay and Glenna Fay Golay, 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 \$35,150.00, payable in monthly installments, with interest thereon at the rate of thirteen and one-half percent (13.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Ricky Joe Golay and Glenna Fay Golay, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated February 2, 1981, covering the above-described property. Said mortgage was recorded on February 4, 1981, in Book 593, Page 724, in the records of Osage County, Oklahoma.

The Court further finds that the Defendants, Ricky Joe Golay and Glenna Fay Golay, 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, Ricky Joe Golay and Glenna Fay Golay, are indebted to the Plaintiff in the principal sum of \$35,531.98, plus interest at the rate of thirteen and one-half percent (13.5%) per annum from August 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, Osage County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$35.14 which became a lien on the property as of 1987. Said

lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Colonial Mortgage Service Company, n/k/a GMAC Mortgage Corporation of Pennsylvania, 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 against the Defendants, Ricky Joe Golay and Glenna Fay Golay, in the principal sum of \$35,531.98, plus interest at the rate of thirteen and one-half percent (13.5%) per annum from August 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, Osage County, Oklahoma, have and recover judgment in the amount of \$35.14, plus penalties and interest, for personal property taxes for the year of 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Colonial Mortgage Service Company, n/k/a GMAC Mortgage Corporation of Pennsylvania, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Ricky Joe Golay and Glenna Fay Golay, 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 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;

Third:

In payment of the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, in the amount of \$35.14, personal property taxes which are currently due and owing.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the

Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL
Assistant United States Attorney


LARRY D. STUART
District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Osage County, Oklahoma

PP/css

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

FLEET FINANCE, INC., a
corporation,

Plaintiff,

vs.

JAMES E. MASON, JR., WILMA
BASSETT, COUNTY TREASURER OF
TULSA COUNTY, OKLAHOMA,

Defendants.

No. 87-C-407-C

CONSOLIDATED WITH

FLEET FINANCE, INC., a
corporation,

Plaintiff,

vs.

JAMES E. MASON, JR., HELEN
LOUISE PARKER; and the
COUNTY TREASURER, TULSA COUNTY
STATE OF OKLAHOMA,

Defendants.

No. 87-C-406-B ✓

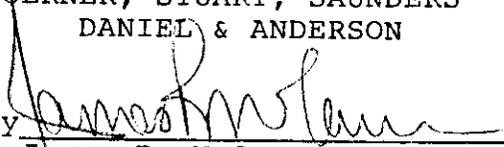
DISMISSAL WITH PREJUDICE

The Plaintiff, Fleet Finance, Inc. and the Defendant's, James E. Mason, Jr., Wilma Bassett, Helen Louise Parker, and the Treasurer of Tulsa County, State of Oklahoma, either individually, or by and through their respective counsel, hereby dismiss with prejudice to any subsequent refiling the Complaints and any and all counter-claims and cross-claims filed in the above

1-25-88

referenced case by and between the above named parties.

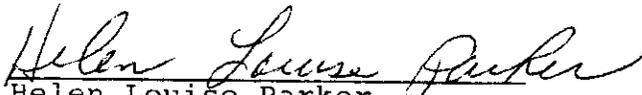
DOERNER, STUART, SAUNDERS
DANIEL & ANDERSON

By 

James P. McCann
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Fleet
Finance, Inc.


Wilma Bassett


Helen Louise Parker

MARTIN & TURNER


C. Rabon Martin
1023 W. 23rd Street
Tulsa, Oklahoma 74107

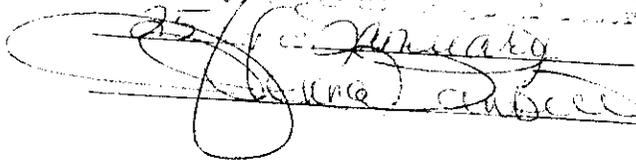
Attorneys for Wilma Bassett
and Helen Louise Parker

TULSA COUNTY TREASURER


Doris Fransein

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy
of the foregoing instrument has been delivered on each
of the parties hereto and a copy of the same to
each of the parties hereto as shown on the


_____, 1988.

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

FLEET FINANCE, INC., a
corporation,

Plaintiff,

vs.

JAMES E. MASON, JR., WILMA
BASSETT, COUNTY TREASURER OF
TULSA COUNTY, OKLAHOMA,

Defendants.

No. 87-C-407-C

1-25-88

CONSOLIDATED WITH

FLEET FINANCE, INC., a
corporation,

Plaintiff,

vs.

JAMES E. MASON, JR., HELEN
LOUISE PARKER; and the
COUNTY TREASURER, TULSA COUNTY
STATE OF OKLAHOMA,

Defendants.

No. 87-C-406-B

DISMISSAL WITH PREJUDICE

The Plaintiff, Fleet Finance, Inc. and the Defendant's,
James E. Mason, Jr., Wilma Bassett, Helen Louise Parker, and the
Treasurer of Tulsa County, State of Oklahoma, either individual-
ly, or by and through their respective counsel, hereby dismiss
with prejudice to any subsequent refiling the Complaints and any
and all counter-claims and cross-claims filed in the above

referenced case by and between the above named parties.

DOERNER, STUART, SAUNDERS
DANIEL & ANDERSON

By *James P. McCann*
James P. McCann
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Fleet
Finance, Inc.

Wilma Bassett
Wilma Bassett

Helen Louise Parker
Helen Louise Parker

MARTIN & TURNER

C. Rabon Martin
C. Rabon Martin
1023 W. 23rd Street
Tulsa, Oklahoma 74107

Attorneys for Wilma Bassett
and Helen Louise Parker

TULSA COUNTY TREASURER

Doris Fransein
Doris Fransein

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy
of the foregoing instrument is being placed on each
of the parties hereto and the same to
be filed on the _____ day of _____, 1988.

James P. McCann, 1988.
James P. McCann

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

Entered

JAN 2 1988

DONALD R. COPELAND, an)
individual,)
)
Plaintiff,)
)
vs.)
)
AMERICAN AIRLINES, INC.,)
a Delaware corporation,)
)
Defendant.)

Case No. 86-C-357-~~F~~C

AGREED ORDER OF
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is a suit for wrongful discharge commenced by the Plaintiff against the Defendant claiming that Plaintiff's employment contract with the Defendant was breached because he was not terminated for good cause. Furthermore, Plaintiff claims that he was terminated arbitrarily, capriciously, and in bad faith. Finally, Plaintiff makes a claim for punitive damages.

On December 9, 1987, the Defendant filed a Motion for Summary Judgment claiming that there are no genuine issues of material fact and, therefore, the Defendant was entitled to judgment as a matter of law on all of Plaintiff's claims.

The Defendant has made no objection to Plaintiff's Application for additional time to respond to Defendant's Motion for Summary Judgment. Nevertheless, the Plaintiff has agreed that the Statement of Material Facts As To Which No Genuine Issue Exists as set forth in Defendant's Brief in Support of American Airlines, Inc.'s Motion for Summary Judgment filed December 9, 1987, are not in dispute and no genuine issue of fact exists in

this case. Furthermore, the Plaintiff and Defendant agree that according to the undisputed facts, the Defendant, American Airlines, Inc., is entitled to a judgment as a matter of law on all of Plaintiff's claims. Finally, Plaintiff and Defendant have agreed that each party should bear its own costs and attorney's fees in this matter. Accordingly, the Court, taking into consideration Defendant's Motion and Brief for Summary Judgment filed December 9, 1987, and Plaintiff's agreement and stipulation as to the facts set forth therein and Plaintiff's agreement that Defendant is entitled to judgment in its favor as a matter of law, the Court hereby enters the following Findings of Fact and Conclusions of Law:

1. That the Defendant, American Airlines, Inc., is a Delaware corporation with its principal place of business at the Dallas Ft. Worth Airport in Texas. The Plaintiff is an individual and citizen of the State of Oklahoma. The Court has jurisdiction and venue over the subject matter and parties herein pursuant to 28 U.S. Section 1332.

2. On December 9, 1987, the Defendant filed a Motion for Summary Judgment and a Brief in Support of Summary Judgment setting forth a Statement of Material Facts As To Which No Genuine Issue Exists. That Statement of Material Facts is incorporated herein by reference.

3. That under the facts herein stipulated to by the parties as set forth in Defendant's Statement of Material Facts As To Which No Genuine Issue Exists, the Defendant is entitled to

judgment in its favor on all of Plaintiff's claims as a matter of law.

4. This judgment does not affect in any way, either by adding to or taking away from, any vested retirement benefits, including insurance benefits, ^{if any,} to which Plaintiff is entitled under Defendant's retirement plan.

A judgment in favor of the Defendant, American Airlines, Inc., and against Plaintiff, Donald R. Copeland, shall be entered contemporaneously with the filing of this Agreed Order of Findings of Fact and Conclusions of Law.

Each party shall bear its own costs and attorneys' fees in this matter.

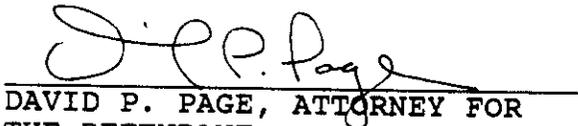
IT IS HEREBY ORDERED this 22 day of January, 1988.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:


FRANK R. COURBOIS, ATTORNEY
FOR THE PLAINTIFF


DAVID P. PAGE, ATTORNEY FOR
THE DEFENDANT

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

J. C. WILLIAMS, D/B/A as J. C.)
ROOFING COMPANY, Individually)
and as a Member of the BLACK)
CONTRACTORS ASSOCIATION, and)
the BLACK CONTRACTORS)
ASSOCIATION,)

Plaintiffs,)

-vs-)

Case No. 86-C-1157C

TULSA URBAN RENEWAL AUTHORITY,)
MILLARD HOUSE, Individually and)
as CHAIRMAN of the TULSA URBAN)
RENEWAL AUTHORITY, the CITY OF)
TULSA, OKLAHOMA, and END-CORR)
INDUSTRIES, INC.,)

Defendants.)

JAN 7 1988

ORDER OF DISMISSAL

This matter having come before the court upon the filing of the attached stipulations of the defendants, and the Dismissal with Prejudice filed January 12, 1988, by the plaintiffs and potential intervenors, the court being advised in the premises, and good cause having been shown, now therefore:

IT IS, THEREFORE, ORDERED AND ADJUDGED that all claims and causes of action in this case of J. C. Williams, d/b/a J. C. Roofing Company, and of the Black Contractors Association, plaintiffs, and of the potential intervenors, Wilton T. Gill, Jr., and Melvin O. Stevens, shall be and are hereby dismissed with prejudice.

(Signed) H. Dale Cook

H. DALE COOK
United States District Judge

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

JAN 7 1988

JERRY W. BROCKUS,
Plaintiff,

VS.

SOLNA PRINTING MACHINERY AB,
Defendant.

)
)
)
)
)
)
)

No. 85-C-1043-C

ORDER OF DISMISSAL WITH PREJUDICE

Upon Application by the parties, and for good cause shown, the Court finds that the above styled and numbered cause of action should be dismissed with prejudice to refiling in the future.

IT IS SO ORDERED this 22 day of January, 1988.

(Signed) H. Dale Cook

H. DALE COOK, U.S. District Judge

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

DONALD R. COPELAND, an)
individual,)
)
Plaintiff,)
)
vs.)
)
AMERICAN AIRLINES, INC., a)
Delaware corporation,)
)
Defendant.)

Case No. 86-C-357-~~E~~C

JAN 7 1988

JUDGMENT

THIS MATTER came on for consideration of the Motion of the Defendant for Summary Judgment. The issues have been duly presented and a decision has been duly rendered in accordance with the Agreed Order of Findings of Fact and Conclusions of Law filed simultaneously herein; accordingly,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be entered on behalf of the Defendant, American Airlines, Inc., and against the Plaintiff, Donald R. Copeland; each party to bear its own costs and attorneys' fees.

IT IS SO ORDERED THIS 22 day of January, 1988.

UNITED STATES DISTRICT JUDGE

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

FILED

JAN 25 1988

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

SANDRA SIMMONS,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,

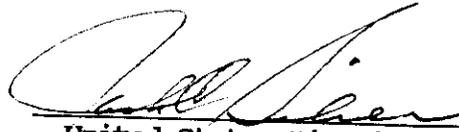
Defendant.

No. 86-C-171-E

RULE 68 JUDGMENT

The undersigned, having reviewed the Defendant's offer and the Plaintiff's acceptance thereof, finds that judgment in the amount of \$50,000.00 should be entered in favor of the Plaintiff and against the Defendant, Allstate Insurance Company.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, that Plaintiff have judgment in her favor in the amount of \$50,000.00 only, with the party litigants to bear their respective costs.



United States District Court Clerk

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DEBORAH D. WAGNER,)
)
 Defendant.)

JAN 11 1988
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 87-C-895-E

AGREED JUDGMENT

This matter comes on for consideration this 25th 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, Deborah D. Wagner, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Deborah D. Wagner, acknowledged receipt of Summons and Complaint on November 9, 1987. The Defendant has not filed an Answer but in lieu thereof has agreed that she is indebted to the Plaintiff in the amount alleged in the Complaint and that judgment may accordingly be entered against her in the amount of \$422.44, plus interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from May 11, 1984, \$.67 per month from February 1, 1985, and \$.63 per month from February 1, 1986, until judgment, 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, Deborah D. Wagner, in the amount of \$422.44, plus interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from May 11, 1984, \$.67 per month from February 1, 1985, and \$.63 per month from February 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.

Deborah D. Wagner
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

Nancy Nesbitt Blevins
NANCY NESBITT BLEVINS
Assistant U.S. Attorney

Deborah D. Wagner
DEBORAH D. WAGNER

NNB/mp

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

DIANA J. BRICE,

Plaintiff,

vs.

AMERICAN BUILDING MAINTENANCE
CO. OF NEBRASKA, a California
corporation, and
LARRY GREENWOOD,

Defendants.

Case No. 87-C-744-B

NOTICE OF
DISMISSAL WITH PREJUDICE

COMES now the plaintiff, Diana J. Brice, by and through her attorney of record, pursuant to Rule 41(a)(1), and hereby dismisses the above cause with prejudice.

Dated this 25th day of January, 1988.

Kathy Borchardt
KATHY EVANS BORCHARDT
Oklahoma Bar Number 965
Attorney for Plaintiff
403 South Cheyenne Avenue
Adams Building, Suite 410
Tulsa, Oklahoma 74103
(918) 585-1271

CERTIFICATE OF MAILING

I hereby certify that on this 25th day of January, 1988, a true and correct copy of the above and foregoing instrument was mailed, with postage thereon fully prepared, to:

C.S. Lewis III
Robinson, Boese, Orbison & Lewis
Attorneys for Defendants
P.O. Box 1046
Tulsa, Oklahoma 74101

Kathy Borchardt
KATHY EVANS BORCHARDT

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AETNA LIFE INSURANCE COMPANY,

Plaintiff,

vs.

LACRETA HILL and COLLEEN HARMON,

Defendants.

No. 87-C-838-B

FILED

JAN 22 1988

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

JOURNAL ENTRY OF JUDGMENT

NOW on this 22nd day of January, 1988, this matter comes on for decision and distribution of funds interpled by Aetna Life Insurance Company. After reviewing the file and by agreement of counsel, the court finds: Aetna Life Insurance Company, the Plaintiff herein, has deposited with the Court Clerk of the United States District Court for the Northern District of Oklahoma the sum of THIRTEEN THOUSAND AND NO/100 DOLLARS (\$13,000.00) which was placed in an interest bearing account, representing the full limits of liability under a life insurance policy issued on the life of Ralph Marion Hill, which fund is exposed as a result of the death of said Ralph Marion Hill, wherein both Defendants, Lacreata Hill and Colleen Harmon, were claiming proceeds of the fund. The court further finds that the Defendant, Lacreata Hill, has executed and filed a Waiver and Disclaimer of Proceeds Deposited by Plaintiff, and claims no right, demand or interest in the fund and in fact waives any rights, claims or demand she might have to said fund. The court finds that the entire proceeds of the fund should go to the Defendant, Colleen Harmon. The court further finds that Colleen Harmon has agreed to pay out of said fund the funeral expenses incurred on behalf of Ralph Marion Hill, in the amount of TWO THOUSAND EIGHT HUNDRED TWELVE AND 42.100 DOLLARS (\$2,812.42).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that Lacreata Hill, based on her execution and filing of a Waiver and Disclaimer of the Proceeds herein, be awarded nothing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the court that the Defendant, Colleen Harmon, be awarded THIRTEEN THOUSAND AND NO/100 DOLLARS (\$13,000.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the court that of the THIRTEEN THOUSAND AND NO/100 DOLLARS (\$13,000.00) awarded to Colleen Harmon, TWO THOUSAND EIGHT HUNDRED TWELVE AND 42/100 DOLLARS (\$2,812.42), representing funeral expenses for the death of Ralph Marion Hill, will be paid out of said fund by Colleen Harmon.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the court that the Plaintiff, Aetna Life Insurance Company, is hereby released and dismissed from any and all responsibility, liability and payment to any named or unnamed claimants that have or might have an interest in the fund.

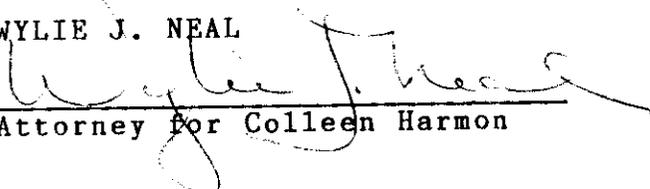
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the court that each party will bear its own costs and fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the court that the court clerk is hereby directed to disperse said fund herein in the amount of \$13,000.00 plus interest payable to Colleen Harmon, c/o Wylie J. Neal, 5001 E. 68th Street, Suite 200, Tulsa, Oklahoma.

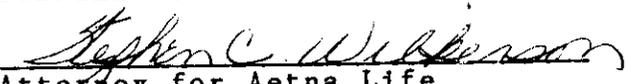
S/ THOMAS R. BRETT
JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

APPROVALS AS TO FORM AND CONTENT:

WYLIE J. NEAL


Attorney for Colleen Harmon

STEPHEN C. WILKERSON


Attorney for Aetna Life
Insurance Company

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

RODNEY K. HUNT,

Plaintiff,

-vs-

JENSEN INTERNATIONAL, INC., a
Kansas Corporation, and JENSEN
BROTHERS MANUFACTURING CO.,
INC., a Kansas Corporation,

Defendants.

No. 87-C-449-E

ORDER OF DISMISSAL

NOW, on this 21 day of January, 1988, pursuant to Rule
41A of the Federal Rules of Civil Procedure and the Joint Appli-
cation of all parties in the above styled and numbered cause, this
case is hereby dismissed with prejudice by reason of settlement.

S/ JAMES O. HESSEN

U. S. District Judge

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

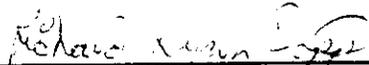
RICHARD L. DOPP,)
)
 Plaintiff,)
)
 vs.) No. 87-C-792-C
)
 DAVID L. THOMPSON, District)
 Attorney, GARY ICE, Assistant)
 Police Chief, LESLIE E. FARRIS)
 Special Agent, FBI Ottawa)
 County,)
)
 Defendants.)

DISMISSAL WITH PREJUDICE

COMES NOW, Richard Lynn Dopp, Plaintiff herein, and dismisses the complaint filed herein. The basis for this dismissal is a settlement reached between the Plaintiff and the Defendant David L. Thompson, whereby the Plaintiff has agreed to dismiss this action in exchange for the dismissal of Case No. CJ-87-204, State of Oklahoma ex rel David L. Thompson vs. Richard Lynn Dopp, et al., filed in the District Court of Ottawa County, State of Oklahoma with prejudice and the return of all items seized as listed in Defendant's Request for Inspection of Items Seized filing in the Ottawa County case on November 16, 1987, with the exception of Items 75, 76, 77, 78 and Item 59. The Settlement Agreement specifically includes the return of \$2,267.00 in cash to Mr. Dopp. Dopp additionally agrees to file no further lawsuits against the parties in this action arising

from any of the above items seized either in state or federal court.

Respectfully submitted,



Richard Lynn Dopp
304 S. Elm
Commerce, Oklahoma 74339

CERTIFICATE OF SERVICE

I, William D. Lunn, do hereby certify that on the 22nd day of January, 1988, I mailed a true and correct copy of the above and foregoing Dismissal, with proper postage thereon fully prepaid, to the following:

David L. Thompson
District Attorney
Ottawa County Courthouse
Miami, Oklahoma 74354

Gary Ice
Assistant Chief of Police
Miami Police Department
Miami, Oklahoma 74354

Kathryn J. Depew
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103



William D. Lunn

FILED

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

MARIE HAMRA,)
)
 Plaintiff,)
)
 vs.) No. 85-C-1114-E
)
 PUBLIC SERVICE COMPANY)
 OF OKLAHOMA,)
)
 Defendant.)

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes before the Court on the Joint Stipulation of Dismissal with Prejudice of the parties. The parties represent to the Court that they have entered into an agreement for an order of dismissal in this matter with no finding of employment discrimination. Finally, it is agreed that the obligations and requirements assumed by the parties in their Mutual, General and Complete Release shall be entered and made part of the instant Order.

IT IS THEREFORE ORDERED that this matter is dismissed with prejudice with no finding of employment discrimination on the part of Public Service Company of Oklahoma. Each party shall bear their own attorney fees and costs.

[Signature]

Judge of the District Court

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

FILED

U.S. DISTRICT COURT

WYANDOTTE TRIBE OF OKLAHOMA,)
)
 Plaintiff,)

vs.)

No. 87-C-9-E

THE STATE OF OKLAHOMA BY AND)
 THROUGH THE OKLAHOMA TAX)
 COMMISSION, ET AL.,)

Defendants.)

STATE OF OKLAHOMA, EX REL)
 OKLAHOMA TAX COMMISSION,)

Plaintiff,)

vs.)

No. 87-C-63-E
(Consolidated)

WYANDOTTE TRIBE OF OKLAHOMA,)
 a Federally Chartered)
 Corporation,)

Defendant.)

ORDER

After the Oklahoma Tax Commission brought suit in Ottawa County, Oklahoma to enjoin the Wyandotte Tribe from selling untaxed cigarettes and other products at a convenience store known as the Wyandotte Tribe Turtle Shop, the Wyandotte Tribe filed a declaratory judgment action in this Court, seeking a declaration of the rights of the parties concerning the power of the State of Oklahoma to impose its sales tax and cigarette tax on sales made at the Turtle Shop. The Wyandotte Tribe then removed the suit filed by the Oklahoma Tax Commission in Ottawa County, the Court denied a motion to remand, and consolidated the

actions. The case was submitted to the Court for decision upon agreed stipulations of fact, pursuant to the suggestion of the Court and with the agreement of the parties. Subsequently several motions were filed by the parties which must first be resolved prior to resolution of the ultimate issues herein.

First, the Wyandotte Tribe has moved the Court to dismiss case number 87-C-9-E, the declaratory judgment action, as being duplicitous of 87-C-63-E, the action brought by the Tax Commission in Ottawa County which was removed to this Court. The Tribe also moves the Court to dismiss David L. Thompson, District Attorney of Ottawa County as a Defendant for the reason that his presence as a Defendant is not necessary to a resolution of the issues. The Ottawa County suit was brought against the corporate entity of the Wyandotte Tribe while the federal court declaratory judgment was filed by the governmental entity of the Tribe. The Tribe now asks the Court to dismiss the removed action on the basis that the governmental entity of the Wyandotte Tribe is the real party in interest, rather than the corporate entity and the governmental entity cannot be joined because it has sovereign immunity. The State of Oklahoma has not responded to these motions.

Several months after the Court denied the state's motion to remand 87-C-63-E to Ottawa County, the United States Supreme Court vacated a decision of the United States Court of Appeals for the Tenth Circuit in Oklahoma Tax Commission v. Graham, 822 F.2d 851 (10th Cir. 1987) which had upheld removal jurisdiction on facts which are virtually identical to those involved in 87-C-

63-E. The Supreme Court remanded the case to the Court of Appeals for reconsideration in light of Caterpillar, Inc. v. Williams, 107 S.Ct. 2425 (1987), a labor law case in which the Court held that removal was improper where the federal question involved in the case was not presented by the allegations of the Plaintiff's claim. This Court denied the motion to remand on a different basis than that employed in the Graham case. However, in light of the jurisdictional question raised by the vacation of the judgment on virtually identical facts in Graham, this Court is hesitant to dismiss the declaratory judgment action and the motion to dismiss is denied. However, the Court can see no reason to retain the District Attorney of Ottawa County as a defendant in the declaratory judgment action, and that motion is granted.

The next motion for determination is the State's Motion to Strike the affidavits of Les Cusher, Leaford Bearskin, Bob Copeland and Jack Naylor and the Tribe's Motion for Summary Judgment, as well as any references to the affidavits in the Tribe's briefs of June 30, 1987. The State contends that the submission of the affidavits and Motion for Summary Judgment are outside the scope of the agreed evidence to be submitted to the Court, and that the State would be denied the right of examination of these affidavits. The Court agrees that the Motion for Summary Judgment and accompanying affidavits are improper on a case submitted on agreed facts. Furthermore, to the extent that the affidavits address the issue of whether the convenience store is operated by the Tribe's governmental entity

or its corporate entity, they are irrelevant. The question of the tax immunity of an Indian enterprise does not turn on the particular form in which the Tribe chooses to conduct its business. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 115 (1973).

The second subject addressed by the affidavits is the extent to which members of other tribes who reside in Ottawa County are eligible for benefits from the Wyandottes or the Inter-Tribal Council. The Tribe contends that under Washington v. Confederated Tribes of Colville, 447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980) Indian purchasers from tribes other than the Wyandotte should be exempt from payment of tax. Although the State has moved to strike the affidavits, it has not indicated whether it actually disputes the truth of the matters set forth therein regarding the beneficiaries of the Wyandotte and Intertribal Council programs. This information is not currently contained in the stipulations of the parties, but is necessary to resolution of the issue raised by the Tribe concerning Indian purchasers who are not members of the Wyandotte Tribe. Therefore the State of Oklahoma shall file a pleading, on or before February 1, 1988 setting forth whether the State is able to stipulate to the information concerning beneficiaries of the Tribal and Intertribal council programs as set forth in the affidavits of Les Cusher and Bob Copeland. If so, it would be of assistance to the Court if the parties would prepare a Supplemental Stipulation for this purpose, which should be filed by February 1, 1988.

Accordingly, the State's Motion to Strike is granted concerning the Tribe's Motion for Summary Judgment, and the affidavits of Jack Naylor and Leaford Bearskin, and the Court reserves ruling on the affidavits of Les Cusher and Bob Copeland.

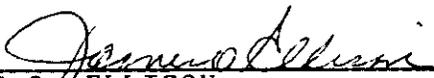
Upon the resolution of the evidentiary matter set forth above, the Court will promptly enter its ruling on the issues presented.

Finally, the parties have not included copies of the Wyandotte treaties among the exhibits to the stipulations. Copies shall be furnished to the Court on or before February 1, 1988.

Summary

1. The Wyandotte's Motion to Dismiss David L. Thompson is granted.
2. The Wyandotte's Motion to Dismiss 87-C-9-E is denied.
3. The State's Motion to Strike is granted to the extent that the Wyandotte's Motion for Summary Judgment and affidavits of Jack Naylor and Leaford Bearskin are stricken. The State shall file a pleading on or before February 1, 1988 indicating whether it can stipulate to the contents of the remaining affidavits.
4. Copies of the Wyandotte treaties in question shall be furnished to the Court as soon as possible, but no later than February 1, 1988.

DATED this 22nd day of January, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

DYCO PETROLEUM CORPORATION,)
a corporation,)
))
Plaintiff,)
))
v.)
))
TRANSOK, INC., an Oklahoma)
corporation, and PUBLIC SERVICE)
COMPANY OF OKLAHOMA, a)
corporation,)
))
Defendant.)

Case No. 86-C-1155-E

ORDER

Upon the joint stipulation of all parties hereto, this action is dismissed with prejudice to refiling and all parties hereto shall bear their own costs and fees in this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

GWENT, INC., a Connecticut
corporation,

Plaintiff,

vs.

THE TELEX CORPORATION, a
Delaware corporation; TELEX
COMPUTER PRODUCTS, INC., an
Oklahoma corporation,

Defendants.

No. 86-C-1058-C

FILED

JAN 21 1988

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

ORDER OF DISMISSAL

Now on this 20 day of January, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by plaintiff, Gwent, Inc. and defendants, The Telex Corporation and Telex Computer Products, Inc. Based upon the representations and requests of the parties, as set forth in the foregoing stipulation, it is

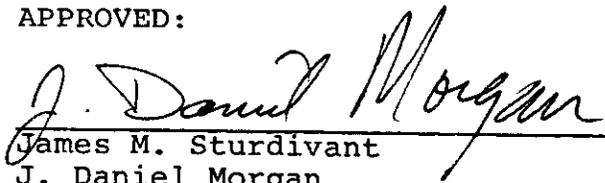
ORDERED that the plaintiff's Complaint and claims for relief against the defendants be and the same are hereby dismissed with prejudice. It is further

ORDERED that each party shall bear its own costs and attorneys fees.

(Signed) H. Dale Cook

H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

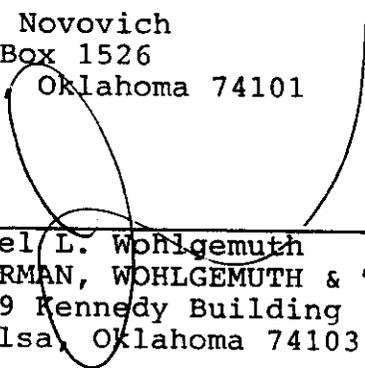
APPROVED:


James M. Sturdivant

J. Daniel Morgan
GABLE & GOTWALS
2000 Fourth National Bank
Tulsa, Oklahoma 74119

Attorneys for Plaintiff,
Colin Gabriel

Serge Novovich
P.O. Box 1526
Tulsa, Oklahoma 74101

By 
Joel L. Wohlgemuth
NORMAN, WOHLGEMUTH & THOMPSON
909 Kennedy Building
Tulsa, Oklahoma 74103

Attorneys for Defendants,
The Telex Corporation and
Telex Computer Products, Inc.

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

FILED

1987

COURT

ALBERT R. ROBY,

Plaintiff,

v.

ROY LAWSON; FITZGERALD,
DeARMAN & ROBERTS, INC.;
GREENWAY CORPORATION; and
DONALD L. WALKER,

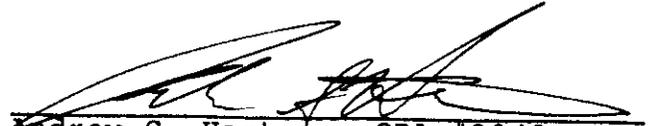
Defendants.

Case No. 87-C-1074-B

DISMISSAL

COMES NOW Albert R. Roby, Plaintiff herein, and hereby dismisses his cause of action against the defendants, Roy Lawson, Fitzgerald, DeArman & Roberts, Inc., Greenway Corporation, and Donald L. Walker. This dismissal is made pursuant to the provisions of Rule 41(a)(1), of the Federal Rules of Civil Procedure.

Respectfully submitted,



Andrew S. Hartman OBA #3948
3401 First National Tower
Tulsa, Oklahoma 74103
(918) 582-1720

ATTORNEY FOR PLAINTIFF,
ALBERT R. ROBY

CERTIFICATE OF MAILING

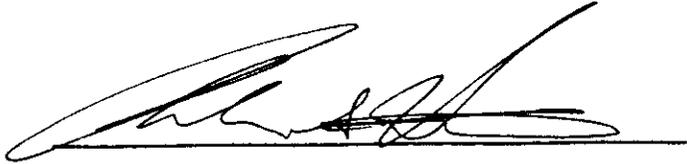
I hereby certify that on the 21st day of January, 1988, I mailed a true and correct copy of the foregoing instrument to:

Greenway Corporation
c/o Don Walker
302 Pointer Trail West
Van Buren, AR 72956

Terry Stevens
Fitzgerald, DeArman
& Roberts, Inc.
6400 S. Lewis
P. O. Box 3094
Tulsa, OK 74101

Roy Lawson
2087 E. 71st Street
Tulsa, OK 74136

Don Walker
302 Pointer Trail West
Van Buren, AR 82956

A handwritten signature in black ink, appearing to read 'Don Walker', is written over a horizontal line.

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

CUE HENDERSON, JR., by the
Administratrix and personal
representative of his Estate,
NAOMI HENDERSON; NAKITA
HENDERSON, a minor, by and
through her legal guardian,
mother, and representative,
CHARLENE DANIELS; and
NAOMI HENDERSON, an individual,

Plaintiffs,

vs.

NEWELL MANUFACTURING COMPANY,
a corporation; and
MUELLER ENGINEERING, INC.,
a corporation,

Defendants
and Third Party
Plaintiff,

-vs-

RIVERSIDE PRODUCTS, a division
of Sivyer Steel Corp.; AMERICAN
CONTEX CORPORATION, JERRY
SMITHEY, SCORCH and MUELLER
ENGINEERING, INC., a
corporation,

Third Party Defendants.)

No. 87-C-313-C

FILED

JAN 21 1988

W. J. Siler, Clerk
DISTRICT COURT

ORDER OF DISMISSAL WITHOUT PREJUDICE

The above matter comes on to be heard this 30 day
of January, 1988, upon the written stipulation of
the parties for a dismissal of said action without prejudice
against Jerry Smithey, and the Court, having examined said
stipulation, and being fully advised in the premises, finds that

said action should be dismissed as to Jerry Smithey pursuant to said stipulation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the cause of action filed herein against Jerry Smithey be, and the same is hereby, dismissed without prejudice.

[Signature]

U. S. DISTRICT JUDGE

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

RICHARD TODD,)
)
 Plaintiff,)
)
 vs.) No. 87-C-444B
)
 A. G. EDWARDS & SONS, INC.,)
)
 Defendant.)

FILED

JAN 21 1988

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

O R D E R

This matter comes before the Court on Defendant A. G. Edwards & Sons, Inc.'s motion to dismiss the complaint. At the status conference held before this Court the motion was converted into a motion for summary judgment and the Court requested further briefing from the parties concerning the contract provisions for (1) Missouri choice of law (2) arbitration. Neither party addressed the arbitration issue. For the following reasons, the motion for summary judgment is granted concerning the request for attorney's fee and denied as to all other issues.

Plaintiff Richard Todd filed this breach of contract action May 20, 1987, based upon the following alleged facts. From January through June 1982, Plaintiff bought 51,600 shares of Tipperary stock through Defendant's broker-dealer, Mark Wiltshire ("Wiltshire"). Plaintiff contends Wiltshire persuaded him to buy and hold on to the stock by claiming Wiltshire had nonpublic information of an imminent acquisition of Tipperary by another corporation. Wiltshire promised great profits would arise from this merger. All of the shares but 3,000 were purchased by

Plaintiff on or before February 17, 1982. The remaining 3,000 shares were purchased on May 28, 1982. Plaintiff sold all shares at a \$647,069.00 loss in March 1983.

Plaintiff contends the false information presented to him as facts by Wiltshire was a breach by Defendant of implied covenants of fair dealing in a written customer's agreement and a breach of an express covenant in that agreement incorporating the National Association of Securities Dealers rules of fair practice (NASD). Defendant has filed this motion contending (1) the complaint fails to state a cause of action, (2) the claims are barred by the statute of limitations, and (3) the complaint fails under Fed.R.Civ.P. 9(b) because fraud is not plead with particularity. It is clear to the Court from a review of the complaint, the claims and relief requested therein, that this is a case concerning a breach of a written contract, not one of alleged tort or fraud.¹ Plaintiff disclaimed any attempt to allege a fraud cause of action. Therefore, Defendant's motion pursuant to Fed.R.Civ.P. 9(b) is moot. Defendant also contends Plaintiff is not entitled to attorney's fee under the facts of this case.

I. FAILURE TO STATE A CLAIM

Defendant contends any act on its part would not breach the written customer's agreement because the agreement is a unilateral contract with all obligations running from the customer to Defendant. Defendant maintains the promises in the contract are only by Plaintiff, the customer. Defendant supports

¹ Vogel v. Cobb, 193 Okla. 64, 141 P.2d 276 (Okla. 1943).

this theory basically by pointing out (1) the contract is entitled "Customer's Agreement", (2) the contract states "the undersigned" agrees and is bound by the agreement, (3) the contract is signed only by Plaintiff, and (4) the actual promises contained therein are from the customer to Defendant.

The Court is not persuaded by this argument. The agreement itself states "receipt and retention of this agreement shall constitute acceptance thereof by the firm [Defendant] without signature hereon." Further, Defendant was obligated under the contract. It is clear Defendant promised to handle Plaintiff's account and to do so according to all laws, rules and regulations.

Defendant also maintains the complaint should be dismissed because there is no private cause of action for alleged violations of the NASD rules, citing Utah v. State University, 549 F.2d 164 (10th Cir. 1977). However, Plaintiff's claim is based on breach of contract, a contract by which Defendant specifically agreed to handle the transactions in accordance with these rules and other applicable law.

II. STATUTE OF LIMITATIONS

Defendant contends Plaintiff's claims are barred by the applicable statute of limitations and no basis for equitable tolling has been pled. Plaintiff's claims are for breach of express and implied covenants of a written contract.²

² Therefore the statute of limitations concerning a fraud case or cases based on implied contracts are inapplicable. Elder v. Simmons, 631 P.2d 739 (Okla. 1981).

Plaintiff maintains Missouri's statute of limitation³ and the cases construing it apply herein because of a Missouri choice of law provision in the customer's agreement. The Tenth Circuit Court of Appeals has ruled choice of law provisions in a contract are generally understood to incorporate only substantive law not procedural law such as statutes of limitation. "Absent an express statement of intent, a standard choice of law provision such as this one will not be interpreted as covering a statute of limitations." FDIC v. Peterson, 770 F.2d 142 (10th Cir. 1985). Therefore, we apply the Oklahoma statute of limitations. Stephens v. Household Finance Corp., 566 P.2d 1163 (Okla. 1977); Central States v. Aalco Express Co., 592 F.Supp. 664 (E.D.Mo. 1984).

12 Okl.St. Ann. §95 provides an action upon an agreement in writing must be brought within five (5) years after the cause of action has accrued. Plaintiff maintains the action did not accrue until the stock was sold in March 1983. Defendant contends with each separate purchase of stock a cause of action accrues.

Under Oklahoma law, the breach of continuing obligations under the customer's agreement "'gives rise to a cause of action each day the breach continues, and any claim for breach back of the statutory period within which the action may be brought is barred.'" Paul Holt Drilling v. Liberty Mutual, 664 F.2d 252

³ Mo.Stat. §516.120 provides a five (5) year statute for contracts. Plaintiff argues that the statute, as construed by Missouri cases, did not begin to run until the stock was sold.

(10th Cir. 1981), quoting from Indian Terr. Illum. v. Rosamond, 190 Okla. 46, 120 P.2d 349 (Okla. 1941). The limitation period runs with each breach, the time of each purchase. Plaintiff is precluded from recovering on the loss from the stock bought prior to the statutory period.

Plaintiff argues that if this is true, this Court should apply the doctrine of equitable tolling because Defendant, in its role as fiduciary, used undue influence and false assurances to persuade Plaintiff not to sell the stock.⁴ Defendant maintains equitable tolling is not applicable in this case, arguing mere ignorance of the existence of a cause of action cannot support tolling of the statute. At this time the Court cannot determine that as a matter of law equitable tolling would not apply herein. Therefore, the motion for summary judgment is overruled, and the Court will consider the issue at the conclusion of the evidence at trial. If there is a genuine dispute, the question will be one for the trier of fact. King & King v. Champlin Petroleum Co., 657 F.2d 1147 (10th Cir. 1981); Dataq, Inc. v. Tokheim Corp., 736 F.2d 601 (10th Cir. 1982).

Finally, Defendant contends Plaintiff is not entitled to attorney's fees even if ultimately the prevailing party. Plaintiff claims a right to an attorney's fee under 12

⁴ However, paragraph 17 of the Customer's Agreement specifically states, "The Firm's recommendations are recognized by the undersigned as opinion source since such suggestions deal with future developments that cannot be predicted with certainty." The Plaintiff asserts his claim under the written agreement, so such a provision may have relevance to equitable tolling.

Okl.St. Ann. §936. This theory was clearly rejected in Russell v. Flanagan, 544 P.2d 510 (Okla. 1975). Plaintiff will not be entitled to an attorney fee award even if he is the ultimate prevailing party.

The motion for summary judgment is denied except as to the attorney fee issue. The stay concerning discovery is lifted.

The following schedule is ordered. Defendant is to file an answer by Feb. 15th, 1988. The parties are to:

Amend or add parties by February 26, 1988;

Exchange the names and addresses of all witnesses, including experts, in writing, along with a brief statement regarding each witness' expected testimony (not necessary if witness' deposition taken) by April 15, 1988;

Complete discovery by April 29, 1988;

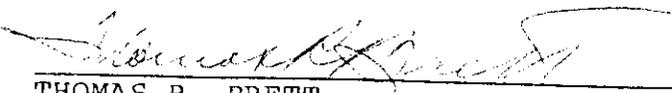
File dispositive motions by May 13, 1988;

File responses to motions by May 25, 1988;

File reply briefs by June 3, 1988.

Pretrial conference and hearing on any motions will be June 16, 1988, at 11:30 P.M.

IT IS SO ORDERED, this 21st day of January, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JIM WELSH REAL ESTATE CO.,)
)
 Plaintiff,)
)
v.)
)
FINA OIL & CHEMICAL CO.,)
)
 Defendant.)

No. 87-C-606-B

FILED
JAN 21 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

In accord with the Order entered this date sustaining the Defendant Fina Oil & Chemical Co.'s motion for summary judgment, the Court hereby enters judgment in favor of the Defendant Fina Oil & Chemical Co. and against the Plaintiff, Jim Welsh Real Estate Co. Defendant is awarded costs of this action. Any application for an award of attorney's fee should be made pursuant to local rules.

DATED this 21 day of January, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

(prior to the fatal accident) was a resident of the State of Oklahoma.¹ The minor, Misty D. Whinery, is a resident of the State of Oklahoma. The defendant Dean Mathew Stevenson (prior to the accident) was a resident of the State of Oklahoma, and his estate is in probate in Oklahoma. The defendant Garry W. Carpenter is a resident of the State of Kansas. The accident occurred on U. S. Highway 50 at a location within the State of Kansas.

The applicable venue statute, 28 U.S.C. §1391(a) provides:

A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside, or in which the claim arose. (emphasis added).

Under the facts as plead by plaintiff, defendant Carpenter challenges venue in the U. S. District Court for the Northern District of Oklahoma because all of the plaintiffs do not reside here, all of the defendants do not reside here, and the claim did not arise here.

In response to defendant's motion, plaintiff alleges that the circumstances of this case are appropriate for application of the venue rules for a transitory action because this case involves a tort, and therefore, venue is proper in this jurisdiction.

¹The complaint is defective to the extent it does not inform the Court under which state's laws plaintiff Carl Whinery obtained his legal capacity to represent the estate of Brandy W. Whinery.

As plaintiff recognized in his response to defendant's motion, a transitory action is characterized by case law as follows:

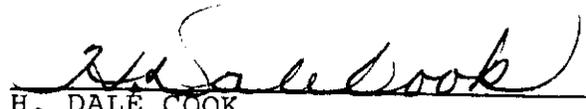
The determinative element in defining a transitory action is whether the type of relief requested is of a "personal" nature so that the court, in acting upon the person or personal property of the defendant which is within its control, need not act directly upon the lands involved.... The relief requested determines the character of the action for venue purposes.

Musicus, Inc. v. Safeway Stores, Inc., 743 F.2d 503, 508 (1984).

Accordingly, plaintiff's suit for money damages under a theory of tort liability would properly be characterized as a transitory action. However, this case involves two defendants. Prior to his death, defendant Stevenson's residence was in Oklahoma and the probate of his estate is within the jurisdiction of this Court. Defendant Carpenter's residence is in the State of Kansas. Since venue is not proper in this jurisdiction in regard to defendant Carpenter, the transitory action theory has no effect on the correct determination of venue in this action.

Under Title 28, U.S.C. §1391(a), it is clear that this Court does not have proper venue for this action. Accordingly, it is the Order of the Court that the motion to dismiss brought by the defendant Carpenter is hereby GRANTED.

IT IS SO ORDERED this 20th day of January, 1988.


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

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

FILED

JAN 19 1988

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

GEORGIA DIANNE CAIN,
Plaintiff,

vs.

THE HOME INSURANCE COMPANY,
Defendant.

)
)
)
)
)
)
)
)
)
)
)

No. 87-C-552-B

ORDER OF DISMISSAL

NOW on this 18 day of January, 1988, upon the written application of the Plaintiff, Georgia Dianne Cain, and the Defendant, The Home Insurance Company, for a Dismissal with Prejudice as to all claims and causes of action of these parties involved in the Complaint of Cain vs. Home, 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, Georgia Dianne Cain, and the Defendant, The Home Insurance Company, be and the same hereby are dismissed with prejudice to any future action.

S/ THOMAS R. BRETT

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

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

RIFFE PETROLEUM COMPANY AND)
SUBSIDIARIES,)
)
Plaintiff,)

v.)

UNITED STATES OF AMERICA,)
)
Defendant.)

ALLENE A. RIFFE, AN)
INDIVIDUAL AND ALLENE A.)
RIFFE, INDEPENDENT)
EXECUTRIX OF THE ESTATE OF)
LAVERN E. RIFFE,)

Plaintiffs,)

v.)

UNITED STATES OF AMERICA,)
)
Defendant.)

Civil No. 85-C-793-E

CONSOLIDATED WITH:

Civil No. 85-C-697-B

FILED

JAN 19 1986

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

STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed that the complaints in the above-entitled cases be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of litigation.


E. JOHN EAGLETON

Attorney for Plaintiffs


STEVEN SHAPIRO
Chief, Civil Trial Section,
Southern Region
Tax Division
Department of Justice
Washington, D.C. 20044
Telephone: (202) 272-4508

Attorney for Defendant

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

RIFFE PETROLEUM COMPANY AND)
SUBSIDIARIES,)

Plaintiff,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)

ALLENE A. RIFFE, AN)
INDIVIDUAL AND ALLENE A.)
RIFFE, INDEPENDENT)
EXECUTRIX OF THE ESTATE OF)
LAVERN E. RIFFE,)

Plaintiffs,)

v.)

UNITED STATES OF AMERICA,)

Defendant.)

Civil No. 85-C-793-E

CONSOLIDATED WITH:

Civil No. 85-C-697-B

FILED

JAN 19 1986

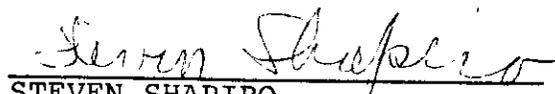
Jack C. Silver, Clerk
U.S. DISTRICT COURT

STIPULATION FOR DISMISSAL

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E. JOHN EAGLETON

Attorney for Plaintiffs


STEVEN SHAPIRO
Chief, Civil Trial Section,
Southern Region
Tax Division
Department of Justice
Washington, D.C. 20044
Telephone: (202) 272-4508

Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES POSTAL SERVICE,)
)
Plaintiff,)
)
vs.)
)
RONALD R. SMITH,)
EXECU-SERVICES, INC.,)
FEDERAL CONSUMER XPRESS, INC.,)
)
Defendants.)

FILED

JAN 19 1988

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

Civil Action No. 88-C-28-B

AMENDED TEMPORARY RESTRAINING ORDER

Upon consideration of Plaintiff's Motion for an Amended Temporary Restraining Order, and it appearing to the Court from the Complaint for Injunctive Relief and the Motion for Amended Restraining Order 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 3:00 p.m. o'clock on this 19th day of January, 1988,

ORDERED that an Amended Temporary Restraining Order be and it is hereby issued directing detention by Plaintiff of

Defendants' incoming mail addressed to:

UPSTART PRODUCTIONS.
FEDERAL CONSUMER XPRESS, INC..
STAR OF HOPE,
RONALD R. SMITH, RONALD SMITH,
EXECU-SERVICES, INC.,

and

BONANZA
6935 East 38th Street
Tulsa, Oklahoma 74145-3200

and

UPSTART PRODUCTIONS,
STAR OF HOPE BONANZA,
STAR OF HOPE,
RONALD R. SMITH,
and
EXECU-SERVICES, INC.
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 p.m.

SIGNED this 18 day of January, 1988.


UNITED STATES DISTRICT JUDGE

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

FILED

JAN 19 1988

ORS CORPORATION, an Oklahoma)
corporation, et al.,)
)
Plaintiffs,)
)
v.)
)
WALTER L. MAGUIRE a/k/a WALTER)
L. MAGUIRE, SR., et al.,)
)
Defendants,)
)
v.)
)
ROBERT A. ALEXANDER, JR., et al.,)
)
Third Party Defendants.)

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

87-C-426-E

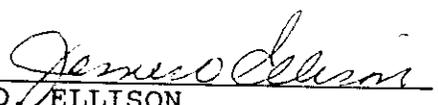
ORDER

The Court has for consideration the Amended Report and Recommendation of the Magistrate filed December 11, 1987 in which the Magistrate recommended that the Report and Recommendation of December 7, 1987 should be amended to reflect that Third Party Plaintiff Walter L. Maguire's Voluntary Motion to Dismiss Without Prejudice, Counts II, III and IV of the Complaint against Third Party Defendant Robert A. Alexander be granted and that said Counts (II, III, and IV) be dismissed as against Alexander without prejudice. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that the Motion to Dismiss Without Prejudice Counts II, III and IV of the Complaint against Third Party Defendant Robert A. Alexander is granted.

Dated this 15th day of January, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

HEBRON LIMITED PARTNERSHIP,)
an Arkansas limited partner-)
ship; ROBERT E. BABCOCK;)
DAVID McCLINTON; CLARK C.)
McCLINTON and MARIE McCLINTON,)
as Trustees for the Clark and)
Marie McClinton Trust; JAMES)
E. LINDSEY, Trustee for the)
Lindsey Family Trust; and JAMES)
L. GADDY,)
Plaintiffs,)

FILED

JAN 19 1988

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

-vs-

Case No. 85-C-226-C

GOLDEN EAGLE DEVELOPMENT,)
INC., an Oklahoma corporation;)
DAVID L. BUSSETT; E. J. WILSON;)
and G. LEE JACKSON,)
Defendants,)

-vs-

RAY HOGAN,)
Garnishee.)

JOURNAL ENTRY OF JUDGMENT

NOW, on this 17th day of January, 1988, this cause comes on to be heard in its regular order; Plaintiff appears by its Attorneys, Eagleton and Nicholson, and the Garnishee, Ray Hogan, having been ordered to make answer to said Garnishment by this Court no later than December 31, 1987, failed to so answer, and makes default.

The Court finds that said Garnishee has been duly served with Summons, that the time for filing an Answer or

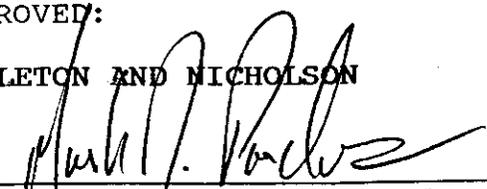
pleading herein has expired and that none has been filed; that it has jurisdiction of the parties and the subject matter of this action. Said Garnishee is adjudged to be in default and the allegations of Plaintiff's Motion for Judgment against Garnishee are ordered taken as true and confessed. Trial by jury is waived in Open Court. The Court, having heard evidence and being fully advised in the premises, and on consideration thereof, finds that all of the allegations of Plaintiff's Motion for Judgment against Garnishee are true and that Plaintiff should have Judgment as prayed for therein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff have and recover Judgment against the Garnishee, Ray Hogan, for the sum of \$175,000.00, with interest thereon at the rate of 15% per annum from December 31, 1987, an Attorney's fee to be determined by the Court, and for all costs of this action, for all of which let Execution issue.


JUDGE

APPROVED:

EAGLETON AND NICHOLSON


DON R. NICHOLSON II, OBA #6673
MARK J. PORDOS, OBA #11476
Fidelity Plaza - Suite 310
P.O. Box 806
Oklahoma City, Oklahoma 73101
Telephone: (405) 236-0550
Attorneys for Plaintiffs

C:\WORD\390

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

TONYA HALL, et al.,

Plaintiffs,

vs.

Case No. 87-C-185-C

TULSA CHILD DEVELOPMENT AND
REGIONAL GUIDANCE CENTER,
et al.,

Defendants.

FILED

JAN 19 1988

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

ORDER FOR DISMISSAL

NOW ON THIS 19 day of Jan, 1988, this matter comes on before the undersigned Judge of the United States District Court upon the joint application and stipulation of the parties for Dismissal Without Prejudice of the above captioned cause of action.

The Court finds that said Motion and stipulation is well founded and would serve justice and should be Ordered.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the above captioned cause is hereby Dismissed Without Prejudice.

JUDGE OF THE UNITED STATES DISTRICT COURT

the remaining two assignments of error raised in his state court appeal. Petitioner raises the following alleged trial errors in his application:

- the prosecutor allegedly withheld exculpatory evidence, in violation of the rule in Brady v. Maryland, 373 U.S. 83 (1963);
- evidence of "other crimes" was introduced in violation of procedures promulgated by the Oklahoma Court of Criminal Appeals in Burks v. State, 594 P.2d 771 (Okla.Crim.App. 1979);
- failure of the trial judge to admonish or instruct the jury as to the limited use to be made of "other crimes" evidence;
- failure of the trial judge to give a cautionary instruction to the jury on eyewitness identification.

On August 18, 1987, the Magistrate issued Findings and Recommendations, recommending that the petitioner's application be dismissed for failure to exhaust available remedies under state law. The Court reviewed those Findings and Recommendations, and found that the petitioner's appeal to the Oklahoma Court of Criminal Appeals did exhaust petitioner's remedies under Oklahoma law. In reviewing the materials submitted by the petitioner in support of his application, the Court noted the existence of questions concerning the materiality of the exculpatory evidence that petitioner claimed was withheld by the prosecutor. Following the dictate of the decisions in U.S. v. Agurs, 427 U.S. 97 (1976), and Trujillo v. Sullivan, 815 F.2d 597 (10th Cir. 1987), that the allegedly undisclosed evidence be considered in the context of the entire record, the Court ordered the State of Oklahoma to provide the Court with the record on

appeal before the state district court and the Court of Criminal Appeals. The State has complied with that order, the Court has reviewed the record and is now ready to rule on petitioner's application.

As the first ground on which he seeks a writ of habeas corpus, the petitioner claims that due process was violated by the prosecution's withholding of exculpatory evidence favorable to the petitioner. Petitioner asserts that the prosecutor did not provide him with certain statements made by his wife, in response to petitioner's motion for discovery of all exculpatory materials. Petitioner contends that his wife, Michelle Lofton, made inconsistent statements prior to petitioner's trial which would reflect upon petitioner's innocence. Petitioner also contends that he was not provided with evidence of the "deal" made between the prosecutor and Michelle Lofton for her testimony at petitioner's trial.

In Brady v. Maryland, 373 U.S. 83 (1963), the United States Supreme Court stated that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." Id. at 87. However, "[t]he rationale underlying Brady is not to supply a defendant with all the evidence" in the prosecutor's possession "which might conceivably assist the preparation of his defense but to assure that the defendant will not be denied access to exculpatory evidence only known" to the prosecution. United States v. LeRoy, 687 F.2d 610, 619 (2nd Cir.

1982). One claiming a Brady violation must bear the burden of demonstrating (1) that the prosecutor suppressed the evidence, (2) the favorable character of the allegedly suppressed evidence, and (3) the materiality of the allegedly suppressed evidence. U.S. v. Warhop, 732 F.2d 775, 778 (10th Cir. 1984).

After reviewing the record, the Court finds that the petitioner has not demonstrated a "suppression" of evidence by the prosecutor. Evidence is not "suppressed" if the defendant knew or should have known of the essential facts permitting him to take advantage of any exculpatory evidence. LeRoy, 687 F.2d at 618 (citations omitted). The Supreme Court has stated that the Brady rule applies in situations involving "the discovery, after trial, of information which had been known to the prosecution but unknown to the defense." U.S. v. Agurs, 427 U.S. at 103 (emphasis added). Even if a defendant learns of the existence of the exculpatory evidence in the course of his trial, the Brady rule has been held not to have been violated. U.S. v. Alberico, 604 F.2d 1315, 1319 (10th Cir. 1979); U.S. v. Behrens, 689 F.2d 154, 158 (10th Cir. 1982).

The record clearly demonstrates that petitioner and his counsel had sufficient awareness of the allegedly withheld exculpatory evidence to allow petitioner to cross-examine the prosecution's witnesses and prepare his defense with reference to the allegedly withheld evidence. For example, petitioner cross-examined his wife several times as to the existence of the alleged "deal" she made with the prosecutor in exchange for her testimony against petitioner. (Trial Transcript, pp.115,117).

Likewise, the petitioner had opportunity to cross-examine his wife about the alleged inconsistency of her statements made prior to the petitioner's trial. (Trial Transcript, pp.121,123). Further, petitioner called a witness who testified to the inconsistent nature of his wife's statements as to the petitioner's guilt. (Trial Transcript, pp.191-93). Thus, petitioner's ability to use the allegedly withheld evidence in his cross-examination of his wife and in the presentation of his defense makes clear that the claimed undisclosed evidence was not "suppressed" by the prosecution at the petitioner's trial.

Similarly, the Court's review of the record causes it to conclude that the alleged exculpatory evidence is not "material" under Brady. In making its determination, the Court uses the guidelines set forth by the Supreme Court in United States v. Agurs, 427 U.S. 97 (1976) for determining whether evidence is to be considered material under Brady. In cases where a defendant makes no request or only a general request for evidence that is then not disclosed, the prosecutor's failure to turn over the undisclosed evidence constitutes a denial of due process if that evidence, evaluated in the context of the entire record, creates a reasonable doubt that otherwise would not exist. Id. at 112-13. It appears that petitioner made only a general request for "all exculpatory materials to be provided to the defense." Appellant's Brief to the Oklahoma Court of Criminal Appeals, p.16. Thus, petitioner's burden under Agurs is to demonstrate that the allegedly undisclosed evidence creates a reasonable doubt about his guilt.

Having examined the entire record, the Court is not persuaded that the claimed exculpatory evidence creates a reasonable doubt as to the petitioner's guilt. Michelle Lofton's testimony was generally consistent with that of other witnesses, as to the petitioner's actions in the death of his step-son. The claimed inconsistencies of Michelle Lofton's statements are not of a significance to overcome the testimony and other evidence against the petitioner. Similarly, the Court finds no evidence of a "deal" between Michelle Lofton and the prosecution for her testimony against the petitioner. Michelle Lofton and her court-appointed attorney repeatedly denied the existence of such a "deal". (Trial Transcript, pp.98,136,268-69). Petitioner's allegations of a "deal" thus appear to be based upon surmise, rather than actual evidence.

Petitioner's other assignments of error raised in his application generally question the correctness of the admission of evidence by the trial judge or the jury instructions given by the trial judge. State court rulings on the admissibility of evidence or on jury instructions may not be questioned in federal habeas corpus proceedings unless they render the trial so fundamentally unfair as to constitute a denial of federal constitutional rights. Brinlee v. Crisp, 608 F.2d 839, 850 (10th Cir. 1979). The Court will briefly consider petitioner's remaining assignments of error in terms of whether a denial of petitioner's constitutional rights has occurred.

Petitioner claims that the prosecutor failed to give sufficient notice of "other crimes" evidence to be used at his trial,

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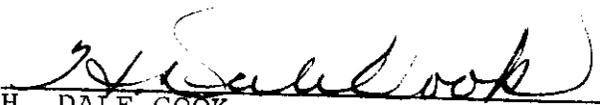
in violation of guidelines set out by the Oklahoma Court of Criminal Appeals in Burks v. State, 594 P.2d 771 (Okla.Crim.App. 1979). Burks requires that the prosecutor specify the exception to the rule barring evidence of other crimes he intends to invoke, prior to the presentations of that evidence at trial. Id. at 774. The purpose of the rule is to prevent surprise to the defendant and allow him to obtain a pretrial determination of the admissibility of that evidence. Id.; Scott v. State, 663 P.2d 17, 19 (Okla.Crim.App. 1983). The record shows that petitioner admitted receiving the prosecutor's notice of his intent to use "other crimes", i.e. prior beatings of the victim by the petitioner, nearly two months before the petitioner's trial. The record also shows that the prosecutor explained his use of the "other crimes", and the petitioner had opportunity to object to the trial court about that evidence, before the trial started. (Trial Transcript, pp.7-11). The petitioner therefore cannot claim surprise or lack of opportunity to obtain a pretrial ruling on the prosecution's use of the "other crimes" evidence.

Petitioner also complains of the trial court's failure to admonish the jury or give a limiting instruction as to the limited purpose for which evidence of "other crimes" was to be used. However, as was noted by the Oklahoma Court of Criminal Appeals, the petitioner did not request such an admonishment or instruction, even though the petitioner had the opportunity to do so. See (Trial Transcript, pp.274-76); Lofton v. State, 693 P.2d 629, 631 (Okla.Crim.App. 1984).

Petitioner's final assignment of error is that the trial court failed to give a cautionary instruction to the jury regarding eyewitness testimony. Since the sole eyewitness testimony was provided by the petitioner's wife, it is difficult to find any substance to petitioner's argument. Again, petitioner did not request at trial that such an instruction be given. See id.

The Court finds that the petitioner has not established that he was denied due process in the course of his trial, pursuant to 28 U.S.C. §2254(d). The Court's review of the record before the trial court and the Oklahoma Court of Criminal Appeals does not demonstrate any denial of the petitioner's constitutional rights. Accordingly, petitioner Robin DuBois Lofton's application for a writ of habeas corpus is hereby DENIED.

IT IS SO ORDERED this 19th day of January, 1988.


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

SECRET & HILL

(A PROFESSIONAL CORPORATION)

ATTORNEYS AT LAW

JMH

JAMES K. SECRET II
W. MICHAEL HILL
TIMOTHY S. HARMON
EMILY J. CRAWFORD
DAN W. ERNST
DAN S. FOLLUO
FRED E. STOOBS
MELVIN C. WEIMAN
THERESA G. DREILING

January 18, 1988

SUITE 200
1515 EAST 71ST STREET
TULSA, OKLAHOMA 74136

(918) 494-5905

The Honorable Thomas Brett
United States District Judge
Northern District of Oklahoma
Federal Building
Tulsa, Oklahoma 74103

Re: Allstate v. Cameron, et al
Case No. 87-C-611-B

Dear Judge Brett:

Please be advised that I have discussed your suggestion of sustaining our Motion to Dismiss this case, without prejudice, on the condition that my company reimburse the defendants for their fees and costs incurred in connection with the defense of this matter with my client. I have also been advised by Mr. Brad Smith that the total amount of his fees and costs on behalf of the defendant, Gary Cameron, is \$3,342.15. Further, Mr. Don Gilder advises that the total cost of his fees and expenses in his representation of the defendant, Susan Jayne Harrawood, in this action, is \$1,520.00. Please be advised that the plaintiff does hereby agree to reimburse each attorney the amount stated above as a term or condition of the Court sustaining the Motion to Dismiss of Allstate Insurance Company.

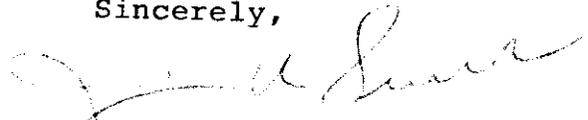
Further, this is to advise you that my client has agreed to accept coverage of Gary Cameron in the State Court action. Hopefully, this will alleviate the necessity of any further declaratory judgment actions in your Court.

By copy hereof, I am advising Attorney Smith and Attorney Gilder of this correspondence and Allstate Insurance Company's intentions with regard to not only the action now pending before you but also the State Court action.

In light of Allstate agreeing to the terms or conditions as you suggested, we would hope you will sustain our Dismissal Without Prejudice in this action.

Page Two.

Sincerely,

A handwritten signature in cursive script, appearing to read "James K. Secrest, II".

JAMES K. SECREST, II

JKS/kr

cc: Mr. Brad Smith
Mr. Don L. Gilder