

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 vs. )  
 )  
 ) DONALD G. CARTER a/k/a DONALD )  
 ) GENE CARTER; BELEND A J. CARTER )  
 ) a/k/a BELINDA JANE CARTER; )  
 ) COUNTY TREASURER, Creek County, )  
 ) Oklahoma; and BOARD OF COUNTY )  
 ) COMMISSIONERS, Creek County, )  
 ) Oklahoma, )  
 )  
 ) Defendants. )

**FILED**  
MAY 1988  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-242-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 31 day  
of May, 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, Creek County,  
Oklahoma, and Board of County Commissioners, Creek County,  
Oklahoma, appear by Wesley R. Thompson, Assistant District  
Attorney, Creek County, Oklahoma; and the Defendants, Donald G.  
Carter a/k/a Donald Gene Carter and Belenda J. Carter a/k/a  
Belinda Jane Carter, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Donald G. Carter a/k/a  
Donald Gene Carter, acknowledged receipt of Summons and Complaint  
on March 30, 1988; that the Defendant, Belenda J. Carter a/k/a  
Belinda Jane Carter, acknowledged receipt of Summons and  
Complaint on March 12, 1988; that Defendant, County Treasurer,

Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on March 10, 1988; and that Defendant, Board of County Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on March 10, 1988.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer herein on March 29, 1988; and that the Defendants, Donald G. Carter a/k/a Donald Gene Carter and Belinda J. Carter a/k/a Belinda Jane Carter, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on August 28, 1987, Belinda Jane Carter filed her voluntary petition in bankruptcy in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-02358. On February 23, 1988, the United States Bankruptcy Court in the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

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

Lot Ten (10), Block Four (4), BLACKBURN ADDITION to the City of Sapulpa, in Creek County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on March 22, 1985, Donald G. Carter and Belenda J. Carter 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 \$49,100.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Donald G. Carter and Belenda J. Carter executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated March 22, 1985, covering the above-described property. Said mortgage was recorded on March 22, 1985, in Book 184, Page 1, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Donald G. Carter a/k/a Donald Gene Carter and Belenda J. Carter a/k/a Belinda Jane Carter, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, there is now due and owing to the Plaintiff the principal sum of \$48,783.44, plus interest at the rate of 12.5 percent per annum from April 1, 1987 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, Creek 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 \$26.65, which became a lien on the property as of 1987. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Donald G. Carter a/k/a Donald Gene Carter in personam and Defendant, Belenda J. Carter a/k/a Belinda Jane Carter in rem, in the principal sum of \$48,783.44, plus interest at the rate of 12.5 percent per annum from April 1, 1987 until judgment, plus interest thereafter at the current legal rate of 7.20 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, Creek County, Oklahoma, have and recover judgment in the amount of \$26.65 for personal property taxes for the year of 1987, plus the costs of this action.

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 judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, in the amount of \$26.65, 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/ JAMES O. ELLISON**

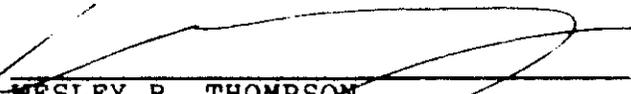
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UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

  
WESLEY R. THOMPSON  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Creek County, Oklahoma

NNB/css

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

BELDON ENERGY, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WEBB SERVICES, INC., et al., )  
 )  
Defendants. )

No. 87-C-1060-E ✓

FILED

MAY 31 1988

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

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

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

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

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

DATED this 26<sup>th</sup> day of May, 1988.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 27 1988

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

ROGER BELL and NORMA BELL,  
Plaintiffs,

v.

FISHER TRUCKING, INC., a  
corporation, Defendants.

No. 87-C-994-E

ORDER

Upon Joint Application for Dismissal With Prejudice by  
Plaintiffs and Defendant herein,

IT IS ORDERED that the above styled matter be dismissed with  
prejudice.

Dated this 26 day of May, 1988.

S/ JAMES O. ELLISON

\_\_\_\_\_  
JAMES O. ELLISON, U.S. DISTRICT JUDGE

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

EQUITY BUILDING COMPANY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SOUTHWESTERN BELL TELEPHONE )  
 COMPANY, )  
 )  
 Defendant. )

87-C-573-E  
**FILED**

MAY 31 1988

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

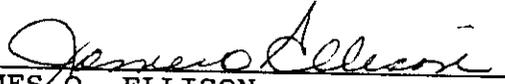
ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed May 4, 1988, in which the Magistrate recommended that plaintiff's Motion for Summary Judgment be denied, and sua sponte that the case should be dismissed for failure to state a claim upon which relief can be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that plaintiff's Motion for Summary Judgment is denied, and sua sponte this case is dismissed for failure to state a claim upon which relief can be granted.

Dated this 26<sup>th</sup> day of May, 1988.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

ROBYN C. TEAR, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 87-C-<sup>22</sup>~~M~~-E  
 )  
 WESTINGHOUSE ELECTRIC, )  
 CORPORATION, )  
 )  
 Defendant. )

FILED

MAY 6 1988

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

ORDER DISMISSING CASE WITH PREJUDICE

UPON the joint stipulation of the Plaintiff, Robyn C. Tear, and the Defendant, Westinghouse Electric Corporation, for the dismissal of this case with prejudice, and good cause having been shown,

IT IS HEREBY ORDERED that the above-captioned case is dismissed with prejudice, each side to bear her or its own costs, attorneys' fees and expenses.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

WILLIAM E. BROCK, Secretary of )  
Labor, United States Department )  
of Labor, and RANDELL CRAIG )  
MONDY, )

Plaintiffs, )

vs. )

TIERRA VISTA, INC., and )  
ROSS FLOOD, )

Defendants. )

No. 80-C-486-E ✓

81-C-264-E FILED

MAY 31 1988

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

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiffs William E. Brock and Randell Craig Mondy recover judgment of the Defendants Tierra Vista, Inc. and Ross Flood, that Defendants are permanently enjoined from withholding back wages of \$13,231.50 and Plaintiff Mondy is awarded judgment in the amount of \$13,231.50 on behalf of himself, Jeffrey McCants and Hugh O'Bannon, and Plaintiffs are awarded the costs of this action.

DATED at Tulsa, Oklahoma this 26<sup>th</sup> day of May, 1988.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

FILED  
MAY 31 1988  
J  
C. Silver, Clerk  
U.S. DISTRICT COURT

ALBERT J. BLAIR, JR., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Defendant. )

No. 87-C-882-E

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the United States of America is permanently enjoined from collecting the tax assessed as set forth in the Complaint, that the tax assessment is abated without penalty to the Plaintiff, and that each party shall bear its own costs and attorney fees.

DATED at Tulsa, Oklahoma this 26<sup>th</sup> day of May, 1988.

James O. Ellison  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 11 1988

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
HOWARD M. MOTE II; SUSAN )  
JACKSON MOTE, a/k/a SUSAN J. )  
MOTE, who is now SUSAN JACKSON; )  
COUNTY TREASURER, Tulsa County, )  
Oklahoma; and BOARD OF COUNTY )  
COMMISSIONERS, Tulsa County, )  
Oklahoma, )  
 )  
Defendants. )

CIVIL ACTION NO. 86-C-1012-E

DEFICIENCY JUDGMENT

Now on this 26 day of May, 1988, there came on for hearing the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment herein, said Motion being filed on the 14th day of March, 1988, and a copy of said Motion being mailed to Howard M. Mote II, 13236-D East 30th Place South, Tulsa, Oklahoma 74134 and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Howard M. Mote II, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on October 7, 1987, in favor of the Plaintiff United States of America, and against the Defendant, Howard M. Mote II, with interest and costs to date of sale is \$59,958.86.

The Court further finds that the appraised value of the real property at the time of sale was \$44,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered October 7, 1987, for the sum of \$39,717.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 2nd day of May, 1988.

The Court further finds that the Plaintiff, United States of America on behalf of the Administrator of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Howard M. Mote II, as follows:

Principal Balance as of 12/29/87	\$47,130.42
Interest	11,739.40
Late Charges to Date of Judgment	289.64
Appraisal by Agency	175.00
Management Broker Fees to Date of Sale	300.00
Publication Fees of Notice of Sale	219.40
Court Appraisers	<u>105.00</u>
TOTAL	\$59,958.86
Less Credit of Appraised Value	- <u>44,500.00</u>
DEFICIENCY	\$15,458.86

plus interest on said deficiency judgment at the legal rate of 720 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Administrator of Veterans Affairs have and recover from Defendant, Howard M. Mote II, a deficiency judgment in the amount of \$15,458.86, plus interest at the legal rate of 7.20 percent per annum on said deficiency judgment from date of judgment until paid.

**67 JAMES O. ELLISON**

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UNITED STATES DISTRICT JUDGE

PB/css

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

FIRST FEDERAL SAVINGS AND )  
LOAN ASSOCIATION, DAVENPORT, )  
IOWA, ET AL., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
J. W. HOYT & ASSOCIATES, )  
ET AL., )  
 )  
Defendants. )

FILED

MAY 21 1988

1013  
No. 86-C-~~103~~-E  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

O R D E R

The Court has for consideration the two Findings and Recommendations of the Magistrate filed February 17, 1988. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the two Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

IT IS THEREFORE ORDERED that:

1. the motion of Defendant Home Savings & Loan for summary judgment on Counts 7 and 8 is sustained;
2. the motion of Defendant Home Savings & Loan as to the "pre-sales" portion of Count 9 is sustained;
3. the motion of Defendant First Oklahoma Mortgage and Investment Co. to dismiss Count 10 of the Complaint is sustained;
4. the motion of Defendant First Oklahoma Mortgage and

20

Investment Co. to dismiss Counts 4, 5, and 6 of the Complaint is overruled; and

5. the parties will comply with the following scheduling order:

- (1) Discovery shall be completed by June 20, 1988;
- (2) Witness lists shall be exchanged by July 11, 1988;
- (3) An agreed pretrial order shall be filed by July 15, 1988;
- (4) Pretrial will be held July 28, 1988, at 1:00 o'clock p..m.; and
- (5) Trial briefs, and proposed findings of fact and conclusions of law shall be filed July 24, 1988.

It is so Ordered this 26<sup>th</sup> day of May, 1988.

Non-jury trial is set for August 1, 1988.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

BRADLEY D. SMITH,  
Plaintiff,

vs.

MIKE PARSON, and the  
Attorney General of the  
State of Oklahoma,

Defendants.

No. 87-C-1005-E

**FILED**

MAY 11 1988

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

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed December 16, 1987. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

It is so Ordered this 26<sup>th</sup> day of May, 1988.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TIMOTHY E. MERCER; DAISIE M. )  
 MERCER; COUNTY TREASURER, )  
 Tulsa County, Oklahoma, and )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Tulsa County, Oklahoma, )  
 )  
 Defendants. )

**FILED**

MAY 31 1988

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

CIVIL ACTION NO. 87-C-661-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 31 day  
of May, 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 Defendants, Timothy E.  
Mercer and Daisie M. Mercer, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Timothy E. Mercer,  
acknowledged receipt of Summons and Complaint on August 15, 1987;  
that the Defendant, Daisie M. Mercer, was served with Summons and  
Complaint on April 13, 1988; that Defendant, County Treasurer,  
Tulsa County, Oklahoma, acknowledged receipt of Summons and  
Complaint on August 13, 1987; and that Defendant, Board of County

Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 13, 1987.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on August 27, 1987; and that the Defendants, Timothy E. Mercer and Daisie M. Mercer, 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 Ten (10), Block Four (4), MAPLEWOOD ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on July 23, 1985, the Defendants, Timothy E. Mercer and Daisie M. Mercer, 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 \$45,000.00, payable in monthly installments, with interest thereon at the rate of eleven and one-half percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Timothy E. Mercer and Daisie M. Mercer, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated July 23, 1985, covering the

above-described property. Said mortgage was recorded on July 24, 1985, in Book 4879, Page 544, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Timothy E. Mercer and Daisie M. Mercer, 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, Timothy E. Mercer and Daisie M. Mercer, are indebted to the Plaintiff in the principal sum of \$45,217.51, plus interest at the rate of 11.5 percent per annum from October 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Timothy E. Mercer and Daisie M. Mercer, in the principal sum of \$45,217.51, plus interest at the rate of 11.5 percent per annum from October 1, 1986 until judgment, plus interest thereafter at the current legal rate of 7.20 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

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

First:

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

Second:

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

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

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

S/ THOMAS R. BRETT

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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



and the Court having considered the matter and being duly advised, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331, 1345, and 1355 and Section 113 of the Clean Air Act, 42 U.S.C. §7413.

2. Defendant agrees that this Court has personal jurisdiction over it and that venue is properly in this Court. Defendant waives all objections to such personal jurisdiction and venue.

3. The complaint states a claim upon which relief can be granted.

4. Defendant waives the issuance, service and return of process in this action and agrees that this Consent Decree shall have the same force and effect as if process had been issued, served and returned as provided by law.

DEFENDANT

5. Defendant, Grand River Dam Authority is a not-for-profit agency of the State of Oklahoma which owns and operates an electrical utility steam generating unit in Mayes County, Oklahoma.

PARTIES BOUND

6. The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their officers, agents, servants, employees, successors and assigns.

CIVIL PENALTIES

7. By way of settlement of a disputed claim only, and without admitting any liability, Defendant shall pay a civil penalty of ten thousand dollars (\$10,000) in full satisfaction of all civil claims of the Plaintiff for

the violations of the Clean Air Act alleged in the Complaint. Such payment shall be made by a certified check made payable to the "Treasurer of the United States of America." Payment shall be tendered to Tony M. Graham, United States Attorney for the Northern District of Oklahoma, 3600 U.S. Courthouse, 333 West Fourth Street, Tulsa, Oklahoma 74103, within thirty days of entry of this Consent Decree. Notice of such payment, including a copy of the check, shall be given when the payment is made to the Regional Hearing Clerk, United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, and to the Chief, Environmental Enforcement Section, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044.

8. Amounts paid pursuant to paragraph 7 above are in the nature of civil penalties and are not deductible for federal tax purposes.

#### NON-WAIVER PROVISIONS

9. This Consent Decree in no way affects or relieves Defendant of any obligation to comply with any federal, state, or local law or regulation relating to the subject matter of the Consent Decree.

10. By this decree, Plaintiff does not waive any right or remedy available to it under any federal, state or local law or regulation.

11. This court retains jurisdiction over this matter for the purpose of enforcing the rights and obligations created under this Decree until the civil penalty described in paragraph 7 hereof has been paid.

12. This Consent Decree expires upon payment by GRDA of the civil penalty described in paragraph 7.

COSTS OF SUIT

13. Each party in this action shall bear its own costs.

This Consent Decree is entered this 26 day of May, 1988.

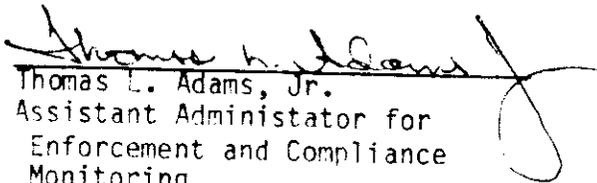
**S/ JAMES O. ELLISON**

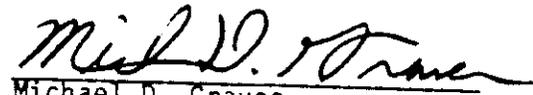
UNITED STATES DISTRICT JUDGE

The undersigned attorneys for the Plaintiff and Defendant agree to the forgoing Consent Decree.

FOR THE UNITED STATES OF AMERICA

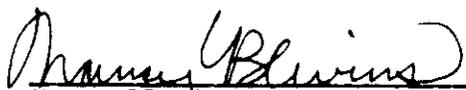
FOR GRAND RIVER DAM AUTHORITY:

  
Thomas L. Adams, Jr.  
Assistant Administrator for  
Enforcement and Compliance  
Monitoring  
United States Environmental  
Protection Agency

  
Michael D. Graves  
Hall, Estill, Hardwick, Gable  
Golden, and Nelson  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172  
(918) 588-3945

  
Roger J. Marzulla  
Assistant Attorney  
General  
Land and Natural Resources  
Division  
United States Department of  
Justice

Tony M. Graham  
United States Attorney  
Northern District of Oklahoma



Nancy Blevins  
Assistant United States Attorney  
Northern District of Oklahoma  
3600 U.S. Courthouse  
333 West Fourth Street  
Tulsa, Oklahoma 74103



Casey Spall  
Trial Attorney  
Environmental Enforcement  
Section  
Land and Natural Resources  
Division  
United States Department of  
Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 633-4160

OF COUNSEL:

KENNETH R. HARMON  
Office of Enforcement and  
Compliance Monitoring  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

MICHAEL C. BARRA  
Assistant Regional Counsel  
U.S. Environmental Protection  
Region VI  
Agency  
1445 Ross Avenue  
Dallas, Texas 75202-2733

FILED

MAY 31 1988

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

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

THE ORIGINAL CHILI BOWL, INC., )  
an Oklahoma Corporation, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
AUTOPROD INC., )  
a New York Corporation, )  
 )  
Defendant. )

Case No. 88-C-331 E

ORDER

NOW on this 26 day of May, 1988, I the undersigned Judge of  
The United States District Court for the Northern District of Oklahoma,  
for good cause shown, find that the Plaintiff's Application for an  
Order of Dismissal should be granted.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED by the Court, pursuant  
to the Application of the Plaintiff, that Plaintiffs action pending  
herein is dismissed with prejudice to refiling same.

S/ JAMES O. ELKSON  
JUDGE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLA-  
HOMA

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

FILED

MAY 27 1988

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

RANDALL STICKLER, personal )  
representative of the Estate )  
of LISA MICHELLE STICKLER, )  
deceased, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DPD, INC., a Delaware )  
corporation, )  
 )  
Defendant. )

No. 86 C-1126 E

ORDER OF DISMISSAL

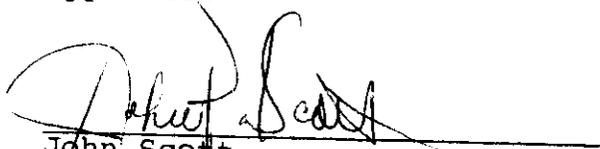
This matter came on for consideration on this 26  
day of May, 1988 upon the Joint Application For Dismissal With  
Prejudice filed herein. The Court being duly advised in the  
premises, finds that said Application For Dismissal is in the  
best interest of justice and should be approved, and the above  
styled and numbered cause of action dismissed with prejudice  
to a refiling.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by  
the Court that the Joint Application For Dismissal With Preju-  
dice by the parties be and the same is hereby approved, and the  
above styled and numbered cause of action and Complaint is dis-  
missed with prejudice to a refiling.

S/ JAMES O. ELLISON

\_\_\_\_\_  
JAMES O. ELLISON, JUDGE  
UNITED STATES DISTRICT COURT

Approved:

A handwritten signature in cursive script, appearing to read "John Scott", written over a horizontal line.

John Scott  
Attorney for plaintiff

A handwritten signature in cursive script, appearing to read "Donald Church", written over a horizontal line.

Donald Church  
Attorney for defendant

?FP.18

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

ROSA SNOW and JERRY SNOW,	)
	)
Plaintiffs,	)
	)
v.	)
	)
CONSOLIDATED CAPITAL PROPERTIES,	)
a California corporation and	)
JOHNSTOWN PROPERTIES, a Georgia	)
corporation,	)
	)
Defendants.	)

No. 87-C-170-E

**F I L E D**

MAY 31 1988

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

ORDER

It is hereby ordered, adjudged, and decreed that the Plaintiff's dismiss their cause of action against the Defendants, Consolidated Capital and Johnstown Properties, with prejudice in the above styled action.

S/ JAMES O. ELLISON  
JUDGE OF THE DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
OKLAHOMA



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

WARREN AMERICAN OIL COMPANY, )  
a Texas corporation, and )  
EGJ OIL INTERESTS, INC., )  
a Texas corporation, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
ARKLA, INC., d/b/a ARKANSAS )  
LOUISIANA GAS CO., a Delaware )  
corporation, )  
 )  
Defendants. )

MAY 27 1968

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

Case No. 87-C-527-B

ORDER DISMISSING WITH PREJUDICE ALL CLAIMS BETWEEN  
WARREN AMERICAN OIL COMPANY, EGJ OIL INTERESTS,  
INC. AND ARKLA, INC., d/b/a ARKANSAS LOUISIANA GAS CO.

The Court has before it for consideration the Joint Motion of Plaintiffs, Warren American Oil Company and EGJ Oil Interests, Inc. and the Defendant, Arkla, Inc., d/b/a Arkansas Louisiana Gas Co., for an order dismissing with prejudice all claims and causes of action asserted by and between those parties in this case.

FINDING that good cause exists for the granting of that Motion, it is hereby ORDERED that all claims and causes of action

asserted by and between Warren American Oil Company, EGJ Oil Interests, Inc. and Arkla, Inc. d/b/a Arkansas Louisiana Gas Co., in this case are hereby dismissed with prejudice, with each of those parties to bear its own costs and attorney fees incurred herein.

IT IS SO ORDERED this 27 day of May, 1988.

S/ THOMAS R. BRETT

---

THE HONORABLE THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



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

MAY 20 1988

KIRBY ANTHONY PROCTOR, a minor )  
by his Parents and Next Friends, )  
EDWARD KIRBY PROCTOR and SUSAN )  
JEAN PROCTOR, husband and wife, )  
Individually, )

Plaintiffs, )

vs. )

Case No.: 88 C 410 B

BAPTIST HEALTHCARE OF OKLAHOMA, )  
INC., an Oklahoma Corporation )  
d/b/a GROVE GENERAL HOSPITAL, )  
F. ROLLIN BLAND, M.D. and )  
DOES ONE through FIFTY, both )  
inclusive )

Defendants, )

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES now the Plaintiffs, KIRBY ANTHONY PROCTOR, a minor, by his Parents and Next Friends, EDWARD KIRBY PROCTOR and SUSAN JEAN PROCTOR, husband and wife, individually, pursuant to F.R.C.P. Rule 41(a) and hereby dismiss without prejudice all claims and causes of action asserted herein against Defendants BAPTIST HEALTHCARE OF OKLAHOMA, INC., an Oklahoma Corporation d/b/a GROVE GENERAL HOSPITAL, F. ROLLIN BLAND, M.D., and DOES ONE through FIFTY.

DATED: May 26, 1988.

*Edward Kirby Proctor*  
EDWARD KIRBY PROCTOR  
14 Maine Avenue  
West Yarmouth, Massachusetts 02673  
Pro Se

*Susan Jean Proctor*  
SUSAN JEAN PROCTOR  
14 Maine Avenue  
West Yarmouth, Massachusetts 02673  
Pro Se

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that on the 26th day of May, 1988, a true and correct copy of the above and foregoing instrument was deposited in the U. S. Mails with all first class postage due thereon full prepaid, via Certified Mail, Return Receipt Requested and addressed to:

Baptist Healthcare of Oklahoma, Inc.  
d/b/a Grove General Hospital  
Agent: Joe L. Ingram  
6106 N.W. 63rd Street  
Oklahoma City, OK

F. Rollin Bland, M.D.  
700 South Main  
P.O. Box 909  
Tulsa, Oklahoma 74344

  
\_\_\_\_\_

  
\_\_\_\_\_

#5322

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

MAY 25 1986

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

JAMES PERRY HALE, )  
Plaintiff, )

vs. )

Case No. CIV-86-C-956-C

DIRECTOR OF THE D.O.C., )  
Assistant, WARDEN MICHEAL )  
WATSON, GARY HUDSON, DAN CLARK, )  
DANIEL CRAMER, MAJOR RUNYON, )  
H.D. SAPPINGTON, LT. RANDLE and )  
OFFICER FEWELL, RICHARD M. )  
WATKINS AND GARY PARSONS, )  
Defendants. )

**NOTICE OF DISMISSAL WITHOUT PREJUDICE**

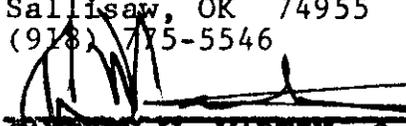
COMES NOW the Plaintiff, JAMES PERRY HALE, and, upon the basis of the affidavit of Amy Hall, Personnel Officer at the Dick Conner Correctional Center, dismisses the above captioned and numbered cause as to the Defendant, MICHAEL WATSON, without prejudice to his right to refile the same at the cost of the Plaintiff.

JAMES PERRY HALE, Plaintiff

MICHAEL RAMIREZ  
Attorney at Law  
115 West Third Street, Suite 825  
Tulsa, OK 74103

-AND-

LAW OFFICES OF HARRY SCOUFOS, P.C.  
Attorneys at Law  
P. O. Box 787  
Sallisaw, OK 74955  
(918) 775-5546

By:   
CAMERON W. MARTIN, O.B.A. #12052

*Law Office  
Harry Scoufos  
Attorney at Law - P. O. Box 787  
Corner of Third and Elm Streets  
Sallisaw, Oklahoma 74955*

#5322

CERTIFICATE OF MAILING

I, CAMERON W. MARTIN, hereby certify that on this 24<sup>th</sup> day of May, 1988, I mailed a true and correct copy of the Notice of Dismissal without Prejudice to Mr. John Galowitch, Assistant Attorney General, Attorney General's Office, 112 State Capitol, Oklahoma City, Oklahoma, 73105; Mr. Frank Walta, Attorney at Law, 3904 East Reno, Oklahoma City, Oklahoma, 73117; Mr. Don G. Pope, General Counsel, Oklahoma Department of Corrections, 3400 Martin Luther King Avenue, Oklahoma City, Oklahoma, 73111, with sufficient postage fully prepaid thereon.

  
CAMERON W. MARTIN

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 G. D. RUCKER a/k/a GERONE )  
 RUCKER; JIMMIE S. RUCKER a/k/a )  
 JIMMIE RUCKER; BENEFICIAL )  
 OF OKLAHOMA f/k/a BENEFICIAL )  
 FINANCE COMPANY OF OKLAHOMA; )  
 GENERAL CREDIT COMPANY; )  
 FIDELITY FINANCIAL SERVICES, )  
 INC.; STATE OF OKLAHOMA ex rel. )  
 OKLAHOMA TAX COMMISSION; )  
 COUNTY TREASURER, Tulsa County, )  
 Oklahoma; and BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

FILED

MAY 25 1988

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

CIVIL ACTION NO. 87-C-958-B

ORDER

NOW, on this 25th day of May, 1988, there came on for consideration the Motion of the United States to amend the Judgment of Foreclosure previously entered herein on April 5, 1988. The Court finds said Motion is well taken.

NOW, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Judgment of Foreclosure previously entered herein on April 5, 1988, be and the same is hereby amended by deleting the words, "with appraisalment," appearing in the third paragraph on page 5 of the Judgment and inserting in lieu thereof the words, "without appraisalment."

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

MAY 25 1988

JACK E. ... CLERK  
U.S. DISTRICT COURT

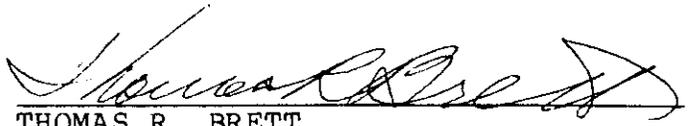
CHARLES GREGORY RITTER and )  
CAROL JEAN RITTER, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
KAWASAKI HEAVY INDUSTRIES, )  
LTD, KAWASAKI MOTORS )  
MANUFACTURING COMPANY, and )  
KAWASAKI MOTOR CORPORATION, )  
 )  
Defendants. )

No. 88-C-236-B

O R D E R

This matter comes before the Court on the Defendant Kawasaki Heavy Industries, Ltd.'s motion to dismiss and quash summons filed April 6, 1988. The Defendant asserts that both process and the service of process pursuant to Fed.R.Civ.P. 12(b)(4) and 12(b)(5) is improper. Plaintiff in its objection admits that service is improper and therefore the Court will quash the summons as requested by the Defendant Kawasaki Heavy Industries, Ltd. The action is dismissed on the basis of insufficient process as to Defendant Kawasaki Heavy Industries, Ltd.

IT IS SO ORDERED, this 24 day of May, 1988.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 25 1988

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

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

CIVIL ACTION NO. 87-C-1093-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18 day  
of May, 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, Patrice  
Wright, appears not, but makes default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Patrice Wright, was served  
with Summons and Complaint on March 29, 1988; that Defendant,  
County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of  
Summons and Complaint on January 5, 1988; and that Defendant,  
Board of County Commissioners, Tulsa County, Oklahoma,  
acknowledged receipt of Summons and Complaint on January 5,  
1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on January 22, 1988; and that the Defendant, Patrice Wright, has failed to answer and her 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:

The North 57 feet of Lot Nine (9), and the South 6 feet of Lot Eight (8), Block Two (2), BURROUGHTS VIEW ADDITION to the City of Tulsa County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on April 19, 1985, the Defendant, Patrice Wright, 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 \$34,000.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Patrice Wright, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated April 19, 1985, covering the above-described property. Said mortgage was recorded on April 25, 1985, in Book 4858, Page 2035, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Patrice Wright, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Patrice Wright, is indebted to the Plaintiff in the principal sum of \$34,266.31, plus interest at the rate of 12.5 percent per annum from October 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the 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 \$00.00, 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 against the Defendant, Patrice Wright, in the principal sum of \$34,266.31, plus interest at the rate of 12.5 percent per annum from October 1, 1986 until judgment, plus interest thereafter at the current legal rate of 7.25 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$00.00, 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 upon the failure of said Defendant, Patrice Wright, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$00.00, 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.

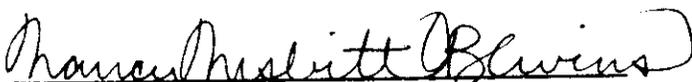
**JAMES O. ELLISON**

---

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

**F I L E D**

MAY 23 1988

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

BILL J. HALL,

Plaintiff,

v.

DOWELL SCHLUMBERGER, INC.,

Defendant.

Case No. 87-C-350-E

ORDER OF DISMISSAL

This cause having come before this Court on the Joint Application for Dismissal with Prejudice of the parties, and this Court being fully advised in the premises, and the parties having stipulated and the Court having found that the parties have reached a private settlement of their claims against one another, and that such claims should be dismissed with prejudice, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the Complaint of Plaintiff, together with any causes of action asserted therein, and the Counterclaims of Defendant, together with any causes of action contained therein, be and hereby are dismissed with prejudice, with each party to bear its own costs.

So Ordered this 24 day of May, 1988.

S/ JAMES O. ELISON

United States District Judge

APPROVED AS TO FORM AND CONTENT:

[Signature]  
Attorney for Plaintiff

[Signature]  
Attorney for Defendant

FILED

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

MAY 25 1988

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

CAROL S. BRITT,  
Plaintiff,  
v.  
DOWELL SCHLUMBERGER, INC.  
Defendant.

Case No. 87-C-348-E

ORDER OF DISMISSAL

This cause having come before this Court on the Joint Application for Dismissal with Prejudice of the parties, and this Court being fully advised in the premises, and the parties having stipulated and the Court having found that the parties have reached a private settlement of their claims against one another, and that such claims should be dismissed with prejudice, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the Complaint of Plaintiff, together with any causes of action asserted therein, and the Counterclaims of Defendant, together with any causes of action contained therein, be and hereby are dismissed with prejudice, with each party to bear its own costs.

So Ordered this 24<sup>th</sup> day of May, 1988.

*James Beaman*  
United States District Judge

APPROVED AS TO FORM AND CONTENT:  
*[Signature]*  
Attorney for Plaintiff

*Mary S. Matthews*  
Attorney for Defendant

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

MAY 25 1988

GENE A. YOUNG,

Plaintiff,

v.

MCDONNELL DOUGLAS-TULSA, a  
Component of McDonnell  
Douglas Corporation, a  
Maryland Corporation,

Defendant,

and

UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA (UAW),  
INTERNATIONAL UNION AND  
LOCAL UNION NO. 1093,

Defendant.

JACK L. HARRIS, CLERK  
U.S. DISTRICT COURT

Civil Action No.  
85-C-386-E

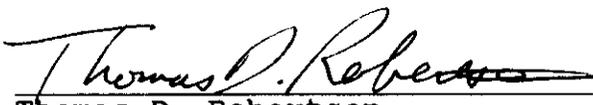
STIPULATION OF DISMISSAL  
WITH PREJUDICE

Gene A. Young, Plaintiff, and McDonnell Douglas Corporation, Defendant, hereby stipulate pursuant to Federal Rule of Civil Procedure 4(a)(1)(ii) that the captioned case is dismissed, with prejudice. Each party is to bear his or its own attorney fees and costs.

For Plaintiff  
Gene A. Young:

  
Alvin Hayes, Jr.  
5662 South 83rd East Avenue  
Tulsa, Oklahoma 74145  
(918) 252-4742

For Defendant McDonnell  
Douglas Corporation:

  
Thomas D. Robertson  
400 Old City Hall Building  
124 East Fourth Street  
Tulsa, Oklahoma 74103  
(918) 584-5182

*Plaintiff only*

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

**F I L E D**

MAY 25 1988

CLAIRE L. CHENNAULT, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LOFFLAND BROTHERS COMPANY )  
 AND MOBIL OIL CORPORATION, )  
 )  
 Defendants. )

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

Case No. 85-C-612-E

ORDER

NOW on this \_\_\_ day of May, 1988, this matter comes on for hearing pursuant to the plaintiff's Application For Dismissal Without Prejudice, and the Court finds justifiable cause therefor.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said Application be granted and that the above-entitled matter be dismissed without prejudice to re-filing.

S/ JAMES O. ELISON

\_\_\_\_\_  
JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,            )  
  )  
  )            Plaintiff,  
  )  
vs.                                        )  
  )  
ONE 1984 CHEVROLET CAMARO Z28        )  
VIN 1G1AP87GOEL244134,                )  
  )            Defendant.            )            CIVIL ACTION NO. 88-C-65-C

ORDER DISMISSING CLAIMS AND DECREE OF FORFEITURE

IT NOW APPEARS that the claim filed herein has been fully compromised and settled. Such settlement more fully appears by the written Stipulation entered into between the claimants, Jack Scott, Rae Dean Scott and Julie Scott, and the United States of America on May 19, 1988, and filed herein, to which Stipulation reference is hereby made and is incorporated herein. Therefore the claim filed herein should be dismissed with prejudice and the Clerk of Court should be authorized and directed to enter of record in this civil action such dismissal.

It further appearing that no other claims to said property have been filed since such property has been seized,

Now, therefore, on motion of Catherine J. Depew, Assistant United States Attorney, and with the consent of the claimants, it is

ORDERED that the claims of Jack Scott, Rae Dean Scott and Julie Scott in this action be and the same hereby is dismissed with prejudice, and it is

FURTHER ORDERED that the Clerk of the above-entitled court is hereby authorized and directed to enter of record in the Court the dismissal of the claim filed herein by Jack Scott, Rae Dean Scott and Julie Scott with prejudice, and it is

FURTHER ORDERED AND DECREED that the defendant property be and hereby is condemned as forfeited to the United States of America for disposition according to the terms of the Stipulation for Compromise dated May 23, 1988.

(Signed) H. Dale Cook

---

H. DALE COOK  
CHIEF UNITED STATES DISTRICT JUDGE

FILED

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

MAY 24 1988

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

PHYLLIS LOWE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DALE THOMAS SHOWS, INC. )  
 )  
 Defendant. )

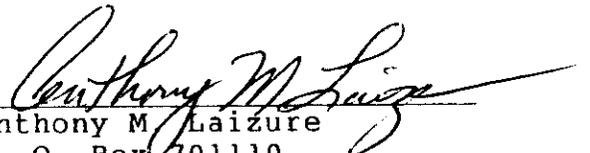
Case No. 87-C-169-C

*before a*  
DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Phyllis Lowe, by and through her attorneys, Stipe, Gossett, Stipe, Harper, Estes, McCune & Parks, and hereby dismiss with prejudice, this action against Dale Thomas Shows, Inc.

Respectfully submitted,

STIPES, GOSSETT, STIPE,  
HARPER, ESTES, McCUNE & PARKS

By:   
Anthony M. Laizure  
P. O. Box 701110  
Tulsa, OK 74170

ATTORNEYS FOR PLAINTIFF  
PHYLLIS LOWE

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Dismissal With Prejudice was mailed this 20 day of May to: Mark K. Blongewicz, 4100 Bank of Oklahoma Tower, One Williams Center, Tulsa, Oklahoma 74172, with proper postage thereon prepaid.

A handwritten signature in cursive script, reading "Anthony M. Leizer", written over a horizontal line.

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

MAY 24 1988

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

CLAUDE AND LINDA RHINE,  
husband and wife,

Plaintiffs,

vs.

STATE FARM FIRE AND  
CASUALTY COMPANY,

Defendant.

No. 87-C-636-C

O R D E R

Now before the Court for its consideration is the motion of the defendant for partial summary judgment on plaintiff's claim for tortious bad faith breach of an insurance contract, said motion filed April 28, 1988.

Plaintiffs have two causes of action before the Court: a breach of contract action seeking recovery to the limits of the insurance policy and a tortious bad faith breach of an insurance contract action seeking recovery of damages for emotional distress and punitive damages. Plaintiffs contracted with the defendant insurance company for a homeowners' policy on plaintiffs' residence and contents on March 4, 1986. On July 16, 1986, two separate sequential fires broke out in the plaintiffs' home. The second fire destroyed the residence, and plaintiffs timely filed a claim and proof of loss. Defendant State Farm paid \$2,500 in interim payments but subsequently refused further payment based on its conclusion that the second fire which destroyed the plaintiffs' home was due to arson.

Defendant State Farm bases its motion for partial summary judgment on reports and evidence which it asserts are a reasonable basis as a matter of law for denial of the claim. The local fire marshal informed a State Farm adjuster that a confidential informant had told him that the plaintiffs' fire should be investigated. The fire marshal also concluded from firemen's oral reports of the fire's burning patterns and from a newspaper report that an investigation was warranted. As a result, the defendant hired a "cause and origin" expert who examined the premises July 19, 1986 and concluded in a report on August 5, 1986 that the damage from the second fire was caused by arson. The expert took five ash samples from the fire scene for laboratory analysis and obtained results in three of the samples consistent with the presence of a "Class II accelerant", which defendant asserts as one of their bases for the conclusion of arson. Further, an electrical inspector hired by defendant investigated the scene July 23, 1986 and made several conflicting oral reports on causation, culminating in a written report dated August 5, 1986 stating the fire's origin was not electrical. Defendant also points to circumstantial evidence that the plaintiff husband was alone in the home between the two fires, the house was small for the family's needs, the plaintiffs removed their children and pets from the home between fires, and plaintiffs could not account for the presence of a Class II accelerant in their home.

In response to defendant's motion, plaintiffs assert that the facts leading to the defendant's conclusions are controverted

and still at issue. The fire marshal's affidavit and deposition show that he made no independent investigation of the fire scene, that he refused to give the name of his alleged "confidential informant", and that the alleged informant provided no substantive evidence upon which he could rely to support his conclusion. Further, plaintiffs contest the "cause and origin" expert's conclusion that a Class II accelerant was the cause of the fire because no purposefully introduced Class II accelerant (e.g. gasoline, kerosene, etc.) was actually found at the scene. Plaintiffs' deposition of the chemist who did the analysis of the samples indicated that the analysis could not conclusively prove that a specific Class II accelerant was present. The defendant's "cause and origin" expert has not yet been deposed by plaintiffs. The plaintiffs hired their own "cause and origin" expert/electrical investigator, who offered deposition testimony and an affidavit that the fire could have had an electrical origin, that burning patterns were not inconsistent with a previous attic fire, that there are alternative explanations for "accelerant trails" in the carpeting, and that there are other possible causes of the fire which have not been explored.

Plaintiffs also assert that the defendant's conduct in denying the claim shows bad faith. Plaintiffs assert that the fire was labelled arson only five days after the fire, before submission of experts' final reports. Plaintiffs also assert that both pre-suit and discovery requests for samples of the ash for independent testing were thwarted by defendant's 18-month

delay and lack of care in storage of the samples. Additionally, plaintiffs point out that defendant acted on less than conclusory results from experts' reports.

Oklahoma has recognized the independent intentional tort of bad faith breach of an insurance contract, imposing tort liability "where there is a clear showing that the insurer unreasonably, and in bad faith, withholds payment of the claim of its insured." Christian v. American Home Assurance Co., 577 P.2d 899, 905 (Okla. 1978). Tort liability may attach to all types of insurance contracts and the focus should be on the reasonableness of the insurer's conduct in denying the claim. If there is conflicting evidence from which different inferences may be drawn regarding reasonableness of the insurer's conduct, then the reasonableness is to be determined by the trier of fact. McCorkle v. Great Atlantic Ins. Co., 637 P.2d 583, 587-88 (Okla. 1981). The trier of fact may be shown the entire course of conduct between parties to arrive at a determination of whether the "reasonable basis" standard has been breached. Timmons v. Royal Globe Ins. Co., 653 P.2d 907, 913, 917 (Okla. 1982).

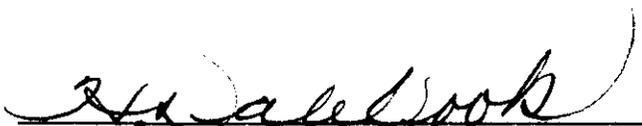
"[S]ummary judgment will not lie if the dispute about a material fact is 'genuine', that is, if the evidence is such that a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505, 2510 (1986). "The evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in his favor." Id. at 2513. Once a properly supported summary judgment motion is made, the non-moving party may not rest on the allegations in his

complaint but must respond with specific facts showing a genuine factual issue; however, if the facts support an inference whereby the non-moving party might prevail, summary judgment is inappropriate. Thomas v. U.S. Dept. of Energy, 719 F.2d 342, 344, (10th Cir. 1983). Summary judgment does not serve as a substitute for a trial of the case nor require the parties to litigate by affidavit. Smoot v. Chicago, Rock Island, & Pacific R.R. Co., 378 F.2d 879, 883 (10th Cir. 1967). It is considered drastic and should be applied with caution to preserve trial on bona fide factual disputes. Jones v. Nelson, 484 F.2d 1165, 1168 (10th Cir. 1973).

Plaintiffs have responded to the defendant's motion for partial summary judgment with specific facts that keep the reasonableness of the insurance company's conclusion of arson at issue. Material issues of fact on the bad faith breach of an insurance contract remain, precluding summary judgment.

Therefore, premises considered, it is the Order of the Court that the motion of the defendant for partial summary judgment on plaintiff's claim of bad faith breach of an insurance contract is hereby DENIED.

IT IS SO ORDERED this 24<sup>th</sup> day of May, 1988.

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA MAY 23 1983

JAMES W. GIBSON, CLERK  
U.S. DISTRICT COURT

SHEARSON LEHMAN MORTGAGE )  
CORPORATION, a Delaware )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
VEREX ASSURANCE, INC., )  
a Wisconsin corporation, )  
 )  
Defendant. )

No. 87-C-48-C

ORDER

Pursuant to the stipulation of the parties as indicated by the parties' Joint Motion to Dismiss With Prejudice, the Court hereby finds and it is hereby ORDERED that

the Complaint and Counterclaim are hereby dismissed with prejudice with each party to bear its own costs.

(Signed) H. Dale Cook

\_\_\_\_\_  
H. DALE COOK  
CHIEF JUDGE OF THE  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

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

**FILED**

MAY 23 1988

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

CIVIL ACTION NO. 87-C-317-B<sup>v</sup>

O R D E R

NOW, on this 20<sup>th</sup> day of May, 1988, there came on for consideration the Motion of the United States to amend the Judgment of Foreclosure previously entered herein on December 9, 1987. The Court finds said Motion is well taken.

NOW, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Judgment of Foreclosure previously entered herein on December 9, 1987, be and the same is hereby amended by deleting the words, "with appraisalment," appearing in the second paragraph on page 4 of the Judgment and inserting in lieu thereof the words, "without appraisalment."

*Thomas R. Reed*  
UNITED STATES DISTRICT JUDGE



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

BEVERLY A. DECKER,  
Plaintiff,

v.

DOWELL SCHLUMBERGER, INC.,  
Defendant.

Case No. 87-C-597-B

**FILED**

MAY 23 1988

Jack C. Silver, Clerk

ORDER OF DISMISSAL U. S. DISTRICT COURT

This cause having come before this Court on the Joint Application for Dismissal with Prejudice of the parties, and this Court being fully advised in the premises, and the parties having stipulated and the Court having found that the parties have reached a private settlement of their claims against one another, and that such claims should be dismissed with prejudice, it is, therefore,

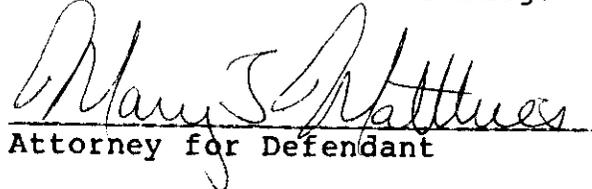
ORDERED, ADJUDGED AND DECREED that the Complaint of Plaintiff, together with any causes of action asserted therein, and the Counterclaims of Defendant, together with any causes of action contained therein, be and hereby are dismissed with prejudice, with each party to bear its own costs.

So Ordered this 20 day of May, 1988.

United States District Judge

APPROVED AS TO FORM AND CONTENT:

  
Attorney for Plaintiff

  
Attorney for Defendant

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

LINVEL DANE ADKINS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JAMES E. FRASIER and THOMAS )  
 DEE FRASIER, individually and )  
 as professional corporations )  
 d/b/a Frasier & Frasier, )  
 )  
 Defendants. )

No. 87-C-1052-B

**FILED**  
MAY 20 1988  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

The Motion to Dismiss of the Defendants herein is hereby sustained because the Defendants were not served within the 120-day period provided in Fed.R.Civ.P. 4. Counsel for the Plaintiff consents to the Court's order and same is a dismissal without prejudice.

IT IS SO ORDERED, this 19<sup>th</sup> day of May, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 205.60 ACRES OF LAND, MORE OR )  
 LESS, SITUATE IN OSAGE COUNTY, )  
 STATE OF OKLAHOMA; NORTH RIVER )  
 PETROLEUM COMPANY; EAGLE )  
 EXPLORATION COMPANY; RISING )  
 STAR OIL CORPORATION; STATE OF )  
 OKLAHOMA EX REL. OKLAHOMA TAX )  
 COMMISSION; JAMES A. TAYLOR, )  
 and UNKNOWN OWNERS, )  
 )  
 Defendants. )

**FILED**  
MAY 20 1988  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 87-C-109-E

AGREED JUDGMENT

NOW, on this 18<sup>th</sup> day of May, 1988, this matter comes on for disposition on application of the Parties hereto, for entry of judgment as agreed by the parties, and the Court, after having examined the files in this action, and being advised by counsel, finds that:

The Court has jurisdiction of the parties and the subject matter of this action.

This judgment applies to the entire estate taken in Tracts 1239ME-1, 1239ME-2, 1709ME-1, 1709ME-2, and 1241ME, as such tracts and estate are described in the Complaint and Amended Complaint filed herein.

Service of process has been perfected, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant herein.

The Acts of Congress set out in Schedule "A" attached to the Amended Complaint filed herein give the United States of America the right, power, and authority to condemn for public use the subject property. Pursuant thereto, on February 12, 1987, the United States of America filed its Declaration of Taking a certain estate in such tracts of land, and title to such property should be vested in the United States of America, as of the date of filing such instrument.

Simultaneously with the filing of the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the estate taken in the subject tracts, a certain sum of money, and part of such deposit has been disbursed, as set out below:

The Defendant Eagle Exploration Company, an owner as of the date of taking of certain fractional interests in tracts 1239ME-1, 1239ME-2, and 1241ME, is the only defendant asserting any claim to the estate taken herein. All other defendants have either disclaimed or defaulted. Defendant Eagle Exploration Company is therefore entitled to receive the just compensation awarded by this judgment.

It is, therefore, ORDERED, ADJUDGED, and DECREED that the United States of America has the right, power, and authority to condemn for public use the subject tracts, as they are described in the Complaint and Amended Complaint filed herein, and such property, to the extent of the estate described in the Complaint and Amended Complaint, is condemned, and title to such estate is vested in the United States of America as of

February 12, 1987, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

It is further ORDERED, ADJUDGED, and DECREED that the right to receive the just compensation for the estate taken herein in Tracts 1239ME-1, 1239ME-2, and 1241ME is vested in Defendant Eagle Exploration Company. The total award of just compensation for the interest of Eagle Exploration Company in the estate taken in these tracts, as agreed upon by the United States of America and Defendant Eagle Exploration Company, is the sum of \$10,000.00. The interest of Defendant Eagle Exploration Company in the estate taken is described as follows:

<u>Tract Nos.</u>	<u>Acres</u>	<u>Leasehold Interest</u>
1239ME-1 ME-2	130.40	Oil 43.75% (120.40 acres) 50% (10 acres) Gas 50% (10 acres) 50% (120.40 acres)
1241ME	67.60	Oil and Gas 25%

It is further ORDERED, ADJUDGED, and DECREED that the estimated compensation that has been disbursed to Defendant Eagle Exploration Company is in the sum of \$16,129.25, creating an overpayment in the sum of \$6,129.25. Therefore, pursuant to Rule 71A(j) of the Federal Rules of Civil Procedure, judgment is hereby entered against Defendant Eagle Exploration Company and in favor of the United States of America in the sum of \$6,129.25. Defendant Eagle Exploration Company is hereby directed to deposit this sum in the Registry of this Court for the benefit of the United States of America.

It is further ORDERED, ADJUDGED, and DECREED that the total estimated compensation deposited in the Registry of this Court was in the sum of \$16,236.15. No other defendants having claimed an interest in the estate taken, the Clerk of this Court is hereby ordered to disburse to the United States of America the sum of \$106.90 remaining on deposit herein, and upon deposit by Defendant Eagle Exploration Company of the sum of \$6,129.25, to disburse this sum to the United States of America.

S/ JAMES O. ELLISON,

UNITED STATES DISTRICT JUDGE

AGREED AS TO FORM AND CONTENT:

TONY M. GRAHAM  
United States Attorney

  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

EAGLE EXPLORATION COMPANY

  
RAYMOND N. JOECKEL  
President

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

**FILED**

MAY 20 1988 §

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

RUTH NELSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ANR PIPELINE COMPANY, )  
 )  
 Defendant. )

No. 87-C-53-E

**JUDGMENT DISMISSING ACTION**  
**BY REASON OF SETTLEMENT**

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

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

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

DATED this 19<sup>th</sup> day of May, 1988.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

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

CAKS-JR, LTD., )  
 )  
Plaintiff, )  
-vs- )  
 )  
RALLY FLAG, INC.; and )  
RICHARD J. BLACKBURN, )  
 )  
Defendants. )

Case No. 86-C-121-E

JUDGMENT IN A CIVIL CASE

**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

**IT IS ORDERED AND ADJUDGED:**

That CAKS-JR, LTD. recover from the defendants, Rally Flag, Inc. and Richard J. Blackburn, the sum of THREE HUNDRED EIGHTY-FOUR THOUSAND, FIVE HUNDRED SEVENTEEN AND NO/100 DOLLARS (\$384,517.00) with interest thereon at the rate of 7.20 percent as provided by law, and its costs of action;

That defendants, their officers, agents, servants and employees, and upon those persons in active concert participation with them who receive actual notice of this order by personal service or otherwise be and they are hereby enjoined from manufacturing,

using or selling in the United States the accused "Rally flag", and from otherwise infringing, or inducing others to infringe U.S. Patent No. 4,519,153, the patent in suit, the claims of which were found to be not invalid and infringed;

That the amount of damages awarded by the jury be increased up to three times the amount;

That plaintiff be awarded reasonable attorneys' fees in bringing this suit and prejudgment interest; and

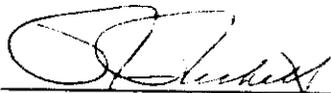
That upon application of the plaintiff, the cause shall be set for determination of the issues of the amount of plaintiff's costs, attorneys' fees, prejudgment interest and the amount that the jury award should be increased.

DATE: 5-18-88

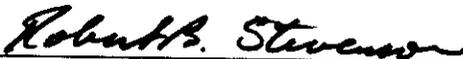
**S/ JAMES O. ELLISON**

James O. Ellison  
United States District Judge

APPROVED AS TO FORM:



Counsel for Plaintiff



Counsel for Defendants

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

**FILED**

MAY 20 1988

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

VICTOR CAMPBELL, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DRESSER INDUSTRIES, and )  
 LIFT-TECH INTERNATIONAL, )  
 INC., )  
 )  
 Defendants. )

No. 87-C-1044-B

O R D E R

Before the Court for decision is the Defendants' Motion for Partial Dismissal pursuant to Fed.R.Civ.P. 12(b)(6), directed to Plaintiff's Amended Complaint. Plaintiff's Amended Complaint alleges that the Defendants, Dresser Industries ("Dresser") and Lift-Tech International, Inc. ("Lift-Tech") violated Plaintiff's rights under the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq. (ADEA) in Count 1, that Defendants violated 42 U.S.C. §1985(3) by entering into a conspiracy to deprive Plaintiff of his rights under ADEA in Count 2, and that Lift-Tech tortiously interfered with Plaintiff's relationship with Dresser in Count 3. The Motion for Partial Summary Judgment is addressed to Count 2 only. Defendants contend that Plaintiff's Amended Complaint fails to state a cause of action in Count 2 for which relief can be granted because the case of Great American Savings & Loan Association v. Novotny, 442 U.S. 366, 60 L.Ed.2d 957 (1979) held that 42 U.S.C. §1985(3) does not provide a separate

cause of action to a plaintiff alleging deprivation of rights as set out herein.<sup>1</sup>

In reference to Count 2 and the 42 U.S.C. §1985(3) alleged conspiracy claim, the Plaintiff alleges the following: The Plaintiff, age 58, was employed by Defendant Dresser Industries for a period of thirty years and at the time of his discharge he was sales manager of the C & H Division of Dresser Industries. On April 2, 1986, the C & H Division of Dresser Industries was sold to the Defendant Lift-Tech International, Inc. It is alleged that previous to the consummation of the sale, the Defendants Dresser Industries and Lift-Tech International entered into a conspiracy to terminate the higher paid and older employees of C & H Division, thereby reducing ongoing overhead to the acquiring company.

Novotny involved alleged discrimination against an employee by a private employer. Novotny was a former officer, director and loan officer of the defendant federal savings and loan association. Novotny's employment was terminated, allegedly by a retaliatory discharge, following Novotny's speaking up in favor of female employees being denied equal employment opportunity. After receiving a right-to-sue letter following the filing of a complaint with the EEOC under Title VII of the Civil Rights Act

<sup>1</sup> Although Plaintiff alleges that he was terminated by Dresser on March 20, 1986 previous to Lift-Tech acquiring the C & H Division of Dresser Industries on April 2, 1986, Lift-Tech is included as a defendant in Plaintiff's Count 1 ADEA claim. Defendant's motion to dismiss does not address whether or not Lift-Tech is a proper party to the ADEA claim so for now the Court will not address it either.

of 1964, Novotny brought an action against his employer savings and loan and its directors claiming damages under 42 U.S.C. §1985(3) contending that he had been injured as a result of a conspiracy to deprive him of equal protection under the law. In footnote 11, page 372, of the Novotny opinion, the court stated that for the purpose of its analysis in Novotny only, it is assuming that the directors of a single corporation can form a conspiracy within the meaning of §1985(3). The court concluded in Novotny that the use of §1985(c) as a separate remedy would undermine the administrative mechanisms and precise remedy provided in Title VII by Congress for resolving employment discrimination disputes, so Novotny's relief was limited to Title VII.

Novotny differs from the instant case in two principal respects: (1) The Plaintiff Campbell's case herein is centered in age discrimination under the ADEA, 29 U.S.C. §621 et seq., and Novotny's action allegedly arose following his retaliatory discharge when he spoke out in favor of employment discrimination against female employees under Title VII; and (2) Novotny's action was against his corporate employer, the savings and loan, as well as directors thereof, while the present action is against two corporate entities, one of which was Campbell's former employer and one which was not but is an alleged successor entity.

The Court is convinced that the rationale of Novotny is applicable to permit the sustaining of the motion for partial

dismissal by Dresser because the pronounced specific statutory scheme under ADEA and Title VII are sufficiently analogous to conclude that a §1985(3) alleged conspiracy is also not available against an employer for alleged age discrimination. Therefore, the Defendant Dresser's motion for partial dismissal of Count 2 of the Plaintiff's Amended Complaint is hereby sustained.

The issue of whether or not a §1985(3) alleged conspiracy can be maintained against Lift-Tech is not as clear cut because Lift-Tech is a separate third party alleged conspiring entity not Plaintiff's employer at the time of his termination.

In Griffin v. Breckenridge, 403 U.S. 88 (1971), the court sanctioned an alleged conspiracy action under §1985(3) against private individuals involving racial discrimination. In order to ensure that §1985(3) would not be construed as a "general federal tort law", the court required that actionable private conspiracies must be motivated by "some racial, or perhaps otherwise class based, invidious discriminatory animus." Id. at 105. Griffin stated that to establish a prima facie case the defendants must (1) conspire; (2) do so for the purpose of depriving a person, or class of persons, of equal protection of the law or equal privileges and immunities under the laws; (3) act in furtherance of the conspiracy; and (4) injure the victim in his person or property, or deprive him of a right or privilege of a United States citizen. Id. 102-03. It would seem that the analysis of Griffin would support an alleged §1985(3) conspiracy if a non- employer third party conspired with an employer to deny

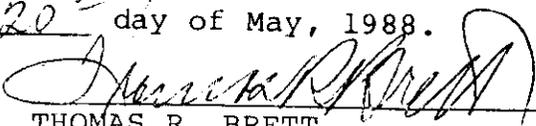
an employee the equal protection provided by the age discrimination statutory scheme.

The Court concludes, however, that Plaintiff has supplied the answer to an otherwise novel and perplexing issue by suing the Defendant Lift-Tech under ADEA in Count 1. Since Plaintiff has chosen to sue the Defendant Lift-Tech under ADEA, Novotny precludes the §1985(3) action against Lift-Tech and Lift-Tech's motion for partial dismissal, that is, of Count 2 is likewise sustained.<sup>2</sup>

The parties are to proceed with the following pretrial and trial schedule:

June 10, 1988	Amend pleadings or add additional parties
July 29, 1988	Exchange names and addresses of all witnesses in writing, including any experts, along with a brief statement regarding each witness' expected testimony (not necessary if witness' deposition taken)
August 12, 1988	Discovery cut-off
August 19, 1988	Dispositive motions
August 30, 1988	Response
September 6, 1988	Reply
September 15, 1988 at 10:45 A.M.	Final pretrial conference and hearing on any pending motions

IT IS SO ORDERED this 20<sup>th</sup> day of May, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

<sup>2</sup> For a helpful discussion of private conspiracies under 42 U.S.C. §1985(3), see: Private Conspiracies to Violate Civil Rights: The Scope of Section 1985(3) After Great American Savings & Loan Association v. Novotny, 61 BUL Rev. 1007 (1981) and Paragraphs 19.17-.18, Eglit, Howard C., Age Discrimination, Volume 3 (McGraw-Hill, Inc. 1986).

JDS/jh

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

VONA JEAN EVANS and  
VIRGIL EVANS,  
Plaintiffs,

v.

ABC CORPORATION;  
DEF CORPORATION;  
JOHN DOE;  
TIFCO, INC., a Maryland  
corporation;  
SIMPLIMATIC ENGINEERING COMPANY,  
a Delaware corporation;  
J&S CONVEYORS, INC., a New York  
corporation;  
GARVEY CORPORATION, a New Jersey  
corporation;  
CONTRAN CONVEYORS AND SYSTEMS,  
INC., a New Jersey corporation;  
RAPISTAN CORP., a Delaware  
corporation;  
ALVEY, INC., a Missouri  
corporation;  
UNEX CONVEYING SYSTEMS, INC.,  
a New Jersey corporation;  
UNIFLO CONVEYOR, INC., a Kansas  
corporation; and  
MATHEWS CONVEYORS COMPANY, a  
Delaware corporation,

Defendants.

**FILED**

MAY 20 1988

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

88-C-287-E

Case No. CJ 88-1097

NOTICE OF DISMISSAL WITHOUT PREJUDICE

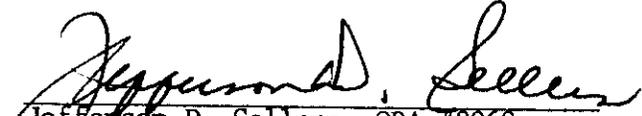
To: Ronald D. Wood  
1346 E. 19th Street  
Tulsa, OK 74120

ATTORNEY FOR ALVEY, INC.

Notice is hereby given that Vona Jean Evans and Virgil Evans,  
the above-named plaintiffs, hereby dismiss the above-entitled action

without prejudice as against defendant Alvey, Inc., pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, and hereby file this Notice of Dismissal with the clerk of the court before service by defendant Alvey, Inc., of either an answer or a motion for summary judgment.

Dated May 16, 1988.

  
Jefferson D. Sellers, OBA #8068  
JACK B. SELLERS LAW ASSOCIATES, INC.  
P.O. Box 730  
Sapulpa, Oklahoma 74067  
(918) 224-9070

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE

I hereby certify that on this 16th day of May, 1988, a copy of the foregoing was mailed to:

Daniel J. Hoehner, OBA #10852  
Tom L. King, OBA #5040  
Jeff R. Beeler, OBA #658  
KING, ROBERTS & BEELER  
15 N. Robinson, Suite 600  
Oklahoma City, OK 73102

Joseph A. Sharp, OBA #8124  
Jerry D. Stritzke, OBA #11535  
BEST, SHARP, SHERIDAN & STRITZKE  
The Kennedy Building, Suite 700  
321 S. Boston  
Tulsa, OK 74103

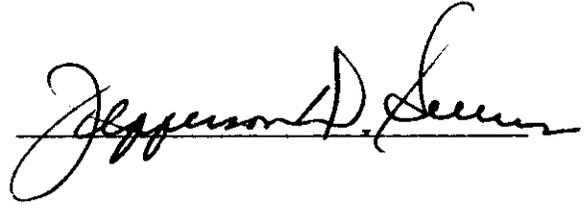
Ronald D. Wood  
1346 East 19th Street  
Tulsa, OK 74120

James E. Green, Jr.  
COMFORT, LIPE & GREEN, P.C.  
2100 Mid-Continent Tower  
401 South Boston Avenue  
Tulsa, OK 74103

Mark Finnerty, OBA #2924  
GOREE, KING, RUCKER & FINNERTY  
Southern Oaks Office Park  
7335 S. Lewis, Suite 306  
Tulsa, OK 74136

Michael J. Gibbens, OBA #3339  
JONES, GIVENS, GOTCHER, BOGAN &  
HILBORNE  
3800 First National Tower  
Tulsa, OK 74103

Elsie Draper, OBA #2482  
GABLE & GOTWALS  
2000 Fourth Nat. Bank Building  
Tulsa, OK 74119

A handwritten signature in cursive script, appearing to read "J. J. Seaman", written over a horizontal line.

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

BARTA-ISO AIRCRAFT, LTD., )  
a New York corporation, )

Plaintiff, )

v. )

No. 87-C-557-B

ALEXANDER J. STONE CONSULTA- )  
TION & INVESTMENT CO., INC., )  
an Oklahoma corporation, and )  
ALEXANDER J. STONE, an )  
individual, )

Defendants. )

**FILED**

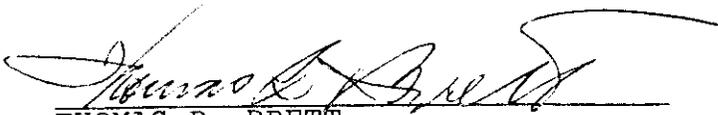
MAY 20 1988

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

J U D G M E N T

In keeping with the Order entered this date in favor of the attorneys fee claimant, Judgment is hereby entered in favor of Barta-Iso Aircraft, Ltd., and against Alexander J. Stone Consultation & Investment Co., Inc. and Alexander J. Stone, as and for attorneys fees in the amount of Sixteen Thousand Dollars (\$16,000.00), plus interest at the rate of 7.20% per annum from this date.

DATED this 23<sup>rd</sup> day of May, 1988.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

ROOSEVELT FEDERAL SAVINGS AND  
LOAN ASSOCIATION,

Plaintiff

v.

Case No. 87-C-83-E

HERITAGE POINT ASSOCIATES,  
debtor and mortgagor; PORT  
DUNCAN ON GRAND LAKE, LTD.,  
HERITAGE POINT PARTNERSHIP,  
LTD., ROGER LAUBACH and  
ADELINE LAUBACH, PORT DUNCAN  
REALTY COMPANY, PORT DUNCAN  
RESORT MARINA, LTD., KEN CLOSE  
d/b/a KEN'S KABINETS, and  
SLANKARD PLASTERING SERVICES,  
INC. potential lien or other  
claimants; and ROGER LAUBACH,  
THOMAS M. PRESTON, SHERRY L.  
PRESTON, ROBERT M. HOOVER, JR.,  
JAMES P. QUIGLEY AND PAUL H.  
BROGAN, guarantors,

Defendants.

FILED

MAY 20 1988

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

ORDER OF CONSENT JUDGMENT

THIS MATTER comes on for consideration upon the Joint Stipulation and Application of Roosevelt Federal Savings and Loan Association ("Roosevelt") and Port Duncan on Grand Lake, Ltd., Heritage Point Partnership, Ltd., Roger Laubach and Adeline Laubach, Port Duncan Realty Company, Port Duncan Resort Marina, Ltd., and Roger Laubach, guarantor, (hereinafter referred to specifically by name and collectively as "Laubach Defendants") for entry of judgment by consent, pursuant to and as provided for in a Settlement Agreement dated May 6, 1988, and the Court being fully advised in the premises finds and orders as follows:

1. All parties are correctly named and are properly before this Court.

2. This Court has jurisdiction of the subject matter of this matter pursuant to 28 U.S.C. § 1332(a)(1).

3. Venue is proper in the Northern District of Oklahoma in that the real property which is the subject of this action is situated here and in that the individual sued as guarantor has consented that suit may be brought against him here.

4. The real estate and premises involved in this action is more particularly described on Exhibit "A" to this Order.

5. The disputes between Roosevelt and Heritage Point Associates, Ltd. ("Heritage Point") have been resolved, in part, by way of an Order of Partial Judgment dated April 12, 1988. The Laubach Defendants have evidenced their consent to such Order, which provides, inter alia, for:

(a) Judgment in favor of Roosevelt against Heritage Point on its Promissory Note in the amount of \$4,755,000.

(b) Except as to the second mortgage of the Laubach Defendants, declaration of Roosevelt's Mortgage and Security Agreement as prior and superior to all other asserted interests in, liens on and rights to the involved real property and personal property, excluding certain boat slips referenced in paragraph 8 below, and foreclosure of and as to the same.

(c) Sale in foreclosure to determine the value of the involved real property and personal property, excluding certain boat slips referenced in paragraph 8 below, to set Roosevelt's entitlement to a deficiency judgment, which deficiency judgment in no event shall be less than \$2,900,000.

6. The disputes between Roosevelt and the Laubach Defendants have been resolved by way of a Settlement Agreement dated May 6, 1988, which is hereby adopted by the Court, and Roosevelt and the Laubach Defendants should have and are hereby granted relief as provided in that Settlement Agreement and, without limiting the Settlement Agreement's terms by any exclusion, as set forth below.

7. The counterclaims of the Laubach Defendants against Roosevelt, if any, except the separate counterclaim of defendant Port Duncan Resort Marina, Ltd. referenced in paragraph 8 below, and all defenses of the Laubach Defendants against Roosevelt, if any, heretofore and/or currently asserted should be and are hereby dismissed with prejudice. The counterclaims of the Laubach Defendants against any other parties to this action should be and are hereby dismissed without prejudice.

8. Defendant Port Duncan Resort Marina, Ltd. should be and is hereby granted judgment against Roosevelt on its separate counterclaim and as between and among Roosevelt and the Laubach Defendants, the right, title and interest of Port Duncan Resort Marina, Ltd. (and/or such other of the Laubach Defendants as is appropriate) to the specific personal property,

i.e. the boat slips, which are the subject of its separate counterclaim is adjudged to be superior to and exclusive of any other asserted right, title or interest.

9. Roosevelt's Mortgage and Security Agreement which is the subject of its Second Amended Complaint should be and is hereby adjudged to be a first, prior and superior lien upon the real estate and premises described in Exhibit "A" and upon all the personal property attendant to, located on or used in connection with that real estate and premises except as pertains to the personal property, i.e. boat slips, referenced in paragraph 8, above. That Mortgage and Security Agreement should be and is hereby adjudged to foreclose all other rights, titles or interests, including without limitation any right, title or interest of the Laubach Defendants' second mortgage and specifically including any prescriptive easement or right which has or might hereafter be claimed by defendant Port Duncan Resort Marina, Ltd. or the other Laubach Defendants to attach the personal property, i.e. boat slips, referenced in paragraph 8, above, to the real estate described in Exhibit "A."

10. Roosevelt should be and is hereby entitled as contemplated by the Order of Partial Judgment referenced in paragraph 5, above, to obtain title to the real estate and premises described in Exhibit "A" and the involved personal property, excluding that personal property, i.e. boat slips, referenced in paragraph 8 above, by consummating with Heritage Point a prior settlement agreement between those parties, which

agreement was attached to Roosevelt's Second Amended Complaint as Exhibit "E." In summary, paragraph 4.4(d) of that agreement provides that Heritage Point shall convey clear title to the resort condominium project and the realty on which the project is situated to Roosevelt or its nominee by way of execution and delivery of a deed substantially the same in form as the one attached thereto as Exhibit "D-1;" that the issuance of a commitment for an owner's title insurance policy shall be a condition to Roosevelt's acceptance of the deed; that the expense of such commitment and policy shall be borne by Roosevelt; that Heritage Point shall convey clear title to all personalty attendant to or acquired in connection with the resort condominium project (except the boat slips referenced in paragraph 8 of this Order) to Roosevelt or its nominee by way of execution and delivery of a bill of sale of personalty substantially the same in form as the one attached thereto as Exhibit "D-2;" and that pursuant to such deed and bill of sale, Roosevelt or its nominee shall have unencumbered title to and the right to immediate possession of the resort condominium project, the realty on which the project is situated and the attendant personalty and possession of the same shall be tendered and delivered to Roosevelt or its nominee simultaneously with the execution and delivery of the deed and bill of sale. The Laubach Defendants consent to the foregoing conveyance.

11. The Laubach Defendants have evidenced their consent to and, as between Roosevelt and the Laubach Defendants,

in lieu of an amount established after marshall's sale, the fair market value of the real estate and premises should be and is hereby established at \$2,900,000. Notwithstanding its Order of Partial Judgment referenced in paragraph 5 above, based on the amount previously stated, the deficiency on the judgment granted to Roosevelt, after proper offset of the fair market value of the real property, should be and is hereby established in the amount of \$1,855,000 for the purpose of determining Roger Laubach's liability on his guaranty of Heritage Point's indebtedness to Roosevelt.

12. Notwithstanding the deficiency judgment amount referenced in paragraph 11 above, pursuant to the Settlement Agreement referenced in paragraph 6 above between Roosevelt and the Laubach Defendants, Roosevelt should be and is hereby granted judgment on the Continuing Limited Guaranty against Roger Laubach, in the amount of \$363,750, together with postjudgment interest thereon as provided by law.

13. Roosevelt and the Laubach Defendants should be and are hereby required to bear their own costs and attorneys' fees.

WHEREFORE, IT IS ADJUDGED, ORDERED AND DECREED that judgment shall be entered in this matter as set forth hereinabove.

DATED this 19 day of May, 1988.

ST JAMES O. ELLISON  
United States District Judge

APPROVED:

  
\_\_\_\_\_  
John N. Hermès  
Elizabeth Scott Wood  
McAfee & Taft  
A Professional Corporation  
10th Floor, Two Leadership Square  
Oklahoma City, Oklahoma 73102

Attorneys for Plaintiff Roosevelt  
Federal Savings and Loan Association

  
\_\_\_\_\_  
Jerry Reed  
6918 South Yorktown, Suite 200  
P. O. Box 700239  
Tulsa, Oklahoma 74170-0239

Attorney for Laubach Defendants

WOOD:ROOSEVELT\_LAUBACH\_ORDER\_CON

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

VICTORY NATIONAL BANK OF NOWATA )  
and STEVEN P. RIFF, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
INTERNATIONAL SURPLUS LINES )  
INSURANCE COMPANY, )  
 )  
Defendants. )

**FILED**

MAY 19 1988

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

Case No. 87-C-680-B

ORDER OF DISMISSAL WITH PREJUDICE

Upon joint application of the parties for dismissal with prejudice, it is ordered that this action be dismissed with prejudice to refiling of same.

Dated this 19 day of May, 1988.

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

THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

MAY 19 1988

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

AMERICAN AIRLINES, INC. )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DIRECTOR OF THE SOUTHERN )  
REGIONAL SERVICE CENTER OF THE )  
IMMIGRATION AND NATURALIZATION )  
SERVICE )  
 )  
Defendant. )

Civil Action No. 87-C-960-B

ORDER DISMISSING ACTION

This matter comes before the Court upon the Application of the Plaintiff, American Airlines, Inc. The Court finds that this case is moot in that the subject matter of the action has received a Nonimmigrant Visa.

It is hereby ordered that this case is dismissed as moot.

Dated this 19 day of May, 1988

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

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

FEDERAL DEPOSIT INSURANCE  
CORPORATION,

Plaintiff,

vs.

ROBERT K. BELL ENTERPRISES,  
INC., et al.,

Defendants,

and

ROBERT K. BELL ENTERPRISES,  
INC., et al.,

Third-Party Plaintiffs,

vs.

FEDERAL DEPOSIT INSURANCE  
CORPORATION, et al.,

Third-Party Defendants.

Case No. 87-C-687-B

**FILED**

MAY 19 1988

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

ORDER OF  
DISMISSAL WITHOUT PREJUDICE

This cause came on to be heard on the Joint Stipulation for Dismissal filed by all parties entering an appearance in the above-entitled cause and the Court being fully advised,

IT IS ORDERED that all claims, counterclaims and third-party claims asserted in the above-entitled action are hereby dismissed without prejudice, each party to bear its own costs and attorneys' fees.

DATED this 19 day of May, 1988.

S/ THOMAS R. BRETT  
\_\_\_\_\_  
United States District Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 WILLIAM E. O'GROSKY; LADONA J. )  
 O'GROSKY; GARY L. CARDER; )  
 KAREN M. CARDER; COUNTY )  
 TREASURER, Tulsa County, )  
 Oklahoma; and BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

**FILED**  
MAY 19 1988  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

CIVIL ACTION NO. 87-C-639-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19 day  
of May, 1988. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by Doris L. Fransein, Assistant District  
Attorney, Tulsa County, Oklahoma; the Defendant, Karen M. Carder,  
appears not, having previously filed her Disclaimer; and the  
Defendants, William E. O'Grosky, Ladona J. O'Grosky, and Gary L.  
Carder, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendants, William E. O'Grosky and  
Ladona J. O'Grosky, were served with Summons and Complaint on  
February 11, 1988; that the Defendant, Gary L. Carder, was served

with Summons and Complaint on November 30, 1987; that the Defendant, Karen M. Carder, acknowledged receipt of Summons and Complaint on November 2, 1987; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 7, 1987; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 7, 1987.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on August 27, 1987; that the Defendant, Karen M. Carder, filed her Disclaimer herein on November 4, 1987; and that the Defendants, William E. O'Grosky, Ladona J. O'Grosky, and Gary L. Carder, 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 Five Hundred Thirty-one (531), Block Forty-one (41), TULSA HEIGHTS, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on November 26, 1984, the Defendants, William E. O'Grosky and Ladona J. O'Grosky, 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 \$33,500.00, payable in monthly installments, with interest thereon at the rate of thirteen percent (13%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, William E. O'Grosky and Ladona J. O'Grosky, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated November 26, 1984, covering the above-described property. Said mortgage was recorded on November 27, 1984, in Book 4830, Page 1231, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, William E. O'Grosky and Ladona J. O'Grosky, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, William E. O'Grosky and Ladona J. O'Grosky, are indebted to the Plaintiff in the principal sum of \$33,620.26, plus interest at the rate of 13 percent per annum from June 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

The Court further finds that the Defendant, Gary L. Carder, is in default and has no right, title, or interest in the subject real property.

The Court further finds that the Defendant, Karen M. Carder, disclaims any 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 Defendants, William E. O'Grosky and Ladona J. O'Grosky, in the principal sum of \$33,620.26, plus interest at the rate of 13 percent per annum from June 1, 1986 until judgment, plus interest thereafter at the current legal rate of 7.20 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, Gary L. Carder, Karen M. Carder, and County Treasurer 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 judgment rendered herein in favor of the Plaintiff.

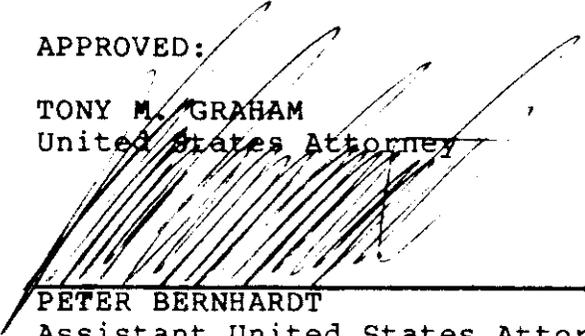
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT  
Assistant United States Attorney

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

PB/css

**FILED**

**MAY 18 1988**

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

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

NATIONAL CANADA CORPORATION, )  
formerly MBC Financial )  
Services Corporation, a )  
Delaware corporation; )

Plaintiff, )

vs. )

Case No. 87-C-1054B

FORTUNA ENERGY CORPORATION, )  
an Oklahoma corporation, and )  
MARTIN A. VAUGHAN, an )  
individual, and MEC, INC., )  
an Oklahoma corporation, )

Defendants. )

ORDER SETTING ASIDE DEFAULTS  
AND DISMISSING ACTION

Pursuant to the Plaintiff's Request to Set Aside Defaults and to Dismiss Action filed by Plaintiff in the above styled action and Rule 41 of the Federal Rules of Civil Procedure, the Defaults entered herein by the Court Clerk on February 25, 1988, are hereby set aside and the above styled action is dismissed without prejudice, each party to bear its own costs, expenses and attorneys' fees.

DATED this 18<sup>th</sup> day of May, 1988.

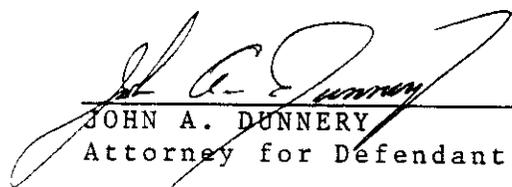
  
DISTRICT COURT JUDGE

S2821P08



APPROVED AS TO FORM:

  
\_\_\_\_\_  
RONALD W. HORGAN  
Attorney for Plaintiff

  
\_\_\_\_\_  
JOHN A. DUNNERY  
Attorney for Defendant

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

BARBARA C. THERKILDSEN, as Personal )  
Representative of William C. Barrows, )  
Jr., Deceased, )

Plaintiff, )

v. )

no. 87-C-852-B

ELLSWORTH PAVING & SEALING, INC., )  
an Oklahoma corporation, and )  
DALE EDWARD CLARK, an individual, )

Defendants, )

STROUD OIL RECLAIMING COMPANY, INC., )  
an Oklahoma corporation, and KEVIN )  
ELLSWORTH, an individual, )

Additional Defendants. )

**FILED**

MAY 18 1988

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

O R D E R

This matter comes before the Court on Defendant Ellsworth Paving and Sealing, Inc. and Dale Edward Clark's motion for summary judgment against Kieran Elizabeth Barrows and Defendant Stroud Oil Reclaiming Company, Inc.'s ("SORCO") motion to dismiss claims against it. At the status conference held May 12, 1988, SORCO's motion to dismiss was converted into a motion for summary judgment. Counsel advised all discovery and sanction motions are moot or satisfied.

William C. Barrows died as a result of a traffic accident. Defendant Dale Edward Clark drove the truck involved in the accident. At the time of the accident it is alleged Defendant Clark was acting within the scope and course of his employment for Defendant Ellsworth Paving and Sealing, Inc. It is alleged

SORCO owned the truck. Plaintiff, Barbara C. Therkildsen, personal representative of William C. Barrows, Jr., Deceased, brought this wrongful death action against Defendants Clark, Ellsworth and SORCO.

The Court grants Defendant SORCO's motion. Negligence may not be imputed simply by mere ownership of the truck. Gilbert v. Walker, 356 P.2d 346 (Okla. 1960). Further, there is no evidence before the Court that SORCO knew or should have known of any defect in the power steering or that it negligently maintained the truck. Bush v. Middleton, 340 P.2d 474 (Okla. 1959). The motion for summary judgment is sustained.

Also before the Court is Defendants' motion for summary judgment against claims of Kieran Elizabeth Barrows. Plaintiff names Kieran Elizabeth Barrows as a survivor entitled to recovery for the death of William C. Barrows, Jr. At the time of the death of William C. Barrows, Kieran was in the legal custody of and adoption proceedings were under way by William C. Barrows. The Barrows had been planning the adoption for two years and had just received consent to adopt three weeks prior to William C. Barrows' death. Defendants argue the adoption was not finalized until after the death, and there is no evidence of a contract to establish an equitable adoption under Byers v. Byers, 618 P.2d 930 (Okla. 1980). Although whether William C. Barrows contracted to adopt Kieran is an issue of fact, Clemons v. Clemons, 193 Okla. 412, 145 P.2d 928 (Okla. 1943), there are simply no facts before the Court that there was a contract.

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

The nonmovant must set forth specific facts with supporting material showing that there is a genuine issue for trial. Windon Third Oil and Gas v. F.D.I.C., 805 F.2d 342 (10th Cir. 1986) citing, Celotex Corporation v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The motion for summary judgment of Defendant against the claim of Kieran Elizabeth Barrows, a minor, is therefore sustained because there is no evidence in the record that she was a lawful child of William C. Barrows, Deceased, at the time of his death.

IT IS SO ORDERED, this 18<sup>th</sup> day of May, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

TANDATA CORPORATION and )  
MICHAEL KEITH GRAY, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
ANN McLAUGHLIN, Secretary )  
of Labor, and BENJAMIN )  
BUSTOS, Certifying Officer, )  
U.S. Department of Labor, )  
 )  
Defendants. )

No. 87-C-556-B ✓

**FILED**

MAY 18 1988

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

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This case is an appeal from the decision of an immigration naturalization Administrative Law Judge, rendered on December 16, 1986, that affirmed the determination of a certification officer of the United States Department of Labor denying the application of Tandata Corporation ("Tandata") for an alien labor certification on behalf of Michael Keith Gray ("Gray"), a citizen of England. The determination was pursuant to §212(a)(14) of the Immigration and Naturalization Act ("INA"), 8 U.S.C. §1182(a)(14). The case is reviewed on the administrative record. After consideration of the administrative record, the applicable legal authority, and the arguments of counsel, and the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Plaintiffs, Tandata and Gray, are residents of Tulsa County, Oklahoma, and the Northern District of Oklahoma.

2. The parties agree that the following are facts herein and the Court so finds:

On September 12, 1985, the employer, Tandata Corporation, filed an application for Alien Employment Certification on behalf of Michael Keith Gray as a Security Aide and Driver. AF, 278-279.<sup>1</sup> The business of the company is the sale of computer systems. The alien's job duties required him "[t]o provide security and courier services including the driving of vehicles for conveyance of company executives." Id. Further, the employer required, inter alia, three months of experience in the job offered and "Police training in security and firearms or professional equivalent" and the ability to render first aid medical treatment. Id.

The Certifying Officer issued a Notice of Findings ("NOF") on December 18, 1985 proposing to deny the certification on the ground that the employer violated 20 C.F.R. § 656.21(b)(7) in that a number of qualified U. S. workers were rejected for other than job related reasons. The employer was advised to offer the job to each of these workers by certified mail, return receipt requested. AF, 64. The NOF also noted that the

<sup>1</sup> "AF" references are to the Appeal File submitted to the District Court in this case. The number refers to the page number in the file.

job opportunity was a Schedule B occupation<sup>2</sup> and that no waiver had been requested. However, the Certifying Officer also noted that since no shortage of qualified U.S. workers existed in the local area, no waiver could have been granted by the Department. Id.

The employer submitted a rebuttal statement on February 11, 1986 which was considered by the Department. It contended, inter alia, that all U.S. workers were rejected for lawful job related reasons due primarily to their lack of courier experience and that the occupation was not a Schedule B occupation requiring a waiver.

The Certifying Officer issued a Final Determination on May 2, 1986 denying the labor certification. AF, 50. He found that the employer remained in noncompliance with the applicable regulatory provisions. He found:

DENIAL: The employer did not comply with the instructions contained in NOF dated December 18, 1985 by offering the job opportunity to those applicants who clearly established that they met or exceeded the listed requirements or by requesting a "Schedule B" waiver. The employer has failed to comply with the instructions contained in the December 18, 1985 NOF, nor has it successfully rebutted those findings; therefore, this application is denied.

2 If a job opportunity is a Schedule B occupation, issuance of a labor certification is precluded unless a waiver can be obtained. See 20 C.F.R. §656.23(b).

Plaintiff thereupon sought review of the denial of labor certification before a Department of Labor Administrative Law Judge ("ALJ") pursuant to 20 C.F.R. §656.26. This review was limited to the information before the Certifying Officer. 20 C.F.R. §656.26(e).

Upon review, the ALJ found that the offered position should be classified as a Schedule B occupation. Further, he noted:

Inasmuch as the necessity for courier duties and experience were not substantiated under the applicable regulations, the lack of such experience could not form a lawful, job-related reason for rejection of otherwise qualified U.S. applicants. Moreover, since qualified applicants responded during the recruitment period, no waiver of "Schedule B" requirements can be granted.

AF, 5. He then affirmed the Certifying Officer's denial of labor certification.

On July 13, 1987, the employer filed a complaint in this Court seeking administrative review and declaratory and injunctive relief.

3. The certifying officer's review of the qualifications of the available U.S. workers who applied for the employer's position caused him to conclude that there were numerous domestic workers whose resumes and/or applications met and exceeded the listed requirement for training and experience. AF, 64. The employer's failure to properly "document that they were rejected

solely for lawful job related reasons" in accordance with 20 C.F.R. §656.21(b)(7) supports the denial of the labor certification herein.

4. The Court concludes that the denial determination of the certification officer of the Department of Labor and the affirmance of the Administrative Law Judge is supported by relevant factual information in the record and could not be characterized as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

#### CONCLUSIONS OF LAW

1. Federal jurisdiction herein is granted pursuant to 28 U.S.C. §1331 and 8 U.S.C. §1182(a)(14) as the action is based upon a federal question.

2. Any Finding of Fact above which might be properly characterized a Conclusion of Law is set forth herein.

3. The scope of review of a denial of alien labor certification is limited to a determination of whether the decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." The reviewing court is to determine "whether there has been a clear error of judgment by the agency and whether the agency action was based on a consideration of relevant factors." 5 U.S.C. §706(2)(A); Kawn v. Donovan, 777 F.2d 479 (9th Cir. 1985); Acupuncture Center of Washington v. Dunlop, 543 F.2d 852, 859 (D.C. Cir.), cert. denied sub nom. Acupuncture Center of Washington v. Usery, 429 U.S. 818 (1976), citing Pesikoff v. Secretary of Labor, 501 F.2d 757, 761

n. 5 (D.C. Cir.), cert denied, 419 U.S. 1038 (1974); Seo v. U.S. Department of Labor, 523 F.2d 10, 12 (9th Cir. 1975), citing Secretary of Labor v. Farino, 490 F.2d 885, 889-890 (7th Cir. 1973).

4. Judicial review is confined to an examination of the administrative record. Doraiswamy v. Secretary of Labor, 555 F.2d 832, 841 (D.C.Cir. 1976), citing Camp v. Pitts, 411 U.S. 138, 141 (1973); Acupuncture Center, 543 F.2d at 859.

5. Section 214(a)(14) provides in pertinent part for the exclusion of aliens seeking permanent employment unless:

"[T]he Secretary of Labor has determined ... that (A) there are not sufficient workers who are able, willing, qualified ... and available at the time of application for a visa ... and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed."

Section 212(a)(14) of the INA was enacted to exclude aliens from competing for jobs American workers could fill and protect the American labor market from an influx of both skilled and unskilled foreign labor. Wang v. INS, 602 F.2d 211, 213 (9th Cir. 1979); Cheung v. District Director, INS, 641 F.2d 666, 669 (9th Cir. 1981); Production Tool Corporation v. Employment and Training Administration, 688 F.2d 1161, 1168 (7th Cir. 1982). Such authority supports that the burden of obtaining an alien labor certification is on the employer and alien who seeks entry for permanent employment. 8 U.S.C. §1361; see also, 20 C.F.R. §656.2(b).

6. 20 C.F.R. 656.24(b)(2)(ii) states:

"[t]he certifying officer shall consider a U.S. worker able and qualified for the job opportunity if the worker by education, training, experience or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed . . ."

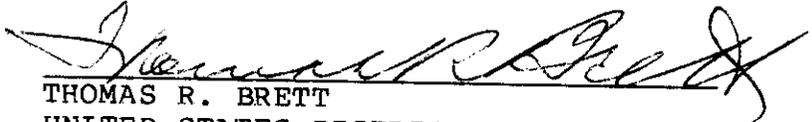
7. The conclusion of the certifying officer of the Secretary of Labor and the Administrative Law Judge that the employer failed to properly document that available domestic workers were rejected solely for lawful job-related reasons in accordance with 20 C.F.R. §656.21(b)(7) is supported by the record and is not an arbitrary and capricious finding.

8. The obligation of the Secretary is to locate a class of workers, who, while possibly not meeting the prospective employer's personalized job description, do provide the employer with the potential for getting the job accomplished. Acupuncture Center of Washington v. Dunlop, 543 F.2d 852, 860 (D.C.Cir.), cert. denied sub nom. Acupuncture Center of Washington v. Usery, 429 U.S. 818 (1976); Pesikoff v. Secretary of Labor, 501 F.2d 757, 762 (D.C.Cir.), cert. denied, 419 U.S. 1038 (1974); and Doraiswamy v. Secretary of Labor, 555 F.2d 832, 846-47 (D.C.Cir. 1976).

9. The Plaintiffs, Tandata and Gray, did not adequately document the business necessity of the courier experience requirement. 20 C.F.R. §656.21(b)(2)(ii); Kwan v. Donovan, 777 F.2d 479 (9th Cir. 1985); and Oriental Rug Importers, Ltd. v. Employment and Training Administration, 696 F.2d 47 (1982).

10. In keeping with the Findings of Fact and Conclusions of Law expressed herein, a separate Judgment will be entered this date affirming the administrative law decision rendered on December 16, 1986, by Administrative Law Judge Victor J. Chao affirming the determination of the certifying officer of the United States Department of Labor denying Tandata's application for alien labor certification on behalf of Michael Keith Gray.

DATED this 18<sup>th</sup> day of May, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**FILED**

MAY 17 1988

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

MAIL MART, INC., a Texas corporation,  
  
Plaintiff,  
  
v.  
  
REALVEST, INC., now known as  
Fracorp, Inc., an Oklahoma corporation,  
  
Defendant.

Case No. 87C-878E

ORDER

It appearing to the Court that the above entitled action has been fully settled, adjusted and compromised, and based on stipulations; therefore,

**IT IS ORDERED AND ADJUDGED** that the above entitled action be, and it is hereby, dismissed, without cost to either party and with prejudice to any and all causes of action which have been filed by the Plaintiff or the Defendant in the above styled action.

Dated this 17<sup>th</sup> day of May, 1988.

**S/ JAMES O. ELLISON**

UNITED STATES DISTRICT JUDGE

NAIFEH & WOSKA  
A Professional Corporation

By: Margaret A. Gatchell

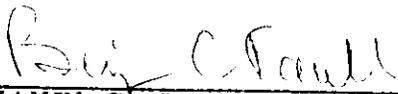
A. DANIEL WOSKA - OBA #9900  
MARGARET A. GATCHELL - OBA #12302

100 Colcord Building  
15 N. Robinson  
Oklahoma City, Oklahoma 73102  
(405) 235-2404

ATTORNEYS FOR MAIL MART, INC.

This Order dismissing the above-entitled action is approved  
by me this 14 day of May, 1988.

By:

  
\_\_\_\_\_

BENJAMIN C. FAULKNER  
OBA No. 2845

English, Jones & Faulkner  
1700 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74119

ATTORNEYS FOR REALVEST, INC., NOW  
KNOWN AS FRACORP, INC.

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

FILED

MAY 18 1988

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

BRUCE W. SCHAFFER, II, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RAY TORABY, TIM HALLBAKER, )  
 and PARVIZ KAHOSROWYAR, )  
 )  
 Defendants. )

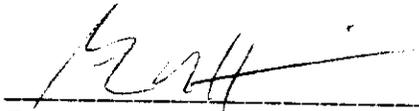
Case No. 88-C-326-B

NOTICE OF DISMISSAL WITH PREJUDICE

COMES NOW Plaintiff and dismisses the above-styled and  
numbered cause with prejudice to any future action.

FRASIER & FRASIER

By:

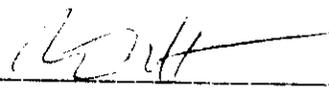
  
\_\_\_\_\_  
Steven R. Hickman OBA#4172  
1700 S.W. Blvd., Suite 100  
P. O. Box 799  
Tulsa, OK 74101  
918/584-4724

CERTIFICATE OF MAILING

I hereby certify that on this 17<sup>th</sup> day of May, 1988, I mailed a true and correct copy of the above and foregoing instrument to:

Richard Davis  
Attorney at Law  
502 W. 6th St.  
Tulsa, OK 74119

with the correct and proper postage thereon fully prepaid.

  
\_\_\_\_\_  
Steven R. Hickman

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

**F I L E D**

**MAY 18 1988**

NORTH CENTRAL OIL )  
CORPORATION, a Texas )  
corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
WILLIAM J. PITTS )  
ENTERPRISES, INC., )  
an Illinois corporation, )  
 )  
Defendant. )

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

Case No. 87-C-686-B

JOURNAL ENTRY OF JUDGMENT

On this 12th day of May, 1988, the Motion for Default Judgment of the plaintiff, North Central Oil Corporation ("North Central"), came on for hearing before this Court. Plaintiff, North Central, appeared by its counsel of record, Kelley C. Callahan of Crowe & Dunlevy, 1800 Mid-America Tower, 20 North Broadway, Oklahoma City, Oklahoma 73102, and Defendant William J. Pitts Enterprises, Inc., ("Pitts, Inc."), did not appear, despite notice of this hearing having been mailed via certified mail and regular mail on April 21, 1988, to the address of said defendant's registered agent, as listed in the records of the Illinois Secretary of State.

Upon reviewing the file, North Central's Brief submitted in support of its Motion for Default Judgment, and the presentation of plaintiff's counsel at the May 12, 1988 hearing, the Court finds as follows:

1. North Central filed this action on August 19, 1987. The designated agent for William J. Pitts Enterprises, Inc. (as listed in the records of the Illinois Secretary of State), John J. Harte, was served with summons and a copy of the Complaint, by certified mail, return receipt requested and personally served with summons and a copy of the First Amended Complaint, but William J. Pitts Enterprises, Inc. did not answer or otherwise respond to either pleading within the period required by the Federal Rules of Civil Procedure.

2. The Clerk of this Court has entered default against Pitts, Inc. pursuant to Fed. R. Civ. Pro. 55(a).

3. Pitts, Inc., owns non-operating working interests in certain oil and gas leases and/or oil and gas interests covering the following wells located in Pawnee County, Oklahoma, more particularly described as follows:

(a) Stillwater National Bank and Trust Oil Unit #1, Well #1

WELL LOCATION: Section 31, Township 22 North,  
Range 4 East, Pawnee County,  
Oklahoma

(b) Randall C. Osborn #1 Well

WELL LOCATION: Section 28, Township 22 North,  
Range 5 East, Pawnee County,  
Oklahoma

(c) Randall C. Osborn #2 Well

WELL LOCATION: Section 28, Township 22 North,  
Range 5 East, Pawnee County,  
Oklahoma

(d) Lynn Osborn #1 Well

WELL LOCATION: Section 33, Township 22 North,  
Range 5 East, Pawnee County,  
Oklahoma

(e) Charles Ripley, Jr., #1 Well

WELL LOCATION: Section 31, Township 22 North,  
Range 4 East, Pawnee County,  
Oklahoma

(f) No. 1 L. Perrine: Salt Water Disposal Well

WELL LOCATION: Section 28, Township 22 North,  
Range 5 East, Pawnee County,  
Oklahoma

4. That pursuant to Oklahoma law and the Operating Agreement to which North Central and Pitts, Inc., are parties, North Central has a lien upon the interests owned by William J. Pitts Enterprises, Inc., in the above-described leasehold estates and/or wells, the oil and gas produced therefrom, the proceeds from the sale of oil and gas produced therefrom, and upon Pitts, Inc.'s interest in the material and equipment upon the subject oil and gas leasehold estates and/or wells.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:  
Plaintiff North Central Oil Corporation is hereby granted a money judgment against Defendant William J. Pitts

Enterprises, Inc., in the amount of \$287,827.97, plus pre-judgement interest thereon in the total amount of \$73,132.30. Post-judgment interest on this sum is to be computed at the contract rate of twelve percent (12%) per annum from the date of this judgment. Plaintiff North Central Oil Corporation is further granted judgment for its costs in the amount of \$120 and attorneys' fees in the amount of \$6,483.50.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Operator's Lien of North Central on the non-operating working interests of William J. Pitts, Inc., in the leasehold estates and/or wells described in paragraph 3 above, the oil and gas produced therefrom, the proceeds from the sale of oil and gas produced therefrom, and upon William J. Pitts, Inc.'s interest in the material and equipment upon the subject leasehold estates and/or wells, be foreclosed and all of William J. Pitts, Inc.'s right, title and interest in and to oil, gas and mineral leases covering said lands be sold according to law and the proceeds generated thereby applied to the payment of the judgment entered herein against Defendant, William J. Pitts Enterprises, Inc., and the residue, if any, be held in the registry of the Court to await its further order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant William J. Pitts Enterprises, Inc., and all persons claiming under or through said defendant since the

filing of Plaintiff North Central Oil Corporation's Operator's Lien Statement (as amended) with the County Clerk of Pawnee County, Oklahoma, be, and they hereby are, forever barred and foreclosed of and from any and all and every lien upon, right, title, interest, estate and equity in or to the non-operating working interests of defendant William J. Pitts Enterprises, Inc. in the leasehold estates and/or wells described in paragraph 3 above, the equipment, improvements and fixtures located thereon, the production of oil and gas therefrom and the proceeds derived from the sale of any such oil and gas.

DATED this 18<sup>th</sup> day of May, 1988.

**S/ THOMAS R. BRETT**

---

THOMAS R. BRETT, UNITED STATES  
DISTRICT JUDGE

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

**F I L E D**

**MAY 18 1988**

RANDY ARNOLD, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JACK MCKENZIE, individually, )  
and officially as Chief of )  
Police, City of Sapulpa; )  
ROGER MINER, individually as )  
the City Manager, City of )  
Sapulpa; CITY OF SAPULPA; and )  
LANTZ McCLAIN, individually as )  
District Attorney of Creek )  
County; BOARD OF COUNTY COM- )  
MISSIONERS, COUNTY OF CREEK; )  
BOARD OF COMMISSIONERS, )  
COUNTY OF OKFUSKEE, )  
 )  
Defendants. )

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

No. 87-C-955-B

O R D E R

This matter comes before the Court on the following motions: Defendant McClain's Motion to Dismiss for Failure to State a Claim pursuant to Fed.R.Civ.P. 12(b)(6); Defendants Board of County Commissioners of Creek and Okfuskee Counties, Oklahoma (Board of County Commissioners) Motion to Dismiss for Failure to State a Claim, Fed.R.Civ.P. 12(b)(6), and Motion for Attorney Fees, 42 U.S.C. §1988.

This suit arises from Plaintiff's resignation from the Sapulpa Police Department at the insistence of Defendant District Attorney McClain. Plaintiff alleges that his civil rights were violated by the Defendants in threatening to file perjury charges against him unless he resigned from his employment as a Sapulpa police officer.

Defendant McClain's Motion to Dismiss the Amended Complaint pursuant to 12(b)(6) contends that the alleged actions by Defendant McClain fall within the protection of prosecutorial immunity and should be dismissed. Insofar as the Defendant's motion only addresses the matters alleged in the Amended Complaint, the Court cannot consider documents or oral evidence outside the pleadings. In order to prevail on a motion to dismiss, Defendants must establish that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Haines v. Kerner, 404 U.S. 519 (1972). In deciding the motion, the Court must assume the allegations contained in the complaint are true. Gardner v. Toilet Goods Ass'n, 387 U.S. 167 (1957). See also, Martinez v. Winner, 771 F.2d 424 (10th Cir. 1985).

The Court finds that the Plaintiff has attempted in his Amended Complaint to allege actions and conduct of Defendant District Attorney McClain which are not within the scope of his district attorney duties. The Court will therefore overrule the Motion to Dismiss as the Court needs a fuller factual record developed concerning the purported perjury testimony of the Plaintiff Arnold and the actions of District Attorney McClain.

Defendant McClain has also moved to dismiss Plaintiff's pendent state claims for lack of jurisdiction. Since the Court has denied Defendant McClain's motion to dismiss the federal causes of action, it will exercise jurisdiction over the pendent state claims. However, in regard to Plaintiff's claim for breach

of contract, the Court finds that the Plaintiff has failed to state a claim. Plaintiff makes no allegation that Defendant McClain was a party to any contract or collective bargaining agreement between the City of Sapulpa and the Fraternal Order of Police. Defendant McClain cannot be held liable for breach of a contract to which he is not a party. Plaintiff's pendent state claim for breach of contract is dismissed.

The Court now considers Defendants Board of County Commissioners' Motion to Dismiss for failure to state a claim.

Municipalities and other local governmental units cannot be sued on a respondeat superior theory for the unconstitutional acts of their employees. Monell v. Department of Social Services, 436 U.S. 658 (1978). A municipality or other local government unit, however, may be sued for "constitutional deprivations visited pursuant to governmental custom" as well as deprivations visited pursuant to a "policy, statement, ordinance, regulation, or decision officially adopted and promulgated by the body's officers." Id. at 690-91.

Applying the law and facts to the standard for a motion for failure to state a claim, Defendants' motion is granted. Plaintiff has not alleged that the Boards of Commissioners adopted any policy statement, ordinance or otherwise. In fact, Plaintiff states, ". . . it is not alleged the individual Commissioners of the BOARD OF COMMISSIONERS of the respective counties did anything wrong, nor is it alleged, as defendants point out, that the respective county governments did anything

wrong by acts or omissions." (See Plaintiff's Response Brief, dated December 4, 1987, pages 6-7). The Court holds, therefore, that Plaintiff has failed to state a claim. Defendants' Boards of County Commissioners' motions are granted.

Defendants Boards of County Commissioners also move for an award of attorneys fees under 42 U.S.C. §1988 arguing the Plaintiff's complaint was clearly frivolous when filed. Defendants also seek an award under Fed.R.Civ.P. 11 for sanctions against the Plaintiff's attorney.

The Court does not find the complaint as alleged meets the stringent requirements of 42 U.S.C. §1988 to merit an award of attorneys fees, and orders that the Plaintiff and Defendant Boards of County Commissioners will be responsible for their own respective attorneys fees.

Defendants' motion for Rule 11 sanctions and the Plaintiff's motion for Rule 11 sanctions are denied.

The parties should adhere to the following schedule in this case:

Discovery cut-off - June 13, 1988;

Motions for summary judgment - June 20, 1988;

Responses to motions - June 28, 1988;

Replies - July 5, 1988.

IT IS SO ORDERED, this 18<sup>th</sup> day of May, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

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

MAY 18 1993

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

THE FOURTH NATIONAL BANK OF )  
TULSA, )  
 )  
Plaintiff, )  
 )  
v. ) No. 87-C-717-B  
 )  
OLD STONE BANK, a federal )  
savings bank, )  
 )  
Defendant. )

O R D E R

Before the Court for consideration is the Defendant Old Stone Bank's Motion to Dismiss the Amended Complaint pursuant to Fed.R.Civ.P. 12(b)(6). The Court heard oral arguments on the pending motion and finds as follows:

As discussed with the parties at the hearing on the pending motion, the Court will disregard all matters outside the pleadings and treat the instant motion as one to dismiss pursuant to Fed.R.Civ.P. 12(b)(6) instead of converting the motion to one for summary judgment pursuant to Rule 56.

This dispute arises out of a construction loan made by the Plaintiff, The Fourth National Bank of Tulsa ("Fourth National"), to its borrower, Bridgeport III Associates Limited Partnership ("Bridgeport III") for the construction of an office building in Tulsa, Oklahoma. Plaintiff alleges that the Defendant Old Stone Bank ("Old Stone") agreed to provide a standby loan commitment to lend Bridgeport III \$4,000,000.00 at the completion of the construction in the event Bridgeport III was unable to secure

permanent financing to pay off the construction loan. Plaintiff by its Amended Complaint asserts a number of counts against Old Stone based upon the alleged anticipatory repudiation and failure to provide the financing called for by the standby agreement. Fourth National brings the Amended Complaint against the Defendant as the assignee of claims of Omega Investments, Inc. ("Omega"), P. Thomas Mann ("Mann") and Bridgeport III Associates Limited Partnership ("Bridgeport III").

Plaintiff alleges that it gave Old Stone proper notice through its assignor that it intended to draw down funds from the standby commitment. The Plaintiff further alleges that it could have performed the conditions required under the standby agreement had the Defendant not cancelled the contract before the conditions were due.

Plaintiff's Amended Complaint states eleven separate counts as follows: Count I - breach of contract; Count II - breach of contract; Count III - breach of contract; Count IV - breach of contract; Count V - promissory estoppel; Count VI - promissory estoppel; Count VII - promissory estoppel; Count VIII - breach of covenant of good faith and fair dealing; Count IX - tortious interference with contractual relations; Count X - tortious interference with contractual relations; and Count XI - tortious interference with contractual relations. Defendant has moved to dismiss each of the Plaintiff's causes of action under Rule 12(b)(6) for failure to state a claim.

The standard for evaluating a motion to dismiss is well known. To prevail on a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, defendant must establish that plaintiff can prove no set of facts in support of his or her claim that would entitle plaintiff to relief. Haines v. Kerner, 404 U.S. 519 (1972). All factual allegations should be construed to the benefit of the pleader. Gardner v. Toilet Goods Association, 387 U.S. 167 (1967); Lee v. Derryberry, 466 F.Supp. 30 (W.D.Okl. 1978).

In opposing the breach of contract claims, the Defendant asserts that the Plaintiff's own allegations show that the developer Bridgeport III did not meet and could not have met "a condition precedent to the Defendant's obligation to fund the standby commitment; that the project had more than a certain percentage of the project under lease." Defendant urges that paragraphs 19 through 23 of the Amended Complaint show without question that the Plaintiff would have been unable to meet the condition precedent to Old Stone's obligation to fund. Succinctly stated, the Defendant urges that Bridgeport III could only have met the lease-up condition of the standby agreement if the commitment were first funded. The Amended Complaint states:

"19. After renewing the standby commitment, Mann, through First Oklahoma, continued to seek permanent financing for the Project.

"20. Few lenders would consider making a loan in Oklahoma's troubled economic climate. Mann attempted to improve the economic viability of the project by negotiating an arrangement with a potential tenant for the Project, Fenix & Scisson, Inc. ("F&S").

"21. F&S was interested in entering into a five-year lease for over 15,000 square feet of space in Bridgeport III, contingent on Bridgeport III's obtaining financing to purchase an office building then owned by F&S. The F&S office building was an attractive investment opportunity to Bridgeport III. It was capable of generating sufficient rental income to pay the costs of acquiring and operating the property and was expected to appreciate in value.

"22. Consummation of a lease with F&S was important if Bridgeport III were to improve its chances of obtaining permanent financing. The lease was also important to Bridgeport III's ability to meet the formal conditions to the standby commitment from Old Stone. Bridgeport III could only draw down funds under its standby commitment if 30% of the building were leased to independent tenants, under leases providing for pro forma rent of at least sixteen dollars a square foot. With F&S as tenants, Bridgeport III could have met and indeed exceeded the requirement that 30% of the building be leased at the required pro forma rental rate. This was communicated to Old Stone in March 1986.

"23. Fourth National was willing to finance the purchase of the F&S building to make it possible for Bridgeport III to enter into a lease with F&S. However, Fourth National could not exceed its lawful lending limits, and so its construction loan had to be repaid before it could extend \$1.8 million additional credit to Bridgeport III. Unless Old Stone honored its standby commitment, or some other permanent financing were found, Bridgeport III could not obtain full financing from Fourth National for the purchase of the F&S building (and thus could not induce F&S to lease space in the Project)."

Plaintiff, in the oral argument on the pending motion, relied on paragraph 27 of the Amended Complaint for the proposition that the Defendant's conduct constituted an anticipatory repudiation of the contract rendering the Plaintiff's obligation to perform the condition precedent unnecessary.

Defendant counters by stating that the alleged repudiation would only relieve the Plaintiff's obligation to fulfill the condition precedent if such repudiation "contributes materially" to the nonperformance. See, Restatement (Second) of Contracts §255 (1979). The Court finds the Defendant's position persuasive and will ultimately require the Plaintiff to prove that (1) Bridgeport III could have satisfied the condition precedent; or (2) that the Defendant's alleged repudiation contributed "materially" to the nonperformance and therefore excused Bridgeport's performance.

Paragraph 27 of the Amended Complaint alleges that the Plaintiff would have been ready, willing and able to perform the material conditions of the standby commitment and to close its loan from Old Stone on or before July 15, 1986. While perhaps inartfully drafted, the Court does not find the Plaintiff's Amended Complaint as logically foreclosing recovery on the breach of contract claims. Paragraph 23 of the Amended Complaint states: "... Unless Old Stone honored its standby commitment, or some other permanent financing were found, Bridgeport III could not obtain full financing from Fourth National..." This allegation, if taken as true, leaves open the possibility that Bridgeport III could have obtained alternative financing which would have satisfied any conditions in the standby loan commitment agreement. Plaintiff's counsel represented at oral argument that other permanent financing was in fact obtained for the purchase of the tenant's building and that F&S ultimately

became a tenant in the Bridgeport III project. Counsel did not state, however, that such financing and lease of the subject property occurred before the July 15, 1986 deadline for fulfilling the condition precedent to loan funding.

The Court concludes that the Defendant's motion to dismiss the breach of contract claims on the issue of failure to fulfill the condition precedent is overruled.

Defendant next seeks to dismiss the contract causes of action on the basis that the Plaintiff failed to give Old Stone sufficient notice of the exercise of the funding option. The thrust of this argument is beyond the scope of the Court's examination of the pleadings. A determination of the notice issue would require an interpretation of matters outside the pleadings such as the standby loan commitment agreement, the various letters between the parties, and affidavits of the actors involved. Pursuant to the parties' request, the Court is not considering matters outside the pleadings and will therefore overrule the notice argument urged by the Defendant.

Defendant seeks dismissal of Count V, VI and VII which allege a cause of action for promissory estoppel. Defendant urges that the promissory estoppel concept is only applicable where an agreement fails for lack of consideration and such is not the case in the instant dispute. The Court finds that the Plaintiff's fifth, sixth and seventh causes of action are merely alternative pleadings and are proper under Fed.R.Civ.P. 8(a) which provides in pertinent part:

"... Relief in the alternative or of several different types may be demanded."

Rule 8(e)(2) provides:

"... A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal, equitable, or maritime grounds..."

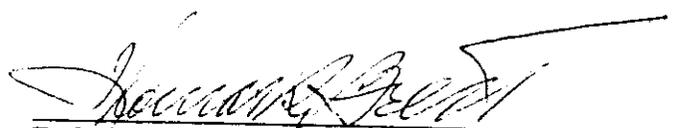
The motion to dismiss Plaintiff's fifth, sixth and seventh causes of action is overruled.

Defendant next moves to dismiss the Plaintiff's eighth cause of action which alleges a breach of the covenant of good faith and fair dealing. Plaintiff alleges that (1) the Defendant breached its obligation to deal in good faith and fair dealing by failing to inform the Plaintiff of its interpretation of the notice requirement of the commitment; (2) that the Defendant lulled the Plaintiff into a belief that any reasonable notice prior to the expiration would be acceptable; (3) that the Defendant failed to fully inform the Defendant as to the reason for not honoring the commitment; and (4) by failing to return telephone calls and refusing to meet with Plaintiff Mann in early June 1986, to discuss the loan commitment. The Plaintiff urges in its response brief that Oklahoma law as articulated in Hall v. Farmers Insurance Exchange, 713 P.2d 1027 (Okla. 1985), engrafts upon an express provision of a contract the covenant of good faith and fair dealing. The Court considers the Plaintiff's eighth cause of action of dubious merit, but must take Plaintiff's allegations as true and overrule the motion to dismiss absent discovery or any evidence of the Defendant's

conduct. However, the Court will entertain a motion for summary judgment on this cause of action at a later date under the more rigid requirements of Fed.R.Civ.P. 56.

Lastly, Defendant seeks to dismiss Counts IX and XI which allege claims for tortious interference with contractual relations. Defendant moves to dismiss the two tort causes of action on the basis they are unassignable by statute, citing 12 Okl.St. Ann. §2017D (1981). The Court agrees. Counts IX and XI seek to recover for tort claims based upon assignment of those claims from others to Plaintiff, Fourth National Bank. The Plaintiff has properly alleged a claim for tortious interference with contractual relations on its own behalf in Count X as no assignment is claimed in the Amended Complaint. Under the standard previously articulated, the Court grants Plaintiff's motion to dismiss Counts IX and XI of the Plaintiff's Amended Complaint.

IT IS SO ORDERED, this 18<sup>th</sup> day of April, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

TANDATA CORPORATION and )  
MICHAEL KEITH GRAY, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
ANN McLAUGHLIN, Secretary )  
of Labor, and BENJAMIN )  
BUSTOS, Certifying Officer, )  
U.S. Department of Labor, )  
 )  
Defendants. )

No. 87-C-556-B

**FILED**

MAY 18 1988

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

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the Defendants, Ann McLaughlin, Secretary of Labor, and Benjamin Bustos, Certifying Officer, U. S. Department of Labor, and against the Plaintiffs, Tandata Corporation and Michael Keith Gray, and costs are hereby assessed against the Plaintiffs. The parties are to pay their own respective attorney fees. The Court hereby affirms the administrative law decision rendered on December 16, 1986, by Victor J. Chao which affirmed the determination of the certifying officer of the United States Department of Labor denying Tandata's application for an alien labor certification on behalf of Michael Keith Gray, Plaintiffs herein.

DATED this 19<sup>th</sup> day of May, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**MAY 17 1988**

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

LEE ELLER and HELEN ELLER,  
husband and wife,  
  
Plaintiffs,

v.

FEDERAL DEPOSIT INSURANCE  
CORPORATION, a District of  
Columbia corporation,  
  
Defendant.

No. 87-C-1070C

DISMISSAL WITHOUT PREJUDICE

COME NOW the Plaintiffs, LEE ELLER and HELEN ELLER,  
by and through their attorney of record, James R. Hicks, of  
Morrel & West, Inc., and hereby dismiss without prejudice their  
action against the Defendant, Federal Deposit Insurance  
Corporation.

MORREL & WEST, INC.

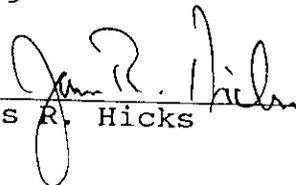


\_\_\_\_\_  
JAMES R. HICKS, OBA #11345  
1717 South Boulder, Suite 800  
Tulsa, OK 74119  
(918) 592-2424

CERTIFICATE OF MAILING

I hereby certify that on the 17<sup>th</sup> day of May, 1988, I  
mailed a true and correct copy of the above and foregoing  
document with postage thereon fully prepaid to:

Gene C. Buzzard  
Rene DeMoss  
GABLE & GOTWALS, INC.  
2000 Fourth National Bank Bldg.  
Tulsa, OK 74119



\_\_\_\_\_  
James R. Hicks

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 17 1988

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 HAROLD J. REYNOLDS, )  
 )  
 Defendant. )

CIVIL ACTION NO. 87-C-932-E

ORDER OF DISMISSAL

Now on this 17th day of May, 1988, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Harold J. Reynolds have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Harold J. Reynolds, be and is dismissed without prejudice.

*of* JAMES O. SILVER

UNITED STATES DISTRICT JUDGE

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

FILED

MAY 17 1988

SARAH K. TURNEY,

Plaintiff,

v.

ECONOMY FIRE AND CASUALTY  
COMPANY, an Illinois corporation,

Defendant.

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

No. 88-C-73-C

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Sarah K. Turney, by and through her attorney of record, James R. Hicks, of Morrel & West, Inc., and the Defendant, Economy Fire & Casualty Company, by and through its attorney of record, Galen L. Brittingham of the law firm of Thomas, Glass, Atkinson, Haskins, Nellis & Boudreaux and pursuant to Rule 41 of the Federal Rules of Civil Procedure, hereby dismisses with prejudice Plaintiff's action against the Defendant, Economy Fire & Casualty Company.

THOMAS, GLASS, ATKINSON, HASKINS,  
NELLIS & BOUDREAUX

MORREL & WEST, INC.

  
\_\_\_\_\_  
GALEN L. BRITTINGHAM, OBA #12226  
525 S. Main, Suite 1500  
Tulsa, OK 74103

  
\_\_\_\_\_  
JAMES R. HICKS, OBA #11345  
1717 South Boulder, Suite 800  
Tulsa, OK 74119  
(918) 592-2424

ATTORNEY FOR DEFENDANT

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that on this 17<sup>th</sup> day of May, 1988, a true and correct copy of the above and foregoing document was hand delivered with the proper postage fully prepaid thereon to the following:

Galen L. Brittingham  
525 South Main, Suite 1500  
Tulsa, OK 74103

  
\_\_\_\_\_  
James R. Hicks

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

CESSNA FINANCE CORPORATION,  
a Kansas corporation,  
  
Plaintiff,  
  
v.  
  
GEORGE A. SHIPMAN, dba  
SHIPMAN INVESTMENTS;  
LANDMARK SAVINGS BANK F.S.B.,  
  
Defendants.

No. 87-C-662-B

**FILED**

MAY 17 1988

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

ORDER  
OF DISMISSAL

The Court has previously been advised by the parties that the captioned case has been settled and dismissal is forthcoming. Although counsel has been contacted numerous times by the Clerk, closing papers have not been filed. The action is hereby dismissed by the Court with prejudice. Parties are to pay their own costs and attorney fees.

IT IS SO ORDERED, this 17 day of May, 1988.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

B14/8

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

**FILED**

MAY 17 1988

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

UNIT RIG & EQUIPMENT CO., )  
INC., )

Plaintiff, )

vs. )

No. 87-C-321-B

BURAN EQUIPMENT COMPANY, )

Defendant. )

ORDER OF DISMISSAL

NOW, on this 17 day of May, 1988, the above-styled and numbered case comes on pursuant to the parties' stipulation of dismissal.

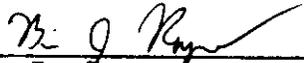
The Court, upon due consideration, finds that the case should be dismissed.

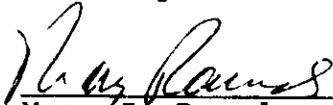
IT IS, THEREFORE, ORDERED that the above-styled and numbered cause is hereby dismissed with prejudice.

S/ THOMAS R. BRETT

JUDGE

APPROVED AS TO CONTENT AND FORM:

  
\_\_\_\_\_  
Brian J. Rayment  
Attorney for Plaintiff

  
\_\_\_\_\_  
Mary J. Rounds  
Attorney for Defendant

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

TRANSWESTERN MINING COMPANY, )  
a corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
VANNOY HILDERBRAND, et al., )  
 )  
Defendants. )

No. 86-C-477-B

**FILED**

MAY 17 1988

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

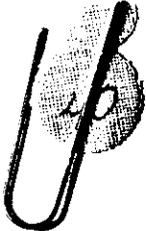
ORDER OF DISMISSAL

The Court has previously been advised by the parties that the captioned case has been settled or that interests have been disclaimed. Any remaining claims are hereby dismissed with prejudice. The parties are to pay their own costs and attorney fees.

IT IS SO ORDERED, this 17<sup>th</sup> day of May, 1988.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



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

STUART CRUM, an individual, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CHICAGO FOOTBALL FRANCHISE )  
 LIMITED PARTNERSHIP, an Illinois )  
 limited partnership; EDWARD )  
 EINHORN, a general partner; EDJER )  
 CORPORATION, a general partner, )  
 EDWARD EINHORN, Individually, and )  
 MARV LEVY, OKLAHOMA OUTLAWS, )  
 an Oklahoma limited partnership, )  
 BILL TATHAM, JR., ARIZONA OUTLAWS, )  
 successors in interest to the )  
 Oklahoma Outlaws, )  
 )  
 Defendants. )

Case No. 86-C-628-C ✓

FILED

MAY 17 1988 *NR*

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

ORDER

Upon review of the Application For Order Dismissing With Prejudice Defendants Oklahoma Outlaws, Bill Tatham, Jr. and the Arizona Outlaws, for good cause shown it is hereby ordered that said Application be granted.

IT IS SO ORDERED this 17<sup>th</sup> day of May, 1988.

*W. S. Anderson*  
JUDGE OF THE DISTRICT COURT

692-01  
JDP:cc  
CRUM-DISM

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



*Entered  
to Annie*

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

**FILED**

HARVEY BROWER, et al, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TELEX CORP., et al, )  
 )  
 Defendants. )

MAY 17 1988 *mb*

87-C-766-C ✓ Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed April 27, 1988 in which the Magistrate recommended that the Defendants' Motion to Dismiss (#5) be granted and that Plaintiff be granted leave to amend within ten (10) days, to state, if possible, a cognizable claim under Rule 10b-5, in accord with the requirements of Rule 9(b).

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 Defendants' Motion to Dismiss (#5) ~~is~~ <sup>is granted</sup> granted and that Plaintiff is granted leave to amend within ten (10) days, to state, if possible, a cognizable claim under Rule 10b-5, in accord with the requirements of Rule 9(b).

Dated this 17<sup>th</sup> day of may, 1988.

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

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

**FILED**

**MAY 16 1988**

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

MARVIN and PATRICIA WAREHIME, )

Plaintiff, )

vs. )

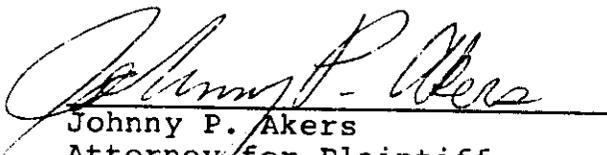
TIME INSURANCE COMPANY, )

Defendant. )

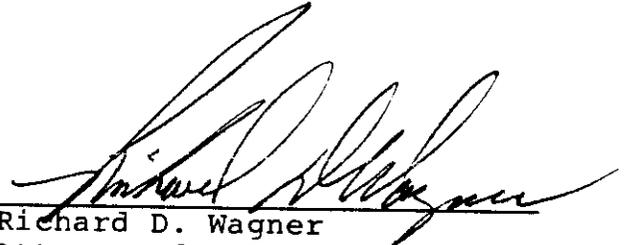
Case No. 88 C 70 B

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, MARVIN and PATRICIA WAREHIME, by and through their attorney, Johnny P. Akers, and the Defendant, TIME INSURANCE COMPANY, by and through its attorney, Richard D. Wagner, and move this Court to dismiss the above styled action without prejudice to the refiling of the same.



Johnny P. Akers  
Attorney for Plaintiff  
415 S. Dewey - Suite 201  
Bartlesville, OK 74003



Richard D. Wagner  
Attorney for Defendant  
P. O. Box 1560  
Tulsa, Oklahoma 74101-1560

RECEIVED MAY 18 1988

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DON P. JONES, )  
 )  
Defendant. )

**MAY 13 1988**

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

CIVIL ACTION NO. 88-C-0037-C

ORDER OF DISMISSAL

Now on this 13 day of May, 1988, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Don P. Jones have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Don P. Jones, be and is dismissed without prejudice.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 16 1988

MEADOW GOLD DAIRIES, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BUY-RITE FOODS, INC., )  
 )  
 Defendant. )

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

Case No. 87-C-1050-C

ORDER OF DISMISSAL

On Joint Motion of the plaintiff and the defendant, the parties having settled the subject matter of this action, IT IS HEREBY ORDERED by the Court that the Complaint of the plaintiff and this action are dismissed with prejudice to the bringing of another action upon the same claim for relief sought herein.

ENTERED THIS 12<sup>th</sup> day of May, 1988.

(Signed) H. Dale Cook

\_\_\_\_\_  
H. DALE COOK, CHIEF JUDGE

IN THE UNITED STATES COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

RONDA D. WING, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CITY OF GLENPOOL, an )  
 Oklahoma municipal )  
 corporation, GLENPOOL UTILITY )  
 SERVICES AUTHORITY, a public )  
 trust of the City of Glenpool )  
 and DAN D. GIBSON, )  
 )  
 Defendants. )

No. 87-C-630 C

**F I L E D**

**MAY 16 1988**

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

ORDER OF DISMISSAL

NOW on this 16 day of May, 1988, there comes on  
for consideration the Joint Stipulation of Dismissal  
concerning this matter, and for good cause shown,

IT IS HEREBY ORDERED that this claim against the  
defendants be, and it is hereby, dismissed from this  
lawsuit, with prejudice, with each party to bear its own  
costs and attorney's fees.

(Signed) H. Dale Cook

United States District Judge

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

EUGENE FOUST, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 FRANK THURMAN AND ATTORNEY )  
 GENERAL OF OKLAHOMA, )  
 )  
 Respondents. )

88-C-295-B

**FILED**

**MAY 16 1988**

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

ORDER

Now before the Court is the Petition for Habeas Corpus relief pursuant to 28 U.S.C. §2254 of Eugene Foust. Respondent, Attorney General of the State of Oklahoma, has filed a Motion to Dismiss (#4) the habeas petition as premature. Petitioner has filed a Motion to Expedite Consideration (#6), and a Motion for Summary Judgment (#7)(in essence a motion for judgment by default).

Petitioner was convicted by a jury of Lewd Molestation of a Minor Child After Former Conviction of a Felony in Tulsa County District Court in Case No. CRF-87-3767, and sentenced to thirty (30) years imprisonment (a conviction which the Petitioner attacks in a companion case, case No. 88-C-286-B).

Petitioner, while being held at the Tulsa County Jail pending appeal, was charged with additional crimes of: Obtaining Merchandise by Bogus Check in CRF 88-0517, Obtaining Merchandise by Bogus Check in CRF 88-05118, and Obtaining Merchandise by Bogus Check (Count I) with Uttering Two or More Bogus Checks Exceeding \$50 (Count II), both in CRF 88-606.

Petitioner, inter alia, seeks habeas relief on the basis

that his pre-trial bond set in the amount of \$116,000 is excessively high so as to constitute an infringement of the Eighth Amendment (Count II).

The protection against unreasonable bail pending trial has been found by the federal courts to be one of the few rights which may be reviewed by a petition for habeas corpus prior to trial. Atkins v. People of the State of Michigan, 644 F.2d 543, 549 (6th Cir. 1981). "If asserted by way of habeas corpus, however, the petitioner must demonstrate that state remedies have been exhausted." Id.

Foust alleges in his petition that he has exhausted his state remedies by petitioning both the trial court and the Oklahoma Court of Criminal Appeals (Case No. H88-153) for a writ of habeas corpus. Both petitions have been denied. Thus, it appears that this Court may entertain Petitioner's writ of habeas corpus, under 28 U.S.C. §2241, based on the Eighth Amendment of the United States Constitution, which is made binding on the states by the Fourteenth Amendment. Mechaicum v. Fountain, 696 F.2d 790, 791 (10th Cir. 1983).

The right to release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is excessive under the Eight Amendment. Stack v. Boyle, 342 U.S. 1, 5, 96 L.Ed. 3 (1951).

In United States ex rel. Kennedy v. Walters, 366 F.Supp. 600

(E.D. Okla. 1973), the role of a federal habeas court was examined in the context of a state prisoner's pre-trial denial of bail. Walters held that the task of the federal court was not to hear evidence and set bail de novo. Id., at 601 (citing Simon v. Woodson, 454 F.2d 161 (5th Cir. 1972)).

Rather than conduct a hearing on bail de novo, encroaching upon the prerogatives of the State of Oklahoma in the due administration of criminal justice, the role of the federal habeas court is limited. Id. The only issue to be resolved by this Court is whether the state judge has acted in an arbitrary and unreasonable manner, abusing his discretion in fixing bail. Id. In other words, before granting the writ, it must be evident that the state court's bail setting is beyond the range within which judgments could rationally differ in relation to the apparent elements of the situation. Id.

The circumstances in this case, as they appear in the Tulsa County District Court files, are as follows.

Foust is currently charged with Obtaining Merchandise By Bogus Check in CRF 88-0517. Bail is set at \$8,000. In CRF 88-0518, Foust is charged again with Obtaining Merchandise by Bogus Check, with bail set at \$8,000. In CRF 88-0606, Foust is also charged with Obtaining Merchandise by Bogus Check (Count I) and Uttering Two or More Bogus Checks exceeding \$50 (Count II). Bail was initially set at \$10,000 per count, and then raised to \$50,000 per count at his arraignment.

On February 2, 1988, in an apparently unrelated case, Foust

was convicted by a jury of Lewd Molestation of a Minor After Former Conviction of a Felony, and sentenced to thirty (30) years imprisonment. (Case No. CRF 87-3767).

The record in that case disclosed Foust had been previously convicted in the District Court of Dade County, Florida of the felony crime of Worthless Check, in six (6) different cases between 1979 and 1985. (Case No. 78-14270, decided 4-3-79; Case No. 83-1809, decided 1-21-83; Case No. 83-28828, decided 6-3-85; Case No. 83-114027, decided 6-23-83; Case No. 83-1751 (Count I), decided 6-23-85; and Case No. 84-24605 (Count II) decided 6-23-85).

The fixing of bail by the Oklahoma court is a matter within its sound judicial discretion, guided by what is reasonably necessary to assure appearance at trial. Id. Under the circumstances of this case, especially in light of the thirty (30) year sentence facing Foust after trial on the present charges, and the attendant flight incentive, Petitioner's bail, fixed at \$116,000, cannot be said to be arbitrary, unreasonable, or an abuse of the state court's discretion.

The Court thus finds that Petitioner's pre-trial bail was not set in violation of the Eighth Amendment protection against "excessive bail", and that the habeas petition as to Count II should be denied. Accordingly, Respondent's Motion to Dismiss is also denied, as to Count II of the Petition.

As to Count I (denial of effective assistance of counsel) and Count III (lack of court's jurisdiction to try case due to

constitutional violations), this Court has jurisdiction under 28 U.S.C. §2241(c)(3). However, federal habeas corpus does not lie, absent special circumstances, to adjudicate the merits of an affirmative defense to a state criminal charge prior to a judgment of conviction by a state court. Braden v. Judicial Circuit Court of Kentucky, 410 U.S. 484, 489, 35 L.Ed.2d 443 (1973).

Petitioner's grounds in Counts I and III arise out of dissatisfaction with his court-appointed counsel. Alleging his counsel has a conflict of interest (Count I), Petitioner argues the state court has lost jurisdiction to try him, by virtue of requiring the Petitioner to proceed with ineffective counsel (Count III), citing Johnson v. Zerbst, 304 U.S. 458, 468, 58 S.Ct. 1019 (1938). Zerbst involved a post-trial petition where Petitioner was not represented by any counsel. Here, Petitioner is represented by counsel. Furthermore, to grant habeas relief, on the basis of ineffectiveness of counsel, there must be a showing of both (1) error by counsel; and (2) that, but for the error, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668, 698, 80 L.Ed.2d 674 (1984). Obviously, Petitioner cannot make such a showing prior to conviction and any rule to the contrary would place federal courts in the untenable position of peering over counsel's shoulder during every step of Petitioner's representation.

Therefore, Petitioner's claim of ineffective assistance of counsel is improperly raised in its present pre-conviction

posture, Malone v. State of Tennessee, 432 F.Supp 5, 6 (E.D. Tenn. 1976), and Petitioner is unable to make a rational argument on the law or these facts to support his habeas petition on Counts I and III. Van Sickle v. Holloway, 791 F.2d 1431, 14344 (10th Cir. 1986). Under these circumstances, Counts I and III are to be dismissed pursuant to 28 U.S.C. §1915(d). Id.

It is the Order of this Court that Petitioner's Motion to Expedite Consideration is granted. The Petition is dismissed without prejudice as to Counts I and III. The Petition as to Count II is, after consideration on the merits, denied. Respondent's Motion to Dismiss, accordingly, is denied as to Count II and moot as to the remaining Counts I and III.

Dated this 16<sup>th</sup> day of May, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAY 18 1988

JACQUELINE B. GLENN  
U.S. DISTRICT COURT

DAWN ELAINE WESCOTT, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 UNITED STATES OF AMERICA, et al., )  
 )  
 Defendants. )

Civil Action No. 87-C-27-E

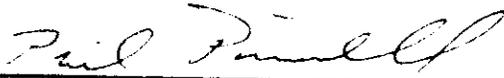
VOLUNTARY DISMISSAL

IT IS HEREBY STIPULATED by the parties, through their respective attorneys, that this action, brought pursuant to the Federal Torts Claims Act, be voluntarily dismissed with prejudice in accordance with a Stipulation for Compromise Settlement entered into contemporaneously with the filing of this voluntary dismissal. This voluntary dismissal is filed pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

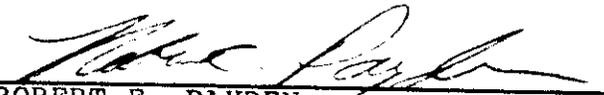
DATED this 12<sup>th</sup> day of May, 1988.

Respectfully submitted,

TONY M. GRAHAM  
United States Attorney

  
\_\_\_\_\_  
PHIL PINNELL  
Assistant United States Attorney

Attorney for Defendant  
UNITED STATES OF AMERICA  
UNITED STATES POSTAL SERVICE

  
\_\_\_\_\_  
ROBERT E. PAYDEN

Attorney for Plaintiff  
DAWN ELAINE WESCOTT

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

FILED

SUSANNA JOHNSON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JOSEPH A. YELENCISICS, as )  
 Executor of the Estate of )  
 JOSEPH YELENCISICS, deceased, )  
 )  
 Defendant. )

MAY 16 1988

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

No. 87-C-572-B

ORDER

The motion for Defendant for partial summary judgment is before the Court for decision. The motion is directed to two subjects in issue in this partnership dissolution and accounting action:

1. Whether or not the applicable period of limitations (12 Okl.St. Ann. §95) bars Plaintiff's cause of action relative to the transaction infusing approximately 1,039 head of cattle into the cattle ranching partnership of the parties in 1974 and 1975 (Paragraphs 5, 6, and 7 of the Amended Complaint); and
2. Whether or not ranch real property owned by the parties as tenants in common is partnership property to pass in accordance with the partnership agreement.

The Plaintiff has conceded that the issue (2) above is no longer in dispute and that the ranch real property situated in Delaware County, State of Oklahoma, described as follows, to-wit:

E 1/2 NE 1/4 of Section 32; and all of Section 33 less W 1/2 SW 1/4; and SW 1/4 NW 1/4 and N 1/2 NW 1/4 SW 1/4 of Section 34, all in Township 24 North, Range 25 East; and all of Section 4 less W 1/2 SW 1/4; and N 1/2 N 1/2 and N 1/2 SW 1/4 NW 1/4 and SW 1/4 SW 1/4 NW 1/4 and W 1/2 SE 1/4 NW 1/4 of Section 9; and the Southwest 10 acres of

*CPS Hand delivered  
this date  
no.*

Lot 3 of Section 3, all in Township 23 North, Range 25 East; and E 1/2 SW 1/4 SE 1/4 and SE 1/4 SE 1/4 of Section 3; and all of Section 9 less E 1/2 SE 1/4 SE 1/4 NE 1/4 and NE 1/4 NE 1/4 and W 1/2 E 1/2 and W 1/2 less W 1/2 SW 1/4 SW 1/4 NW 1/4 of Section 10; and N 1/2 SW 1/4 and SW 1/4 SW 1/4 and NW 1/4 SE 1/4 SW 1/4 of Section 14; and W 1/2 and SE 1/4 SE 1/4 of Section 15; and NE 1/4 and E 1/2 NE 1/4 NW 1/4 and SW 1/4 NE 1/4 NW 1/4 and SE 1/4 NW 1/4 and S 1/2 SW 1/4 NW 1/4 and SE 1/4 less 3.729 acres described as follows: Beginning at the Southwest Corner of SW 1/4 SW 1/4 SE 1/4, thence East 495 feet thence North 330 feet; thence West 495 feet; thence South 330 feet to the point of beginning, and SW 1/4 less 61.6 acres sold to Grand River Dam Authority, all in Section 16; and N 1/2 NE 1/4 and N 1/2 SE 1/4 NE 1/4 less 36 acres sold to Grand River Dam Authority of Section 21; and N 1/2 NE 1/4 and N 1/2 NE 1/4 NW 1/4 and NW 1/4 NW 1/4 and SW 1/4 NW 1/4 and S 1/2 SE 1/4 NW 1/4 less 7.9 acres sold to Grand River Dam Authority of Section 22; and NW 1/4 NW 1/4 and W 1/2 SW 1/4 NW 1/4 of Section 23, all in Township 24 North, Range 24 East of the Indian Meridian, containing 3996. acres, more or less, less any mineral rights heretofore reserved and all easements of record.

held by the parties as tenants in common should remain as such, and not be considered property of the partnership. Therefore, the Court finds that said property is held as tenants in common by Joseph Yelencsics and Susanna E. Johnson, and the Defendant's motion for partial summary judgment regarding same is hereby sustained.

The Court concludes relative to issue (1) above that material facts remain in dispute concerning whether said 1,039 head of cattle should be treated as an independent sale to and obligation of Joseph A. Yelencsics or a contribution of capital or property by the Plaintiff as a partner in the partnership. In the former, the statute of limitations asserted would be

applicable, but if the latter, the period of limitation would not commence until the date of partnership dissolution. 54 Okl.St. Ann. §243; Gilliland v. Snedden, 159 P.2d 734 (Okla. 1945).

Since material issues of fact remain regarding the sale or contribution of the 1,039 head of cattle which significantly bear on the accounting issue, Defendant's motion for partial summary judgment is overruled. A fundamental rule in considering a motion for summary judgment is that inferences from the underlying facts must be viewed in a light most favorable to the party opposing the motion. Celotex Corporation v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Matshushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. \_\_\_\_\_, 106 S.Ct. 1955 (1987); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); and Winton Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986).

Therefore, as stated above, the Defendant's motion for partial summary judgment is sustained in part and overruled in part.

DATED this 16th day of May, 1988.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE