

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ANN MCLAUGHLIN, Secretary of)
Labor, United States Department)
of Labor,)

Plaintiff,)

v.)

NATIONAL PUBLISHING GROUP, LTD.)

Defendant.)

Civil Action

File No. 88-C-74C

FILED

NOV 15 1988

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

JUDGMENT BY DEFAULT

Plaintiff's motion for judgment by default came on for consideration. It appears to the Court that on January 28, 1988, this civil action was commenced; that on February 22, 1988, the summons and complaint were served upon defendant; that on May 13, 1988, the Clerk of the Court entered default against defendant pursuant to Rule 55 of the Federal Rules of Civil Procedure; that defendant has not moved pursuant to Rule 55(c) to set aside for good cause shown the entry of default against it; and that defendants are withholding \$5,580 plus interest in unpaid wages due to Kathleen C. Rush. It is therefore:

Ordered, adjudged and decreed that defendants, its officers, agents, servants and all persons in active concert or participation with it be and they hereby are permanently enjoined and restrained from violating Section 11(c)(1) of the Act.

It is further ordered that defendant reimburse Kathleen C. Rush for lost wages in the amount of \$5,580 plus interest at the rate provided by 26 U.S.C. 6621 from February 15, 1985 until the date this judgment is entered and at the rate provided by 28 U.S.C. 1961 thereafter until paid.

It is further ordered that the defendant shall clear all personnel and company records of Kathleen C. Rush.

Dated this 14 day of, June, 1988.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Michael Henry Olvera, one of the attorneys of record for the plaintiff above named, does hereby certify that he has served a true and correct copy of each of the foregoing motion for default judgment, affidavit, and proposed default judgment on defendant by depositing same in the United States mail, addressed to Honorable Hanna Atkins, Secretary of State of Oklahoma, on the 20 day of October, 1988.



MICHAEL HENRY OLVERA
Attorney

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

FILED

NOV 15 1988

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

FRED W. AHRING, JR. and)
PAMELA AHRING, and DONALD)
KIMBERLY, individuals,)

Plaintiffs,)

vs.)

CASE NO. 88-C679-E

MICHAEL MARKOW, an individual,)
ALAMO RESOURCES, INC., a)
California corporation,)
ADOBE ENERGY, INC., a)
California corporation,)
BELDON ENERGY, INC., a)
California corporation,)
DAVID KNIGHT, an individual)
DAVID BRYANT, an individual)
and PROFESSIONAL MANAGEMENT)
SYSTEMS, INC., a California)
corporation,)

Defendants.)

STIPULATION AND ORDER FOR DISMISSAL

IT IS HEREBY STIPULATED AND AGREED, by the parties, through their undersigned attorneys of record, that the above-entitled case has settled and shall be dismissed without prejudice, each party to bear its own costs.

DATED: October 17, 1988

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON

By William G. Bernhardt
WILLIAM G. BERNHARDT
Attorneys for Defendants
Beldon Energy, Inc.,
David Knight, and David Bryant

DATED: October 18, 1988

KELLEY DRYE & WARREN

By Howard M. Loeb
HOWARD M. LOEB
Attorneys for Defendants
Beldon Energy, Inc.,
David Knight, and David Bryant

DATED: October 19, 1988

COMFORT, LIPE & GREEN

By James E. Green, Jr.
JAMES E. GREEN, JR.
Attorneys for Defendants
Michael Markow, Alamo
Resources, Inc., and Adobe
Energy, Inc.

DATED: October 31, 1988

ALBRIGHT & WELCH

By B. M. Daniel
BRUCE M. DANIEL
Attorneys for Plaintiffs
FRED W. AHRING, JR.,
PAMELA AHRING, and
DONALD KIMBERLY

FILED

NOV 21 1988

ORDER

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

IT IS SO ORDERED.

DATED: 11/18/88

[Faint stamp]

UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
ONE PARCEL OF REAL PROPERTY)
WITH BUILDINGS, APPURTENANCES,)
AND IMPROVEMENTS, KNOWN AS)
4921 W. EIGHTH STREET,)
TULSA, OKLAHOMA, et al.,)
)
Defendants.)

FILED

NOV 15 1988

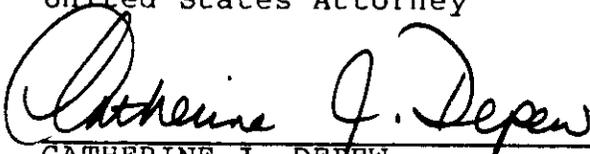
Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-655-C

~~OF~~
STIPULATION FOR DISMISSAL

Pursuant to Rule 41(a)(1(ii) of the Federal Rules of Civil Procedure the Plaintiff, United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and the Claimant, Noel Hickey, hereby stipulates to dismissal against the Defendant Property, known as one parcel of real property with buildings, appurtenances, and improvements, known as 4921 W. Eighth Street, Tulsa, Oklahoma, without prejudice and without costs pursuant to the terms and conditions of the Release of Claim of Seized Property and Indemnity Agreement entered into by the parties on August 22, 1988.

TONY M. GRAHAM
United States Attorney



CATHERINE J. DEPEW
Assistant United States Attorney
Attorney for UNITED STATES
OF AMERICA



NOEL HICKEY
Claimant

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

FILED

NOV 15 1986

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

GENERAL ELECTRIC COMPANY,)
a New York corporation,)
)
Plaintiff,)
)
vs.)
)
SUPERIOR WELDING, INC.,)
an Oklahoma corporation,)
)
Defendant.)

Case No. 87-C-1080-E

JOINT STIPULATION OF DISMISSAL

The plaintiff, General Electric Company ("General Electric") and the defendant, Superior Welding, Inc. ("Superior"), pursuant to FED. R. CIV. P. 41(a)(1)(ii), stipulate that all claims for relief asserted by General Electric and Superior in the captioned matter be dismissed, with prejudice to refileing, with General Electric and Superior to each bear their own respective costs and attorney's fees.

TILLY & WARD

SELBY, CONNOR & MADDUX

By James W. Tilly
James W. Tilly, OBA #9019
1412 South Boston, Suite 715
Tulsa, OK 74119

By James W. Connor
James W. Connor OBA #1856
416 E. Fifth Street
P.O. Drawer Z
Bartlesville, Oklahoma 74005-5025.

Attorneys for General Electric Company

Attorneys for Superior Welding, Inc.

FILED

NOV 15 1988

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

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

R. F. SCHAUB, Trustee of The)
Schaub Corporation Defined)
Benefit Pension Plan and Trust,)
and of The Schaub Corporation)
Defined Contribution Pension)
Plan and Trust,)

Plaintiff,)

vs.)

CASE NO. 88-C448-B

MICHAEL MARKOW, an individual,)
ALAMO RESOURCES, INC., a)
California corporation,)
ADOBE ENERGY, INC., a)
California corporation,)
BELDON ENERGY, INC., a)
California corporation,)
DAVID KNIGHT, an individual)
DAVID BRYANT, an individual)
and PROFESSIONAL MANAGEMENT)
SYSTEMS, INC., a California)
corporation,)

Defendants.)

STIPULATION AND ORDER FOR DISMISSAL

IT IS HEREBY STIPULATED AND AGREED, by the parties, through their undersigned attorneys of record, that the above-entitled case has settled and shall be dismissed without prejudice, each party to bear its own costs.

DATED: October 19, 1988

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON

By William G. Bernhardt
WILLIAM G. BERNHARDT
Attorneys for Defendants
Beldon Energy, Inc.,
David Knight, and David Bryant

DATED: October 18, 1988

KELLEY DRYE & WARREN

By Howard M. Loeb
HOWARD M. LOEB
Attorneys for Defendants
Beldon Energy, Inc.,
David Knight, and David Bryant

DATED: October 19, 1988

COMFORT, LIPE & GREEN

By James E. Green, Jr.
JAMES E. GREEN, JR.
Attorneys for Defendants
Michael Markow, Alamo
Resources, Inc., and Adobe
Energy, Inc.

DATED: October 31, 1988

ALBRIGHT & WELCH

By B. M. Daniel
BRUCE M. DANIEL
Attorneys for Plaintiff
R.F. SCHAUB

ORDER

IT IS SO ORDERED.

DATED: November 18, 1988

S/ THOMAS R. BRETT

UNITED STATES DISTRICT COURT JUDGE

1031A

F I L E D

NOV 18 1988

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 HOWARD TIMOTHY KEENEY; JODY)
 LYNN KEENEY; COUNTY TREASURER,)
 Tulsa County, Oklahoma;)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma; and)
 STANDARD FEDERAL SAVINGS &)
 LOAN ASSOCIATION,)
)
 Defendants.)

FILED

NOV 15 1988

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

CIVIL ACTION NO. 88-C-364-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15th day
of November, 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; the Defendant, Standard Federal
Savings & Loan Association, appears not, having previously filed
its Disclaimer; and the Defendants, Howard Timothy Keeney and
Jody Lynn Keeney, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on April 26, 1988; and that the Defendant, Board of County

Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 25, 1988.

The Court further finds that the Defendants, Howard Timothy Keeney and Jody Lynn Keeney, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning August 9, 1988, and continuing to September 13, 1988, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Howard Timothy Keeney and Jody Lynn Keeney, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Howard Timothy Keeney and Jody Lynn Keeney. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States

Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers to Amended Petition herein on May 11, 1988; that the Defendant, Standard Federal Savings & Loan Association, filed its Disclaimer herein on May 15, 1988; and that the Defendants, Howard Timothy Keeney and Jody Lynn Keeney, 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 Four (4), Block Four (4), THE MEADOWS at INDIAN SPRINGS, an Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on July 25, 1986, the Defendants, Howard Timothy Keeney and Jody Lynn Keeney, 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 \$46,669.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Howard Timothy Keeney and Jody Lynn Keeney, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated July 25, 1986, covering the above-described property. Said mortgage was recorded on July 25, 1986, in Book 4958, Page 982, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Howard Timothy Keeney and Jody Lynn Keeney, 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, Howard Timothy Keeney and Jody Lynn Keeney, are indebted to the Plaintiff in the principal sum of \$47,344.91, plus interest at the rate of 10 percent per annum from January 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 Defendant, Standard Federal Savings & Loan Association, disclaims any right, title, or interest in the subject real property.

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 in rem against Defendants, Howard Timothy ~~Keeney~~ and Jody Lynn Keeney, in the principal sum of \$47,344.91, plus interest at the rate of 10 percent per annum from January 1, 1987 until judgment, plus interest thereafter at the current legal rate of 8.15 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, ~~Standard~~ Standard Federal Savings & Loan Association 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 ~~appraisal~~ appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

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

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

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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



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

IN RE:)
MARSHALL SUPPLY & EQUIPMENT)
COMPANY, INC., d/b/a MARSUCO,)
Debtor,)
MYRNA L. VINCENT,)
Plaintiff/Appellant,)
v.)
COMMITTEE OF CREDITORS)
HOLDING UNSECURED CLAIMS,)
Defendant/Appellee.)

Bky. No. 86-01926-WK

FILED

NOV 15 1988

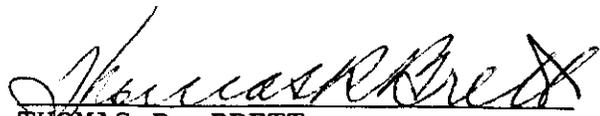
Jack C. Silver, Clerk
U. S. DISTRICT COURT
88-C-503-B

ORDER

There being no response to the Motion to Dismiss Appeal filed by Appellee, the Committee of Creditors Holding Unsecured Claims, and more than fifteen (15) days having passed since the filing of such motion, and no extension of time having been sought by Appellant, the court, pursuant to Local Rule 15A of the Northern District of Oklahoma, concludes that Appellant has therefore waived any objection or opposition to the motion. See, Woods Construction Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Motion to Dismiss Appeal filed by Appellee, the Committee of Creditors Holding Unsecured Claims is therefore granted.

It is so ordered this 15 day of November, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

NOV 15 1988

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

Civil Action No. 88-C-558-F

DOY HEFNER d/b/a HEFNER AND)
SON COAL COMPANY,)

Defendant.)

ACCEPTED JUDGMENT

This matter comes on for consideration this 15th
day of November, 1988, the Plaintiff appearing by
Tony M. Crahan, United States Attorney for the Northern
District of Oklahoma, through Phil Pinnell, Assistant United
States Attorney, and the Defendant, Don Hefner d/b/a Hefner
and Son Coal Company, appearing by Robert J. Petrick,
Attorney of Record for the Defendant.

The Court, being fully advised, having examined the
file herein, and having examined a copy of the fully
executed settlement agreement submitted with this agreed
judgment, and incorporated herein, finds that the Plaintiff
validly issued cessation orders (COs) 84-3-7-2(1),
84-3-7-4(1), 84-3-7-6(2), 85-3-7-3(1), 85-3-7-4(1),
85-3-7-25(2) and 85-3-7-30(1). The Court further finds that
the Defendant has agreed to perform the remedial actions
required by said COs in accordance with the attached
settlement agreement.

said settlement agreement allows the required remedial action to be satisfied by the Defendant's payment of the sum of \$45,000.00 to an escrow account at a financial institution agreeable to the Plaintiff or paid into this Court's registry and disbursed to Plaintiff upon the Plaintiff's application.

The Court further finds that the Plaintiff agrees that upon receipt of said sum of money it will terminate all outstanding NCVs and CCs and not issue any additional violations with respect to Defendant's surface coal mining operations which were conducted prior to the date of this order.

The Court further finds that the Defendant has agreed to cease the conducting of any further surface coal mining operations in the United States until this judgment is satisfied and further finds that the Defendant has agreed to allow his name to remain on an applicant/violator system list.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant and in this regard it is ORDERED that the Defendant deposit the sum of \$45,000.00 in an escrow account at a financial institution selected by the Plaintiff or paid into the Court registry and thereafter paid to Plaintiff upon Plaintiff's application.

IT IS FURTHER ORDERED that upon the Defendant's payment or deposit of \$45,000.00 he is forever released and discharged from any further obligation or responsibility for the required remedial actions specified in the above-referenced cessation orders. IT IS FURTHER ORDERED that upon the Defendant's payment or deposit of the sum of \$45,000.00 the Plaintiff will terminate all outstanding NCVs and COs and will not issue any additional violations with respect to Defendant's surface coal mining operations conducted up to the date of this order. IT IS FURTHER ORDERED that the Defendant is permanently enjoined from conducting any further surface coal mining and reclamation operations in the United States until this judgment is satisfied and that the Defendant's name shall remain on the Plaintiff's application/violator system list.

IT IS FURTHER ORDERED that each party shall bear its own costs and attorneys fees in regard to this case.

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. CRAFAM
United States Attorney

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

ROBERT J. PETRICK
Attorney for Don Hefner
d/b/a Hefner and Son Coal
Company
P. O. Box 447
Muskogee, Oklahoma 74402
(918) 687-9972

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Civil Action No. 88-C-558-F
)
DON HEFNER d/b/a HEFNER AND)
SON COAL COMPANY,)
)
Defendant.)

SETTLEMENT AGREEMENT

The United States of America, by and through its undersigned counsel, Don Hefner d/b/a Hefner and Son Coal Company, by and through his attorney of record, and the Oklahoma Department of Mines (ODM), by and through its undersigned counsel, hereby enter into the following agreement which, among other objectives, is intended to provide a full settlement of the above-captioned proceeding.

The United States filed the above-styled case to enforce compliance with cessation orders (COs) 84-3-7-2(1), 84-3-7-4(1), 84-3-7-6(2), 85-3-7-3(1), 85-3-7-4(1), 85-3-7-25(2), and 85-3-7-30(1). In addition, the parties wish to settle all outstanding liability for penalty and fines of whatever nature, set forth in the above-referenced COs, and any other NOV or COs heretofore, or hereafter, issued by either Federal or Oklahoma governmental authorities pertaining to the Defendant's previous surface coal mining operations.

The above-cited COs were issued against Don Hefner d/h/a Hefner and Son Coal Company for violations of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq. (SMCRA).

The parties agree as follows:

1. The Defendant concedes the validity of the cessation orders set forth in the above-styled action and agrees that he is liable for the reclamation of the areas set forth and described in said orders. Accordingly, the Defendant agrees to the entry of a judgment upholding the validity of the above-cited COs.

2. Notwithstanding any provisions set forth above, the parties agree that the remedial measures set forth in this agreement shall constitute full satisfaction of the reclamation obligation set forth in the cessation orders listed above if performed by the Defendant in accordance with the terms of this agreement.

3. The parties agree that any and all remedial measures required with respect to the Defendant's previous surface coal mining operations pursuant to the above-cited COs, and any other NOV or CC issued, or to be issued, by either Federal or State government authorities, shall be satisfied by the payment by the Defendant of \$45,000.00 into an escrow account to be established by the Plaintiff or paid into the Court's registry. It is further agreed

that these funds shall be utilized solely for the reclamation of the pertinent property or properties. It is further understood that should the Defendant commence surface coal mining operations subsequent to its payment of \$45,000.00, those future operations, of course, will be subject to SMCRA and any pertinent state enforcement program.

4. It is expressly recognized that CDCM holds approximately \$10,000.00 in outstanding reclamation bonds with respect to Defendant's properties. CDCM agrees to release said outstanding reclamation bonds upon the Defendant's payment of \$45,000.00 in the manner described above and the United States adopts and approves this procedure.

5. The Defendant agrees to the entry of an injunction prohibiting him from engaging in surface coal mining operations anywhere in the United States until this judgment is satisfied.

6. The United States of America, the Office of Surface Mining Reclamation and Enforcement, The State of Oklahoma, and the Oklahoma Department of Mines and any other in privity with any of the above-named parties further agree that the payment by the Defendant of \$45,000.00 as specified above shall constitute full satisfaction and discharge of any liability for the reclamation of all Defendant's properties covered under permits 2022 and 2073.

The parties further agree to release and discharge any past or present officer, director, employee, shareholder or partner, indemnitor, guarantor or surety of the Defendant from any further liability for reclamation of these areas upon the successful completion of this agreement.

7. The United States and CDCM agree to release and discharge the Defendant, and any of its or his present or past partners, officers, directors, employees, shareholders, from any liability for fines and penalties, of any nature, which have been or may be assessed pursuant to SMCRA, and the approved state regulatory program, with respect to Defendant's previous surface coal mining operations.

8. Each party to this agreement shall bear its own cost of litigation.

9. The parties further agree that the United States District Court for the Northern District of Oklahoma shall retain jurisdiction of this case pending the successful completion of the terms of this agreement.

10. That each of the respective Attorneys signing this agreement represent and warrant to the others and the Court that they each have full and complete authority to make and execute this agreement and bind forever their respective clients to this full and complete settlement agreement.

Dated this 15th day of November, 1988.

APPROVED:

Phil Pinnell
PHIL PINNELL
Assistant United States
Attorney
3600 U.S. Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74102
(918) 581-7463

Robert J. Petpick
ROBERT J. PETPICK
Attorney for Don Hefner
d/b/a Hefner and Son Coal
Company
P. O. Box 447
Muskogee, Oklahoma 74402
(918) 687-9979

Mark Secrest
MARK SECREST
Attorney for the Oklahoma
Department of Mines
4040 North Lincoln Boulevard
Suite 107
Oklahoma City, Oklahoma 73105

Robert Henry
OR ROBERT HENRY
Attorney General
State of Oklahoma
State Capital Building
Oklahoma City, Oklahoma 73105

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

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

FILE
NOV 15 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 88-C-185-B

DEFICIENCY JUDGMENT

Now on this 15th day of Nov., 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 September, 1988, and a copy of said Motion being mailed to Phillip Keith Wright and Lillie Gale Wright, 164 North Florence Avenue, Tulsa, Oklahoma 74110, 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 Phil Pinnell, Assistant United States Attorney, and the Defendants, Phillip Keith Wright and Lillie Gale Wright, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on April 12, 1988, in favor of the Plaintiff United States of America, and against the Defendants, Phillip Keith Wright and Lillie Gale Wright, with interest and costs to date of sale is \$52,511.50.

The Court further finds that the appraised value of the real property at the time of sale was \$38,965.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered April 12, 1988, for the sum of \$34,776.00 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 3rd day of November, 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 Defendants, Phillip Keith Wright and Lillie Gale Wright, as follows:

Principal Balance as of 04/12/88	\$43,884.70
Interest	7,573.29
Late Charges to Date of Judgment	155.96
Appraisal by Agency	175.00
Management Broker Fees to Date of Sale	295.00
Abstracting	185.00
Publication Fees of Notice of Sale	137.55
Appraisers' Fees	<u>105.00</u>
TOTAL	\$52,511.50
Less Credit of Appraised Value	- <u>38,965.00</u>
DEFICIENCY	\$13,546.50

plus interest on said deficiency judgment at the legal rate of 8.15 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 Defendants, Phillip Keith Wright and Lillie Gale Wright, a deficiency judgment in the amount of \$13,546.50, plus interest at the legal rate of 8.15 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

PP/css

#5322

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

FILED

NOV 14 1988

JAMES PERRY HALE,)
Plaintiff,)

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

vs.)

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

RICHARD M. WATKINS, et al.,)
Defendants.)

ORDER

NOW on this 10th day of November, 1988, comes on for hearing Plaintiff's Dismissal with Prejudice as to the Defendants, RICHARD M. WATKINS, GARY PARSONS, RANDY FEWELL, WILLIAM B. RANDALL, DONALD R. SAPPINGTON, JR., GARY HUDSON, RICHARD S. RUNYON, DANIEL D. CLARK, DANIEL L. CRAMER, the OKLAHOMA DEPARTMENT OF CORRECTIONS, and the STATE OF OKLAHOMA, filed herein against the above named Defendants at the cost of the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff's Dismissal with Prejudice as to the Defendants, RICHARD M. WATKINS, GARY PARSONS, RANDY FEWELL, WILLIAM B. RANDALL, DONALD R. SAPPINGTON, JR., GARY HUDSON, RICHARD S. RUNYON, DANIEL D. CLARK, DANIEL L. CRAMER, the OKLAHOMA DEPARTMENT OF CORRECTIONS, and the STATE OF OKLAHOMA, is hereby granted.

(Signed) H. Dale Cook

UNITED STATES MAGISTRATE

Judge

*Law Office
Florry Scroggs
Attorney at Law - P. O. Box 117
Lawrence, Oklahoma 74555*

FILED

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

NOV 10 1988

JAMES SILVER, CLERK
U.S. DISTRICT COURT

CASTER C. BUCK,
Plaintiff,
vs.
UNITED STATES OF AMERICA,
Defendant.

Civil No. 88-C1420-E

NOTICE OF DISMISSAL WITH PREJUDICE ~~NOTICE~~

COMES NOW the plaintiff, Caster C. Buck, by and through his attorneys, Adams & Dickson, by William T. Dickson, and hereby dismisses the above-referenced case with prejudice.

DATED this 10 day of November, 1988.

Respectfully submitted,

ADAMS & DICKSON
Attorneys at Law

BY William T. Dickson
WILLIAM T. DICKSON - DW0372
OBA#10634
P. O. Drawer T
Catoosa, OK 74015
(918) 266-2232

Counsel for plaintiff

CERTIFICATE OF MAILING

I, William T. Dickson, hereby certify that a true and correct copy of the above and foregoing instrument was mailed, by depositing same in the United States Mails, this 10 day of November, 1988, to the following:

Mary C. Vance
Attorneys, Tax Division
Department of Justice
Rm. 5B31, 1100 Commerce St.
Dallas, TX 75242-0599.

William T. Dickson
WILLIAM T. DICKSON

FILED

NOV 10 1988

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

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

MOUNTAIN MEDICAL LEASING COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 DAVID M. HILL d/b/a MEDALLION MEDICAL,)
 SERVICES,)
)
 Defendant.)

No. 88-C-625-B

DEFAULT JUDGMENT

NOW ON this 10th day of November, 1988, the Clerk of this Court, having entered default in favor of the Plaintiff and against the Defendant herein, judgment is entered in the above-referenced matter in favor of the Plaintiff in the amount of One Hundred Twenty Three Thousand Nine Hundred Thirty-Six and 13/100ths Dollars (\$123,936.13), plus attorney fees in the amount of Six Hundred Eighty and No/100ths Dollars (\$680.00), and costs in the amount of One Hundred Twenty and No/100ths Dollars (\$120.00).

S/ THOMAS R. BRETT
United States District Court Judge

UNITED STATES DISTRICT COURT FOR
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV -9 1988

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
BUCK D. LASLEY,)	
)	
Defendant.)	CIVIL ACTION NO. 87-C-931-C

NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Nancy Nesbitt Blevins, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 9th day of November, 1988.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 9th day of November, 1988, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: 3532 East 28th Street, Tulsa, Oklahoma 74114.

Nancy Nesbitt Blevins
Assistant United States Attorney

NNB:do

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

FILED

NOV 9 1988 *FW*

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

PEOPLES FEDERAL SAVINGS AND)
LOAN ASSOCIATION,)
)
Plaintiff,)
)
v.)
)
ITT COMMERCIAL FINANCE)
CORPORATION,)
)
Defendant.)

87-C-296-C ✓

ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed October 5, 1988, in which the Magistrate recommended that defendant's Motion for Summary Judgment be granted and plaintiff's Motion for Summary Judgment be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that defendant's Motion for Summary Judgment is granted and plaintiff's Motion for Summary Judgment is denied.

Dated this 8th day of November, 1988.

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

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

NOV 9 1988

ULYSSES S. WASHINGTON,)
)
 Plaintiff,)
)
 -vs-)
)
 WAL-MART STORES, INC.,)
)
 Defendant.)

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

No. 88-C-124-EP

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the Joint Application for Dismissal With Prejudice filed herein by all of the parties to this litigation, the Court finds that the Plaintiff's cause of action should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the causes of action of the Plaintiff be and the same is hereby dismissed with prejudice.

S/ JAMES O. ELLISON

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

F I L E D

NOV 9 1988

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

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

BRENT K. NEWCOMB,)
)
 Plaintiff,)
)
 vs.)
)
 NANCY J. INGLE, et al.,)
)
 Defendants.)

No. 88-C-635-E

JUDGMENT

The Defendants are granted judgment against the Plaintiff.

The Defendants are granted their costs of this action.

ORDERED this 3rd day of November, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 BOB G. MORSE; MARY ANN MORSE;)
 CARROLL E. NELSON; PEGGY NELSON;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

NOV 9 1988

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

CIVIL ACTION NO. 88-C-0043-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this _____ day
of _____, 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; and the Defendants, Bob G.
Morse, Mary Ann Morse, Carroll E. Nelson, and Peggy Nelson,
appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Carroll E. Nelson and
Peggy Nelson, were served with Summons and Complaint on July 14,
1988; that Defendant, County Treasurer, Tulsa County, Oklahoma,
acknowledged receipt of Summons and Complaint on January 21,
1988; and that Defendant, Board of County Commissioners, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on January 20, 1988.

The Court further finds that the Defendants, Bob G. Morse and Mary Ann Morse, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning August 11, 1988, and continuing to September 15, 1988, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Bob G. Morse and Mary Ann Morse, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Bob G. Morse and Mary Ann Morse. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the

parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on February 11, 1988; and that the Defendants, Bob G. Morse, Mary Ann Morse, Carroll E. Nelson, and Peggy Nelson, 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 Six (6), Block Eleven (11) of Blocks Eleven (11), Twelve (12), and Thirteen (13), NEW HAVEN ADDITION, City of Tulsa, Oklahoma.

The Court further finds that on April 26, 1985, the Defendants, Bob G. Morse and Mary Ann Morse, 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 \$26,900.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Bob G. Morse and Mary Ann Morse, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated April 26, 1985, covering the above-described property. Said mortgage was recorded on April 29, 1985, in Book 4859, Page 1343, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Bob G. Morse and Mary Ann Morse, 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, Bob G. Morse and Mary Ann Morse, are indebted to the Plaintiff in the principal sum of \$27,258.38, plus interest at the rate of 12.5 percent per annum from September 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the 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 Defendants, Carroll E. Nelson and Peggy Nelson, are in default and have no right, title, or interest in the subject real property.

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

Bob G. Morse and Mary Ann Morse, in the principal sum of \$27,258.38, plus interest at the rate of 12.5 percent per annum from September 1, 1986 until judgment, plus interest thereafter at the current legal rate of 8.15 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, Carroll E. Nelson, Peggy Nelson, 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 appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

NOV 9 1988

CB

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

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

IN RE THE APPEAL OF STOCKTON
OIL/GAS CO.

Appellant

88-C-757-E ✓

ORDER

This matter comes before the court on Stockton Oil/Gas Co., Inc.'s Motion for Leave to Appeal an order of the U.S. Bankruptcy Court for the Northern District of Oklahoma. For the reasons set forth below, the Motion for Leave to Appeal is denied.

Appellant seeks leave to appeal an interlocutory order approving a proposed compromise and settlement, filed July 20, 1988. Interlocutory orders of the Bankruptcy Court are appealable only in the court's discretion. 28 U.S.C. §158(a). Leave to appeal will be granted if there are controlling questions of law as to which there are substantial grounds for difference of opinion and if an immediate appeal from the order may materially advance the ultimate termination of litigation. In re Lady Madonna Industries, Inc., 76 B.R. 281, 284 (S.D. N.Y. 1987); In re Den-col Cartage & Distribution, Inc., 20 B.R. 645 (D.C. Colo. 1982).

The July 20, 1988 order, at issue in this appeal, was the subject of a Joint Renewed Motion to Approve Compromise and Settlement filed August 26, 1988, resulting in a revised,

5

contingent order of approval by the Bankruptcy Court, entered on September 15, 1988.

The July 20, 1988 order, appealed from herein, does not meet the requirements for granting leave to appeal. The appeal is premature. Therefore, leave to appeal is denied and the appeal is hereby dismissed.

Dated this 7th day of November, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

CHARLES STEVEN BRADLEY
Plaintiff,
v.
RON CHAMPION, et al
Defendant.

88-C-154-B

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

NOV - 9 1988

FILED

ORDER

Now before the Court is the Petition for Writ of Habeas Corpus of Charles Steven Bradley. Respondents Ron Champion and the Attorney General of the State of Oklahoma have filed a Response to the Petition and Petitioner has filed a Traverse to the Response.

Petitioner was convicted by a jury of Second Degree Burglary After Former Conviction of Two or More Felonies on April 22, 1983 in Oklahoma County District Court (Case No. CRF 82-1978), and sentenced to 100 years in prison. On appeal, the conviction was affirmed, but the sentence modified to life imprisonment and, thereafter, upon a Petition for Rehearing and Modifying Disposition, the sentence was again modified to 45 years in prison. Petitioner also pursued other post-conviction relief without success, and Respondents concede Petitioner has exhausted his state remedies.

Petitioner asserts as Ground I for habeas relief that constitutional error occurred when his counsel stipulated to the prior felony convictions of Petitioner (TR. 93-94). In addition, certified copies of Judgments and Sentences of Petitioner's prior

felony convictions were introduced into evidence. Petitioner argues that the absence of his consent or waiver of his right to have the state prove the prior convictions violated his 6th, 8th, and 14th Amendment rights.

After reviewing the record, including the evidence of Petitioner's prior convictions, even if it could be said that there was error, this Court believes it was harmless error beyond a reasonable doubt. Sanches v. Mondragon, slip. op. No 86-2295, (10th Cir. Oct. 6, 1988) (citing Chapman v. California, 386 US 18 (1967) for applying harmless error analysis in context of waiver of counsel cases). Thus ground is without merit.

Petitioner asserts in Ground II that a photographic line up used was impermissibly suggestive and amounted to a denial of equal protection.

There is nothing improper per se about the use of photographic lineups. Simmons v. U.S. 390 U.S. 377 (1968) A review of the photos themselves reveals no improper suggestivity in the selection of the six individuals shown to the witness Henry Hill. The witness Hill was certain of his identification and there is simply no evidence that Petitioner's photograph was singled out to Hill. Neal v. Biggers, 409 U.S. 188 (1972). This ground is also without merit.

Petitioner asserts in Ground III that his lack of counsel at arraignment violated his 6th and 14th Amendments rights. At his arraignment Petitioner pled not guilty and was thereafter

released from state custody (Original Record p. 49-54). Petitioner does not, however, specify what prejudice he suffered as a result of the denial or lack of counsel. In reality, no actual harm was suffered. Petitioner is thus not entitled to habeas relief on this ground. Johnson v. U.S., 333 F. 2d 371, 372-73 10th Cir. 1964).

As his final ground for relief, Petitioner alleges a denial of due process upon the admission of his confession without a determination by the Court of the voluntariness thereof.

A review of the trial transcript reveals this ground is also without merit. The trial judge heard testimony concerning the circumstances of the confession and made a specific finding that Petitioner freely, knowingly, and intelligently waived his right to remain silent. (Transcript 42-52). This ground, too, is without merit. North Carolina v. Butler, 384 U.S. 436 (1966).

Therefore, Bradley's Petition for Writ of Habeas Corpus is without merit and habeas relief is, hereby, denied.

So Ordered this 9th day of November, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Counsel presented Petitioner's alibi defense, calling both Petitioner and his sister; together with thorough cross examination of the state's witnesses. Counsel's waiver of opening and closing arguments may have been sound trial strategy since the case was tried directly to an experienced judge without a jury. Counsel's stipulation to the prior felonies was also reasonable in light of the certified copies of Judgments and Sentences introduced by the State as Exhibits 5, 6, and 7. Petitioner's ineffective assistance of counsel claim is thus without merit.

As his second ground for relief, Petitioner asserts that it was error for the trial court to permit the stipulation of counsel regarding Petitioner's former convictions without inquiry of Petitioner directly. Although counsel misspoke when he referred to the two (2) Missouri convictions as Oklahoma convictions, the error was harmless. The State had introduced certified copies of the Missouri convictions, which are, under Oklahoma law, sufficient to prove the existence of the prior convictions. Moore v. State, 714 P.2d 599 (Okla. Crim. App. 1986). If there was any error here, it was merely harmless, not rising to constitutional dimensions. Donnelly v. DeChristoforo, 416 U.S. 637 (1974); Sanchez v. Mondragon, slip op. Case No. 86-2295 (10th Cir. October 6, 1988). The second ground is, therefore, also meritless.

As the third ground for habeas relief, Petitioner alleges the trial judge acted "as an advocate for the state" by

discouraging summation. A review of the transcript¹ indicates no

¹ The comments of the Honorable Judge Jay Dalton are set forth at pages 101 and 102 of the trial transcript as follows:

MR. LEWIS: Defense rests.

THE COURT: Does the State have anything additional?

MR. LUNN: I would like to call back Ms. Perkins.

THE COURT: I'm ready to rule. I don't think you need anything.

MR. LUNN: Your Honor, I do have -- I would like to ask --

THE COURT: Counselor, I'm aware of the testimony of the State's witness, and the other hearing, and I'm ready to rule at this time. I mean, what do you have?

MR. LUNN: I have the weather reports that show it was seventy degrees on Saturday and Sunday.

THE COURT: It would be hearsay, if you have it written down.

MR. LUNN: I actually have the copies of the newspapers.

THE COURT: I'm ready to rule. Does the State's attorney desire to give a closing argument at this time?

MR. LUNN: Yes, Your Honor, just briefly.

THE COURT: I don't think it is necessary, but if you desire, you can.

MR. LUNN: I'll waive.

THE COURT: Does the defense desire to give one?

MR. LEWIS: Judge, I'll waive.

denial of a fair trial under the standard of Brainlee v. Crisp, 608 F.2d 839, 852 and 53 (10th Cir. 1979). This ground is also meritless.

As his final ground, Petitioner asserts that Mrs. Evans' (the victim's) identification of the Petitioner should have been excluded from the trial. In Johnson v. Makowski, 823 F.2d 387, 391 (10th Cir. 1987) the Tenth Circuit set forth a two part inquiry to be made when an identification procedure is challenged. First, "it must be determined whether the identification procedure was impermissibly suggestive". If so, then it must be determined "whether the identification procedure nevertheless was reliable in view of the totality of the circumstances". Id. (citing Simmons v. U.S., 390 U.S. 377 (1968)).

In this case, the victims saw their assailant for some thirty (30) seconds at close range during the armed robbery. Approximately six (6) months later, at a high school class reunion, Mrs. Evans saw and recognized her assailant among some 2,000 persons. Thereafter, Mrs. Evans went to the police station and looked at several hundred mug shots and located the photograph of Petitioner; a photograph added to the "mug books" since her last review some six months previous. There is nothing impermissibly suggestive about such an identification procedure, and even if there was, the identification was reliable in view of

the totality of the circumstances. This ground also is insufficient for granting the federal habeas corpus relief Petitioner requests.

Therefore, it is hereby ordered that the Petition for Writ of Habeas Corpus be denied.

Dated this 9th day of November, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

CHARLES STEVEN BRADLEY)
)
 Plaintiff,)
)
 v.)
)
 RON CHAMPION, et al)
)
 Defendant.)

88-C-154-B

✓
JACK C. SILVER, CLERK
U.S. DISTRICT COURT
NOV - 9 1988
FILED

ORDER

Now before the Court is the Petition for Writ of Habeas Corpus of Charles Steven Bradley. Respondents Ron Champion and the Attorney General of the State of Oklahoma have filed a Response to the Petition and Petitioner has filed a Traverse to the Response.

Petitioner was convicted by a jury of Second Degree Burglary After Former Conviction of Two or More Felonies on April 22, 1983 in Oklahoma County District Court (Case No. CRF 82-1978), and sentenced to 100 years in prison. On appeal, the conviction was affirmed, but the sentence modified to life imprisonment and, thereafter, upon a Petition for Rehearing and Modifying Disposition, the sentence was again modified to 45 years in prison. Petitioner also pursued other post-conviction relief without success, and Respondents concede Petitioner has exhausted his state remedies.

Petitioner asserts as Ground I for habeas relief that constitutional error occurred when his counsel stipulated to the prior felony convictions of Petitioner (TR. 93-94). In addition, certified copies of Judgments and Sentences of Petitioner's prior

felony convictions were introduced into evidence. Petitioner argues that the absence of his consent or waiver of his right to have the state prove the prior convictions violated his 6th, 8th, and 14th Amendment rights.

After reviewing the record, including the evidence of Petitioner's prior convictions, even if it could be said that there was error, this Court believes it was harmless error beyond a reasonable doubt. Sanches v. Mondragon, slip. op. No 86-2295, (10th Cir. Oct. 6, 1988) (citing Chapman v. California, 386 US 18 (1967) for applying harmless error analysis in context of waiver of counsel cases). Thus ground is without merit.

Petitioner asserts in Ground II that a photographic line up used was impermissibly suggestive and amounted to a denial of equal protection.

There is nothing improper per se about the use of photographic lineups. Simmons v. U.S. 390 U.S. 377 (1968) A review of the photos themselves reveals no improper suggestivity in the selection of the six individuals shown to the witness Henry Hill. The witness Hill was certain of his identification and there is simply no evidence that Petitioner's photograph was singled out to Hill. Neal v. Biggers, 409 U.S. 188 (1972). This ground is also without merit.

Petitioner asserts in Ground III that his lack of counsel at arraignment violated his 6th and 14th Amendments rights. At his arraignment Petitioner pled not guilty and was thereafter

released from state custody (Original Record p. 49-54). Petitioner does not, however, specify what prejudice he suffered as a result of the denial or lack of counsel. In reality, no actual harm was suffered. Petitioner is thus not entitled to habeas relief on this ground. Johnson v. U.S., 333 F. 2d 371, 372-73 10th Cir. 1964).

As his final ground for relief, Petitioner alleges a denial of due process upon the admission of his confession without a determination by the Court of the voluntariness thereof.

A review of the trial transcript reveals this ground is also without merit. The trial judge heard testimony concerning the circumstances of the confession and made a specific finding that Petitioner freely, knowingly, and intelligently waived his right to remain silent. (Transcript 42-52). This ground, too, is without merit. North Carolina v. Butler, 384 U.S. 436 (1966).

Therefore, Bradley's Petition for Writ of Habeas Corpus is without merit and habeas relief is, hereby, denied.

So Ordered this 9th day of November,
1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

NOV 9 1988 *fw*

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

PEOPLES FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Plaintiff,

vs.

ITT COMMERCIAL FINANCE
CORPORATION,

Defendant.

No. 87-C-296-C ✓

JUDGMENT

This matter comes on for consideration of the motions of the parties for summary judgment. The issues having been duly considered and a decision having been duly rendered in accordance with the Order filed contemporaneously herewith,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered for defendant ITT Commercial Finance Corporation and against plaintiff Peoples Federal Savings and Loan Association.

IT IS SO ORDERED this 8th day of November, 1988.

H. Dale Cook
H. DALE COOK

Chief Judge, U. S. District Court

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

FILED

NOV 8 1988

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

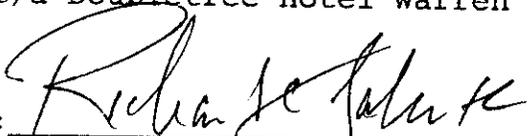
DTM TULSA, INC., d/b/a DOUBLETREE)
HOTEL WARREN PLACE,)
)
Plaintiff,)
)
vs.)
)
MUNSEN'S DISCOVERY TOURS, INC.,)
and PAUL MUNSEN, an individual,)
)
Defendants.)

Case No. 88 C 645 B

DISMISSAL WITH PREJUDICE

Plaintiff, DTM Tulsa, Inc., d/b/a Doubletree Hotel
Warren Place, hereby dismisses this cause, as to both defendants
with prejudice to the refiling of the same.

DTM TULSA, INC.,
d/b/a Doubletree Hotel Warren Place

By: 

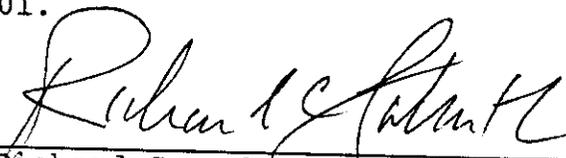
Gary A. Bryant - OBA #1263
Richard C. Labarthe - OBA #11393

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

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on this 7th day of November, 1988, a true and correct copy of the above and foregoing Dismissal With Prejudice, was mailed, postage prepaid, to Louis E. Bellande, Jr., attorney for defendants Munsen's Discovery Tours, Inc., and Paul Munsen, Suite 1901, 180 North LaSalle Street, Chicago, Illinois 60601.


Richard C. Labarthe

MOCK, SCHWABE, WALDO, ELDER, REEVES & BRYANT

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

RECEIVED

November 7, 1988

NOV 8 1988

FIFTEENTH FLOOR
ONE LEADERSHIP SQUARE
211 NORTH ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102
TELEPHONE (405) 235-5500

Mr. Jack C. Silver
U.S. District Court Clerk
U.S. Courthouse
Tulsa, Oklahoma 74103

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

Re: DTM Tulsa, Inc. v. Munsen's Discovery Tours, Inc.,
et al., USDC ND OK, Case No. 88-C-645-B

Dear Mr. Silver:

Enclosed are the original and three (3) copies of a Dismissal With Prejudice. Please file the original of the enclosed document, and return file-stamped copies of the pleading to the undersigned in the enclosed, self-addressed, postage prepaid envelope.

Thank you for your service in this matter.

Sincerely,


Richard C. Labarthe
For the Firm

RCL:ddt
Enclosures

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

FILED

NOV -8 1988

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

VERN O. LAING,)
)
 Appellee,)
)
 v.)
)
 LAWRENCE A. G. JOHNSON,)
)
 Appellant.)

No. 87-C-787-B

ORDER

This matter comes before the Court on appeal from the Bankruptcy Court. Appellant appeals an order filed September 25, 1987 alleging the Court did not have jurisdiction to enter the order.

Vern O. Laing ("Laing"), represented by attorney Lawrence A.G. Johnson ("Johnson"), filed a petition in bankruptcy August 1984. Laing and Johnson were joint owners in an airplane since September of 1983. Laing, but not Johnson, was liable on a note to the Bank of Oklahoma which was secured by the subject airplane. Laing, while represented by Johnson, reaffirmed the debt on the airplane and the Bankruptcy Court approved the reaffirmation on February 12, 1985. Laing was discharged on March 19, 1986, but the Chapter VII proceeding continued.

Some time in 1986 and 1987 Laing and Johnson developed a disagreement over their joint ownership of the aircraft. Johnson petitioned the state court to dissolve their joint ownership in the airplane. Laing amended his schedule of creditors in the Bankruptcy Court to include Johnson. Johnson requested relief from the automatic stay provisions to allow the state court to proceed.

Johnson, as a creditor and not as Laing's counsel, requested and the Court ordered the airplane abandoned from the bankruptcy estate. On September 15, 1987 the Bankruptcy Court conditionally lifted the stay, ordering that Johnson not execute upon any state court judgment obtained until subsequently approved by the Bankruptcy Court.

The state court found the airplane to be valued at \$62,000.00, each party entitled to one-half or \$31,000.00. The state court ordered Laing to either purchase Johnson's one-half interest for \$31,000.00 or accept \$31,000.00 from Johnson and give a clear title to the airplane. Laing was still indebted to the Bank of Oklahoma on the note secured by the airplane for the approximate balance due of \$55,000.00. The state court further ordered that if Laing failed to elect to buy or sell the airplane within 10 days, Johnson would receive an *in rem* judgment for \$31,000.00. Laing failed to make an election. The state court judgment in pertinent part reads: Johnson "... is awarded judgment over and against the Defendant (Laing) for and in the sum of \$31,000.00 *in rem* as a charging order over and against the interest of the Defendant, for which let execution lie."

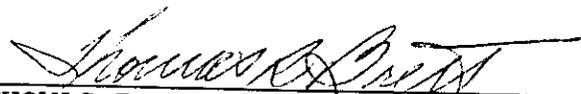
Johnson then sought from the Bankruptcy Court permission to execute on this state court *in rem* judgment. On September 25, 1987, the Bankruptcy Court entered an order of conditional relief of the stay. The Bankruptcy Court allowed Johnson to execute on the *in rem* judgment for title to the airplane if and only if Johnson

first paid \$31,000.00 (Laing's interest in the airplane) to the Bank of Oklahoma to reduce Laing's debt. Johnson has appealed this order asserting that the Bankruptcy Court was without jurisdiction to impose such a condition.

Pending before the Bankruptcy Court continues the dispute between Laing and Johnson over the original purchase agreement between them concerning the airplane.

It is apparent to the Court that the order appealed to this Court is not a final order as required under 28 U.S.C. §158 to give this Court jurisdiction to hear the appeal, nor has either party requested the Court hear an interlocutory appeal. This Court remands the matter to the Bankruptcy Court for final adjudication.¹

DATED this 8th day of November, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹The case before the Bankruptcy Court has been transferred to another bankruptcy judge. In concluding the Chapter VII proceeding the new bankruptcy judge can, within his discretion, review the matter and enter appropriate orders.

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

ORVAL PARKER,

Plaintiff,

vs.

THE GATES RUBBER COMPANY, a
Colorado Corporation, UNISYS
CORPORATION, a Delaware
Corporation, NEW HOLLAND INC.,
a Delaware Corporation, and
FORD MOTOR COMPANY, a
Delaware Corporation,

Defendants.

Case No. 87-C-998-B

1003

ORDER OF DISMISSAL WITH PREJUDICE

On this 7th day of November, 1988, upon written application of the parties for an order of dismissal with prejudice of the complaint and all causes of action, the Court, having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the complaint and have requested the Court to dismiss the complaint with prejudice to any future action, and the Court having been fully advised in the premises, finds that said complaint should be dismissed. It is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the complaint and all causes of action of the Plaintiff filed herein against the Defendant, Ford New Holland, Inc., be and the same are hereby dismissed with prejudice to any further action.

S/ THOMAS R. BRETT

THOMAS R. BRETT, JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 445.20 ACRES OF LAND, MORE OR)
 LESS, SITUATE IN OSAGE COUNTY,)
 STATE OF OKLAHOMA, and)
 DONALD F. LESTER, et al., and)
 UNKNOWN OWNERS,)
)
 Defendants.)

NOV 8 1988

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

CIVIL ACTION NO. 84-C-826-B

J U D G M E N T

1.

NOW, on this 31st day of October 1988, this matter comes on for disposition on application of the Parties hereto, for entry of judgment on the Report of Commissioners filed herein on April 20, 1988, as modified by Order of the Court entered April 26, 1988, and the Court, after having examined the files in this action and being advised by counsel, finds that:

2.

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

3.

This judgment applies to the entire estate taken in the tracts and estate described in the Complaint filed in the captioned civil action.

4.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this action.

5.

The Acts of Congress set out in Exhibit "A" attached to the 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 October 4, 1984, 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.

6.

Simultaneously with filing of the Declaration of Taking and on February 6, 1986, there was deposited in the Registry of this Court as estimated compensation for the estate taken in the subject tracts, certain sums of money, and such deposits have been disbursed, as set out below in paragraph 11.

7.

The Report of Commissioners signed by Allen E. Barrow, Jr., Joseph H. Fee, and John Robertson, and filed herein on April 20, 1988, as modified by Order of the Court entered April 26, 1988, is hereby accepted and adopted as findings of fact in regard to the subject tracts. The total amount of just compensation for the entire estate herein taken, and the allocation thereof to the various interests in subject property, as fixed by the Commissioners, is set out below in paragraph 11.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estate

taken in subject tracts and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency together with appropriate interest thereon should be deposited by the Government. This deficiency is set out below in paragraph 11.

9.

The Defendants named in paragraphs 11 and 12 as owners of the estate taken in subject tracts are the only Defendants asserting any claim to such estate. All other Defendants having either disclaimed or defaulted, the named Defendants were the owners of the estate condemned herein, as of the date of taking, and, as such are entitled to receive the just compensation awarded by this judgment.

10.

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 filed herein, and such property, to the extent of the estate described in such Complaint, is condemned, and title to such estate is vested in the United States of America, as of October 4, 1984, and all Defendants herein and all other persons are forever barred from asserting any claim to such estate.

11.

It is further ORDERED, ADJUDGED AND DECREED that the right to receive the just compensation for the estate taken herein in the subject tracts is vested in the Defendants whose

names appear below in this paragraph and in paragraph 12; the Report of Commissioners filed April 20, 1988, as modified by Order of the Court entered April 26, 1988, hereby is confirmed and the sum therein fixed is adopted as the total award of just compensation for the estate taken in subject tracts, and said award is allocated among the various interests, as shown by the following schedule:

A. MORRISON-LESTER INTEREST

Total award of just compensation for entire estate taken in all tracts	\$433,927.00
Total deposit of estimated compensation for entire estate taken in all tracts	<u>219,827.00</u>
Total deposit deficiency	\$214,100.00
Total interest on the deficiency as of October 31, 1988	<u>103,154.26</u>
Balance due Morrison-Lester interest as of October 31, 1988 . . .	\$317,254.26
Daily rate of interest after October 31, 1988	\$70.07

B. PHILLIPS PETROLEUM COMPANY INTEREST

Total award of just compensation for entire estate taken in all tracts	\$ 29,627.00
Total deposit of estimated compensation for entire estate taken in all tracts	<u>-0-</u>
Total deposit deficiency	\$ 29,627.00
Total interest on the deficiency as of October 31, 1988	<u>11,230.46</u>
Balance due Phillips Petroleum Company interest as of October 31, 1988	\$ 40,857.46
Daily rate of interest after October 31, 1988	\$9.02

12.

The owners of the Morrison-Lester Interest are Roger Morrison, Richard Morrison, Kenneth Morrison, Milton Morrison, Marjorie Morrison as Trustee of Kenneth Morrison Trust No. 1, Milton L. Morrison and Rebecca Ann Morrison as Trustees of the Milton L. Morrison Trust No. 1, Roger Morrison and Milton L. Morrison as Trustees of the Kenneth Morrison Trust No. 2, Roger Morrison, Richard Morrison, and Sidney A. Reitz as Trustees of the Milton L. Morrison Trust No. 3, and Donald F. Lester (Morrison Oil Account).

13.

It is further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court, for the benefit of the owners, the above described (paragraph 11) deposit deficiencies and interest thereon, accrued through October 31, 1988, plus daily interest on such sums as aforesaid until such deposits be made.

14.

It is further ORDERED that when the deposits required by paragraph 13 above shall have been made, then the Clerk of this Court shall disburse the funds on deposit to the Morrison Oil Account and Phillips Petroleum Company.

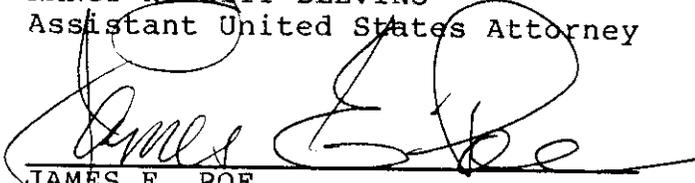

THOMAS R. BRETT
United States District Judge

APPROVED:

UNITED STATES OF AMERICA
TONY M. GRAHAM
United States Attorney



NANCY NESBITT BLEVINS
Assistant United States Attorney



JAMES E. POE
Attorney for Morrison-Lester Interest



GALEN E. WARD
Regional Chief Attorney
Phillips Petroleum Company

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

OIL, CHEMICAL, AND ATOMIC WORKERS)
INTERNATIONAL UNION, LOCAL 5-401,)
Plaintiff,)

vs.)

ST. JOE MINERALS CORPORATION, a)
New York corporation, and)
IVY HOLDINGS, LTD., a Delaware)
corporation,)
Defendants.)

Civil Action No. 88-C-741-C ✓

FILED

NOV 7 1988 *ms*

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

ORDER OF DISMISSAL
WITH PREJUDICE

Pursuant to the Stipulation of Dismissal With Prejudice
filed by all parties in this action,

IT IS HEREBY ORDERED that the above captioned action be
dismissed with prejudice. Each party to bear their own costs and
attorney fees.

SO ORDERED this 4 day of November, 1988.

W. Sale Brook
UNITED STATES DISTRICT JUDGE

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

NOV 7 1988

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-vs-)
)
VIVIAN R. WILLIAMS,)
18802724)
)
Defendant,)

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

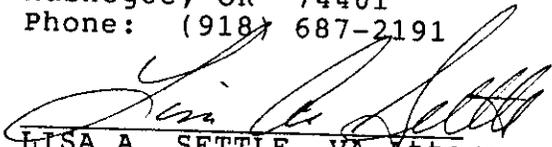
CIVIL NUMBER 88-C-616 B

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Veterans Administration, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

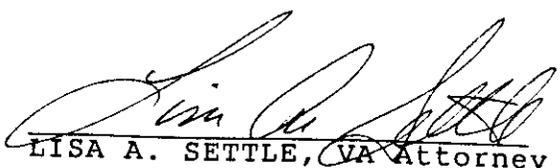
Respectfully Submitted,

UNITED STATES OF AMERICA
Herbert N. Standeven
District Counsel
Veterans Administration
125 South Main Street
Muskogee, OK 74401
Phone: (918) 687-2191

By: 
LISA A. SETTLE, VA Attorney

CERTIFICATE OF MAILING

This is to certify that on the 4th day of November, 1988, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: VIVIAN R. WILLIAMS, at 4500 N.E. Harmony Star Road, Claremore, OK 74017.


LISA A. SETTLE, VA Attorney

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

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

LOCAL 798 OF THE UNITED)
ASSOCIATION OF JOURNEYMEN)
AND APPRENTICES OF THE)
PLUMBING AND PIPE FITTING)
INDUSTRY OF THE U.S. AND)
CANADA, AFL-CIO,)

Defendant.)

84-C-730-C

FILED

NOV 7 1988

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

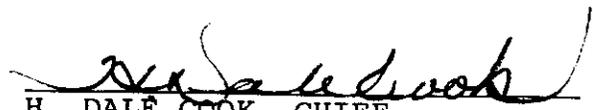
ORDER

The court has for consideration the Findings and Recommendations of the Magistrate filed October 11, 1988, in which the Magistrate recommended that the Application for Attorney Fees of defendants be denied in its entirety. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that the Application for Attorney Fees of defendants is denied in its entirety.

Dated this 7 day of November, 1988.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

FILED

NOV -7 1988

WILLIAM F. WATTS, JR.,)
)
 Plaintiff,)
)
 -vs-)
)
 AVAZAR ASSOCIATES, INTEGRATED)
 RESOURCES, INC., INTEGRATED)
 RESOURCES EQUITY CORPORATION,)
 METEC ASSOCIATES LIMITED)
 PARTNERSHIP, ZAR CORPORATION)
 and PARTNERS ONE THROUGH)
 TWENTY-FIVE, INCLUSIVE,)
)
 Defendants.)

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

No. 88-C-858-E

NOTICE OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1)(i), Plaintiff, William F. Watts, hereby dismisses his action, with prejudice to the refiling thereof.

DATED this 7th day of November, 1988.

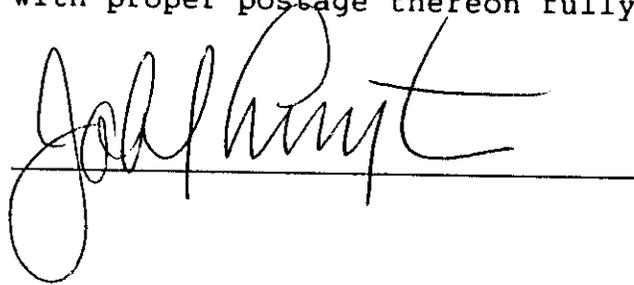


John J. Livingston
525 South Main Street, Suite 1130
Tulsa, Oklahoma 74103
(918) 582-1812

ATTORNEY FOR PLAINTIFF,
WILLIAM F. WATTS

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of November, 1988, a true, correct and exact copy of the above and foregoing instrument was mailed to Richard B. Noulles, of Gable & Gotwals, 2000 Fourth National Bank Building, Tulsa, Oklahoma 74119, Attorney for Defendants herein, with proper postage thereon fully prepaid.

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

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

CURLIE B. STOREY,)
)
 Plaintiff,)
)
 vs.)
)
 TRANSPORT INSURANCE COMPANY,)
)
 Defendant.)

No. 87-C-900-C

F I L E D

NOV 7 1988

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

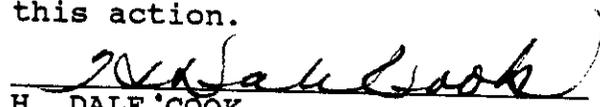
JOURNAL ENTRY OF JUDGMENT

NOW on this 28th day of September, 1988, this matter comes on for trial before the undersigned Judge of the United States District Court. The plaintiff is present and represented by his attorney, Frank Hickman, and the defendant is present and represented by its attorney, Harold C. Zuckerman. A jury was empaneled and sworn in and after presentation of the case on behalf of the plaintiff and presentation of the case on behalf of the defendant, the Court hereby finds as follows:

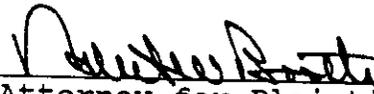
1. That the plaintiff is denied judgment against the defendant on his petition; and
2. That judgment is hereby rendered in favor of, and judgment is entered on behalf of, the defendant Transport Insurance Company, and against the plaintiff, Curlie Storey, in the amount of \$17,671.21, plus the costs of this action.

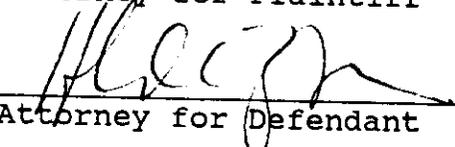
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is rendered in favor of, and judgment is entered on behalf of, the defendant Transport Insurance Company in the amount of

\$17,671.21, plus the costs of this action.


H. DALE COOK
JUDGE OF THE U.S. DISTRICT COURT

APPROVED AS TO FORM:


Attorney for Plaintiff


Attorney for Defendant

FILED

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

NOV 4 1988

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

A. T. CLAYTON & CO., INC.,
Plaintiff,
vs.
MISSOURI-KANSAS-TEXAS
RAILROAD COMPANY,
Defendant.

Case No. 87-C-1077-R P

JUDGMENT

This action came on for trial before the Court, Honorable Layn R. Phillips, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,
IT IS ORDERED AND ADJUDGED,

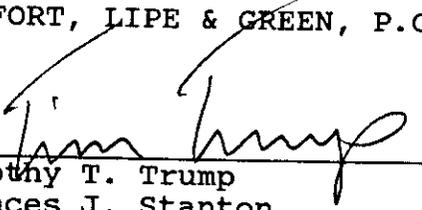
that the Plaintiff A. T. Clayton & Co., Inc. recover of the Defendant Missouri-Kansas-Texas Railroad Company the sum of \$34,341.20; prejudgment interest thereon in the amount of \$4,250.78; prejudgment interest in the amount of \$502.22 on the \$7,600.00 in salvage proceeds previously tendered to Plaintiff; postjudgment interest; and its costs of this action. The award of attorneys fees shall be determined upon further order of the Court.

DATED this 3RD day of November, 1988.


United States District Judge

Approved as to Form:

COMFORT, LIPE & GREEN, P.C.

By 
Timothy T. Trump
Frances J. Stanton
2100 Mid-Continent Tower
401 S. Boston Avenue
Tulsa, Oklahoma 74103
(918) 599-9400

CONNER & WINTERS

By 
Malcolm E. McCollam
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

FILED

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

NOV 4 1988

LOUISE AND FRED HARKAVY,)
)
 Plaintiffs,)
)
 vs.)
)
 FIVE SHOPPING CENTER COMPANY,)
)
 Defendant.)

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

No. 87-C-1049-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 THEREFORE ORDERED that the action be dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigations 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.

ORDERED this 3rd day of November, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

be and they are hereby granted in their entirety against Plaintiff, Roy Chandler.

IT IS THEREFORE ORDERED that Plaintiff take nothing by his action, and that Plaintiff's Complaint filed herein be dismissed with prejudice, at Plaintiff's cost.

Dated this 3 day of ^{Nov}~~October~~, 1988.

S/ JAMES O. ELISON

UNITED STATES DISTRICT JUDGE
FOR THE NORTHERN DISTRICT OF
OKLAHOMA

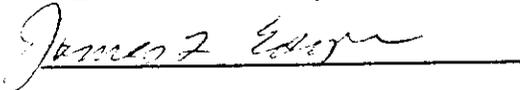
APPROVED AS TO FORM:

JOHN S. ATHENS, OBA #365
DAVID R. CORDELL, OBA #11272



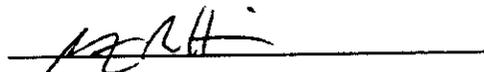
Attorneys for Defendant
AMERICAN AIRLINES, INC.

JAMES L. EDGAR, OBA # ²⁶¹⁷



Attorney for Plaintiff

STEVEN R. HICKMAN, OBA #4172



Attorney for Defendant
TRANSPORT WORKERS UNION OF AMERICA,
AFL-CIO, LOCAL 514
2390.02P

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

GEORGE SWIGER,

Plaintiff,

vs.

WILLBROS ENERGY SERVICES
COMPANY, a corporation,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

Case No. 88-C-1464-E

FILED

NOV 4 1988 *CB*

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

ORDER ALLOWING JOINT
STIPULATION TO REMAND

NOW on this 3rd day of Nov., 1988, this matter having
come before the Court upon the Joint Stipulation of the parties
to remand the action to State Court based upon the reasons
stated therein,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the
Petition for Removal be denied and said action be remanded to
the Tulsa County District Court, State of Oklahoma.

James A. Lewis
UNITED STATES DISTRICT JUDGE

United States District Court)
Northern District of Oklahoma) SS
I hereby certify that the foregoing
is a true copy of the original on file
in this Court.

By *Cindy Bush*
Deputy
Jack C. Silver, Clerk

FES/kb

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

KENT LEWIS,

Plaintiff,

vs.

CHRIS ODDO,

Defendant.

)
)
)
)
)
)
)
)
)
)

No. 87-C-229-C

FILED

NOV 4 1988

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

ORDER OF DISMISSAL

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

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

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

LENARD AMES,

Plaintiff,

vs.

THE CITY OF DEWEY, OKLAHOMA,
GARY TAYLOR, JESS HOUSE,
RAYMOND SPENCER, NATE YOUNG,
BOB JORDON, and LESLIE
PURDUM,

Defendants.

Case No. 87-C-461-B ✓

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

NOV - 3 1988

FILED

J U D G M E N T

In keeping with the Court's Order of November 2, 1988, sustaining the Motion for Summary Judgment of Defendants, the City of Dewey, Oklahoma, Gary Taylor, Jess House, Raymond Spencer, Nate Young, Bob Jordon and Leslie Purdum, judgment is hereby entered in favor of the City of Dewey, Oklahoma, Gary Taylor, Jess House, Raymond Spencer, Nate Young, Bob Jordon and Leslie Purdum, and against Plaintiff Lenard Ames. The costs are to be paid by the Plaintiff and the parties are to pay their respective attorney's fees.

Dated this 3rd day of November, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

NOV 3 1988

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

BARBARA C. THERKILDTSEN, as)
 Personal Representative)
 of William C. Barrows, Jr.,)
 Deceased,)
)
 Plaintiff,)
)
 vs.)
)
 ELLSWORTH PAVING & SEALING, INC.)
 an Oklahoma corporation, and)
 DALE EDWARD CLARK, an)
 individual,)
)
 Defendants.)

No. 87-C-852-B ✓

AMENDED JUDGMENT

In keeping with the Findings of Fact and Conclusions of Law entered on October 31, 1988 and as amended this date, Judgment is hereby granted to the Plaintiff, Barbara C. Therkildsen, as personal representative of William C. Barrows, Jr., Deceased, and against the Defendants, Ellsworth Paving & Sealing, Inc., an Oklahoma corporation, Dale Edward Clark, an individual, and Kevin Ellsworth, an individual, in the amount of Five Hundred Sixteen Thousand Eight Hundred Eight and 74/100 Dollars (\$516,808.74), said sum to bear prejudgment interest at the rate of 9.9% per annum from October 15, 1987 to this date (12 Okl.St. Ann. §727(A)(2)), and said judgment to bear postjudgment interest at the rate of 8.15% per annum following this date (28 U.S.C. §1961).

By Order of May 18, 1988, the Court sustained the motions for summary judgment of the Defendants in reference to the claim of

Kieran Elizabeth Barrows, a minor, through the personal representative herein, and sustained the motion for summary judgment of the Defendant Stroud Oil Reclaiming Company, Inc. against the Plaintiff. Judgment is hereby entered in favor of the Defendants and against the minor Plaintiff, Kieran Elizabeth Barrows, and judgment is hereby entered in favor of Stroud Oil Reclaiming Company, Inc. and against the Plaintiff.

The Defendants are to pay the costs of the action if timely applied for by the Plaintiff in accordance with Local Rule 6. This being principally a wrongful death action pursuant to 12 Okl.St. Ann. §1053, the parties shall pay their own respective attorneys fees.

DATED this 3rd day of November, 1988.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

LENARD AMES,

Plaintiff,

vs.

THE CITY OF DEWEY, OKLAHOMA,
GARY TAYLOR, LES PURDUM,
JESS HOUSE, NATE YOUNG, BOB
JORDAN and RAYMOND SPENCER,

Defendants.

No. 87-C-461-B ✓

FILED

NOV 2 1988 *tl*

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

ORDER

This matter comes before the Court upon Defendants' Motion for Summary Judgment. The Plaintiff, Lenard Ames, instituted this suit to redress alleged constitutional and statutory violations arising from his termination as the Chief of Police for the City of Dewey, Oklahoma.

The Plaintiff has been employed by the City of Dewey for approximately 31 years. In 1981, Plaintiff became the Chief of Police and on or about December 1, 1986, he was also appointed the acting City Manager. Plaintiff continued to serve in this dual capacity until May 4, 1987, when he voluntarily resigned his position as City Manager so he could devote his undivided attention to his duties as Chief of Police. On May 4, 1987, the Dewey City Council appointed Les Purdum the acting City Manager. On May 8, 1987, Les Purdum delivered a letter to the Plaintiff relieving him of his duties "for the good of the service, economic conditions and welfare of the City." The City of Dewey has a charter form of government and vests authority in the city manager to make all

necessary personnel decisions, including promotions and terminations, without interference from the city council. The Plaintiff alleges members of the City Council conspired with the acting City Manager to terminate Ames' employment and deprive him of his constitutionally protected liberty interests, property rights in continued employment and accrued leave time, and right to free association. Additionally, the Plaintiff alleges the City of Dewey should be liable for violating his civil rights protected under 42 U.S.C. §1983.

It is well recognized that a city may be sued for civil rights violations pursuant to 42 U.S.C. §1983; however, in order to state a cause of action against a municipality, a plaintiff must allege the municipality officially adopted or promulgated some custom or policy which had the effect of violating that person's civil rights. Monell v. Department of Social Services of New York, 436 U.S. 658, 690 (1978). Nowhere does the Plaintiff allege the city officially adopted a policy or promulgated a custom which may be fairly attributed as official policy that violated his civil rights.

To survive a motion for summary judgment, the Plaintiff "must establish that there is a genuine issue of material fact as to whether" Defendants' actions constituted an official policy. Plaintiff "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986). Fed.R.Civ.P. 56(c). "The plain language of Rule 56(c) mandates the entry of summary judgment,

after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corporation v. Catrett, 477 U.S. 317 (1986). Therefore, the Plaintiff has the burden of coming forward with some evidence, whether by affidavit or by deposition, to establish the existence of an official policy or custom and the deprivation of his protected rights and interests.

Plaintiff offers Lenard Ames' Affidavit and deposition and deposition testimony from Dewey Mayor Gary Taylor, City Clerk Judy McMurtrey, and acting City Manager Les Purdum to rebut the Defendants' Motions. With regard to the existence of an official policy or custom, the Plaintiff's affidavits and deposition testimony fail to establish any form of policy, whether formal or informal, to deny Plaintiff of any protected rights. Deposition testimony of Les Purdum and Gary Taylor do not establish the existence of any material fact in issue with regard to an official policy, custom, or conspiracy. In fact, the depositions support the Defendants' claim that Les Purdum was acting on his own behalf without direction or influence from other individuals. Deposition of Les Purdum, attached as Exhibit B, and deposition of Gary Taylor, attached as Exhibit C to Plaintiff's Supplemental Response to Defendants' Motion for Summary Judgment.

In their Motion, the Defendants submitted affidavits from the Mayor, the acting City Manager, and the members of the City Council

who are defendants herein. The Mayor's and City Council members' affidavits state they voted to appoint Les Purdum as the acting City Manager, but there was no understanding or instructions to fire the Plaintiff. Additionally, they did not have the authority to make personnel decisions and did not encourage Les Purdum to terminate Plaintiff's employment. Les Purdum's affidavit states that he had the authority to terminate the Plaintiff's employment and the bases for that action were "for the good of the service, economic conditions and welfare of the City." Plaintiff alleges these reasons are a mere pretext; however, Plaintiff fails to come forward with any evidence tending to prove the actual reason for his termination¹. When faced with the Defendants' Motion and supporting affidavits, the Plaintiff's lack of evidence tending to prove the existence of an official policy or custom is fatal to his §1983 claim.

The Plaintiff also asserts that his property interests were unconstitutionally violated when he was fired without a pretermination hearing. To be entitled to a pretermination hearing and to have a claim for a violation of a property interest, the employee must have more than a unilateral expectation of continued employment. The employee must have a legitimate claim of entitlement to continued employment. Board of Regents of State

¹The Plaintiff's failure to come forward with any admissible evidence as to the actual reasons for his termination, other than the allegations in the Complaint, is also dispositive to his claim there was a conspiracy to discharge him for exercising his constitutional rights of free speech and free association.

Colleges v. Roth, 408 U.S. 564, 577 (1972). The Roth decision concluded that these interests should be determined by state law.

"Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits."

Id. To support his claim that he possessed a valid property interest, the Plaintiff alleges the Dewey personnel manual vested him with continued employment which could be terminated only for cause. The manual provides that a person shall be terminated if the following occurs:

- a. Voluntary quitting.
- b. Discharge for cause.
- c. Failure to report to work after a lay-off.
- d. Absence from work without leave.

Plaintiff construes section (b) to permit discharge only for cause and argues the personnel manual supersedes the City Charter and City Code, thereby giving the Plaintiff a protected property interest which may be terminated only after a pretermination hearing. Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

Plaintiff's argument fails on two grounds. First, where the Plaintiff is under no contract or commission and has no fixed term of employment, his employment must be considered terminable at will. Abeyta v. Town of Taos, 499 F.2d 323, 327 (10th Cir. 1974). Additionally, Plaintiff's reliance upon Loudermill is misplaced because the statute in that case specifically provided that a

public employee was a classified employee and could be terminated only for cause. No such statute or language exists in state or local laws in this instance. Plaintiff alleges the personnel manual created such a property right by construing "discharge for cause" to mean "discharge only for cause". The personnel manual, however, was an expression of general personnel policies and does not have the force and effect of law. None of the procedures were followed to enact the policy as an ordinance or as an ordinance by reference. Defendants' Affidavit and Deposition testimony of Judy McMurtrey and Plaintiff's deposition testimony attached as Exhibit A to Plaintiff's Supplemental Response. Notwithstanding any apparent confusion in McMurtrey's deposition², a personnel manual is not the type of ordinance contemplated by Dewey City Charter §18.³

Even if the manual had been adopted as an ordinance by reference, it would have been an improper amendment to the City Charter because it would have substantially limited the City

²In the Plaintiff's Exhibit A, Judy McMurtrey appeared to be confused as to the difference between enacting an ordinance and enacting an ordinance by reference. The complete text, however, establishes McMurtrey's conclusion that the formalities were not followed to enact the manual as either an ordinance or by reference.

³Section 18 of the Dewey City Charter provides: "The council by ordinance may adopt by reference codes, ordinances and standards relating to building, plumbing, electrical installations, milk and milk products, and other matters which it has power to regulate otherwise. Such a code, ordinance or standard so adopted need not be enrolled in the book or ordinances; but a copy shall be filed and kept in the office of the city clerk. The city clerk shall keep copies of every such code, ordinance or standard in force for distribution or sale at their approximate cost."

Manager's authority to make personnel decisions. The Dewey City Charter section 22(1) provides that the City Manager shall have the authority to:

"1. Appoint, and when necessary for the good of the service, suspend, demote or remove all directors, or heads, or administrative departments and all other administrative officers and employees of the city except as he or the council by ordinance or this charter may authorize the head of a department, an officer or an agency to appoint and suspend, demote or remove subordinates in such department, office or agency, subject to such merit system regulations as the council may ordain."

The City Code underscores this authority in sections 2-301 and 2-302 by vesting the City Manager with the discretion to remove employees "without cause for the good of the service." If the City Council wanted to limit the City Manager's authority, the proper means would have been to amend the Charter as provided in the Dewey City Charter §51. Consequently, the City Manager retains the discretion to remove an employee for the good of the service.

The Supreme Court of Oklahoma in Hall v. O'Keefe, 617 P.2d 196 (Okla. 1980), construed the term "for the good of the service" as it appears in Title 11 O.S. §§10-113 and 10-120.⁴ The Supreme Court concluded:

"Certainly the legislature could not have then meant a limitation so vague as 'for the good of the service' to confer upon a city employee a property interest requiring due process

⁴These sections are substantially identical to the Charter provisions in the Dewey City Charter. 11 O.S. §10-113 is identical to Dewey City Charter section 22 (Powers and Duties of the City Manager) and 11 O.S. §10-120 is substantively the same as Dewey Charter section 40 (Merit System).

protection unavailable to him under more explicit guarantees."

Id. at 200. The Plaintiff could have no legitimate expectation of continued employment where the City Charter and City Code allow termination for the good of the service. Accepting the Plaintiff's construction that "termination for cause" superseded the Charter and City Code would substantially alter the authority the City Charter vests in the City Manager to terminate an employee for the good of the service. Relying upon state and city law, it is clear that a property interest was not to be conferred by the terms "for the good of the service." Graham v. City of Oklahoma City, Oklahoma, No. 86-2377 (10th Cir. Oct. 13, 1988).

Notwithstanding the personnel manual is not considered to have the force and effect of law, Plaintiff urges that an employment manual can become part of the employment contract. Hinson v. Cameron, 742 P.2d 549 (Okla. 1987), recognized that an employee manual may form an employment contract if the manual was part of the bargain inducing employment or if the employee suffered some form of detrimental reliance. Id. at 554-55, n.20. The Hinson Court concluded, however, the 37 grounds for termination in that employee handbook were not exhaustive, but merely illustrative. 742 P.2d at 556-57. It is particularly noteworthy the Dewey Personnel Manual never defines what "termination for cause" entails. This is but more indicia the City Council did not intend the manual to have the widespread effect the Plaintiff urges. Even if the Plaintiff's position were adopted, the City Manager would

have complete discretion to determine the grounds for termination given the lack of what constitutes "cause". This discretion, coupled with the authority to terminate employment, defeats any possible property interest in continued employment. Poolaw v. City of Anadarko, 660 F.2d 459, 463 (10th Cir. 1981), *cert. denied*, 469 U.S. 1108 (1985), *overruled on other grounds*, Skinner v. Total Petroleum, Nos. 85-2807 and 85-2825 (10th Cir. October 14, 1988). Absent special circumstances, employment for an indefinite period is not to be considered permanent employment, but employment terminable at-will. Singh v. Cities Service Oil Co., 554 P.2d 1367 (Okla. 1976).

The Plaintiff cannot be considered to have had a vested property interest of permanent employment with the City of Dewey because the City Charter and the City Code clearly provided for termination for the good of the service when the Plaintiff accepted his employment. The Plaintiff has neither plead nor offered evidence showing any reliance or special circumstances giving rise to an enforceable contract based upon the personnel manual.⁵ Consequently there is no property interest in continued employment and a pretermination hearing is unnecessary. Bishop v. Wood, 426

⁵Examples of special circumstances or detrimental reliance are (a) job training where the costs are borne by the employee; (b) detrimental reliance followed by turning down offers of other employment; (c) selling a business by people who then become employees of the buyer; (d) moving after being lured by an indication of lengthy employment; (e) implied or express promises about job security made during recruiting; and (f) statements about good working conditions, salary increases, promotions or special compensation programs. Hinson v. Cameron, 742 P.2d at 555 n.20. (Citations omitted).

U.S. 341 (1976); Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

Although the personnel manual does not confer a property interest in continued employment, Hinson v. Cameron recognizes that certain benefits may vest pursuant to a personnel manual. Section 20.2(c) of the Personnel Manual clearly provides that an employee discharged for cause will be paid accrued annual leave. Although the amount of any accrued leave has not been established, the existence of such leave has not been denied. Accordingly, the Plaintiff is left to whatever remedies state and local law provide in obtaining his accrued leave. Roth, supra.

Plaintiff also alleges his liberty interests have been violated by the publication of false and stigmatizing statements.

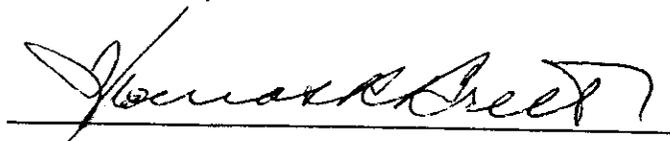
"The [Supreme] Court has held that for an employee to make a successful liberty deprivation claim she must show that her dismissal resulted in the publication of information which was false and stigmatizing --information which had the general effect of curtailing her future freedom of choice or action." (citations omitted).

Asbill v. Housing Authority of Choctaw Nation, 726 F.2d 1499, 1503 (10th Cir. 1984). Plaintiff's counsel acknowledged at the hearing before this Court that there is no admissible evidence in the record to support the allegations of publication of stigmatizing remarks. Plaintiff's deposition of Lenard Ames makes reference to rumors the Plaintiff has heard, but fails to substantiate any of the allegations in the Complaint. A party opposing a motion for summary judgment cannot rely upon mere allegations, but bears the

responsibility of producing more than a scintilla of evidence to support his position. Celotex v. Catrett, supra. In this instance, the Plaintiff has not even produced a scintilla of evidence supporting a claim for a violation to his liberty interests.

It is therefore **ORDERED, ADJUDGED AND DECREED** that Summary Judgment be entered in favor of the City of Dewey, Oklahoma, and the individual defendants with regard to the §1983 claim, the property interest claim with regard to continued employment, and the liberty interest claim. As the remaining issue of any accrued leave days is a matter of state and local law, it is further **ORDERED** that the accrued leave time claim be dismissed for lack of subject matter jurisdiction.

Dated this 2nd day of November, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entered

FILED

NOV 2 1988

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

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

SAFECO INSURANCE COMPANY OF)	
AMERICA, a foreign corporation,)	
)	
Plaintiff,)	
)	
vs.)	No. 87-C-37-EP
)	
RICHARD MONTGOMERY, et al.,)	
)	
Defendants.)	

JOURNAL OF ENTRY OF JUDGMENT

This matter came on for trial on October 5, 1988 at 1:00 P.M. in the United States District Court For The Northern District Of Oklahoma before the Honorable Layn R. Phillips, United States District Judge for the Western District of Oklahoma, sitting as a visiting judge. Safeco Insurance Company Of America appeared by its representative and by its attorney, Philip McGowan and Richard Montgomery and Judy Montgomery appeared personally and by and through their attorneys, L. Richard Howard and Byron Ed Williams.

The Court finds that Safeco, as Plaintiff, filed a declaratory judgment action to determine whether there was coverage on a homeowners insurance policy, being Policy No. OJ51853 existing between Safeco and the Montgomerys. The Montgomerys filed an Answer and Counterclaim seeking to recover damages under the policy, and seeking recovery of additional actual and exemplary damages upon a claim of bad faith.

The Court finds that this Court has jurisdiction of the parties hereto and the subject matter hereof pursuant to 28 USC Sec. 1332(A) in that there is complete diversity of citizenship between the parties and the amount in controversy is in excess of \$10,000.00.

The Court further finds a jury of six persons and one alternate were selected to try the case and after being duly empanelled and sworn the parties began presentation of their evidence. In this connection the Court finds that by virtue of previous Orders entered in the case Richard Montgomery and Judy Montgomery were designated as Plaintiffs and began to put on their case first, and Safeco Insurance Company Of America was designated as Defendant.

The Court further finds that after commencing trial of the case the Court ordered that the case be bifurcated and trial proceed on the issue of coverage under the policy, only, and ordered a later trial on the issue of bad faith dependent upon the outcome of the jury verdict on the coverage issue.

The Court further finds that at the conclusion of all the evidence the issues concerning coverage were submitted to the jury under instructions prepared by the Court. Additional instructions previously submitted by the parties were not given by the Court, ~~nor did the Court receive objections concerning the parties previously submitted instructions.~~ That without objection by either party the alternate was allowed to participate in the deliberations, and the jury retired to deliberate.

The Court further finds that the jury rendered a unanimous verdict which was received in open Court, without objection by either party, and which was accepted by the Court: the verdict reading as follows:

"We, the jury, find in favor of the Defendant, Safeco Insurance Company Of America, and against the Plaintiffs, Richard Montgomery and Judy Montgomery, on the Plaintiffs' claim so that the Plaintiffs take nothing by way of their claim."

The Court further finds that as the jury rendered a verdict in favor of Safeco Insurance Company and against Richard and Judy Montgomery that the Montgomerys take nothing by way of their claim under the policy, that the further claim of Richard Montgomery and Judy Montgomery for actual and exemplary damages in bad faith against Safeco is rendered moot by virtue of the jury verdict and the same is hereby dismissed.

BE IT THEREFORE ORDERED ADJUDGED AND DECREED that Safeco Insurance Company Of America have and recover judgment of and from Richard Montgomery and Judy Montgomery, that the Montgomerys take nothing by way of their claim against Safeco Insurance Company on the homeowners policy issued by Safeco to the Montgomerys and that Safeco be discharged, henceforth, without delay.

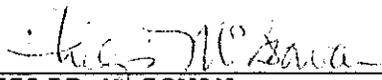
BE IT FURTHER ORDERED ADJUDGED AND DECREED that by virtue of the jury verdict in favor of Safeco on the issue of coverage, that the further claim of Richard Montgomery and Judy Montgomery

for actual and exemplary damages in bad faith against Safeco is rendered moot and is hereby dismissed.


LAYN R. PHILLIPS
United States District Judge

APPROVED AS TO FORM ONLY


L. RICHARD HOWARD
BYRON ED WILLIAMS
for Richard Montgomery and
Judy Montgomery


PHILIP MCGOWAN
for Safeco Insurance Company
Of America

F I L E D

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

NOV 2 1988

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

SPENCE RESEARCH INSTITUTE, INC.,)
)
Plaintiff,)

vs.)

Case No. 88-C-566-E

BOB E. SURRETT, COLLEEN V. SURRETT,)
NEVER M. FAIL, JR., MARILYN K. FAIL,)
JOHN W. SUBLETT, LORENA P. SUBLETT,)
RUSSELL N. FAIL, PATSY FAIL, PETER)
L. BUTZ, SR., JANICE BUTZ, INSILCO)
CORPORATION, JIM WALTER HOMES, INC.,)
JEANNE SPERLING, MARIE DAVIS, DAVID)
JOE DAVIS, JAMES L. WEBB, MARY G.)
WEBB, BURTON KERR, JUDY C. KERR,)
SECURITY NATIONAL BANK, SAPULPA)
RANCH, INC., BOYD G. MCKAY, PAULA)
MCKAY, JOSEPH WEIDER, PHYLLIS A.)
WEIDER, and NICHOL ANN DAVIS,)
)
Defendants.)

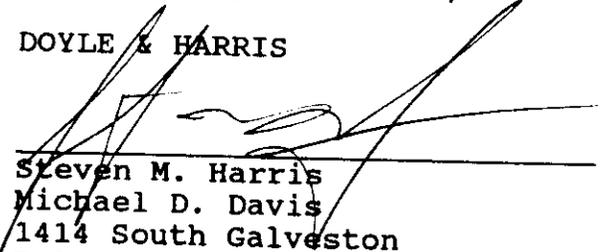
**PARTIAL STIPULATION OF DISMISSAL WITH
PREJUDICE PURSUANT TO RULE 41(a)(1) AS
TO THE DEFENDANTS, MARIE DAVIS, DAVID JOE DAVIS,
NICHOL ANN DAVIS, JAMES L. WEBB AND MARY G. WEBB, ONLY**

COMES NOW the plaintiff and the defendants, Marie Davis, David Joe Davis, Nichol Ann Davis, JAMES L. Webb and Mary G. Webb, and hereby stipulate pursuant to Fed.R.Civ.P. 41(a)(1) to dismiss the above captioned action with prejudice as to said defendants only. The plaintiff

reserves all of its rights as to all other defendants in
said action.

Respectfully submitted,

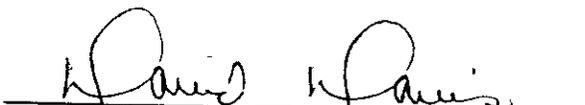
DOYLE & HARRIS



Steven M. Harris
Michael D. Davis
1414 South Galveston
Tulsa, OK 74127
(918) 582-0090
Attorneys for Plaintiff



Marie Davis



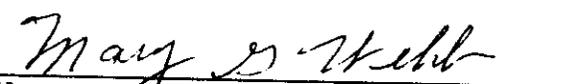
David Joe Davis



Marie Davis as Mother of
Nichol Ann Davis & Next Best Friend
Nichol Ann Davis



James L. Webb



Mary G. Webb

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

NELLIE K. STOVER, an)
individual,)
)
Plaintiff,)
)
vs.)
)
LEONARD L. FRANK, an)
individual; HUDSON FARMS,)
INC., a corporation,)
)
Defendants.)

Case No. 88-C-67 B

FILED

NOV. 2 1988

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

ORDER

The Court has for consideration the parties' Stipulation for Dismissal. and has carefully perused the entire file, the briefs, and all the recommendations concerning said Stipulation, and being fully advised in the premises, finds:

That the parties' Stipulation should be approved by the Court.

IT IS THEREFORE ORDERED that the above-styled and numbered action be dismissed with prejudice to the subsequent filing of same.

DATED this 2nd day of November, 1988.

S/ THOMAS R. BREIT

UNITED STATES DISTRICT JUDGE

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

FILED

NOV - 2 1988

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

LEE PHILLIPS)
)
 Plaintiff,)
)
 vs.)
)
 AMERICAN AIRLINES, INC.,)
)
 Defendant.)

No. 88-C-472-B

O R D E R

This matter comes before the Court on Defendant American Airlines, Inc.'s Motion to Dismiss Count 1 of Plaintiff's Complaint pursuant to Fed.R.Civ.P. 12(b)(6). For the reasons set forth below, the Motion to Dismiss is sustained.

Plaintiff, Lee Phillips, was employed by American Airlines, Inc. ("American Airlines") from 1962 until August 26, 1987. During this 25-year period, Plaintiff received various promotions and commendations from Defendant, as well as oral assurances of continued job security with Defendant. However, at no time did Plaintiff and Defendant enter into a contract for employment. On August 26, 1987 Defendant terminated Plaintiff's employment. Plaintiff alleges this termination was a wrongful discharge as it was done without good cause and for no legitimate business purpose.

On May 27, 1988, Plaintiff filed this action against Defendant, American Airlines, asserting that in terminating the Plaintiff's employment, Defendant breached an implied contract for long term employment. Plaintiff's sole basis for asserting this claim in an at-will employment relationship, is his interpretation

of the Oklahoma Supreme Court's decision in Hinson v. Cameron, 742 P.2d 549 (Okla. 1987).

In Hinson the Oklahoma Supreme Court reaffirmed Oklahoma's adoption of the at-will employment doctrine which is applicable in the absence of an employment contract. Under the at-will doctrine, an employment relationship can be terminated by either the employer or employee at any time and for any reason, without incurring liability in so doing. In reaffirming Oklahoma's commitment to this doctrine, the Court noted, in *dicta*, three possible exceptions to the general rule of at-will employment. The Court determined that these exceptions rested on three distinct theories:

"(a) public policy tort, (b) tortious breach of an implied covenant of good faith and fair dealing and (c) implied contract that restricts the employer's power to discharge." 742 P.2d at 552.

With regard to the third exception, on which Plaintiff's claim is based in this case, the Court laid out factors which could be used to determine whether an implied contract right to job security existed. These factors are:

"(a) evidence of some 'separate consideration' beyond the employee's services to support the implied term, (b) longevity of employment, (c) employer handbooks and policy manuals, (d) detrimental reliance on oral assurances, pre-employment interviews, company policy and past practices and (e) promotions and commendations." 742 P.2d at 554-55.

The factors which Plaintiff claims apply in this case are (b) longevity of employment, (d) detrimental reliance on oral assurances, pre-employment interviews, company policy and past

practices, and (e) promotions and commendations. However, the proper point of inquiry in this case is not whether Plaintiff fits one of the exceptions in Hinson, but rather whether the Oklahoma Supreme Court intends to adopt these exceptions and in so doing effectively move away from the at-will employment doctrine.

Federal courts discussing Oklahoma law have consistently held that the Oklahoma Supreme Court did not adopt any of the exceptions laid out in Hinson. Plaintiff cites no cases which would lead to a contrary belief.

In Clymer v. T.G. & Y. Stores Co., No. 86-0502 (W.D.Okla. Dec. 8, 1987), and Payne v. T.G. & Y. Stores Co., No. 86-0500 (W.D. Okla. Dec. 8, 1987), the Honorable Ralph Thompson specifically addressed this question of whether the Oklahoma Supreme Court, as a result of Hinson, has deviated from the employment-at-will doctrine by adopting any of these three exceptions. Judge Thompson determined that the Oklahoma Supreme Court has not done so and stated, "[t]he Oklahoma Supreme Court has not modified the [at-will] doctrine by adopting exceptions that restrict the grounds on which an at-will employee may be discharged...." Judge Thompson went on to state that "[w]hile the Oklahoma Supreme Court expressly rejected the second theory by declining to impose upon employers a legal duty not to terminate at-will employees in bad faith, it neither adopted nor rejected the exceptions resting on public policy or implied contract." Because neither the Oklahoma legislature nor the Oklahoma Supreme Court have recognized a tort cause of action for wrongful discharge, Judge Thompson refused to

enter judgment for the Plaintiff who brought a cause of action under one of the exceptions in Hinson.

In Hull v. Wal-Mart Stores, Inc., ____ F.2d ____ (10th Cir. 1988) (slip op. April 7, 1988, No. 85-2802), the Tenth Circuit addressed this same question. As in the present case, Hull involved an at-will employee's claim against his former employer for wrongful discharge. In Hull, the Tenth Circuit reversed a jury verdict in favor of the terminated employee. The Court explained that Oklahoma continued to adhere to the at-will rule and therefore when the length of employment "is not specified by the contract, either the employer or employee can terminate the employment without liability."

In light of the Oklahoma Supreme Court's unwillingness to deviate from the employment-at-will doctrine, this Court has no alternative but to sustain Defendant's Motion to Dismiss as Plaintiff has failed to state a claim upon which relief can be granted. To do otherwise would be to significantly depart from established precedent in Oklahoma. Wright and Miller, Federal Practice and Procedure §4507 describes the proper role of federal courts when confronted with proposals to change state law:

"Even if, by the lights of the federal court or the courts of other states, a rule of law as announced by a state's highest court is anomalous, antiquated, or simply unwise, it must be followed unless there are very persuasive grounds for believing that the state's highest court no longer would adhere to it."

This Court sees no grounds for believing that the Oklahoma Supreme Court would no longer adhere to the employment-at-will doctrine. This belief is accentuated by the Plaintiff's inability to cite even one case that would cause us to believe otherwise. It is clearly not the place of a federal court "to adopt innovative theories of [state law] ... but simply to apply that law as it currently exists." Galindo v. Precision American Corp., 754 F.2d 1212, 1217 (5th Cir. 1985). Because the law which currently exists in Oklahoma in the absence of an employment contract is the doctrine of employment-at-will, this Court has no choice but to sustain the Defendant's Motion to Dismiss.

IT IS THEREFORE ORDERED the Motion to Dismiss Count 1 is hereby sustained.

DATED this 2nd day of November, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

10/12/88

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

FILED
NOV 2 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

GEORGE MALL, Individually, and)
INTERNATIONAL BUSINESS AIRCRAFT,)
INC., an Oklahoma corporation,)
Plaintiffs,)
vs.)
THE GARRETT CORPORATION,)
a California corporation,)
Defendant.)

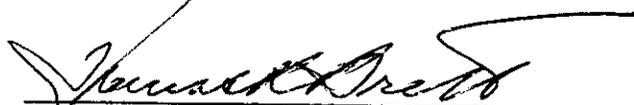
Case No. 83-C-252-B ✓

ORDER OF DISMISSAL

Upon application of the Plaintiffs for Order of Dismissal, and for good cause shown, the Court, being well and fully advised in the premises, is of the opinion that said cause should be dismissed.

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

Ordered this 2nd day of ^{November} ~~October~~, 1988.


THOMAS R. BRETT
United States District Judge

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

LANIE EDWARD LEE,)
)
 Plaintiff,)
)
 v.)
)
 THE CITY OF TULSA, et al,)
)
 Defendants.)

88-C-342-B

FILED

NOV - 1 1988

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

ORDER

Now before the Court for consideration is the joint Motion to Dismiss or for Summary Judgment of Defendant City of Tulsa and Defendant Police Officer Sgt. J. Perkins filed June 17, 1988. The pro se Plaintiff having failed to respond by September 1, 1988, was notified that a response was required and given an additional twenty (20) days. Plaintiff has still not responded to the motion and the court will now consider Defendants' motion on its merits.

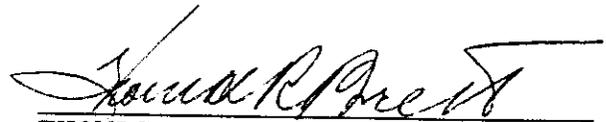
Plaintiff's Complaint arises out of an arrest on March 26, 1986, and courtroom testimony on April 15, 1988. Civil rights actions originating within the State of Oklahoma are subject to the two year statute of limitations codified at Title 12 O.S. §95(3)(1981). Mead v. Grubbs, 841 F.2d 1512, 1522-24 (10th Cir. 1988); Clulow v. State of Oklahoma, 700 F.2d 1291 (10th Cir. 1983). Plaintiff's Complaint was filed on April 19, 1988, more than two years after the events upon which the complaint is based took place. The statute of limitations is not tolled by reason of Plaintiff's incarceration. Battle v. Lawson, 352 F.Supp. 156 (W.D. Okla. 1972).

Therefore, Plaintiff's action is barred by the two year statute of limitations, and Defendants' Motion to Dismiss will be granted.

In addition, Plaintiff's action against non-moving Defendants J.T. Hunter, Dennis B. Prebble, and Robert Green will be dismissed sua sponte as frivolous for the same reason, pursuant to the Court's own review under 28 U.S.C. §1915(d). Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986).

Therefore, Plaintiff's action against all Defendants is hereby dismissed with prejudice.

So Ordered this 1st day of November,
1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

DORIS A. JAGGERS,)
)
 Plaintiff,)
)
 vs.)
)
 CITY OF CLAREMORE, OKLAHOMA,)
 a municipal corporation,)
 POLICE CHIEF TUBBY WILLIAMS,)
 POLICE OFFICER RICHARD SMITH,)
 POLICE OFFICER LARRY GARRETT,)
)
 Defendants.)

87
No. 88-C-1032-B

F I L E D
NOV - 1 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court on Defendant City of Claremore, Oklahoma's Motion for Summary Judgment and on Defendants Tubby Williams, Richard Smith and Larry Garrett's Motion for Summary Judgment. Plaintiff's claims which are still being urged are constitutional claims brought under 42 U.S.C. §1983, assault and battery, malicious prosecution and negligence.

On May 9, 1986, Plaintiff Doris A. Jagers was arrested and criminally charged with harboring a fugitive, and two counts of assault and battery on a police officer. Trial began on March 5, 1987, and the jury found Plaintiff guilty of harboring a fugitive and guilty on only one count of assault and battery on police officer Garrett, not Smith. An appeal has been lodged of the state court criminal matter and this civil action was filed months later on.

The facts that led to Plaintiff's arrest are as follows: Police Chief Williams, Officer Smith and Officer Garrett assisted

Tulsa Police at Plaintiff's residence on May 9, 1986 to apprehend Plaintiff's son, a fugitive. (John Jakubowski's Affidavit, ¶4). Plaintiff was presented a fugitive warrant for her son. (John Jakubowski's Affidavit, ¶4). The car the son had allegedly used during a burglary with which he was charged was parked at Plaintiff's residence. (John Jakubowski's Affidavit, ¶4). Plaintiff denied that her son was present. (Trial Transcript, p. 316). The police left to obtain legal advice. When the police returned and asked Plaintiff again for permission to enter to look for her son, an officer observed movement of blinds on a window near the back of the house while Plaintiff was speaking with officers at the front door. (Larry Garrett's Affidavit, ¶3). Officers also testified her body movements indicated she was hiding someone.¹ (Larry Garrett's Affidavit, ¶4). A struggle commenced when the officers tried to enter the house. Plaintiff's screen door was pulled open, Plaintiff flew out and she struck Officer Smith in the face. (Trial Transcript, p. 428). A gun discharged and Plaintiff fell or was pushed off her porch onto some bushes. (Trial Transcript, p. 324). Plaintiff's son was found inside and arrested. Plaintiff also contends she was physically shaken and received rough treatment while being handcuffed but cannot identify the officer. (Trial Transcript, p. 331). Officer Smith, at Plaintiff's criminal trial, testified as to Plaintiff striking him

¹Plaintiff was convicted of harboring a fugitive and she cannot now claim she did not know he was present. She clearly was obstructing the officers' duty to serve the fugitive warrant.

in the face, "I believe it was her intention to block my passageway ... Whether or not it was her actual intent to strike me in the face, I have no way of knowing." (Trial Transcript, p. 128).

Plaintiff filed this civil suit against the City of Claremore and Officers Williams, Smith and Garrett. Defendants move for summary judgment on all claims.

To survive a motion for summary judgment, Plaintiff "must establish that there is a genuine issue of material facts. Plaintiff "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986). Fed.R.Civ.P. 56(c). "The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corporation v. Catrett, 477 U.S. 317 (1986).

Plaintiff alleges Officers Smith and Garrett violated her rights under 42 U.S.C. §1983. To state a claim under §1983, Plaintiff must prove she was deprived a right secured by the Constitution or laws of the United States and that this deprivation occurred under color of law. Paul v. Davis, 424 U.S. 693 (1975). Plaintiff alleges the police officers deprived her of her right to be free from unjustified and excessive force by police and free from unlawful seizure of her person. "In determining whether the state officer has crossed the constitutional line that would render

the abuse actionable under §1983, we must inquire into the amount of force used in relationship to the need presented, the extent of the injury inflicted and the motives of the state officer. If the state officer's action caused severe injuries, was grossly disproportionate to the need for action under the circumstances and was inspired by malice rather than merely carelessness or unwise, excessive zeal amounting to an abuse of official power that shocks the conscience, it may be redressed under §1983." Wise v. Bravo, 666 F.2d 1328 (10th Cir. 1981).

In the present case, the police were attempting to arrest a fugitive and had a fugitive warrant. The police suspected the fugitive would be armed and dangerous. (Richard Smith's Affidavit, ¶3). Plaintiff was insisting no one was in the house with her while police saw movement in the rear of the house. (Richard Smith's Affidavit, ¶3). 22 Okl.St. Ann. §194 states:

"The officer may break open an outer or inner door or window of a dwelling house, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance."²

Plaintiff was refusing to allow the police access to the house. The Court finds no severe injury inflicted nor no malice present. Recently the Tenth Circuit acknowledged the rule that a warrant founded on probable cause carries with it a limited authority to enter a dwelling when there is reason to believe the

²Although the statute does not indicate whether it refers to an arrest warrant or a search warrant, the statutes surrounding §194 refer to arrest warrants and the chapter where it is found is entitled "Arrest and taking before a Magistrate."

suspect is within. Jones v. City and County of Denver, Colorado, No. 87-2167 (10th Cir., August 12, 1988). This Court concludes the amount of force used in relation to the circumstances presented was not unreasonable. Summary judgment is granted on Plaintiff's claim.

Plaintiff claims the City of Claremore had a policy of failing to properly hire, train, supervise or discipline its police officers. The City submits the affidavit of Claremore Police Chief Charles Williams who stated that the City has no official policy of allowing police officers to use excessive force during arrests. Plaintiff has failed to submit evidence of a genuine factual dispute on the issue. Therefore summary judgment is granted in favor of the City of Claremore on this claim.

Summary judgment on Plaintiff's assault and battery claims must also be granted. The Court has ruled no excessive force was used. In fact, the Court holds although the touching may appear hostile, it was certainly permissible touching under the circumstances in order to serve the warrant. Moreover, Plaintiff's Complaint alleges that the situation in general rose to a level of assault and battery by officers present. Not in the Complaint or even in the briefs submitted does she specify what officer committed which specific intentional tort. Since there is not

sufficient evidence submitted on this claim, summary judgment is sustained.³

Plaintiff's negligence claim, however, is barred by her failure to file a notice of claim of negligence within one year under 51 Okl.St. Ann. §156(b). Summary judgment is sustained on this issue.

Plaintiff also brings a claim of malicious prosecution for charging her with the two counts of assault and battery and harboring a fugitive. To prevail on this theory for malicious prosecution, Plaintiff must prove she prevailed on the original action. Young v. First State Bank of Watonga, 628 P.2d 707 (Okla. 1981). Plaintiff's claim then can only concern the assault and battery charge on Officer Smith, of which she was acquitted, because she was convicted of assault and battery of Officer Garrett. Plaintiff was also found guilty of harboring a fugitive. Plaintiff has the burden of proving the claim was not supported by probable cause. Young v. First State Bank of Watonga, 628 P.2d 707 (Okla. 1981). There is no genuine issue as to the existence of probable cause for the bringing of the charge. Concomitantly, the City points out, the judge at trial on the issue overruled a demurrer to the evidence, as there was evidence Plaintiff struck Officer Smith in the face. See, Ames v. Strain, 301 P.2d 641 (Okla. 1956). The Motion for Summary Judgment is sustained on all

³Based on this ruling it is unnecessary to discuss Defendants' statute of limitation arguments.

claims. Costs are herein assessed against Plaintiff.

IT IS SO ORDERED this 31 day of Oct., 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

DORIS A. JAGGERS,)
)
 Plaintiff,)
)
 vs.)
)
 CITY OF CLAREMORE, OKLAHOMA,)
 a municipal corporation,)
 POLICE CHIEF TUBBY WILLIAMS,)
 POLICE OFFICER RICHARD SMITH,)
 POLICE OFFICER LARRY GARRETT,)
)
 Defendants.)

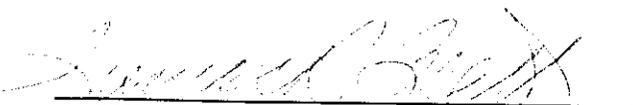
No. ⁸⁷88-C-1032-B

FILED
NOV - 1 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

In keeping with the Court's Order sustaining the Defendants City of Claremore, Oklahoma, a municipal corporation, Police Chief Tubby Williams, Police Officer Richard Smith and Police Officer Larry Garrett's Motion for Summary Judgment, Judgment is hereby entered in favor of said Defendants and against Plaintiff, Doris A. Jagers. The costs are hereby assessed against the Plaintiff, Doris Jagers, and the parties are to pay their own respective attorney fees.

DATED this 31 day of Dec, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV -1 1988 *CB*

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

LEO GLENN LEONARD,)

Defendant.)

CIVIL ACTION NO. 88-C-1265-E ✓

NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Peter Bernhardt, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action with prejudice.

Dated this 1st day of November, 1988.

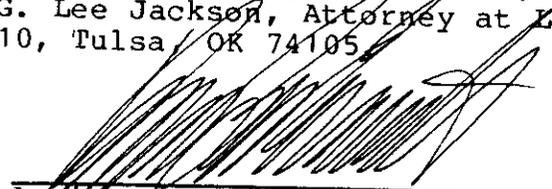
UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

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

CERTIFICATE OF SERVICE

This is to certify that on the 1st day of November, 1988, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: G. Lee Jackson, Attorney at Law, 2421 East 51st Street, Suite 210, Tulsa, OK 74105.


Assistant United States Attorney

PB/cen

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

STATE FARM MUTUAL AUTOMOBILE INSURANCE)
COMPANY, an Illinois corporation,)

Plaintiff,)

vs.)

No. 88-C-280 B)

GREYHOUND LINES, INC., a California)
corporation, ROGER ADKINS, ALFRED)
BREWERTON, JR., DERRICK CLAYDY,)
VINCENTE COUARRUBIAS, PATRICK A. DEAN,)
DAJIANA ERSKINE, DESMOND FELTUS,)
DOROTHY FELTUS, FAITH FLEISCHMANN,)
WALTER FLOWERS, LILLY HILL, LARRY C.,)
ROSIE, AMY AND AUDIE JAMES, KENNETH)
MILLER, KATHERINE A. MOATS, DON MOORE)
JASON W. PARKER, WALTER and CAROL PATTON,)
LEE G. PURDY, MUSKOGEE MEDICAL CENTER)
AUTHORITY, TIMOTHY RAYFIELD,)
MARUICIO RUEDA, JUAN E. SANCHEZ,)
CLIFTON G. SHACKELFORD, CHARLENE STARR,)
DONALD THOMAS, JAMES TOLIVER, JULIE A.)
TOTH, LORENZA VANGUS aka LORENZA)
VARGAS, ANGEL and IMELDA VILLAGOMEZ,)
RICHARD MARRIOTT WYLIE, MARIA)
ZENDEJAS, ST. FRANCIS HOSPITAL, INC.,)
DR. JAROSLAW SLUSARENKO, RADIOLOGY)
CONSULTANTS OF TULSA, CHICAGO TRAUMA)
CENTER, DR. E.P. COUCH, DR. WILLIAM B.)
DAWSON, ALLSTATE INSURANCE COMPANY,)
MID-AMERICAN PREFERRED INSURANCE, and)
UNIVERSAL CASUALTY COMPANY,)

Defendants.)

FILED

NOV - 1 1988

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

ORDER

For good cause shown, Defendant, Universal Casualty Company is hereby dismissed from this action.

S/ THOMAS R. BRETT

JUDGE BRETT