



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

FILED

NOV 30 1988

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

THE WILLOWS CONDOMINIUMS OWNERS' )  
ASSOCIATION, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FEDERAL DEPOSIT INSURANCE CORPORATION, )  
et al., )  
Defendants. )

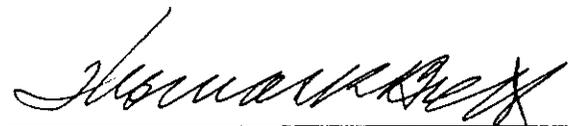
No. 88-C-1286-B

ORDER

COMES ON before me, the undersigned Judge, plaintiff's Application for Dismissal Without Prejudice of certain defendants in the above-styled cause. Upon consideration of the premises and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the following defendants, and only the following defendants, be and are hereby dismissed without prejudice to plaintiff's right to refile pursuant to 12 O.S. Section 100: John Cash, d/b/a Zorrow Properties; Steve Fennel, d/b/a Phoenix Properties; FDB Inc.; Computer Masters, Inc.; Vincent Luongo, Kimberly Hayes; Wayne, Koreen and Suzanne Busdiecker, Alan W. Thompson; Margaret Feller; Vaggen Minassion; Richard L., Mary L. and Robert Bottinghouse; Joe W. Gwartney; Robert B. Case, Jr.; Roy L. Lumly; Gregory Lane and Debra Stephens; Vanessa Murphy-Murray; John and Theresa Alloway; Barte L. and Gertrude Spinelli; L.A. and Cora Mae Spurlin; William, Laurie and Vivian M. Valade; Duane Blevins, Gregg and Linda Murrie, William Clopton; Linda K. Walker; Ronald A. and E. Yvonne Underwood; Montez Mutzig; Martha Jean Mayabb; John Jeff Payton; James E. and Elaine Bird; C. Reiff Brown and Teresa Brown

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE

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

GREGORY A. SIMMONS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 FEDERAL SAVINGS AND LOAN )  
 INSURANCE CORPORATION as )  
 receiver for VICTOR SAVINGS )  
 & LOAN ASSOCIATION, )  
 )  
 Defendant. )

✓  
No. 88-C-1072-B

**F I L E D**  
NOV 30 1988

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

O R D E R

This matter comes before the Court on the motion of Defendant Federal Savings and Loan Insurance Corporation as receiver for Victor Savings & Loan Association ("FSLIC"), to dismiss for lack of subject matter jurisdiction. Defendant claims this Court does not have jurisdiction to hear claims against a savings and loan association which has been placed in receivership. 12 U.S.C. §1264(d)6(c). Plaintiff has filed a motion to compel Defendant to respond to certain interrogatories concerning alleged fraud claims against FSLIC in its corporate capacity. However, FSLIC corporate is not a party to this suit.

In 1987, Victor Federal Savings and Loan Association was closed by the Federal Home Loan Bank Board ("FHLBB") and Victor Savings and Loan Association was chartered. In 1988, the FHLBB closed Victor Savings and Loan Association and appointed FSLIC as receiver. Plaintiff has attempted to collect past due rentals from Victor Savings and Loan Association under a lease agreement between Victor Federal Savings and Loan Association and Simmons Building

14

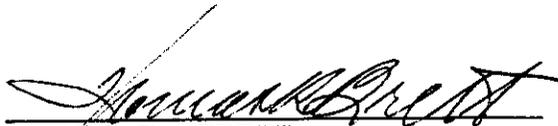
Partnership. It is alleged Victor Savings and Loan Association assumed the obligations under the lease.

This Court has previously held, consistent with North Mississippi Savings and Loan v. Hudspeth, 756 F.2d 1056 (5th Cir. 1985), that this Court has no power to affect the functions of the receiver and the FSLIC is subject to the regulation of FHLBB. Home Savings and Loan Association v. Southwood Partnership v. Federal Savings and Loan Insurance Corporation, No. 87-C-276-B (August 12, 1987). Mortgage Clearing Corporation v. Territory, No. 88-C-157-B (April 26, 1988).

Plaintiff suggests the Court defer ruling on this matter and allow discovery to proceed until the United States Supreme Court settles the conflicting holdings in the circuits.

The Court has reviewed the motions and briefs presented by both parties and holds Plaintiff's motion to compel is overruled and Defendant's motion to dismiss for lack of subject matter jurisdiction is sustained, as Plaintiff must first proceed with administrative exhaustion.

IT IS SO ORDERED this 30<sup>th</sup> day of Nov., 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**FILED**  
NOV 30 1988  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

BILL ENLOE WILSON,  
Petitioner,  
v.  
EARL ALLEN, et al,  
Respondents.

88-C-945-B

ORDER

Now before the Court is the Petition for a Writ of Habeas Corpus of Bill Enloe Wilson. Wilson was convicted in Tulsa County District Court of Possession of a Stolen Vehicle, A.F.C.F. (case No. CRF 86-3349) and Possession of a Firearm, A.F.C.F. (Case No. CRF 86-3350), after pleading guilty to both crimes. Wilson was sentenced to ten (10) years imprisonment in CRF 86-3349 and five (5) years imprisonment in CRF 86-3350, with the sentences to run concurrently.

Wilson did not file a direct appeal but sought post-conviction relief in the trial court. The trial court denied Wilson's application, a decision affirmed on appeal. Respondents concede that Wilson has exhausted his state remedies.

As grounds for federal habeas relief, Wilson alleges: (1) the Court failed to call a rebuttal witness, the brother of a state's witness, (2) the Court failed, on its own, to call Wilson's co-defendant to testify, and (3) the conviction was obtained by knowing use of perjured testimony.<sup>1</sup>

<sup>1</sup> A brief factual overview is necessary to understand the import of Wilson's claims. A Chevrolet Blazer belonging to Lisa Hill was stolen. Wilson and his co-defendant were arrested,

Apparently, Wilson refers to the conduct of his Preliminary Hearing in both charges. Addressing Wilson's last contention first, Wilson's conviction was not actually obtained through any testimony but through Wilson's own pleas of guilt. Because Wilson pled guilty to both crimes, his habeas application is postured differently than one after trial.

A defendant who enters a plea of guilty simultaneously waives all non-jurisdictional defects and defenses occurring prior to the plea. Baker v. U.S., 579 F.2d 1219, 1225 (10th Cir. 1978) (citing, Tollett v. Henderson, 411 U.S. 258 (1973)). Once entered and accepted, Wilson's guilty pleas effectively waived any defects in the Preliminary Hearing, assuming there were any defects. Thus, the only question that remains is whether Wilson's pleas were constitutionally valid under the guidelines of Boykin v. Alabama, 395 U.S. 2338 (1969).

However, Wilson does not attack the validity of his guilty pleas, or does a review of the plea and sentencing transcript

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moving the Blazer to a welding shop. Wilson's defense was (apparently) that Hill had hired him to "repossess" the stolen vehicle.

Thus, when Hill testified she had never before met Wilson, Wilson needed to prove she was lying. Consequently, any possible effect of an absence of testimony from Hill's brother or his co-defendant and the allegedly perjured testimony of Hill, bearing on whether Wilson had ever previously met Hill, would be felt only if Wilson's defense is true (i.e., Hill actually did meet and "hire" Wilson to "re-possess" the Blazer). Wilson has not provided this court with a single item of evidence to show a miscarriage of justice occurred.

In addition, the "prior authorization" defense, even if valid, is no defense to the crime of Possession of a Firearm, A.F.C.F.

reveal any constitutional errors.

Therefore, Petitioner's request for federal habeas relief is groundless and the Petition is hereby denied.

So Ordered this 29 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 30 1988

BRISTOL RESOURCES CORPORATION,  
an Oklahoma corporation,

Plaintiff,

vs.

SABER ENTERPRISES INC.,  
a Texas corporation,

Defendant.

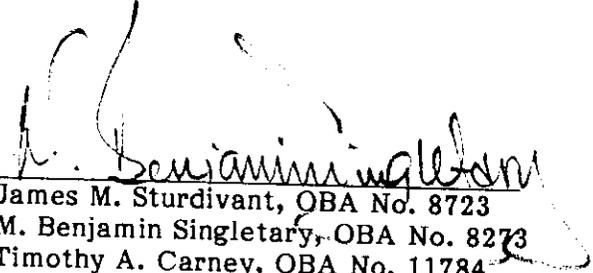
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JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

Case No. 88-C-1475-B

DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff Bristol Resources Corporation and, prior to the filing of an Answer or other responsive pleading, voluntarily dismisses its Complaint with prejudice.

  
James M. Sturdivant, OBA No. 8723  
M. Benjamin Singletary, OBA No. 8273  
Timothy A. Carney, OBA No. 11784  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF

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

FILED

NOV 30 1988

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

BRUCE K. RUCKER, an )  
individual, d/b/a Lightning )  
Electric Supply, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BUNN-O-MATIC CORPORATION, )  
a Delaware corporation, )  
 )  
Defendants. )

Case No. 88-C-72-B

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW, on this 29 day of November, 1988, this matter comes on before the Court pursuant to the Stipulation as to Dismissal Without Prejudice submitted by counsel for the parties in this action, requesting dismissal of the Defendant, BUNN-O-MATIC CORPORATION, without prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Defendant, BUNN-O-MATIC CORPORATION, be and it is hereby dismissed as a Defendant in this action, without prejudice to all claims and causes of action which the Plaintiff might or could have as against said Defendant.

Howard Brett  
United States District Judge

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

FILED

NOV 30 1988

Jack C. Silver, Clerk

U. S. DISTRICT COURT

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

Case No. 87-C-1044B

ORDER OF DISMISSAL

This matter having come on to be heard this 29  
day of November, 1988, upon Joint Stipulation of Dismissal  
With Prejudice , the Court finds that good cause exists to  
grant said Motion.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED  
that this matter be and is hereby dismissed with prejudice.

Dated at Tulsa, Oklahoma this 29 day of November,  
1988.

  
UNITED STATES DISTRICT JUDGE

Submitted by:

Leslie V. Williams  
1924 South Utica, #810  
Tulsa, Oklahoma 74104  
(918) 747-3491



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

ROBERT LUTHER HATCHER, JR.,

Plaintiff,

vs.

GARY PARSONS, et al.,

Defendants.

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}  
}  
}

No. 87-C-86-C

FILED

NOV 30 1988

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

ORDER

Before the Court for its consideration is the objection of plaintiff Robert Hatcher, Jr., to the Findings and Recommendations of the Magistrate. The Magistrate has recommended that defendant's motion to dismiss be granted.

Plaintiff, an inmate in a state correctional institution, brought this action pursuant to 42 U.S.C. §1983. Plaintiff seeks an injunction enjoining defendants from harassing, threatening, and intimidating him and ordering him returned to the Conner Correctional Center and damages in excess of \$5,000,000. He alleges that defendants illegally reclassified him from minimum to maximum security status without due process on July 11, 1986, in order to transfer him to the Oklahoma State Reformatory from the Conner Correctional Center. Plaintiff alleges that defendants made this

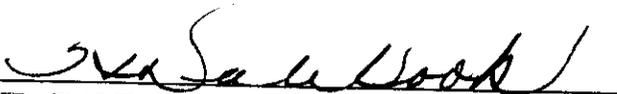
decision in order to place his life in jeopardy. Further, plaintiff alleges that defendants have deprived him of his liberty and have willfully refused to check into his complaints of denial of due process.

Defendants have filed a brief in support of the Magistrate's Recommendations.

The Court has independently reviewed the record and finds that the Findings and Recommendations of the Magistrate are supported by applicable law. The Magistrate's Findings and Recommendations are affirmed and adopted as the Findings and Conclusions of this Court.

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

IT IS SO ORDERED this 28<sup>th</sup> day of November, 1988.

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

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

**F I L E D**

**NOV 30 1988**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DONALD WINFRED MILLER, )  
 )  
 Defendant. )

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

85-CR-98-01-C

86-e-980-c

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed October 26, 1988 in which the Magistrate recommended that the Defendant's Motion to Vacate, Set Aside, or Correct Sentence 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 the Defendant's Motion to Vacate, Set Aside, or Correct Sentence is denied.

Dated this 28<sup>th</sup> day of November, 1988.

  
H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 NEAL G. HENDERSON; DIANE )  
 HENDERSON; COUNTY TREASURER, )  
 Tulsa County, Oklahoma; )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Tulsa County, Oklahoma, )  
 SOUTHWEST GENERAL INSURANCE; )  
 GARY WAYNE RICHARDSON; and )  
 DRUMMOND & RAYMOND, )  
 )  
 Defendants. )

FILED

NOV 30 1988

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

CIVIL ACTION NO. 87-C-322-C

DEFICIENCY JUDGMENT

Now on this 28 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 29th day of August, 1988, and a copy of said Motion being mailed to Neal G. Henderson, c/o Chic Salon, 7246 South Lewis, Tulsa, Oklahoma 74105; Diane Henderson, 8320 East 65th Place; Tulsa, Oklahoma 74133; and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Peter Bernhardt, Assistant United States Attorney, and the Defendants, Neal G. Henderson and Diane Henderson, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on February 11, 1988, in favor of the Plaintiff United States of America, and against

the Defendants, Neal G. Henderson and Diane Henderson, with interest and costs to date of sale is \$105,659.81.

The Court further finds that the appraised value of the real property at the time of sale was \$63,505.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered February 11, 1988, for the sum of \$56,678.00 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 15th 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, Neal G. Henderson and Diane Henderson, as follows:

Principal Balance as of 02/11/88	\$ 80,225.37
Interest	21,288.07
Late Charges to Date of Judgment	644.64
Appraisal by Agency	300.00
Management Broker Fees to Date of Sale	340.00
Abstracting	343.00
Publication Fees of Notice of Sale	305.73
Court Appraisers	105.00
1987 Taxes	1,082.00
1986 Taxes	<u>1,026.00</u>
TOTAL	\$105,659.81
Less Credit of Appraised Value	- <u>63,505.00</u>
DEFICIENCY	\$ 42,154.81



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
A. JAN SMILEY; EARLA O. )  
PANKIEWICZ f/k/a EARLA O. )  
SMILEY; COUNTY TREASURER, )  
Creek County, Oklahoma; and )  
BOARD OF COUNTY COMMISSIONERS, )  
Creek County, Oklahoma, )  
 )  
Defendants. )

FILED

NOV 30 1988

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

CIVIL ACTION NO. 87-C-785-C

DEFICIENCY JUDGMENT

Now on this 28 day of November, 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 21st day of October, 1988, and a copy of said Motion being mailed to Earla O. Pankiewicz f/k/a Earla O. Smiley, Route 1, Box 53, Kellyville, Oklahoma 74039, 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 Defendant, Earla O. Pankiewicz f/k/a Earla O. Smiley, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on March 28, 1988, in favor of the Plaintiff United States of America, and against the

Defendant, Earla O. Pankiewicz f/k/a Earla O. Smiley, with interest and costs to date of sale is \$41,008.48.

The Court further finds that the appraised value of the real property at the time of sale was \$12,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered March 28, 1988, for the sum of \$10,592.00 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 15th day of November.

The Court further finds that the Plaintiff, United States of America on behalf of the Administrator of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Earla O. Pankiewicz f/k/a Earla O. Smiley, as follows:

Principal Balance as of 03/28/88	\$30,544.42
Interest	8,917.70
Late Charges to Date of Judgment	413.76
Appraisal by Agency	175.00
Management Broker Fees to Date of Sale	480.00
Abstracting	237.30
Publication Fees of Notice of Sale	135.30
Appraisers' Fees	<u>105.00</u>
TOTAL	\$41,008.48
Less Credit of Appraised Value	- <u>12,000.00</u>
DEFICIENCY	\$29,008.48

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Administrator of Veterans Affairs have and recover from Defendant, Earla O. Pankiewicz f/k/a Earla O. Smiley, a deficiency judgment in the amount of \$29,008.48, plus interest at the legal rate of 8.55 percent per annum on said deficiency judgment from date of judgment until paid.

*[Signature]*  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

PP/css



**F I L E D**

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

**NOV 30 1988**

BRADLEY K. STANTON, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 AMERICAN MUTUAL LIABILITY )  
 INSURANCE, et al., )  
 )  
 Defendants. )

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

No. 84-C-268-E

**JUDGMENT**

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

IT IS THEREFORE ORDERED that the Defendant Farmers Insurance Company is granted judgment against the Plaintiff Linda E. Stanton. Farmers Insurance Company is granted its costs of this action against Plaintiff Linda E. Stanton.

ORDERED this 30<sup>th</sup> day of November, 1988.

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



**F I L E D**

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

**NOV 30 1988**

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

THOMAS L. STEWART,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 86-C-443-E
	)	
LARRY MEACHUM, et al.,	)	
	)	
Defendants.	)	

**O R D E R**

Now before the Court is Defendants' Motion for Summary Judgment. Although Plaintiff failed to respond to Defendants' motion in a timely manner as required by the Federal Rules of Civil Procedure and the Local Rules of the Northern District of Oklahoma, on September 2, 1988, the Court, sua sponte, gave Plaintiff an extension of time in which to respond to the motion. However, no such response was ever filed by Plaintiff.

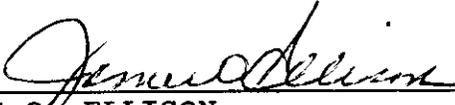
Rule 56(c) of the Federal Rules of Civil Procedure provides for summary judgment against a party who, after time for discovery, fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, \_\_\_\_\_ U.S. \_\_\_\_\_, 106 S.Ct. 2548 (1986).

The Court finds that based on the evidence before it, including the "Additional Special Report Information" filed herein on March 27, 1987, that black inmates are not denied equal protection as a result of purportedly being attacked more than

white prisoners. The statistics provided prove the contrary. Additionally, Plaintiff has failed to prove negligence on the part of the Defendant as it relates to the unfortunate stabbing of Plaintiff by another inmate. Thus Defendants' motion for summary judgment should be granted.

IT IS THEREFORE ORDERED that Defendants' motion for summary judgment is granted and Plaintiff's civil rights complaint pursuant to 42 U.S.C. §1983 is hereby dismissed.

ORDERED this 30<sup>th</sup> day of November, 1988.

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

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

THE TELEX CORPORATION, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ASHER B. EDELMAN, et al., )  
 )  
 Defendants. )

No. 87-C-873-E

**FILED**

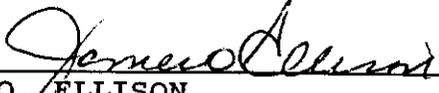
NOV 30 1988

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

JUDGMENT

Judgment is granted in favor of The Telex Corporation and against the Intervenors. Telex is granted its costs of this action against the Intervenors.

ORDERED this 30<sup>th</sup> day of November, 1988.

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

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

BONNEVILLE LIFE INSURANCE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOHN WILLIAMS, )  
 )  
 Defendant. )

No. 88-C-192-E ✓

**F I L E D**

NOV 30 1988 *Am*

O R D E R

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

This matter came on before the Court for Pre-Trial Conference.  
Neither party appeared.

IT IS THEREFORE ORDERED that this matter is dismissed without  
prejudice for failure to prosecute.

DATED this 30<sup>th</sup> day of November, 1988.

*James O. Ellison*  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

NOV 29 1988

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BILLIE DEAN PARKS; JEANETTE )  
PARKS; COUNTY TREASURER, )  
Rogers County, Oklahoma; and )  
BOARD OF COUNTY COMMISSIONERS, )  
Rogers County, Oklahoma, )  
 )  
Defendants. )

CIVIL ACTION NO. 88-C-392-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 29 day  
of Nov, 1988. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Rogers County, Oklahoma, and  
Board of County Commissioners, Rogers County, Oklahoma, appear by  
Ernest E. Haynes, Jr., Assistant District Attorney, Rogers  
County, Oklahoma; and the Defendants, Billie Dean Parks and  
Jeanette Parks, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, County Treasurer, Rogers  
County, Oklahoma, acknowledged receipt of Summons and Complaint  
on May 3, 1988; and that the Defendant, Board of County  
Commissioners, Rogers County, Oklahoma, acknowledged receipt of  
Summons and Complaint on May 3, 1988.

The Court further finds that the Defendants, Billie Dean Parks and Jeanette Parks, were served by publishing notice of this action in the Claremore Daily Progress, a newspaper of general circulation in Rogers County, Oklahoma, once a week for six (6) consecutive weeks beginning August 4, 1988, and continuing to September 8, 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, Billie Dean Parks and Jeanette Parks, 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, Billie Dean Parks and Jeanette Parks. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the

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

It appears that the Defendants, County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, filed their Answer herein on May 9, 1988; and that the Defendants, Billie Dean Parks and Jeanette Parks, 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 Rogers County, Oklahoma, within the Northern Judicial District of Oklahoma:

The South 160 feet of the West 675 feet of the S/2 of NW/4 of SE/4 of Section 16, Township 24 North, Range 17 East of the IB&M, Rogers County, Oklahoma, according to the U.S. Government Survey thereof.

The Court further finds that on October 31, 1983, the Defendants, Billie Dean Parks and Jeanette Parks, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$27,000.00, payable in monthly installments, with interest thereon at the rate of thirteen percent (13%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Billie Dean Parks and Jeanette Parks, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated October 31, 1983, covering the above-described property. Said mortgage was recorded on October 31, 1983, in Book 660, Page 709, in the records of Rogers County, Oklahoma.

The Court further finds that the Defendants, Billie Dean Parks and Jeanette Parks, 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, Billie Dean Parks and Jeanette Parks, are indebted to the Plaintiff in the principal sum of \$26,669.26, plus interest at the rate of 13 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Billie Dean Parks and Jeanette Parks, in the principal sum of \$26,669.26, plus interest at the rate of 13 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the

current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

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

First:

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

Second:

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

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

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

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

*James O. Ellison*  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

*Phil Pinnell*  
PHIL PINNELL  
Assistant United States Attorney

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JIMMY LEON MOSS; DAPHNE A. )  
 MOSS; JEWEL ROSS; MARY LEE )  
 ROSS a/k/a MARY LEE WILSON )  
 ROBINSON; JOHN DOE, Tenant; )  
 FIDELITY FINANCIAL SERVICES, )  
 INC.; COUNTY TREASURER, Tulsa )  
 County, Oklahoma; and BOARD OF )  
 COUNTY COMMISSIONERS, Tulsa )  
 County, Oklahoma, )  
 )  
 Defendants, )  
 )  
 vs. )  
 )  
 CLARENCE ROBINSON, )  
 )  
 Additional Party Defendant. )

**F I L E D**

NOV 29 1988

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

CIVIL ACTION NO. 87-C-1028-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 29 day  
of Nov, 1988. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Tulsa County, Oklahoma, and  
Board of County Commissioners, Tulsa County, Oklahoma, appear by  
Doris L. Fransein, Assistant District Attorney, Tulsa County,  
Oklahoma; the Defendant, Fidelity Financial Services, Inc.,  
appears by its attorney Don E. Gasaway; and the Defendants, Jimmy  
Leon Moss, Daphne A. Moss, Jewel Ross, Mary Lee Ross a/k/a Mary  
Lee Wilson Robinson, and John Doe, Tenant, appear not, but make  
default.

The Court being fully advised and having examined the file herein finds that the Defendant, Mary Lee Ross a/k/a Mary Lee Wilson Robinson, was served with Summons and Complaint on April 15, 1988; that Defendant, John Doe, Tenant, was served with Summons and Complaint on April 15, 1988; that Defendant, Fidelity Financial Services, Inc., acknowledged receipt of Summons and Complaint on February 1, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 14, 1987; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 11, 1987.

The Court further finds that the Defendants, Jimmy Leon Moss, Daphne A. Moss, and Jewel Ross, 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 May 31, 1988, and continuing to July 5, 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, Jimmy Leon Moss, Daphne A. Moss, and Jewel Ross, 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, Jimmy Leon Moss, Daphne A. Moss, and Jewel Ross. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as 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 December 31, 1987 and their Answers to Cross-Complaint of Defendant, Fidelity Financial Services, Inc., on March 31, 1988; that the Defendant, Fidelity Financial Services, Inc., filed its Answers and Cross-Complaints herein on March 4, 1988 and March 11, 1988; and that the Defendants, Jimmy Leon Moss, Daphne A. Moss, Jewel Ross, Mary Lee Ross a/k/a Mary Lee Wilson Robinson, and John Doe, Tenant, 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 Eight (8), Block Sixty-one (61), VALLEY VIEW ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 20, 1964, the Defendants, Jimmy Leon Moss and Daphne A. Moss, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$10,500.00, payable in monthly installments, with interest thereon at the rate of five and one-half percent (5.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Jimmy Leon Moss and Daphne A. Moss, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated March 20, 1964, covering the above-described property. Said mortgage was recorded on March 20, 1964, in Book 3432, Page 671, in the records of Tulsa County, Oklahoma.

The Court further finds that pursuant to a General Warranty Deed dated September 10, 1970, and filed of record on October 8, 1970, in Book 3942 at Page 91 in the records of Tulsa County, Oklahoma, and pursuant to a General Warranty Deed dated October 1, 1983, and filed of record on October 3, 1983, in Book

4732 at Page 953 in the records of Tulsa County, Oklahoma, the above-described real property was conveyed to Jewell Ross.

The Court further finds that the Defendants, Jimmy Leon Moss and Daphne A. Moss and/or Jewell Ross, 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, Jimmy Leon Moss and Daphne A. Moss, are indebted to the Plaintiff in the principal sum of \$4,514.55, plus interest at the rate of 5.5 percent per annum from December 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$332.00, plus penalties and interest, for the year of 1987. Said lien is superior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendant, Fidelity Financial Services, Inc., has a lien on the property which is the subject matter of this action in the amount of \$7,794.78 with interest thereon at the rate of 21 percent per annum from January 12, 1988 until paid, an attorney's fee of \$1,169.21, and costs, by virtue of a real estate mortgage dated January 30,

1984, and recorded on January 31, 1984, in Book 4763, Page 316, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Jewel Ross, Mary Lee Ross a/k/a Mary Lee Wilson Robinson, and John Doe, Tenant, 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, Jimmy Leon Moss and Daphne A. Moss, in the principal sum of \$4,514.55, plus interest at the rate of 5.5 percent per annum from December 1, 1986 until judgment, plus interest thereafter at the current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$332.00, plus penalties and interest, for ad valorem taxes for the year of 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Jewel Ross, Mary Lee Ross a/k/a Mary Lee Wilson Robinson, John Doe, Tenant, 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 the Defendant, Fidelity Financial Services, Inc., has a good and valid lien on the subject real property in the amount of \$7,794.78 with interest thereon at the rate of 21 percent per annum from January 12, 1988 until paid, an attorney's fee of \$1,169.21, and costs of this action, by virtue of a real estate mortgage dated January 30, 1984, and recorded on January 31, 1984, in Book 4763, Page 316, in the records of Tulsa County, Oklahoma.

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

First:

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

Second:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$332.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of the Defendant, Fidelity Financial Services, Inc., in the amount of \$7,794.78 with interest thereon at the rate of 21 percent per annum from January 12, 1988 until paid, an attorney's fee of \$1,169.21, and costs of this action.

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

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

  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PHIL PINNELL  
Assistant United States Attorney

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

  
DON E. GASAWAY  
Attorney for Defendant,  
Fidelity Financial Services, Inc.

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JIMMY LEON MOSS; DAPHNE A. )  
 MOSS; JEWEL ROSS; MARY LEE )  
 ROSS a/k/a MARY LEE WILSON )  
 ROBINSON; JOHN DOE, Tenant; )  
 FIDELITY FINANCIAL SERVICES, )  
 INC.; COUNTY TREASURER, Tulsa )  
 County, Oklahoma; and BOARD OF )  
 COUNTY COMMISSIONERS, Tulsa )  
 County, Oklahoma, )  
 )  
 Defendants, )  
 )  
 vs. )  
 )  
 CLARENCE ROBINSON, )  
 )  
 Additional Party Defendant. )

**FILED**

**NOV 29 1988**

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

CIVIL ACTION NO. 87-C-1028-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 29<sup>th</sup> day  
of November, 1988. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Tulsa County, Oklahoma, and  
Board of County Commissioners, Tulsa County, Oklahoma, appear by  
Doris L. Fransein, Assistant District Attorney, Tulsa County,  
Oklahoma; the Defendant, Fidelity Financial Services, Inc.,  
appears by its attorney Don E. Gasaway; and the Defendants, Jimmy  
Leon Moss, Daphne A. Moss, Jewel Ross, Mary Lee Ross a/k/a Mary  
Lee Wilson Robinson, and John Doe, Tenant, appear not, but make  
default.

The Court being fully advised and having examined the file herein finds that the Defendant, Mary Lee Ross a/k/a Mary Lee Wilson Robinson, was served with Summons and Complaint on April 15, 1988; that Defendant, John Doe, Tenant, was served with Summons and Complaint on April 15, 1988; that Defendant, Fidelity Financial Services, Inc., acknowledged receipt of Summons and Complaint on February 1, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 14, 1987; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 11, 1987.

The Court further finds that the Defendants, Jimmy Leon Moss, Daphne A. Moss, and Jewel Ross, 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 May 31, 1988, and continuing to July 5, 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, Jimmy Leon Moss, Daphne A. Moss, and Jewel Ross, 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, Jimmy Leon Moss, Daphne A. Moss, and Jewel Ross. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as 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 December 31, 1987 and their Answers to Cross-Complaint of Defendant, Fidelity Financial Services, Inc., on March 31, 1988; that the Defendant, Fidelity Financial Services, Inc., filed its Answers and Cross-Complaints herein on March 4, 1988 and March 11, 1988; and that the Defendants, Jimmy Leon Moss, Daphne A. Moss, Jewel Ross, Mary Lee Ross a/k/a Mary Lee Wilson Robinson, and John Doe, Tenant, 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 Eight (8), Block Sixty-one (61), VALLEY VIEW ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 20, 1964, the Defendants, Jimmy Leon Moss and Daphne A. Moss, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$10,500.00, payable in monthly installments, with interest thereon at the rate of five and one-half percent (5.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Jimmy Leon Moss and Daphne A. Moss, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated March 20, 1964, covering the above-described property. Said mortgage was recorded on March 20, 1964, in Book 3432, Page 671, in the records of Tulsa County, Oklahoma.

The Court further finds that pursuant to a General Warranty Deed dated September 10, 1970, and filed of record on October 8, 1970, in Book 3942 at Page 91 in the records of Tulsa County, Oklahoma, and pursuant to a General Warranty Deed dated October 1, 1983, and filed of record on October 3, 1983, in Book

4732 at Page 953 in the records of Tulsa County, Oklahoma, the above-described real property was conveyed to Jewell Ross.

The Court further finds that the Defendants, Jimmy Leon Moss and Daphne A. Moss and/or Jewell Ross, 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, Jimmy Leon Moss and Daphne A. Moss, are indebted to the Plaintiff in the principal sum of \$4,514.55, plus interest at the rate of 5.5 percent per annum from December 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$332.00, plus penalties and interest, for the year of 1987. Said lien is superior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendant, Fidelity Financial Services, Inc., has a lien on the property which is the subject matter of this action in the amount of \$7,794.78 with interest thereon at the rate of 21 percent per annum from January 12, 1988 until paid, an attorney's fee of \$1,169.21, and costs, by virtue of a real estate mortgage dated January 30,

1984, and recorded on January 31, 1984, in Book 4763, Page 316, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Jewel Ross, Mary Lee Ross a/k/a Mary Lee Wilson Robinson, and John Doe, Tenant, 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, Jimmy Leon Moss and Daphne A. Moss, in the principal sum of \$4,514.55, plus interest at the rate of 5.5 percent per annum from December 1, 1986 until judgment, plus interest thereafter at the current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$332.00, plus penalties and interest, for ad valorem taxes for the year of 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Jewel Ross, Mary Lee Ross a/k/a Mary Lee Wilson Robinson, John Doe, Tenant, 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 the Defendant, Fidelity Financial Services, Inc., has a good and valid lien on the subject real property in the amount of \$7,794.78 with interest thereon at the rate of 21 percent per annum from January 12, 1988 until paid, an attorney's fee of \$1,169.21, and costs of this action, by virtue of a real estate mortgage dated January 30, 1984, and recorded on January 31, 1984, in Book 4763, Page 316, in the records of Tulsa County, Oklahoma.

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

First:

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

Second:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$332.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of the Defendant, Fidelity Financial Services, Inc., in the amount of \$7,794.78 with interest thereon at the rate of 21 percent per annum from January 12, 1988 until paid, an attorney's fee of \$1,169.21, and costs of this action.

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

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

  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PHIL PINNELL  
Assistant United States Attorney

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

  
DON E. GASAWAY  
Attorney for Defendant,  
Fidelity Financial Services, Inc.

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BILLIE DEAN PARKS; JEANETTE )  
 PARKS; COUNTY TREASURER, )  
 Rogers County, Oklahoma; and )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Rogers County, Oklahoma, )  
 )  
 Defendants. )

**F I L E D**

NOV 29 1988

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

CIVIL ACTION NO. 88-C-392-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 29<sup>th</sup> day  
of November, 1988. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Rogers County, Oklahoma, and  
Board of County Commissioners, Rogers County, Oklahoma, appear by  
Ernest E. Haynes, Jr., Assistant District Attorney, Rogers  
County, Oklahoma; and the Defendants, Billie Dean Parks and  
Jeanette Parks, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, County Treasurer, Rogers  
County, Oklahoma, acknowledged receipt of Summons and Complaint  
on May 3, 1988; and that the Defendant, Board of County  
Commissioners, Rogers County, Oklahoma, acknowledged receipt of  
Summons and Complaint on May 3, 1988.

The Court further finds that the Defendants, Billie Dean Parks and Jeanette Parks, were served by publishing notice of this action in the Claremore Daily Progress, a newspaper of general circulation in Rogers County, Oklahoma, once a week for six (6) consecutive weeks beginning August 4, 1988, and continuing to September 8, 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, Billie Dean Parks and Jeanette Parks, 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, Billie Dean Parks and Jeanette Parks. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the

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

It appears that the Defendants, County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, filed their Answer herein on May 9, 1988; and that the Defendants, Billie Dean Parks and Jeanette Parks, 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 Rogers County, Oklahoma, within the Northern Judicial District of Oklahoma:

The South 160 feet of the West 675 feet of the S/2 of NW/4 of SE/4 of Section 16, Township 24 North, Range 17 East of the IB&M, Rogers County, Oklahoma, according to the U.S. Government Survey thereof.

The Court further finds that on October 31, 1983, the Defendants, Billie Dean Parks and Jeanette Parks, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$27,000.00, payable in monthly installments, with interest thereon at the rate of thirteen percent (13%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Billie Dean Parks and Jeanette Parks, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated October 31, 1983, covering the above-described property. Said mortgage was recorded on October 31, 1983, in Book 660, Page 709, in the records of Rogers County, Oklahoma.

The Court further finds that the Defendants, Billie Dean Parks and Jeanette Parks, 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, Billie Dean Parks and Jeanette Parks, are indebted to the Plaintiff in the principal sum of \$26,669.26, plus interest at the rate of 13 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Billie Dean Parks and Jeanette Parks, in the principal sum of \$26,669.26, plus interest at the rate of 13 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the

current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

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

First:

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

Second:

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

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

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

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

  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PHIL PINNELL  
Assistant United States Attorney

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

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

**FILED**

**NOV 28 1988**

B

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

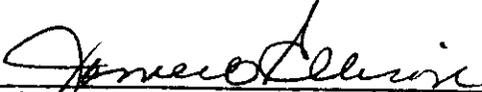
BARRY RAWDON, )  
 )  
 Plaintiff, )  
 )  
 vs . )  
 )  
 SPURRIER CHEMICAL COMPANY, and )  
 SFB PLASTICS, INC., a corporation )  
 and KERR GLASS MANUFACTURING )  
 CORPORATION, a corporation, )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 MID-CONTINENT CASUALTY COMPANY, )  
 )  
 Intervenor. )

No. 87-C-518-E ✓

ORDER OF DISMISSAL

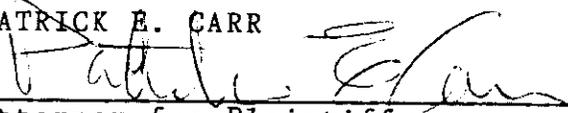
NOW on this 28<sup>th</sup> day of November, 1988, upon the written application of the Plaintiff, Barry Rawdon, the Defendants, Spurrier Chemical Company, SFB Plastics, Inc. and Kerr Glass Manufacturing Corporation, and the Intervenor, Mid-Continent Casualty Company, for a Dismissal With Prejudice of the Complaint of Rawdon v. Spurrier, et al., and all causes of action therein, the court having examined said Application finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the court to dismiss said Complaint with prejudice to any future action. The court being fully advised in the premises finds that said settlement is in the best interest of the Plaintiff, and that said Complaint should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that the Complaint and all causes of action of the Plaintiff, Barry Rawdon, against the Defendants, Spurrier Chemical Company, SFB Plastics, Inc. and Kerr Glass Manufacturing Corporation, and the Intervenor, Mid-Continent Casualty Company, be and the same hereby are dismissed with prejudice to any future action.

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

APPROVALS:

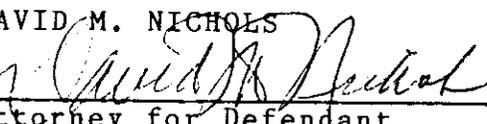
PATRICK E. CARR

  
\_\_\_\_\_  
Attorney for Plaintiff

RICHARD D. WAGNER

  
\_\_\_\_\_  
Attorney for Defendant  
Spurrier Chemical Company

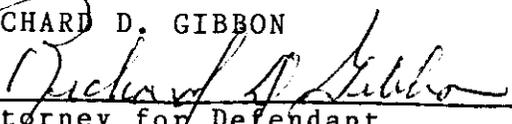
DAVID M. NICHOLS

  
\_\_\_\_\_  
Attorney for Defendant  
SFB Plastics

W. MICHAEL HILL

  
\_\_\_\_\_  
Attorney for Defendant  
Kerr Glass Manufacturing Corp.

RICHARD D. GIBBON

  
\_\_\_\_\_  
Attorney for Defendant  
Mid-Continent Casualty Company

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

**FILED**

NOV 28 1988 *hm*

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

CHEVRON U.S.A. INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PERMIAN PETROLEUM CO., )  
 )  
Defendant. )

No. 88-C-569-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 request of either party / <sup>prior to</sup> the initial status conference of January 11, 1989.

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 23<sup>rd</sup> day of November, 1988.

*James O. Ellison*  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA **F I L E D**

CLAYTON H. COLLINSWORTH, )  
 )  
Plaintiff, )  
 )  
MISSION INSURANCE CO., )  
 )  
Intervenor, )  
 )  
vs. )  
 )  
CHICAGO PNEUMATIC TOOL CO., )  
 )  
Defendant. )

NOV 28 1988

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

No. 86-C-160-E

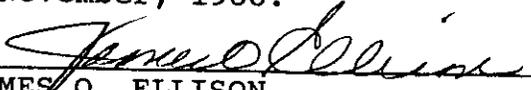
**JUDGMENT DISMISSING ACTION**  
**BY REASON OF SETTLEMENT**

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 28<sup>th</sup> 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. )  
 )  
 VALDORA CORDELIA GILL, )  
 a/k/a VALDORA C. GILL, )  
 a/k/a VALDORA GILL, )  
 )  
 Defendant. )

**FILED**

NOV 28 1988 *JSW*

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

CIVIL ACTION NO. 88-C-1231-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 28<sup>th</sup> 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 28<sup>th</sup> day of November 1988, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Valdora Cordelia Gill, 4613 North Trenton Street, Tulsa, Oklahoma 74126.

*Nancy Nesbitt Blevins*  
Assistant United States Attorney

*2*

F I L E D

NOV 28 1988

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

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

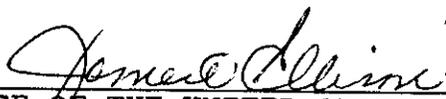
NATHANIEL BROWN, SR., and	)	
GLANDORA BROWN,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 88-C49-E
	)	
CORDIA THOMAS TUBBS, and	)	
OKLAHOMA FARM BUREAU MUTUAL	)	
INSURANCE COMPANY, an	)	
Oklahoma corporation,	)	
	)	
Defendants.	)	

ORDER

ON THIS 23<sup>d</sup> day of November, 1988, upon the written application of the Plaintiff, Nathaniel Brown, Sr., and Glandora Brown, for a Dismissal With Prejudice of their Complaint on file herein, the Court having examined said application and noting agreement by all counsel of record, finds that the parties herein have entered into a compromise and settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any further action. The Court, being fully advised in the premises, finds that the Complaint filed herein by the Plaintiffs, Nathaniel Brown, Sr., and Glandora Brown, shall be dismissed with prejudice to any further action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiffs, Nathaniel Brown, Sr. and Glandora Brown, be and the same are

hereby dismissed with prejudice to any further action.

  
\_\_\_\_\_  
JUDGE OF THE UNITED STATES  
DISTRICT COURT

**CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_\_ day of November, 1988  
a true and correct copy of the above and foregoing Order was  
deposited in the U.S. Mail addressed to

Donald G. Hopkins  
4606 South Garnett, Suite 306  
Tulsa, Oklahoma 74146

Howard Mullen  
OZER, KIEL, TRUEAX, et al  
Cherry Tower, Suite 1400  
949 South Cherry Street  
Denver, CO 80222

Jerry B. Stritzke  
Kennedy Building, Suite 700  
Tulsa, Oklahoma 74103

with sufficient postage thereon fully prepaid.

  
\_\_\_\_\_

*CC Carter*

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 DENNIS D. MILLSPAUGH, )  
 447522934 )  
 )  
 Defendant, )

CIVIL NUMBER 88-C-735 C

**FILED**

**NOV 28 1988**

DEFAULT JUDGMENT

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

A Default having been entered against the Defendant and counsel for the Plaintiff having requested Judgment against the defaulted Defendant and having filed a proper Affidavit, all in accordance with Rule 55(a) and (b)(1) of the Federal Rules of Civil Procedure and Rule 7 of the Rules of the District Court for the NORTHERN District of Oklahoma, now, therefore;

JUDGMENT is rendered in favor of the Plaintiff, United States of America, and against the Defendant, DENNIS D. MILLSPAUGH, in the principal sum of \$2221.33, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$13.68. Future costs and interest at the legal rate of 8 1/2 %, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 23 day of March, 1988.

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

By: \_\_\_\_\_

NOV 28 1988

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

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

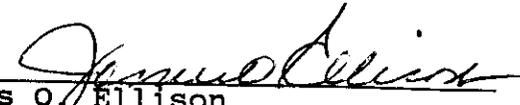
MARGARET WICK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 86-C-638-E
	)	
118677 ONTARIO LIMITED	)	
	)	
Defendant.	)	

ORDER

This cause comes on to be heard on the motion of defendant 118677 Ontario Limited to dismiss this action as to Alois Muller for failure of the plaintiff to prosecute. The Court finds that this action was filed on July 3, 1986, and that Alois Muller has never been served with Summons and Complaint. It thus appears to the Court that the plaintiff has failed to prosecute this action as to Alois Muller and it is

ORDERED that this action be and it is hereby dismissed as to Alois Muller for want of prosecution.

Dated this 23<sup>rd</sup> day of November, 1988.

  
 \_\_\_\_\_  
 James O. Ellison  
 United States District Judge

APPROVED:

  
Dianne L. Smith, OBA #8330  
2021 South Lewis Suite 725  
Tulsa, Oklahoma 74104  
(918) 743-5151

  
W. E. Sparks  
2626 E. 21st St., Suite 9  
Tulsa, Oklahoma 74114  
(918) 743-4343

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

**F I L E D**

**NOV 28 1988**

ADEMOLA MICHAEL OGUNLEYE, )

Plaintiff, )

vs. )

STATE OF OKLAHOMA, et al., )

Defendants. )

No. 87-C-171-E

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

ORDER OF DISMISSAL

This Court has previously granted Plaintiff the opportunity to amend his complaint after ruling that the Defendants' motion to dismiss or for summary judgment be granted. Plaintiff having failed to timely amend his complaint this action is dismissed with prejudice against the State of Oklahoma, Tulsa Judicial District 2, Honorable J. D. Dalton, Tulsa District Court Judge, Bob Dick, Tulsa Police Department, and David Moss, District Attorney for the County of Tulsa. Defendant William E. Lewis remains in default and this Order of Dismissal does not affect the default judgment granted Plaintiff against Defendant Lewis.

It is so ORDERED this 23<sup>rd</sup> day of November, 1988.

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

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

**F I L E D**

**NOV 28 1988**

NATHANIEL BROWN, SR., and )  
GLANDORA BROWN, )

Plaintiffs, )

vs. )

CORDIA THOMAS TUBBS, and )  
OKLAHOMA FARM BUREAU MUTUAL )  
INSURANCE COMPANY, an )  
Oklahoma corporation, )

Defendants. )

No. 88-C49-E

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

ORDER

ON THIS 23 day of November, 1988, upon the written application of the Plaintiff, Nathaniel Brown, Sr., and Glandora Brown, for a Dismissal With Prejudice of their Complaint on file herein, the Court having examined said application and noting agreement by all counsel of record, finds that the parties herein have entered into a compromise and settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any further action. The Court, being fully advised in the premises, finds that the Complaint filed herein by the Plaintiffs, Nathaniel Brown, Sr., and Glandora Brown, shall be dismissed with prejudice to any further action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiffs, Nathaniel Brown, Sr. and Glandora Brown, be and the same are

hereby dismissed with prejudice to any further action.

*James O. Ellison*  
JUDGE OF THE UNITED STATES  
DISTRICT COURT

**CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_\_ day of November, 1988  
a true and correct copy of the above and foregoing Order was  
deposited in the U.S. Mail addressed to

Donald G. Hopkins  
4606 South Garnett, Suite 306  
Tulsa, Oklahoma 74146

Howard Mullen  
OZER, KIEL, TRUEAX, et al  
Cherry Tower, Suite 1400  
949 South Cherry Street  
Denver, CO 80222

Jerry B. Stritzke  
Kennedy Building, Suite 700  
Tulsa, Oklahoma 74103

with sufficient postage thereon fully prepaid.

*Jerry B. Stritzke*

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

FILED  
NOV 27 1988

✓  
Clerk  
U.S. DISTRICT COURT

WILLIAM M. ENDECOTT,

Plaintiff,

vs.

No. 88 C 1442B

BURLINGTON NORTHERN RAILROAD  
COMPANY,

Defendant.

DISMISSAL WITH PREJUDICE AND RELEASE AND  
SETTLEMENT OF ALL CLAIMS AND CAUSES OF ACTION

Plaintiff William M. Endecott does hereby dismiss with prejudice to ever refiling this case his cause of action against defendant Burlington Northern Railroad Company and all agents, servants and employees of defendant.

William M. Endecott  
William M. Endecott

Subscribed and sworn to before me on this 14th day of November, 1988.

Cathy L Rhodes  
Notary Public

My Commission Expires:

March 10, 1992

APPROVED:

Cliff W. Ratner  
Cliff W. Ratner, Esq., KBA #04897  
Attorney for Plaintiff

FILED

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

NOV 28 1988

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

BARRY RAWDON,

Plaintiff,

vs .

SPURRIER CHEMICAL COMPANY, and  
SFB PLASTICS, INC., a corporation  
and KERR GLASS MANUFACTURING  
CORPORATION, a corporation,

Defendants,

and

MID-CONTINENT CASUALTY COMPANY,

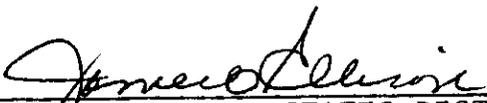
Intervenor.

No. 87-C-518-E

ORDER OF DISMISSAL

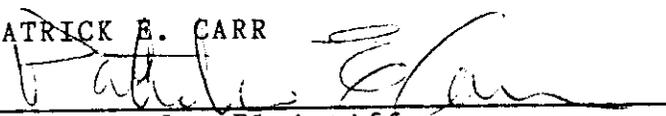
NOW on this 28<sup>th</sup> day of November, 1988, upon the written application of the Plaintiff, Barry Rawdon, the Defendants, Spurrier Chemical Company, SFB Plastics, Inc. and Kerr Glass Manufacturing Corporation, and the Intervenor, Mid-Continent Casualty Company, for a Dismissal With Prejudice of the Complaint of Rawdon v. Spurrier, et al., and all causes of action therein, the court having examined said Application finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the court to dismiss said Complaint with prejudice to any future action. The court being fully advised in the premises finds that said settlement is in the best interest of the Plaintiff, and that said Complaint should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that the Complaint and all causes of action of the Plaintiff, Barry Rawdon, against the Defendants, Spurrier Chemical Company, SFB Plastics, Inc. and Kerr Glass Manufacturing Corporation, and the Intervenor, Mid-Continent Casualty Company, be and the same hereby are dismissed with prejudice to any future action.

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

APPROVALS:

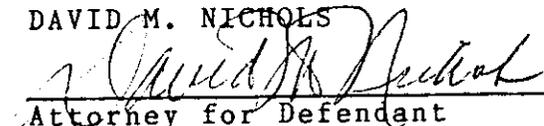
PATRICK E. CARR

  
\_\_\_\_\_  
Attorney for Plaintiff

RICHARD D. WAGNER

  
\_\_\_\_\_  
Attorney for Defendant  
Spurrier Chemical Company

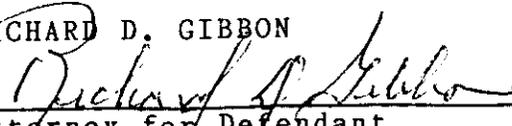
DAVID M. NICHOLS

  
\_\_\_\_\_  
Attorney for Defendant  
SFB Plastics

W. MICHAEL HILL

  
\_\_\_\_\_  
Attorney for Defendant  
Kerr Glass Manufacturing Corp.

RICHARD D. GIBBON

  
\_\_\_\_\_  
Attorney for Defendant  
Mid-Continent Casualty Company



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

FILED

ROY SAGEL,

Plaintiff,

-vs-

INGERSOLL-RAND CO., a  
New Jersey corporation,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

NOV 23 1988

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

Case No. 87-C-1062-C

JOINT STIPULATION OF DISMISSAL OF ALL CLAIMS WITH PREJUDICE

COME NOW the parties hereto, by and through their attorneys of record, and pursuant to Fed. R. Civ. Proc. 41(a)(1)(ii), hereby stipulate that the captioned case is hereby dismissed in its entirety with prejudice, including all claims and counterclaims therein by reason that the parties have reached a settlement. Each party is to bear its own attorneys' fees.

JUDD JAMES and MARILYN KAY  
HOOVER

NICHOLS, WOLFE, STAMPER,  
NALLY & FALLIS, INC.

By: Marilyn Kay Hoover  
Marilyn Kay Hoover  
420 South Boston, Ste 208  
Tulsa, Oklahoma 74103  
(918) 592-0826

By: Diane O. Palumbo  
Diane O. Palumbo, OBA #12154  
400 Old City Hall Building  
124 East Fourth Street  
Tulsa, Oklahoma 74103  
(918) 584-5182

ATTORNEYS FOR PLAINTIFF

ATTORNEYS FOR DEFENDANT

GLH/LAL/lc  
07/06/88

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

NOV 23 1988

FLORA L. POWELL, individually, and as )  
surviving wife of HUBERT C. POWELL, )  
deceased, )

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

Plaintiff, )

vs. )

No. 88C-555-E

ANCHOR PACKING COMPANY, a corporation; )  
et al., )

Defendants. )

ORDER OF DISMISSAL

NOW on this 21 day of November, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant Dal-Tile Corporation. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, Dal-Tile Corporation, be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

S/ JAMES O. SILVER

\_\_\_\_\_  
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

November 23, 1988

JACK C. SILVER  
CLERK

(918) 581-7796  
(FTS) 736-7796

TO: Counsel/Parties of Record

RE: Case # 87-C-257-C ✓  
Burkhart Petroleum Corporation vs. ANR Pipeline

This is to advise you that Chief Judge H. Dale Cook entered the following Minute Order this date in the above case:

Plaintiff's motion to strike defendant's counterclaim as moot is hereby GRANTED.

Very truly yours,

JACK C. SILVER, CLERK

By: Rosanne J. Miller  
Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES POSTAL SERVICE, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PAUL GRAYSON MERSCH, )  
 )  
Defendant. )

**F I L E D**

NOV 23 1988

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

) Civil Action No. 88-C-1526-C

PRELIMINARY INJUNCTION

Upon consideration of Plaintiff's Motion for a Preliminary Injunction and the Exhibits in support thereof, and it appearing to the Court that the United States Postal Service has filed an administrative proceeding in this matter under 39 U.S.C. § 3005, that Plaintiff lacks authority to withhold mail from Defendant during the pendency of this proceeding and that there is probable cause to believe that Defendant is engaged in conducting an unlawful activity through the mails by means of a lottery or gift enterprise, both in violation of 39 U.S.C. § 3005 and therefore should be restrained by order of this Court, it is by the Court at 2:o'clock p.m. on this 23 day of Nov., 1988, ORDERED that a Preliminary Injunction be and it hereby is issued directing detention by Plaintiff of Defendant's incoming mail addressed to:

National Bancard Corporation  
P.O. Box 470902  
Tulsa, OK 74147

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

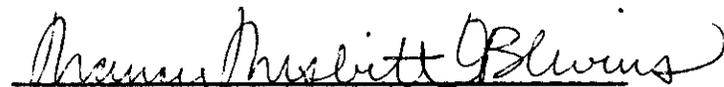
FURTHER ORDERED that the detained mail may be examined by the Defendant and that such mail be delivered to the Defendant as is clearly not connected with the alleged unlawful activity.

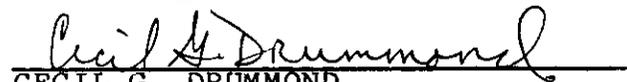
SIGNED this 23 day of Nov., 1988.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

  
CECIL G. DRUMMOND  
Attorney for Defendant  
Paul Grayson Mersch

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

**FILED**

NOV 23 1988

THURSTON FIRE & CASUALTY  
INSURANCE COMPANY,

Plaintiff,

vs.

CRAWFORD & COMPANY,

Defendant.

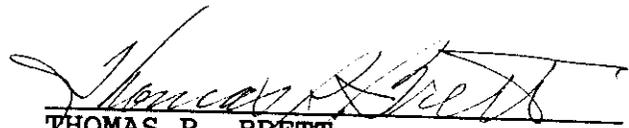
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

No. 87-C-849-B

J U D G M E N T

In keeping with the verdict of the jury rendered and filed this date, Judgment is hereby entered in favor of Plaintiff (newly named defendant), Thurston Fire & Casualty Insurance Company, and against the Defendant (newly named Plaintiff), Crawford & Company, and the costs are to be assessed against Crawford & Company. Any claim for attorney fees by the prevailing party herein should be made in keeping with Local Rule 6(g).

DATED this 23rd day of November, 1988.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

CERTIFICATE (If Applicable)

I hereby certify that on \_\_\_\_\_ the movant herein had cash and securities in the amount of \$ \_\_\_\_\_ on account to his credit at the penal institution where he is confined. I further certify that movant likewise has the following securities to his credit according to the records of said \_\_\_\_\_ institution:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Authorized Officer of Penal Institution

**FILED**

NOV 23 1988

(Date)

(Title)

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

ORDER

In reliance upon the representations and information set forth in the above motion, declaration and certificate, it is ordered that:

The movant herein is permitted to file and maintain this action to conclusion without prepayment of fees or costs.

The movant herein is permitted to file this action without prepayment of fees or costs, however any further proceedings in this matter must be specifically authorized in advance by the court.

This motion for leave to proceed *in forma pauperis* is denied.

\_\_\_\_\_  
United States District Judge  
United States Magistrate

11/23, 19 88

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

FILED

NOV 23 1988

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

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
THEODORE V. ANDERSON and )  
LUCINDA B. ANDERSON, husband )  
and wife, et al., )  
 )  
Defendants. )

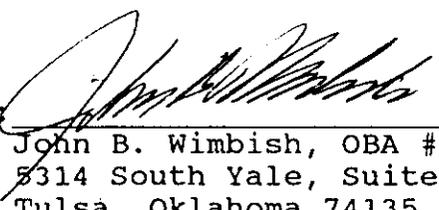
Case No. 88-C-547-E

COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P.  
DISMISSAL OF ITS CROSS-COMPLAINT WITHOUT PREJUDICE

COMES NOW Defendant Commonwealth Mortgage Company of America,  
L.P. and hereby dismisses its cross-complaint in the captioned  
matter as against all parties without prejudice to the filing of  
a new action.

RIDDLE & WIMBISH

By:

  
John B. Wimbish, OBA #9756  
8314 South Yale, Suite 200  
Tulsa, Oklahoma 74135  
(918) 494-3770  
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on this 23rd day of November,  
1988, I mailed a true and correct copy of the above and foregoing  
Dismissal Without Prejudice to the following with proper postage  
fully prepaid thereon:

April Ward Mather  
Boesche, McDermott & Eskridge  
800 Oneok Plaza  
100 West 5th Street  
Tulsa, Oklahoma 74103

Mr. David Noss  
111 West 5th Street  
Tulsa, Oklahoma 74103  
Attorney for Catoosa  
Development Authority

George Owens  
Owens & McGill  
1606 First National Building  
Tulsa, Oklahoma 74103  
Attorney for Theodore and Lucinda  
Anderson and Edward Covington

Mary Kay Morrissey  
Andrew Turner  
2400 First National Tower  
Tulsa, Oklahoma 74103  
Attorney for Air Cargo Equipment



John B. Wimbish

11/88  
B853004A.DIS  
JBW:pam

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

**F I L E D**

MAKO, INC., )

Plaintiff, )

vs. )

CIRCLE K CONVENIENCE STORES, )  
INC., )

Defendant. )

**NOV 23 1988**

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

No. 87-C-490-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 23<sup>d</sup> day of November, 1988.

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



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

FILED

NOV. 22 1988

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

KATHY BARRINGER, Administratrix of the Estate of Joe Barringer, Deceased, )

Plaintiff, )

v. )

WAL-MART STORES, INC. and ACTION PRODUCTS COMPANY, )

Defendants. )

No. 87-C-1015-B

ORDER

This matter comes before the Court on the Defendants' Motion for Summary Judgment. Plaintiff initiated this action to seek redress for the wrongful death of her husband allegedly caused by a product manufactured by Action Products Company and sold by Wal-Mart Stores, Inc.

On February 21, 1987, Plaintiff's husband, Joe Barringer, went fishing alone on Lake Hudson near Salina, Oklahoma. When Joe Barringer did not return, the Plaintiff contacted the local authorities, who, in turn, initiated a search. Late that evening, Joe Barringer's 10-foot, flat-bottomed boat was found capsized, although Joe Barringer remained missing. When the boat was turned upright, it was discovered that the back portion of the rear boat seat was broken off; however, the sitting portion of the seat remained attached. A few beer cans and a life preserver were also found under the capsized boat. The lake patrolman who recovered the boat discovered that the boat's engine was in gear and the throttle was about half open. The broken portion of the seat was found the next morning floating along the shore line. On March 27,

42

1987, Mr. Barringer's body was found in Lake Hudson without a life preserver.

The decedent purchased the plastic boat seat from Defendant Wal-Mart Stores, Inc. The seat in question was manufactured by Defendant Action Products Company. Plaintiff filed this products liability claim against Wal-Mart Stores and Action Products Company alleging Mr. Barringer fell into the water and drowned when the plastic seat he was sitting on broke. The Plaintiff alleges the plastic seat was defective because it became brittle after it had been exposed to the sun for an extended period of time.

Defendants moved for summary judgment because the Plaintiff cannot establish the boat seat proximately caused Mr. Barringer's death. To sustain an action for products liability, the Plaintiff must prove the product caused the injury. The mere possibility the product might have caused the injury is insufficient. Kirkland v. General Motors Corp., 521 P.2d 1353 (Okla. 1974). In this instance, the Defendants argue several equally plausible hypotheses which could have caused Mr. Barringer's death. Mr. Barringer's death could be attributed to him starting the boat while it was in gear, thereby causing him to fall and break the seat. Also, Mr. Barringer could have started the boat in gear, fallen into the water, thereby causing the boat to capsize and breaking the seat.

The causal relationship must be proved by circumstantial evidence because there are no witnesses to the accident. Although essential facts may be proved by circumstantial evidence, that evidence must have sufficient probative value to constitute the

basis for a legal inference rather than mere speculation, and the circumstances proved must lead to the conclusion as a reasonable probability. Downs v. Longfellow Corp., 351 P.2d 999 (Okla. 1960).

In Downs, the Oklahoma Supreme Court noted:

"The conclusion must be a reasonable and probable one, and must follow logically from the facts. The circumstances must, of course, agree with and support the hypothesis which they are adduced to prove; but circumstantial evidence is not sufficient to establish a conclusion where the circumstances are merely consistent with such conclusion, or where the circumstances give equal support to inconsistent conclusions, or are equally consistent with contradictory hypotheses."

351 P.2d at 1005. See also, Thompson v. Medley Material Handling, Inc., 732 P.2d 461, 463 (Okla. 1987).

The central issue for all four causes of action is whether the circumstantial evidence offered tends to support Plaintiff's theory with reasonable probability, as opposed to the other causal hypotheses suggested by the Defendants. To withstand a motion for summary judgment, the Plaintiff "must establish that there is a genuine issue of material fact as to whether" the boat seat proximately caused Mr. Barringer's death. Plaintiff must do more than advance a theory consistent with the limited facts available. "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 proximate cause of Mr. Barringer's drowning.

Plaintiff's circumstantial evidence need not rise to such a degree of certainty that all other possibilities are eliminated; however, the evidence must take the likelihood of causation beyond the realm of speculation or conjecture. To overcome this burden, the Plaintiff submits as expert testimony the affidavit of Mr. Ronald Hellman, an engineer and reconstructionist.<sup>1</sup> The affidavit states that the boat seat was defective and unreasonably dangerous when it left the manufacturer's control and that the boat seat caused Mr. Barringer's death.<sup>2</sup> Although Mr. Hellman may be qualified to opine as to the seat's condition when it left the manufacturer's control, his conclusion that the defect caused the drowning is unsupported.<sup>3</sup> His opinion as to the ultimate issue of

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<sup>1</sup>Defendants do not take issue with the qualifications of expert Hellman as an engineer or reconstructionist but do question the validity of Mr. Hellman's opinion as to the cause of death because the facts upon which Mr. Hellman bases his opinion are not provided.

<sup>2</sup>Plaintiff also attaches a copy of a Complaint filed in the District Court for the District of South Carolina, Cook v. K-Mart and Action Products Company, Case No. [illegible]. Plaintiff relies upon this Complaint as evidence of Action Products' knowledge the boat seat was defective. Cook is not controlling because the case was settled out of court and the issue was never litigated. Additionally, the seat's defective design becomes an issue only if the Plaintiff can prove Mr. Barringer was sitting on the seat when it broke.

<sup>3</sup>See, Downs v. Longfellow at 1004, citing 32 C.J.S. §569 which states: "Reasons and facts supporting opinion. The reasons given in support of the opinions rather than the abstract opinions are of importance, and the opinion is of no greater value than the

death is merely speculation and conjecture. Taking as true Mr. Hellman's opinion the seat was defective, a jury could just as easily conclude the seat broke when the boat capsized or when Mr. Barringer started the engine in gear with the throttle half open. It is important to note the affidavit does not explain the cause of the drowning, merely the condition of the seat. Although the seat may have been defective, it would not necessarily have been the proximate cause of Mr. Barringer's death. It requires building an inference upon an inference to conclude the boat seat caused Mr. Barringer's drowning based upon Mr. Hellman's opinion the seat was defective.

The Plaintiff also submits her affidavit to support the conclusion the seat caused Mr. Barringer's death. Notwithstanding the Plaintiff is not considered an expert, her affidavit suffers from the same inferential deficiencies as Mr. Hellman's ultimate conclusion of causation. Plaintiff offers her opinion or belief that the boat seat caused her husband's death based upon her knowledge of his boating/fishing habits and the weather conditions at the time of the accident.

Plaintiff explains the causation element as follows:

"Joe Barringer was an experienced fisherman. He was out on the lake on a calm but cold day in February 1987. There is no reasonable

---

reasons given in its support. If no rational basis for the opinion appears, or if the facts from which the opinion was derived do not justify it, the opinion is of no probative force, and it does not constitute evidence sufficient to authorize submission of the issue to the jury or to sustain a finding or verdict, \* \* \*."

possibility that Joe Barringer would have voluntarily entered the water for a casual swim. The inference that can be drawn from the capsized boat and broken seat is that the traumatic and sudden fracture of the defective boat seat caused Joe Barringer to fall into the water and drown. The surrounding facts and circumstances tend to support this conclusion with reasonable certainty." (Plaintiff's Response, pp. 5-6).

Plaintiff's conclusion that the boat seat caused the drowning is based solely upon Mr. Barringer's experience as a fisherman. From that statement, the Plaintiff infers the seat proximately caused Mr. Barringer's drowning. "While one reasonable inference resulting from a proven fact or facts may be treated as evidence in itself, it cannot be utilized as a basic proven fact for the generation of further, additional inferences." Downs, at 1005. Although Mr. Barringer may have been a very experienced fisherman, the fact does not make the Plaintiff's theory any more plausible than the Defendants' alternative theories. The Defendants present several equally plausible theories causing Mr. Barringer's death.

"For example, the lake patrolman who recovered the boat has testified that when the boat was recovered, the motor was at half throttle and the motor was in gear. Based on this testimony, it can be inferred that Joe Barringer attempted to start the boat motor while the boat was in gear and that when the motor started it abruptly threw him over the back edge of the boat. [Exhibit "B", p. 34]. Thus, an equally plausible inference can be drawn from the evidence that the boat seat had nothing to do with the demise of Joe Barringer. Or, Mr. Barringer could have simply lost his balance, fallen overboard, with the boat seat breaking after the fact. Another possibility is that the event which caused the boat seat to break happened before the event which caused Joe Barringer to fall into the lake. For example, it is possible that the boat seat

broke early in the day and Joe Barringer continued to use the broken seat. The direct evidence reveals that only the back of the seat was broken and the sitting portion remained intact. Thus, the seat could still be used even though it did not have a back." (Defendants' Brief filed May 23, 1988, page 10).

The opinion expressed by the lake patrolman who found the capsized boat is also instructive on the Defendants' causation theory.

"Yes, sir. Upon what I noticed with the boat being in gear, the throttle being half throttled, a portion of a back seat being broke off, no damage done to the bottom of the boat that looked fresh or looked extensive enough to cause a boat to turn over, and being that the water conditions was the way it was,<sup>4</sup> I just--my opinion was the -- that Joe just stood up to start the motor, and it probably didn't start the first crank.

Your older motors will start in gear. He may have throttled it a couple of times and give it a tow, and it may have started in gear and slung him over the back seat of the boat, which could have broke the back of the seat, and by hitin' the back edge of the boat, is enough weight to flip a 10-foot flat-bottomed boat over." (Dep. of Tommy Parker, p. 34, Exhibit to Defendants' Brief in Support of Motion for Summary Judgment).

Mere speculation as to one of many possible causes of Mr. Barringer's death is insufficient to take this case beyond the threshold of Celotex. Plaintiff has the burden of coming forward with evidence to take her theory the defective boat seat proximately caused Mr. Barringer's death beyond the realm of possibility and into the realm of probability.

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<sup>4</sup>The weather was cold but calm on February 21, 1987.

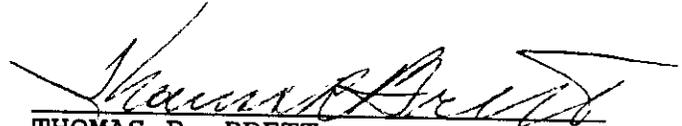
"In a case of this kind, a verdict for plaintiff cannot be predicated upon conjecture or speculation relating to the issue of negligence. Instead there must be substantial evidence tending to show the acts of negligence pleaded in the complaint; and there must also be evidence tending to show that such negligence proximately caused the damage to the complainant. Negligence as the proximate cause of damage may be established by permissible inferences, but the inference must be based upon something other than mere conjecture or speculation. It does not suffice to introduce evidence tending to show facts which are simply consistent with negligence but suggest with equal force an inference of the nonexistence of negligence. The inference of negligence must be the more probable and more reasonable inference to be drawn from the evidence. Evidence which presents a mere choice of probabilities relating to negligence as the proximate cause of damage create only conjecture or speculation on which a verdict for plaintiff cannot stand. The evidence must bring the theory of plaintiff to the level and dignity of a probable cause." [citations omitted]

McCready v. United Iron and Steel Co., 272 F.2d 700, 702 (10th Cir. 1959). Where the Plaintiff fails to meet that burden, "'there can be no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Celotex at 323. Although the boat seat may have been defective, the Motion for Summary Judgment must be sustained

because the Plaintiff has not produced adequate probative evidence, either direct or circumstantial, tending to prove the seat proximately caused Mr. Barringer's death.

It is therefore ORDERED that the Defendants' Motion for Summary Judgment be sustained and the case dismissed.

IT IS SO ORDERED, this 22<sup>nd</sup> 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 22 1988

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

KATHY BARRINGER, Administratrix of the )  
Estate of Joe Barringer, Deceased, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
WAL-MART STORES, INC. and ACTION )  
PRODUCTS COMPANY, )  
 )  
Defendants. )

No. 87-C-1015-B

J U D G M E N T

In keeping with the Order Granting Summary Judgment pursuant to Fed.R.Civ.P. 56(c) entered contemporaneously herewith, Judgment is hereby entered in favor of the Defendants Wal-Mart Stores, Inc. and Action Products Company, and against the Plaintiff, Kathy Barringer, Administratrix of the Estate of Joe Barringer, Deceased. Costs are hereby assessed against the Plaintiff. The parties are to pay their own respective attorneys' fees.

DATED this 22<sup>nd</sup> day of November, 1988.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**F I L E D**

NOV 22 1988

BELDON ENERGY, INC., a  
California corporation,  
  
Plaintiff,  
  
v.  
  
CHARLES H. ASBILL, an  
individual; and S.S.J.  
ENGINEERING, INC., a Texas  
corporation,  
  
Defendant.

to Silver, Clerk  
U.S. DISTRICT COURT

No. 87-C-75-E

ORDER

Upon the motion of Charles H. Asbill and S.S.J. Engineering, Inc., this action is dismissed without prejudice and with each party to bear its own costs.

Dated this \_\_\_\_ day of November, 1988.

*[Handwritten signature]*

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

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

**FILED**

**NOV 22 1988**

DANNY GRIFFITH,  
Plaintiff,  
v.  
TOM WHITE,  
Defendant.

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

86-C-584-E

ORDER

Now before the Court is Danny Griffith's Motion to Withdraw his Petition for a Writ of Habeas Corpus and dismiss the case. Respondents have filed no objection.

Therefore, Petitioner's Motion to Withdraw is hereby granted and the Petition for Writ of Habeas Corpus is hereby dismissed without prejudice.

Dated this 21<sup>st</sup> day of November, 1988.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

**F I L E D**

TURNER BROTHERS, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TRANSWESTERN MINING COMPANY, )  
 )  
 Defendant. )

**NOV 22 1988**

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

No. 86-C-646-E

JUDGMENT

In keeping with the Court's Findings of Fact and Conclusions of Law filed November 1, 1988, the Court hereby enters judgment against Plaintiff, Turner Brothers, Inc. ("TBI") and in favor of Defendant, Transwestern Mining Company ("Transwestern") on all of TBI's claims against Transwestern in this action. Further, the Court enters judgment against TBI and in favor of Transwestern in the amount of \$274,506.00, together with pre-Judgment interest accrued thereon from and after June 30, 1986, at the legal rate (15 O.S. § 266) of 6% per annum, and post-Judgment interest at the rate of 8.55% per annum accruing from the date hereof, on Transwestern's Counterclaim against TBI for overpayment of Reimbursable Costs pursuant to the Mining Agreement between the parties. The Court further awards costs of this action in favor of Transwestern and against TBI.

ENTERED this 21<sup>st</sup> day of November, 1988.

  
\_\_\_\_\_  
THE HONORABLE JAMES O. ELLISON  
UNITED STATES DISTRICT COURT JUDGE

**F I L E D**

**NOV 22 1988**

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

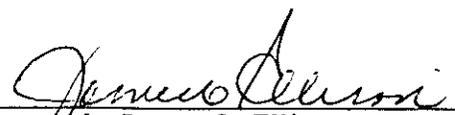
**Jack C. Silver, Clerk  
U.S. DISTRICT COURT**

IN RE: JOHN H. WILLIAMS, JR.	)	Case No. 86-00475-W
and CAROL S. WILLIAMS,	)	(Chapter 11)
	)	Appeal No. 88-C-1364-E
Debtors,	)	
	)	
ROBERT A. STOCKER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary No. 87-0337-W
	)	
KENSINGTON COMPANY LIMITED	)	
PARTNERSHIP, formerly The	)	
Kensington Company, Ltd., an	)	Appeal No. 88-C-1199-B E
Oklahoma limited partnership;	)	and
and JOHN H. WILLIAMS, SR.,	)	Appeal No. 88-C-1363-E
	)	
Defendants.	)	

**AMENDED ORDER OF CONSOLIDATION AND DISMISSAL**

The Order of Consolidation herein dated November 14, 1988, is hereby amended to reflect the prior dismissal of Appeal Number 88-C-1198-E and the fact that Appeals numbered 88-C-1199-B and 88-1363-C have both been previously transferred by Judges Thomas Brett and H. Dale Cook to Judge James O. Ellison. Appeal Number 88-C-1199 is hereby dismissed as premature. Remaining Appeals numbered 88-C-1363 and 88-C-1364 are hereby consolidated for all purposes insofar as the appeals are concerned and all pleadings, in the future, shall be filed in Appeal Number 88-C-1363-E.

Dated this 22<sup>d</sup> day of November, 1988.

  
The Honorable James O. Ellison,  
United States District Judge





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

FILED

NOV 21 1988

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

ROBERT E. BRESNAHAN, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant )  
 )  
 v. )  
 )  
 LARRY HAMBLET, )  
 )  
 Additional Defendant )  
 on Counterclaim )

CIVIL NO. 87-C-815-B

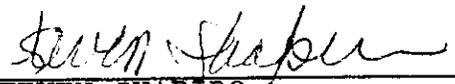
STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed that the complaint and the United States' counterclaim against the plaintiff in the above-entitled case be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of this litigation. The United States' claim against Larry Hamblet, on which the Court has issued a default judgment, is expressly reserved by the United States and is not affected by this stipulation.



TED M. RISELING  
Riseling & Associates, Inc.  
P. O. Box 52561  
Tulsa, Oklahoma 74152

ATTORNEY FOR PLAINTIFF



STEVEN SHAPIRO  
Chief, Civil Trial Section  
Southern Region  
Department of Justice  
Tax Division  
P. O. Box 14198  
Washington, D.C. 20044

ATTORNEY UNITED STATES

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

GLINDELL A. PETTY,

Plaintiff,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY,

Defendant.

AND

SAND SPRINGS RAILWAY COMPANY,

Plaintiff,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY,

Defendant.

No. 88-C-50-E

**FILED**

NOV 21 1988

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

No. 88-C-383-E

DISMISSAL WITH PREJUDICE

The Court has now before it the Stipulation of the parties, Glindell A. Petty, Missouri-Kansas-Texas Railroad Company and Sand Springs Railway Company, that the above-referenced matters have been fully and finally settled and now may be dismissed with prejudice.

IT IS, THEREFORE, the order of the Court that the instant actions should be and hereby are dismissed with prejudice,

AND IT IS SO ORDERED this 18 day of Nov., 1988.

S/ JAMES O. ELLISON

James O. Ellison  
United States District Judge

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

GLINDELL A. PETTY,  
Plaintiff,  
vs.  
MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY,  
Defendant.

No. 88-C-50-E

**FILED**

NOV 21 1988

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

AND  
SAND SPRINGS RAILWAY COMPANY,  
Plaintiff,

No. 88-C-383-E

vs.  
MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY,  
Defendant.

DISMISSAL WITH PREJUDICE

The Court has now before it the Stipulation of the parties, Glindell A. Petty, Missouri-Kansas-Texas Railroad Company and Sand Springs Railway Company, that the above-referenced matters have been fully and finally settled and now may be dismissed with prejudice.

IT IS, THEREFORE, the order of the Court that the instant actions should be and hereby are dismissed with prejudice,

AND IT IS SO ORDERED this 18 day of Nov., 1988.

S/ JAMES O. ELLISON

James O. Ellison  
United States District Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

WILLIE E. FERGUSON; LINDA J. )  
FERGUSON; OLA FAY HAY; COUNTY )  
TREASURER, Tulsa County, )  
Oklahoma; and BOARD OF COUNTY )  
COMMISSIONERS, Tulsa County, )  
Oklahoma, )

Defendants. )

**FILED**

**NOV 21 1988**

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

CIVIL ACTION NO. 88-C-183-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18 day of Nov, 1988. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinell, 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, Willie E. Ferguson, Linda J. Ferguson, and Ola Fay Hay, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Ola Fay Hay, was served with Summons and Complaint on May 26, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 24, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 23, 1988.

The Court further finds that the Defendants, Willie E. Ferguson and Linda J. Ferguson, 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 4, 1988, and continuing to September 8, 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, Willie E. Ferguson and Linda J. Ferguson, 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, Willie E. Ferguson and Linda J. Ferguson. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in

ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as 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 March 11, 1988; and that the Defendants, Willie E. Ferguson, Linda J. Ferguson, and Ola Fay Hay, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Ten (10), in Block Three (3), NORTHRIDGE, an Addition in Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on February 15, 1978, the Defendants, Willie E. Ferguson and Linda J. Ferguson, 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 \$12,500.00, payable in monthly installments, with interest thereon at the rate of eight and one-half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Willie E. Ferguson and Linda J. Ferguson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated February 15, 1978, covering the above-described property. Said mortgage was recorded on February 28, 1978, in Book 4312, Page 1734, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Willie E. Ferguson and Linda J. Ferguson, signed a Quit Claim Deed to Ola Fay Hay, dated March 17, 1979, and recorded on March 19, 1979, in Book 4387, Page 1468 in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Willie E. Ferguson and Linda J. Ferguson, 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, Willie E. Ferguson and Linda J. Ferguson, are indebted to the Plaintiff in the principal sum of \$10,772.38, plus interest at the rate of 8.5 percent per annum from June 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, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$10.00 which became a lien on the

property as of 1981 and 1987. Said lien is inferior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendant, Ola Fay Hay, is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Willie E. Ferguson and Linda J. Ferguson, in the principal sum of \$10,772.38, plus interest at the rate of 8.5 percent per annum from June 1, 1987 until judgment, plus interest thereafter at the current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$10.00 for personal property taxes for the years 1981 and 1987, plus the costs of this action.

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

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

First:

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

Second:

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

Third:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$10.00, personal property taxes which are currently due and owing.

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

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

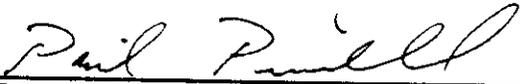
DAVID R. WILSON

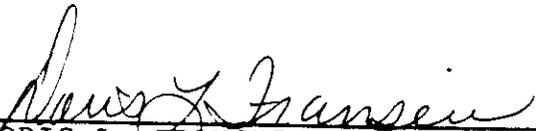
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UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

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

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

PP/css

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

TONY P. MOORE, )  
Plaintiff, )  
 )  
INSURANCE COMPANY OF )  
NORTH AMERICA, )  
Intervenor, )  
 )  
VS. )  
 )  
SIGNODE CORPORATION, a )  
Delaware Corporation; and )  
WELDOTRON CORPORATION, a )  
New Jersey Corporation, )  
Defendants. )

No. 82-C-336-E

AGREED JOURNAL ENTRY OF JUDGMENT

Now on this 21st day of November, 1988, the above styled and numbered cause of action came on for jury trial pursuant to regular notice and setting. Thereafter, the party litigants, through counsel, advised the Court that an agreement had been reached between the parties to waive a jury trial and have the Court enter judgment herein.

Thereafter, a non-jury trial was commenced. The Court, after having received the testimony of the Plaintiff, Tony Moore, the agreed statements of counsel, and the deposition testimony of Plaintiff's expert witness, John Severt, finds on the issues of liability and damages that the Plaintiff herein is entitled to judgment against the Defendant, Weldotron Corporation, in the amount of \$580,000.00 only.

FILED  
NOV 21 1988  
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment in his favor, subject to any rights of the Intervenor, Insurance Company of North America, and against the Defendant, Weldotron Corporation, in the amount of \$580,000.00, all for which let execution issue.

It is so Ordered this 21st day of November, 1988.

S/JOHN LEO WAGNER

~~JAMES O. ELLISON, JOHN L. WAGNER~~  
UNITED STATES DISTRICT JUDGE  
MAGISTRATE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BILL M. FOSTER, Jr.; LINDA C. )  
 FOSTER; BILLIE J. WASHINGTON; )  
 JESSE R. FOSTER; HERBERT LEE )  
 FOSTER; GERALD E. FOSTER; )  
 HILLCREST MEDICAL CENTER, )  
 a corporation; STATE OF )  
 OKLAHOMA ex rel. OKLAHOMA TAX )  
 COMMISSION; COUNTY TREASURER, )  
 Tulsa County, Oklahoma; and )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Tulsa County, Oklahoma, )  
 )  
 Defendants. )

**FILED**

**NOV 18 1988**

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

CIVIL ACTION NO. 88-C-62-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18 day  
of Nov, 1988. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Tulsa County, Oklahoma, and  
Board of County Commissioners, Tulsa County, Oklahoma, appear by  
Doris L. Fransein, Assistant District Attorney, Tulsa County,  
Oklahoma; the Defendant, Hillcrest Medical Center, a corporation,  
appears not, having previously filed its Disclaimer; the  
Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission,  
appears by its attorney Robert B. Struble; and the Defendants,  
Bill M. Foster, Jr., Linda C. Foster, Billie J. Washington,  
Jesse R. Foster, Herbert Lee Foster, and Gerald E. Foster, appear  
not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Jesse R. Foster, was served with Summons and Complaint on March 31, 1988; that the Defendant, Gerald E. Foster, was served with Summons and Complaint on April 8, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on January 26, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 28, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 27, 1988.

The Court further finds that the Defendants, Bill M. Foster, Jr., Linda C. Foster, Billie J. Washington, and Herbert Lee Foster, 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 4, 1988, and continuing to September 8, 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, Bill M. Foster, Jr., Linda C. Foster, Billie J. Washington, and Herbert Lee Foster, 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, Bill M. Foster, Jr., Linda C. Foster, Billie J. Washington, and Herbert Lee Foster. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as 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 17, 1988; that the Defendant, Hillcrest Medical Center, filed its Disclaimer herein on March 1, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer and Cross-Petition herein on February 22, 1988; and that the

Defendants, Bill M. Foster, Jr., Linda C. Foster, Billie J. Washington, Jesse R. Foster, Herbert Lee Foster, and Gerald E. Foster, 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 Thirty-one (31), Block Forty-four (44), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on December 23, 1971, Bill Mac Foster, Sr., executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, his mortgage note in the amount of \$10,300.00, payable in monthly installments, with interest thereon at the rate of four and one-half percent (4.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Bill Mac Foster, Sr., executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated December 23, 1971, covering the above-described property. Said mortgage was recorded on December 27, 1971, in Book 3997, Page 2094, in the records of Tulsa County, Oklahoma.

The Court further finds that on December 18, 1984, Bill Mac Foster, Sr., died intestate in Tulsa County, State of Oklahoma. By Order filed March 18, 1985, in the District Court,

Probate Division, Tulsa County, State of Oklahoma, Billie J. Washington was appointed personal representative of the estate of Bill Mac Foster, Sr., deceased.

The Court further finds that the Order Allowing Final Account, Determination of Heirship, Distribution and Discharge filed October 9, 1985, judicially determined that Bill M. Foster, Jr., Billie J. Washington, Jesse R. Foster, Herbert Lee Foster, and Gerald E. Foster were the sole and only heirs of Bill Mac Foster, Sr., deceased.

The Court further finds that pursuant to a Personal Representative Deed dated October 21, 1985, and filed of record on December 9, 1985, in Book 4911, Page 1357 in the records of Tulsa County, Oklahoma, Billie J. Washington, Personal Representative of the Bill Mac Foster Estate, conveyed the above-described real property to Bill M. Foster, Jr., Billie J. Washington, Jesse R. Foster, Herbert Lee Foster, and Gerald E. Foster.

The Court further finds that the Defendants, Bill M. Foster, Jr., Billie J. Washington, Jesse R. Foster, Herbert Lee Foster, and Gerald E. Foster, 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, Bill M. Foster, Jr., Billie J. Washington, Jesse R. Foster, Herbert Lee Foster, and Gerald E. Foster, are indebted to the Plaintiff in the principal sum of \$7,326.01, plus interest at the rate of 4.5 percent per annum from February 23, 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, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$4.00 which became a lien on the property as of 1987. Said lien is inferior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendant, Linda C. Foster, is in default and has no right, title, or interest in the subject real property.

The Court further finds that the Defendant, Hillcrest Medical Center, a corporation, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Income Tax Warrant No. ITI86002474, in the amount of \$88.92, plus penalties and interest accrued and accruing, dated June 2, 1986, and recorded on July 7, 1986, in Book 4953, Page 1224, in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the United States Internal Revenue Service has a federal tax lien upon the property by

virtue of a Notice of Federal Tax Lien Under Internal Revenue Laws, No. 80285, against Bill M. Foster in the amount of \$56.17 for the tax period ending December 31, 1979 and \$1,159.73 for the tax period ending December 31, 1981. Said tax lien was recorded on September 7, 1982, in Book 4636, Page 659. Inasmuch as government policy prohibits the joining of another federal agency as party defendant, the Internal Revenue Service is not made a party hereto; however, by agreement of the agencies the lien will be released at the time of sale should the property fail to yield an amount in excess of the debt to the Administrator of Veterans Affairs.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Bill M. Foster, Jr., Billie J. Washington, Jesse R. Foster, Herbert Lee Foster, and Gerald E. Foster, in the principal sum of \$7,326.01, plus interest at the rate of 4.5 percent per annum from February 23, 1987 until judgment, plus interest thereafter at the current legal rate of 8.55 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$4.00 for personal property taxes for the year of 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$88.92, plus penalties and interest accrued and accruing, for Income Tax Warrant No. ITI86002474 dated June 2, 1986, and recorded on July 7, 1986, in Book 4953, Page 1224, in the records of Tulsa County, Oklahoma.

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

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

First:

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

Second:

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

Third:

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of \$88.92, plus penalties and interest, for Income Tax Warrant No. ITI86002474;

Fourth:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$4.00, personal property taxes which are currently due and owing.

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

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

(Signed) H. Dale Cook

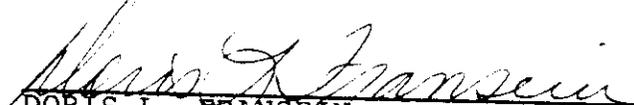
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PHIL PINNELL  
Assistant United States Attorney

  
ROBERT B. STRUBLE  
Attorney for Defendant,  
State of Oklahoma ex rel.  
Oklahoma Tax Commission

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

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

FILED  
NOV 18 1988 <sup>A</sup>

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

HOMART DEVELOPMENT CO.,  
Plaintiff,  
vs.  
ALFRED S. THERIAC,  
Defendant.

Case No. 88-C-201-C ✓

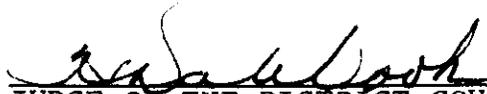
ORDER DISMISSING ACTION BY REASON OF SETTLEMENT

THIS MATTER comes on before the Court, and the Court has been advised by counsel that this action has been settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

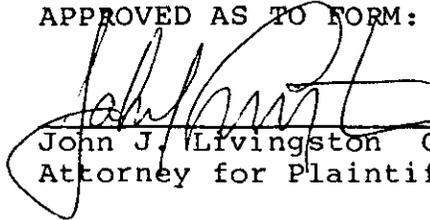
IT IS ORDERED that the action is dismissed without prejudice. The parties have filed settlement papers.

IT IS FURTHER ORDERED that the Court retains complete jurisdiction to enter the Judgment as provided for in paragraph 3 of the Stipulation and Settlement Agreement filed in these proceedings on September 8, 1988.

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

  
\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

  
\_\_\_\_\_  
John J. Livingston OBA #5477  
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE  
*Northern*  
~~WESTERN~~ DISTRICT OF OKLAHOMA

**FILED**

NOV 18 1988

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

B & M OIL COMPANY, INC. )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant )

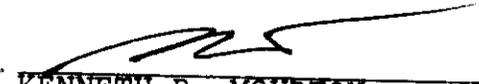
CIVIL NO. 88-C-165-C

STIPULATION FOR DISMISSAL

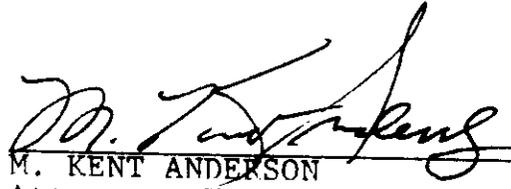
It is hereby stipulated and agreed that the Complaint filed herein be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of litigation.

**FILED**  
NOV 16 1988

*AH*

  
KENNETH R. MOURTON  
BALL, MOURTON, ADAMS, LTD  
P.O. Box 1948  
One McIlroy Plaza, Suite 303  
Fayetteville, Arkansas 73702  
(501) 442-6213

ATTORNEY FOR PLAINTIFF

  
M. KENT ANDERSON  
Attorney, Tax Division  
Department of Justice  
Room 5B31, 1100 Commerce Street  
Dallas, Texas 75242  
(214) 767-0293

ATTORNEY FOR DEFENDANT

ENTERED IN JUDGEMENT DOCKET ON

~~NOV 16 1988~~





NOV 18 1988

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

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

JEAN L'AQUARIUS	)	
	)	
Petitioner,	)	
	)	
v.	)	87-C-877-B
	)	
THOMAS WHITE, Warden,	)	
	)	
Respondent.	)	

ORDER

Now before the Court are the following motions: Respondent's Motion for Abstention or in the alternative, Request for Stay Pending Resolution of State Court Action (#17)<sup>1</sup>; Respondent's Motion to Dismiss (#18); Petitioner's Motion to Strike Respondent's Motion for Abstention (#19); Petitioner's Motion to Supplement the Motion to Strike (#20); Petitioner's Motion to Strike Respondent's Motion to Dismiss (#22); and Petitioner's Motion for Hearing (#24).<sup>2</sup>

At the center of all these motions is a parallel proceeding in the Oklahoma District Court of Osage County, Case No. C-87-616. Respondents assert that the Osage County Court action is virtually identical to the one brought here. On September 16,

<sup>1</sup> "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion or order or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

<sup>2</sup> Petitioner's Motion to Supplement the Motion to Strike (#20) and Motion to Strike Respondent's Motion to Dismiss (#22) are in effect responses to Respondent's Motion to Dismiss and are treated as such, herein.

1988, the Honorable Judge J.R. Pearman dismissed the Osage County Case finding the action to be "frivolous and without merit".

As Respondent's Motion for Abstention was filed prior to the state court's decision, it is now moot and Petitioner's Motion to Strike (#19) is likewise moot.

Respondent's Motion to Dismiss (#18) is founded upon the contention that the state court order dismissing L'Aquarius' state civil rights action should be given res judicata effect in this court requiring L'Aquarius' federal complaint be dismissed. Thus, some background is necessary.

In 1974 the United States District Court for the Eastern District of Oklahoma issued Findings of Fact and Conclusions of Law in L'Aquarius v. Anderson, Case No. 72-155-CIV finding L'Aquarius' constitutional rights had been violated. As a result, the Court held that the injunction issued in Battle v. Anderson, 376 F.Supp. 402, 428-37 (E.D. Okla. 1974) granted L'Aquarius all the necessary equitable relief he was entitled to.

While incarcerated in Oklahoma's prison system again in 1987, L'Aquarius filed two (2) nearly identical civil rights actions complaining the prisons were not complying with the Court's Order in L'Aquarius v. Anderson (Case No. 72-155). On November 9, 1987 he filed his Complaint in Oklahoma's Osage County District Court (Case No. C-87-616). Thereafter, on November 17, 1987 he filed his action in this Court.

Under the doctrine of res judicata or claim preclusion, a final judgment on the merits bars further claims by parties or

their privies based on the same cause of action. Petromanagement Corp. v. Acme-Thomas Joint Venture, 835 F.2d 1329, 1335 (10th Cir. 1988). The Full Faith and Credit statute, 28 U.S.C. §1738, requires a federal court to give the same preclusive effect to a state court judgment that would be given in a state in which the judgment was rendered. Migra v. Warren City School District Board of Education, 465 U.S. 75 (1984); Heinold Hog Market, Inc. v. McCoy, 817 F.2d 81, 82 (10th Cir. 1987). In this action, it is necessary to look to the law of Oklahoma for determining the preclusive effect of the Osage County decision under the res judicata doctrine. Id.

In Stovall v. Continental Federal Savings and Loan Association, 635 P.2d 1336, 1338 (Okla. Ct. App. 1981), the State Appellate Court restated the well-settled principle that:

A judgment rendered by a court of competent jurisdiction on the merits is a bar to any future suit between the same parties or their privies on the same cause of action so long as the judgment remains unreversed... A right, question or fact distinctly put in issue and directly determined ... cannot be disputed in a subsequent suit between the same parties or their privies, even where the subsequent suit is a different cause of action.

Thus, it can be said that Oklahoma courts would apply the doctrine of res judicata when the following criteria are satisfied: (1) identity of the subject matter of the claim; (2) identity of the cause of action; (3) identity of persons or parties to the action; and (4) identity of quality or capacity in persons to be affected. Kickapoo Tribe of Oklahoma v. Rader, 822

F.2d 1493, 1501 (10th Cir. 1987); see also, Wabaunsee v. Harris, 610 P.2d 782, 785 (Okla. 1980).

Reviewing both the state court Complaint<sup>3</sup> and the Amended Complaint filed in this action (#12) it appears that all four (4) criteria are satisfied for the application of the res judicata doctrine.

Both actions arise out of L'Aquarius' incarceration in the Oklahoma prison system, specifically, Conners Correctional Center. Both actions seek relief for the state prison officials' alleged deliberate refusal to comply with the "Federal Court Order and Injunction" in L'Aquarius v. Anderson.<sup>4</sup>

In both cases, L'Aquarius brought the action, and in both cases the actions were brought against Department of Corrections prison officials.<sup>5</sup>

As it appears that the "four identities" are present, the question then becomes whether the state court decision is a final decision on the merits. Woosley v. Hi-Plains Harvestore, Inc., 550 F.Supp. 161, 165 (W.D. Okla. 1981) ("If an action is to be

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<sup>3</sup> See, Respondent's Request for Abstention, Exhibit "A".

<sup>4</sup> There is a slight difference in the type of relief requested in each case. In his state action, L'Aquarius asks for damages and injunctive relief. In this federal action he seeks injunctive relief, or in the alternative, release from confinement.

<sup>5</sup> In the state action, L'Aquarius named as Defendants, Henry Hutchenson (Deputy Warden, Conners Correctional Center and Jon Tillinghast (Medical Director, Oklahoma D.O.C.). In the federal action Hutchenson and Tillinghast are named as Defendants, as well as sixteen additional D.O.C. officials. Amended Complaint, pages 6-7,

barred by res judicata or collateral estoppel there must be a final determination on the merits which means, on substantial grounds of the action or defense as distinguished from matters of practice, procedure or form".)

In the Osage County case, L'Aquarius' action was dismissed on a Motion to Dismiss. The State court held a hearing on L'Aquarius' Motion for a Temporary Injunction on April 25, 1988, and presumably considered the merits prior to issuing its Order for the D.O.C. to follow the "United States District Court Order filed on June 14, 1974". (Court Minute, attached as Exhibit "D" to L'Aquarius' Supplemental to Motion to strike #20).

In its dismissal order, the State court makes specific findings on the merits of L'Aquarius' claim. It states,

COMES now the Court, on the 9th day of September, 1988, and finds that Plaintiff has suffered no deprivation of any constitutionally protected rights. In addition, the Court finds that the document proffered by Plaintiff as an "injunction", is no more than what it says, "Findings of Fact and Conclusions of Law" concerning Plaintiff's situation as it existed in 1972. The document in and of itself provides no relief. In the prior action, Plaintiff was granted no greater or different relief than was afforded all Oklahoma inmates by Battles v. Anderson, CIV-72-95.

Accordingly, the Court finds that Plaintiff's action is frivolous and without merit. Defendant's Motion to Dismiss is hereby granted.

(Exhibit to Respondents' Motion to Dismiss and Brief in Support #18).

The State court based the dismissal on more than "matters of practice, procedure or form". The court's finding went to the heart of the substance of the action (i.e., whether L'Aquarius suffered the deprivation of a constitutionally protected right,

or, whether the "injunction" provided L'Aquarius specific enforceable relief).

Under Oklahoma law, a dismissal on the merits is entitled to be accorded res judicata treatment. City of El Reno v. Cleveland-Trinidad Paving Co., 25 Okl. 648, 107 P. 163, 165 (Okla. 1910) ("That a judgment rendered upon a general demurrer being sustained is none the less a final judgment upon the merits has been settled by this court ..."): see also, United States v. California & Ore Land Co., 192 U.S. 355 (1904); Bizzell v. Spring Valley Township, 124 U.S. 225 (1888).

Therefore, applying Oklahoma's res judicata doctrine to the State court decision, L'Aquarius would be precluded from bringing the same claim in a second State court action. Consequently, this Court must also accord the Osage County District Court judgment res judicata effect under the Full Faith and Credit Statute, 28 U.S.C. §1738. Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 380 (1985).

Respondents's Motion to Dismiss (#18) is granted. Respondent's Motion for Abstention (#17), Petitioner's Motion to Strike Respondent's Motion for Abstention (#19) and Petitioner's Motion for Hearing (#23) are moot.<sup>6</sup>

Petitioner's action is hereby dismissed with prejudice.

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<sup>6</sup> Petitioner's Motion to Supplement (#20) and Motion to Strike (#22) are in effect Responses and require no formal ruling. See fn. 2, supra.

Dated this 18 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 18 1988

TDR INDUSTRIES COMPANY, LTD. )  
et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
THE CREDIT LIFE INSURANCE )  
COMPANY, et al., )  
 )  
Defendants. )

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

88-C-118-C ✓

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate, filed September 30, 1988, in which the Magistrate recommended the following:

- (1) that the Motion to Remand of Plaintiff Professional Investors Life Insurance Company be denied;
- (2) that the action originally filed in the District Court of Tulsa County, Oklahoma on November 23, 1987 in Case No. CJ-87-7724, by Plaintiffs TDR Insurance Company, Ltd., TDR Management and Consulting Inc., Richard L. Baldini and David G. Baldini, against Defendants, The Credit Life Insurance Company and Central Penn Life Insurance Company, be remanded to the District Court of Tulsa County, Oklahoma, pursuant to the Court's own discretion under 28 U.S.C. §1441(c); and
- (3) the Petition for Rescission originally filed on January 22, 1988 in Tulsa County District Court by the remaining Plaintiff, Professional Investors Life Insurance Company against Defendants, The Credit Life Insurance Company and Central Penn Life Insurance Company, be transferred to the United States District Court for the Southern District of Ohio, Western Division, in the interest of justice, pursuant to 28 U.S.C. §1404(a); and that the case in this District be closed.

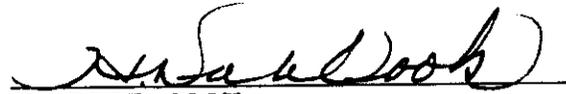
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No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is, therefore, Ordered that the recommendations of the Magistrate are hereby adopted as set forth above.

So ORDERED this 15<sup>th</sup> day of November, 1988.

  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE

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

FILED

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 JOHN D. LACY, )  
 444560090 )  
 )  
 Defendant, )

NOV 18 1988

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

DEFAULT JUDGMENT

A Default having been entered against the Defendant and counsel for the Plaintiff having requested Judgment against the defaulted Defendant and having filed a proper Affidavit, all in accordance with Rule 55(a) and (b)(1) of the Federal Rules of Civil Procedure and Rule 7 of the Rules of the District Court for the NORTHERN District of Oklahoma, now, therefore;

JUDGMENT is rendered in favor of the Plaintiff, United States of America, and against the Defendant, JOHN D. LACY, in the principal sum of \$4596.92, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$15.36. Future costs and interest at the legal rate of 8.55%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 16<sup>th</sup> day of Nov., 1988.

U.S. DISTRICT COURT CLERK  
NORTHERN DISTRICT OF OKLAHOMA

By: [Signature]  
Deputy Clerk

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

LEROY WAYNE JACKSON, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 JAMES L. SAFFLE and The )  
 Attorney General of the )  
 State of Oklahoma, )  
 )  
 Respondents. )

88-C-335-E

FILED  
10/18/88  
Clerk  
COURT

ORDER

Now before the Magistrate is respondents' Motion to Dismiss (Docket #8).<sup>1</sup> Having reviewed the pleadings, court records, and applicable law, the Magistrate finds as follows. Petitioner pled guilty and was convicted in Tulsa County District Court, Case Nos. CRF-75-2249, 2410, 2411, and 2409 of Burglary, Second Degree Robbery With a Firearm, and two counts of Shooting With Intent to Kill, and sentenced to concurrent ten years imprisonment in CRF-75-2409 and 2410, and to seven years imprisonment in CRF-75-2411 and 2249. The conviction was not appealed to the Oklahoma Court of Criminal Appeals.

Petitioner filed two applications for relief under the Oklahoma Post-Conviction Procedure Act, 22 O.S. §1080 et seq. The petitions were denied by the trial court on December 28,

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<sup>1</sup> "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

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1987, and such denials were affirmed by the Court of Criminal Appeals in Case No. PC-87-780 after remand to the district court.

Petitioner now seeks federal habeas relief on the following grounds: (1) Denial of due process of law when petitioner was improperly certified to stand trial as an adult; (2) Trial court failed to advise petitioner of his right against self-incrimination; and (3) Trial court failed to advise petitioner that he had a right to confront his accuser.

The Magistrate has examined the affidavit of David Hurte, Acting Offender Records Manager for the Oklahoma Department of Corrections, which states that petitioner discharged the ten-year sentences on October 3, 1980 and the seven-year sentences prior to that date. The affidavit also states that petitioner received a one-year suspended sentence in Case No. CRF-80-323 for Escape from the Jesse Dunn Correctional Center on July 18, 1980. The affidavit states that petitioner is now serving a fifteen-year sentence for his conviction in Case No. CRF-81-197 for Burglary in the Second Degree After Former Conviction of a Felony. After completion of that sentence, he will be rebilled to a fifteen-year sentence for his conviction in Case No. 86-2543 for Burglary in the Second Degree After Former Conviction of a Felony. These facts have been admitted by petitioner.

The petitioner filed his habeas petition in this case on April 7, 1988, seven and a half years after the expiration of his sentences received for the 1976 convictions which he now attacks.

For the court to have jurisdiction to hear a habeas corpus action under 28 U.S.C. § 2254, the petitioner must be "in custody" for the conviction under attack. See Beavers v. Alford, 582 F.Supp. 1504, 1506 (W.D.Okla. 1984). "There must be a definite relationship between the challenged sentence and the sentence currently being served or which will be served in the future." Id. citing Peyton v. Rowe, 391 U.S. 54, 88 S.Ct. 1549, 20 L.Ed.2d 426 (1968); Carafas v. LaVallee, 391 U.S. 234, 88 S.Ct. 1556, 20 L.Ed. 2d 554 (1968). See also Ward v. Oklahoma, 376 F.2d 847 (10th Cir. 1967).

The courts have found instances when habeas corpus is appropriate even though the petitioner is not in custody pursuant to the judgment being challenged, such as when the petitioner is serving a probationary period, Minnesota v. Murphy, 465 U.S. 420, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984), or when the petitioner attacks a consecutive sentence to be served in the future, Peyton v. Rowe, 391 U.S. 54, 88 S.Ct. 1549, 20 L.Ed.2d 426 (1968), or when the petitioner was in custody on the sentence under attack when the petition was filed, but has since been unconditionally released, Carafas v. LaVallee, 391 U.S. 234, 88 S.Ct. 1556, 20 L.Ed.2d 554 (1968), or when there is a "positive demonstrable relationship" between the prior conviction completely served and the sentence currently being served, Escobedo v. Estelle, 665 F.2d 613 (5th Cir. 1981); Thigpen v. Alford, 526 F.Supp. 689 (W.D.Okla. 1981).

The petitioner clearly fails to qualify under the first exception mentioned above because he is not serving a probationary period. He also is not attacking a consecutive sentence to be served in the future. He did not file his habeas petition until after the sentences for the convictions that he is now attacking had expired. Therefore, before the petitioner is entitled to habeas relief, it must be shown that there is some relationship between the earlier sentences fully served and the sentence for which the petitioner is currently held. Otherwise there is no jurisdiction to attack the earlier sentences in federal habeas corpus proceedings and the petitioner's habeas action should be dismissed.

The Magistrate has reviewed the information filed in CRF-81-197, which indicates that five prior convictions were alleged as former convictions for enhancement purposes. Four of the former convictions were the 1976 convictions attacked in this case and the fifth was the conviction in Case No. CRF-80-323, relating to the Escape from a Penal Institution. The petitioner has not attacked this escape conviction in his habeas petition. The Judgment and Sentence and the Appearance Docket in Case No. CRF-81-197 indicate that the petitioner pled guilty and was adjudged to be guilty of Burglary in the Second Degree After Former Conviction of a Felony. The documents do not state which prior conviction was used to enhance the sentence.

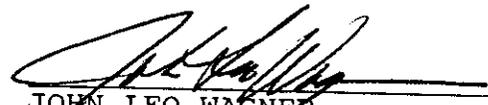
The courts have found that where there are other prior convictions that could be utilized to enhance a sentence being

served, use of a conviction, even if deemed invalid, should be considered harmless error. Beavers v. Alford, 582 F.Supp. 1504 (W.D.Okla. 1984). In Lane v. Williams, 455 U.S. 624, 102 S.Ct. 1322, 71 L.Ed.2d 508 (1982), the Supreme Court recognized that a criminal defendant must suffer actual harm from the judgment he attacks to be entitled to collateral review of a final judgment. 71 L.Ed.2d at 516, n.13.

The Magistrate concludes that petitioner has not shown that he is suffering harm from the convictions he is challenging, and because he has another conviction, the 1980 escape conviction, that could have supported enhancement of his current sentence, any error in utilizing the convictions attacked here is harmless error. This applies also to his pending sentence in CRF-86-2543, which the record shows was also enhanced by only one prior conviction, although the information originally set forth his four 1976 convictions and his escape conviction for enhancement purposes.

It is therefore the recommendation of the Magistrate that respondents' Motion to Dismiss be granted.

Dated this 18<sup>th</sup> day of November, 1988.

  
JOHN LEO WAGNER  
UNITED STATES MAGISTRATE

FILED

NOV 18 1988

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

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

HOUSTON AND KLEIN, INC.,  
Plaintiff,  
V.  
WORTHEN MORTGAGE COMPANY,  
Defendant,

NO. 87-C-28-E

WORTHEN MORTGAGE COMPANY,  
Plaintiff,  
V.  
RONALD MAIN,  
Defendant and Third  
Party Plaintiff,  
V.  
VETERAN'S ADMINISTRATION,  
Third-Party Defendant.

NO. 87-C-516-E

ORDER OF DISMISSAL

NOW ON THIS 17 day of Nov, 1988, the  
Court has for its consideration the Motion for Dismissal filed in  
the above-styled and numbered actions by the Plaintiffs and  
Defendants. Based upon the requests of the Plaintiffs and  
Defendants as set forth in the foregoing motion, it is

ORDERED that Plaintiff Houston and Klein, Inc.'s Petition  
for Declaratory Judgment against Defendant Worthen Mortgage

Company in Case Number 87-C-28-E is hereby dismissed with prejudice. It is further

ORDERED that Plaintiff Worthen Mortgage Company's Complaint against Defendant Ronald Main in Case Number 87-C-516-E be and the same is hereby dismissed with prejudice. Defendant Ronald Main's Third-Party Complaint against the Veteran's Administration is not affected by this dismissal, nor are any rights or causes of action which Houston & Klein, Inc. or Worthen Mortgage Company may have against the Veteran's Administration. It is further

ORDERED that Defendant Worthen Mortgage Company's Counterclaim against Plaintiff Houston and Klein, Inc. in Case Number 87-C-28-E be and the same is hereby dismissed with prejudice. It is further

ORDERED that each party shall bear its own costs and attorney's fees.

DATED THIS 17 day of Nov., 1988.

S/ JAMES O. ELLISON

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JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

FILED

NOV 18 1988

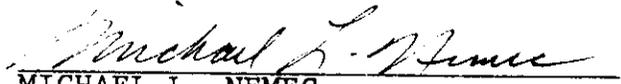
Jock C. Sizer, Clerk  
U.S. DISTRICT COURT

MORELAND INVESTMENT CO., INC. )  
 )  
Plaintiff )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Defendant )

CIVIL NO. 88-C-269-C

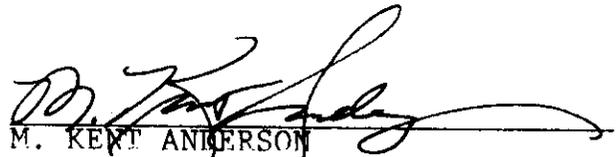
STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed that the Complaint filed herein be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of litigation.



MICHAEL L. NEMEC  
2642 East 21st Street, Suite 190  
Tulsa, Oklahoma 74114  
(918) 747-1161

ATTORNEY FOR PLAINTIFF



M. KENT ANDERSON  
Attorney, Tax Division  
Department of Justice  
Room 5B31, 1100 Commerce Street  
Dallas, Texas 75242  
(214) 767-0293

ATTORNEY FOR DEFENDANT

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

PAMELA FRUNZI, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 88-C-414-E  
 )  
 SUBURBAN OLDSMOBILE BUICK, )  
 GMC TRUCKS, INC., & H. WAYNE )  
 CLINE, )  
 )  
 Defendants. )

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff and Defendants, by and through their respective attorneys, would jointly stipulate that all of Plaintiff's claims herein should be dismissed with prejudice, with each party to bear his or her own costs and attorney fees.

HOWARD & WIDDOWS, P.C.

By: Rockne E. Porter  
Rockne E. Porter  
2021 South Lewis, Suite 570  
Tulsa, Oklahoma 74104

HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.

By: Janet M. Reasor  
J. Patrick Cremin  
Janet M. Reasor  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172  
(918) 588-3944

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

**F I L E D**

**NOV 16 1988**

FAYE SMITH,

Plaintiff,

vs.

CITY OF OWASSO, a municipal  
corporation,

Defendant.

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

Case No. 86-C-846-E

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes before the Court on the Stipulation for Dismissal with Prejudice of the parties herein.

Being advised in the premises and for good cause shown, the Court hereby dismisses this matter with prejudice.

The Court further orders each party to bear its respective attorney's fees and costs of the action.

DATED this 16<sup>th</sup> day of November, 1988.

JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

FILED

NOV 16 1988

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

KIMBERLYN RAE KENDRICK, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
HICKS COMMUNICATIONS PARTNERS, )  
a Delaware Limited Partnership )  
d/b/a KAYI-FM 107, A HICKS )  
COMMUNICATIONS, INC., STATION, )  
 )  
Defendant. )

Case No. 87-C-844-B

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Kimberlyn Rae Kendrick, by and through her attorneys of record, Michael C. Taylor & Associates, by Michael C. Taylor, and dismisses without prejudice the cause of action concerning defamation in the above-captioned matter.

Respectfully submitted,

MICHAEL C. TAYLOR & ASSOCIATES

BY:

  
Michael C. Taylor  
1625 South Boston Avenue  
Tulsa, Oklahoma 74119  
(918) 587-3366

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF HAND-DELIVERY

I, Michael C. Taylor, hereby certify that a true and correct copy of the foregoing Dismissal Without Prejudice was hand-delivered to R. Mark Solano, attorney for Defendant, on this 16<sup>th</sup> day of November, 1988.

  
\_\_\_\_\_  
Michael C. Taylor

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE 6 1988

NORTHERN DISTRICT OF OKLAHOMA JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

KIM MARTIN, Mother and Next of )  
Friend of RYAN MARTIN, a minor; )  
KIM MARTIN and SAM MARTIN, )  
Individually, )

Plaintiffs, )

vs. )

No. 88-C-1528-B

AMERICAN CYANAMID COMPANY d/b/a )  
LEDERLE LABORATORIES; and )  
CONNAUGHT LABORATORIES, INC., )

Defendants. )

NOTICE OF DISMISSAL WITHOUT  
PREJUDICE BY PLAINTIFF

To: Connaught Laboratories, Inc.  
c/o Mike Barkley  
James W. Connor, Jr.  
Barkley, Rodolf, Silva, McCarthy & Rodolf  
100 West 5th Street, Suite 410  
Tulsa, OK 74103

Lederle Laboratories, a Division of  
American Cyanamid Company  
c/o Stephen Peterson  
Brenda K. Penland  
Fenton, Fenton, Smith, Reneau & Moon  
One Leadership Square, Suite 800  
211 North Robinson  
Oklahoma City, OK 73102

and

John Clough  
Odette Ashley  
Haight, Brown & Bonesteel  
201 Santa Monica Boulevard  
Santa Monica, California 90406

Notice is hereby given that KIM MARTIN, Mother and Next of  
Friend of RYAN MARTIN, a minor; KIM MARTIN and SAM MARTIN, Indi-

vidually, the above-named Plaintiffs, hereby dismiss the above entitled action without prejudice, pursuant to Rule 41 (a) (1) (i) of the Federal Rules of Civil Procedure, and hereby files this notice of dismissal with the Clerk of the Court before service by Defendants of either an Answer or a Motion for Summary Judgment.



JOHN BAUM - O.B.A. #612  
Attorney for Plaintiffs  
BAUM, RALSTIN & SHORES  
4808 Classen Boulevard  
P. O. Box 54560  
Oklahoma City, OK 73154  
(405) 848-9552

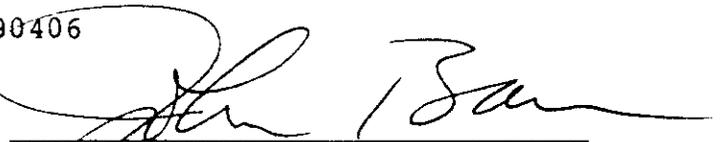
CERTIFICATE OF MAILING

This is to certify that on this 16 day of November, 1988, a true and correct copy of the above and foregoing Notice of Dismissal Without Prejudice By Plaintiff was mailed to the following:

Mike Barkley  
James W. Connor, Jr.  
Barkley, Rodolf, Silva, McCarthy & Rodolf  
100 West 5th Street, Suite 410  
Tulsa, OK 74103  
Connaught Laboratories, Inc.

Stephen Peterson  
Brenda K. Penland  
Fenton, Fenton, Smith, Reneau & Moon  
One Leadership Square, Suite 800  
211 North Robinson  
Oklahoma City, OK 73102  
Lederle Laboratories, a Division of  
American Cyanamid Company

John Clough  
Odette Ashley  
Haight, Brown & Bonesteel  
201 Santa Monica Boulevard  
Santa Monica, California 90406



JOHN BAUM

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

FILED

NOV 16 1988

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

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

vs. )

SELLERS RESOURCES CORP., an )  
Oklahoma corporation; R. A. )  
SELLERS, JR.; and VERNEY C. )  
SELLERS, )  
 )  
Defendants. )

Case No. 88-C-146-C

JUDGMENT BY CONFESSION

This matter comes on before the Court, the Honorable H. Dale Cook presiding, on this 31 day of October, 1988, pursuant to regular assignment. The plaintiff, Federal Deposit Insurance Corporation, acting in its corporate capacity ("FDIC/Corporate"), is represented by its counsel, Robert S. Glass of Gable & Gotwals, Inc., and the defendants, Sellers Resources Corp. ("Sellers Corp.") and R. A. Sellers, Jr. ("Sellers Junior"), are represented by their counsel, Lee I. Levinson of Gasaway & Levinson, P.A., and said counsel, having represented to the Court by virtue of their signatures together with the signature of Sellers Junior, in his corporate and individual capacities, that the parties have agreed to the entry of this Judgment by confession of liability in favor of FDIC/Corporate, and against Sellers Corp. in the sum of \$215,164.07, and against Sellers Junior in the sum of \$902,904.32 (obligor Note 17208 in the amount of \$687,740.25 and guarantor Note 17206 in the amount of \$215,164.07), both Judgment amounts calculated as of October 13, 1988, and accruing interest at the rate of 8.04 percent per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full, together with all costs of this action, including a reasonable attorney's fee in the sum of \$3,000.00 and all accruing collection costs. The Court makes the following FINDINGS pursuant to the stipulations and agreement of the parties to this Judgment by Confession:

1. This Court has jurisdiction over the subject matter and all the parties hereto. The issues in this case have been resolved either by agreement between the parties or by virtue of the confession of judgment made by Sellers Corp. and Sellers Junior.

2. All of the allegations of FDIC/Corporate's Petition are true and correct and FDIC/Corporate is entitled to judgment against Sellers Corp. in the sum of \$215,164.07, and against Sellers Junior in the sum of \$902,904.32, both Judgment amounts accruing interest at the rate of 8.04 percent per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full, together with all costs of this action, including a reasonable attorney's fee in the sum of \$3,000.00k and all accruing collection costs.

3. FDIC/Corporate's security interests and mortgage lien claims in and to the hereinbelow described property are prior and superior to any right, title, interest and claim asserted by Sellers Corp. and Sellers Junior therein. FDIC/Corporate's collateral is described as follows (the "FDIC/Corporate Collateral"):

1. See Exhibit "A" attached hereto and by this reference made a part hereof, therein describing certain real estate comprising a portion of FDIC/Corporate's Collateral; and
2. One Thousand (1,000) shares of Sellers Resources Corp. and Three Hundred Seventy-Five (375) shares of Mid-Continent Drilling Corp. capital stock, the certificates for which are presently held by FDIC/Corporate.

The FDIC/Corporate Collateral secures the indebtedness owing by Sellers Corp. and Sellers Junior to FDIC/Corporate. FDIC/Corporate is entitled to judgment in rem against Sellers Corp. and Sellers Junior establishing its security interests and mortgage liens to be prior and superior to the interests held by such defendants.

4. FDIC/Corporate has and does hereby elect to have the FDIC/Corporate Collateral separately sold with appraisement, and such election is hereby approved and the sale shall be with appraisement.

IT IS THEREFORE ORDERED and DECREED by this Court that Federal Deposit Insurance Corporation, acting in its corporate capacity, shall have and recover of and

from the defendant, Sellers Resources Corp., the sum of \$215,164.07, and against the defendant, R. A. Sellers, Jr., in the sum of \$902,904.32, both Judgment amounts calculated as of October 13, 1988, and accruing interest at the rate of 8.04 percent per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full, together with all costs of this action, including a reasonable attorney's fee in the sum of \$3,000,00, for all of which special and general execution shall issue; that upon the failure of either Sellers Resources Corp. or R. A. Sellers, Jr. to satisfy the Judgment entered against them and in the event FDIC/Corporate so elects, the Sheriff of Creek County, Oklahoma, shall levy upon the FDIC/Corporate Collateral, including all improvements thereon, and after having same separately appraised, as provided by law, shall proceed to advertise and separately sell the same according to law, and shall immediately turn over the proceeds thereof to the Court Clerk for the United States District Court, Northern District of Oklahoma, who shall apply the proceeds arising from each sale, respectively, as follows:

- (i) in payment of the costs and expenses incurred in this action, including the costs of sale and all court costs and attorney's fees incurred by FDIC/Corporate;
- (ii) in payment to FDIC/Corporate of its Judgment as hereinabove set forth; and
- (iii) and the residue, if any, shall be deposited with the Clerk of this Court to await further order of Court;

that after the sale of the FDIC/Corporate Collateral, Sellers Resources Corp. and R. A. Sellers, Jr., and each of them and all persons and entities claiming under any of them, shall be and they are hereby forever barred and foreclosed of and from any and every lien and interest in and to the FDIC/Corporate Collateral, or any portion thereof sold in execution upon this Judgment; that upon confirmation of the sale of the FDIC/Corporate Collateral, the Sheriff of Creek County, Oklahoma shall execute and deliver good and sufficient Sheriff's Deeds to the purchaser of the FDIC/Corporate Collateral or any portion thereof, which shall convey all the right, title, interest, estate and equity of

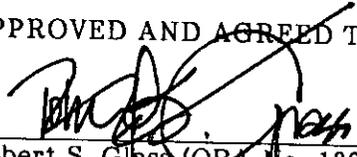
redemption of the parties to this action, and all persons and entities claiming under them, and each of them; and upon application of the purchaser(s) the Court shall issue a Writ of Assistance to the Sheriff who shall thereupon and forthwith place said purchaser(s) in full and complete possession and enjoyment of the FDIC/Corporate Collateral.

In the event this Judgment is not paid by Sellers Resources Corp. or R. A. Sellers, Jr. upon entry by the Court, FDIC/Corporate may cause general or special execution to issue on the Judgment at its sole election.

IT IS SO ORDERED.

  
HONORABLE H. DALE COOK,  
CHIEF JUDGE, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

APPROVED AND AGREED TO:

  
Robert S. Glass (OBA No. 10824)  
Counsel for Plaintiff, Federal Deposit Insurance  
Corporation, acting in its corporate capacity

  
Lee I. Levinson (OBA No. 5395),  
Counsel for Defendants, Sellers Resources Corp.  
and R. A. Sellers, Jr.

SELLERS RESOURCES CORP.

By:   
R. A. Sellers, Jr., its President

  
R. A. Sellers, Jr., Individually

SE

RE... ESTATE MC TG..GE

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THIS INDENTURE, Made and entered into this 25TH day of November, 19 86, between R. A. Sellers, Jr. and Verney C. Sellers of Tulsa County, State of Oklahoma (hereinafter referred to as mortgagors, whether one or more), and THE CITIZENS BANK OF DRUMRIGHT, Creek, County, State of Oklahoma (hereinafter referred to as mortgagee).

WITNESSETH: That said mortgagors, in consideration of the sum of Five Hundred Fifty-nine Thousand Four Hundred Forty-one and 64/100 DOLLARS (\$ 559,441.64+Int.), the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto said mortgagee, its successors and assigns, all the following described real estate, lying, situated and being in the County of Creek State of Oklahoma, to-wit:

RECEIPT No. 3073 Properties as listed on Exhibit "A"
Mortgage Tax Paid \$ 111.79
This 5th day of Dec 1986
MACHINE THOS. Co. Treas.
By [Signature] Deputy

STATE OF OKLAHOMA
COUNTY OF CREEK
THIS INSTRUMENT WAS FILED
FOR RECORD ON
DEC - 5 1986
2 o'clock P.M. and duly recorded in
Book 213 Page 1557-60
ROMA LEE BRANHAM, County Clerk
By [Signature] Deputy

TO HAVE AND TO HOLD The same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, forever.

This conveyance is intended as a mortgage, and is given for the purpose of securing the payment of an indebtedness according to the terms and conditions of the following promissory note(s) of even date herewith, executed by the mortgagors and payable to THE CITIZENS BANK OF DRUMRIGHT, or order, at its office in Drumright, Oklahoma, to-wit:

Due and payable in a single payment of outstanding principal and accrued interest due on or before May 27, 1987.

This Mortgage shall likewise secure the payment of any indebtedness according to the terms and conditions of any notes which may be given by Mortgagors to the Mortgagee for any additional loans or advances which may be made from time to time prior to the release hereof to the extent only, however, that the aggregate amount of such additional advances does not exceed the sum of NONE Dollars (\$ ). Such additional loans or advances may be made without notice to, or the consent of, any person bound by this Mortgage, but nothing herein contained shall be deemed to impose any obligation upon said Mortgagee to make such additional advances.

IT IS AGREED By the mortgagors that this mortgage shall secure the payment of any extensions, renewals or changes in form of said note(s).

The mortgagors hereby covenant that they are the owners in fee simple of said mortgaged premises, and that the same are free and clear of all encumbrances; that they have good right and lawful authority to convey and encumber the same, and that they will warrant and defend the title to said premises against the claims of all persons whomsoever.

The mortgagors agree to insure the buildings and improvements on said property against fire and other hazards in a sum and with companies satisfactory to and for the benefit of the mortgagee, its successors and assigns, and to maintain such insurance during the existence of this mortgage; and agree to pay all taxes and assessments levied and assessed against said premises and property before the same shall become delinquent. The mortgagors agree that if such insurance is not effected and maintained, or if any and all taxes and assessments which are or may be levied and assessed against said premises, or any part thereof, are not paid before the same become delinquent, then the mortgagee, its successors and assigns, may effect such insurance and pay such taxes and assessments, and shall be allowed interest thereon at the rate of 12% per annum from date of payment until paid. All such sums paid by the mortgagee for taxes, insurance, repairs, or for the protection of said property, together with the interest thereon, as herein provided, shall be likewise secured hereby (it being agreed that the mortgagee shall have no duty or obligation to pay such taxes, insurance premiums, repairs, or any sums for the protection of said premises and property).

It is further expressly agreed that if any part of said principal sum hereby secured, or any interest thereon, is not paid when the same becomes due and payable, or if such insurance is not effected and the policies of insurance delivered to the mortgagee, its successors or assigns, or if any taxes or assessments levied and assessed against said premises and property are not paid before the same become delinquent, or in the event of the breach of any of the covenants and agreements herein contained, or upon a transfer of title of said premises or any part thereof by the mortgagor without prior written consent of mortgagee, the mortgagee, its successors and assigns, may, without notice to the mortgagors, elect to declare the whole sum or sums and interest thereon due and payable at once, and may proceed to foreclose this mortgage for the collection of the debts secured hereby, and the mortgagee, its successors and assigns, shall become and be entitled to the possession of said mortgaged premises and to the rents and profits therefrom, and shall, as a matter of right, on the institution, of any such foreclosure proceeding, be entitled to the appointment of a receiver for the purpose of collecting said rents and profits, said rents being hereby assigned to mortgagee, its successors and assigns, as further security for said indebtedness. It is also agreed that the mortgagee may, at its option, collect a late charge not to exceed two cents for each dollar of each payment more than fifteen (15) days in arrears to cover the extra expense involved in handling delinquent payments.

Now if said mortgagors shall pay or cause to be paid to said mortgagee, its successors and assigns, said sum or sums of money secured hereby, together with the interest thereon, according to the terms and tenor of the evidence of said debt or debts, and shall procure and maintain such insurance and pay such taxes and assessments, and shall perform all of the agreements and covenants herein contained, then these presents shall be wholly discharged and void; otherwise shall remain and be in full force and effect.

The mortgagors agree that as often as any proceeding is taken to foreclose this mortgage said mortgagors shall pay to the mortgagee, its successors and assigns, a sum equal to 15 Dollars (15.00) and 15 per cent (15%) additional of the total amount due on said note(s) and other evidence of debt secured hereby, as an attorney's fee for such foreclosure, in addition to all other legal court costs, which attorney's fee shall be due and payable upon the filing of a petition for the foreclosure hereof, and such attorney's fee shall be a part of the debt secured by this mortgage.

The mortgagors waive notice of election to declare the whole debt due, as above provided, and agree that appraisalment may be waived, or not, at the option of the mortgagee, its successors or assigns, without notice to the mortgagors. All the covenants, agreements and terms contained herein shall be binding on the mortgagors, their heirs, personal representatives and assigns, and shall be for the benefit of the mortgagee, its successors and assigns.

IN WITNESS WHEREOF, Mortgagors have executed these presents the day and year first above written.

1987



[Signature]
R. A. Sellers, Jr.
[Signature]
Verney C. Sellers

EXHIBIT "A"

EXHIBIT "A"

Surface and surface only in and to the following described tracts of real property located in Creek County, Oklahoma, to-wit:

1. A tract of land in the West Half of the West Half of the Southwest Quarter (W/2 W/2 SW/4) of Section 31, Township 18 North, Range 7 East, I.M., being more particularly described as follows: Beginning at a point on the North right-of-way line of Broadway Street in the City of Drumright, and a distance of 19.9 feet East of the Southeast corner of Lot 21, Block 7, Drumright's Amended Addition to the City of Drumright, Thence North 79.7 feet; thence East 21.7 feet; thence South 79.55 feet; thence West 21.35 feet to the point of beginning, which property was formerly a portion of Ohio Avenue in Drumright, but vacated by Ordinance No. 67 of the City of Drumright, and which property was formerly occupied by City Drug Store, and described by Street Address as 151 East Broadway, Drumright, Oklahoma. "City Drug Store"

108  
2. Northeast Quarter (NE/4) of Section 29, Township 18 North, Range 7 East, Creek County, State of Oklahoma.

3. A tract of land described as beginning at a point 41.25 feet East of the Southeast corner of Lot 21, Block 7, Drumright's Addition (also sometimes known as Drumright's Amended Addition) to the City of Drumright, thence North a distance of 87.05 feet to a point, thence East a distance of 21.8 feet to a point, thence South a distance of 86.7 feet to a point, thence West a distance of 22.8 feet to the point of beginning, Creek County, State of Oklahoma. "Citizens Bank Building" 153 East Broadway, Drumright, OK.

4. South Half of the Northwest Quarter (S/2 NW/4) and the Northwest Quarter of the Northwest Quarter of the Northwest Quarter (NW/4 NW/4 NW/4) and the South Half of the Northwest Quarter of the Northwest Quarter (S/2 NW/4 NW/4) and the Southwest Quarter of the Northeast Quarter of the Northwest Quarter (SW/4 NE/4 NW/4) of Section 28, Township 18 North, Range 7 East, Creek County, State of Oklahoma.

5. A tract of land lying and being a part and portion of Ohio Avenue, vacated by Ordinance No. 67 of the City of Drumright, Oklahoma, and included in the tract of land hereby conveyed a two-story brick building at the present time: Said tract of land hereby conveyed being more particularly described as follows, to-wit:

A tract of land beginning at the intersection of the West line of the present North Ohio Avenue with the South line of the first alley North of East Broadway Street in the City of Drumright, Oklahoma, which said point of beginning is further designated as a point on the South line of said alley, 63.4 feet East of the Northeast corner of Lot 21, in Block 7, in DRUMRIGHT'S AMENDED ADDITION to the City of Drumright, Oklahoma;

Thence West along the South line of said alley, a distance of 43.4 feet to the West line of said two-story brick building;

Thence South along the West side of said two-story brick building to the Southwest corner thereof, a distance of 32.4 feet;

1559  
OR

Thence East along the South side of said two-story building a distance of approximately 21 feet to the center of the partition wall between what is known as the City Drug Store building and what is now known as The Citizens Bank Building;

Thence North along the center of said partition wall, produced, in a Northerly direction a distance of approximately 8.5 feet to the center of the North wall of the said The Citizens Bank Building and said two-story building.

Thence East along the center of said North wall a distance of approximately 22.4 feet to the West line of said North Ohio Avenue.

Thence North approximately 27 feet along the West side of said North Ohio Avenue to the point of beginning, together with all the upper story wall of said two-story building resting on the wall of said The Citizens Bank Building, as aforesaid; situated in Creek County, State of Oklahoma. "Mode Building", 111 North Ohio, Drumright, OK.

6. Tract A

Beginning at a point 40 feet South and 180 feet West of the Northeast corner of the West Half (W/2) of the Northwest Quarter (NW/4) of the Northwest Quarter (NW/4) of Section 1, Township 17 North, Range 11 East, thence West 280 feet to a point, thence South 300 feet to a point, thence East 280 feet to a point, thence North 300 feet to the point of beginning in Creek County, State of Oklahoma.

Tract B

Beginning at a point 40 feet South and 30 feet West of the Northeast corner of the West Half (W/2) of the Northwest Quarter (NW/4) of the Northwest Quarter (NW/4) of Section 1, Township 17 North, Range 11 East, Creek County, Oklahoma; thence West 150 feet to a point; thence South 300 feet to a point; thence East 150 feet to a point; thence North 300 feet to the point of beginning  
LESS AND EXCEPT:

A tract of land containing 5,060.41 Sq. Ft. in West Half (W/2) of the Northwest Quarter (NW/4) of the Northwest Quarter (NW/4) of Section 1, Township Seventeen (17) North, Range Eleven (11) East, Creek County, Oklahoma, said tract of land being more particularly described as follows, to-wit:

COMMENCING at the Northeast Corner of said W/2 of the NW/4 of the NW/4 of Section 1, T17N, R11E; THENCE Due West along the North line of said W/2 of the NW/4 of the NW/4, for a distance of 375.13 feet; THENCE Due South for a distance of 235.86 feet to the POINT OF BEGINNING of said 5,060.41 Sq. Ft. tract of land; THENCE Due West for a distance of 61.45 feet; THENCE Due South for a distance of 82.35 feet; THENCE Due East for a distance of 61.45 feet; THENCE Due North for a distance of 82.35 feet to the POINT OF BEGINNING. "Creek Hills Mall".

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
RONNIE D. POLLARD; BARBARA )  
 )  
POLLARD; LARRY E. POLLARD; )  
 )  
TERESA POLLARD; COUNTY )  
 )  
TREASURER, Tulsa County, )  
 )  
Oklahoma; BOARD OF COUNTY )  
 )  
COMMISSIONERS, Tulsa County, )  
 )  
Oklahoma, and JACK MASTIN d/b/a )  
 )  
NEIGHBORHOOD PERIODICAL CLUB, )  
 )  
Defendants. )

FILED

NOV 16 1988

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

CIVIL ACTION NO. 88-C-0045-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15<sup>th</sup> 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, Jack Mastin d/b/a Neighborhood Periodical Club, appears pro se; and the Defendants, Ronnie D. Pollard, Barbara Pollard, Larry E. Pollard, and Teresa Pollard, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, Ronnie D. Pollard and Barbara Pollard, were served with Summons and Amended Complaint on March 17, 1988; that the Defendant, Jack Mastin d/b/a

Neighborhood Periodical Club, acknowledged receipt of Summons and Amended Complaint on March 4, 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, Larry E. Pollard and Teresa Pollard, 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 4, 1988, and continuing to September 8, 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, Larry E. Pollard and Teresa Pollard, 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, Larry E. Pollard and Teresa Pollard. 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 herein on February 11, 1988, and their Answers to Amended Petition herein on February 26, 1988; that the Defendant, Jack Mastin d/b/a Neighborhood Periodical Club, filed his Answer herein on March 15, 1988; and that the Defendants, Ronnie D. Pollard, Barbara Pollard, Larry E. Pollard, and Teresa Pollard, 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:

The East Half of the East Half (E/2 E/2) of Lots Five (5) and Six (6), COOLEY'S SUB-DIVISION, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 19, 1985, the Defendants, Ronnie D. Pollard, Barbara Pollard, Larry E. Pollard, and Teresa Pollard, 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 \$63,000.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Ronnie D. Pollard, Barbara Pollard, Larry E. Pollard, and Teresa Pollard, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated March 19, 1985, covering the above-described property. Said mortgage was recorded on March 19, 1985, in Book 4850, Page 2057, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Ronnie D. Pollard, Barbara Pollard, Larry E. Pollard, and Teresa Pollard, 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, Ronnie D. Pollard, Barbara Pollard, Larry E. Pollard, and Teresa Pollard, are indebted to the Plaintiff in the principal sum of \$62,591.48, plus interest at the rate of 12.5 percent per annum from April 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

The Court further finds that the Defendant, Jack Mastin d/b/a Neighborhood Periodical Club, has a lien on the property which is the subject matter of this action by virtue of a judgment in the amount of \$315.95, plus costs, awarded in the Small Claims Court of Tulsa County, State of Oklahoma, Case No. SC-84-07266, dated November 4, 1987, and recorded on November 4, 1987, in Book 5062, Page 0667, in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Ronnie D. Pollard and Barbara Pollard in personam, and Defendants, Larry E. Pollard and Teresa Pollard in rem, in the principal sum of \$62,591.48, plus interest at the rate of 12.5 percent per annum from April 1, 1987 until judgment, plus interest thereafter at the current legal rate of 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, 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 the Defendant, Jack Mastin d/b/a Neighborhood Periodical Club, have and recover judgment in the amount of \$315.95, plus costs, for a judgment awarded in the Small Claims Court of Tulsa County, State of Oklahoma, Case No. SC-84-07266, dated November 4, 1987, and recorded on November 4, 1987, in Book 5062, Page 0667, in the records of Tulsa County, Oklahoma.

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

First:

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

Second:

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

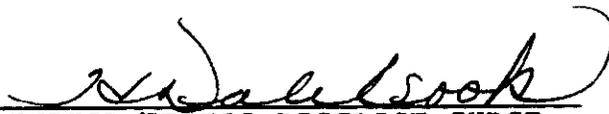
Third:

In payment of the Defendant, Jack Mastin d/b/a Neighborhood Periodical Club, in the amount of \$315.95, plus costs.

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

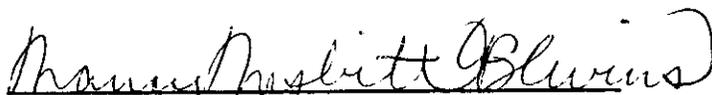
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants

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

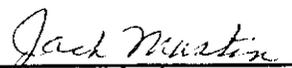
  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

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

  
JACK MASTIN d/b/a  
NEIGHBORHOOD PERIODICAL CLUB

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

FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its corporate  
capacity,

Plaintiff,

vs.

R. A. SELLERS, JR.,

Defendant.

Case No. 88-C-348-C

**F I L E D**

**NOV 16 1988**

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

JUDGMENT BY CONFESSION

This matter comes on before the Court, the Honorable H. Dale Cook presiding, on this 15<sup>th</sup> day of November, 1988, pursuant to regular assignment. The plaintiff, Federal Deposit Insurance Corporation, acting in its corporate capacity ("FDIC/Corporate"), is represented by its counsel, Robert S. Glass of Gable & Gotwals, Inc., and the defendant, R. A. Sellers, Jr. ("Sellers Junior"), is represented by his counsel, Lee I. Levinson of Gasaway & Levinson, P.A., and said counsel, having represented to the Court by virtue of their signatures together with the signature of Sellers Junior hereinbelow that the parties have agreed to the entry of this Judgment by confession of liability in favor of FDIC/Corporate and against Sellers Junior in the sum of \$34,410.09, calculated as of October 13, 1988, plus interest accruing thereon at the rate of 8.04 per cent per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full, together with all costs of this action, including a reasonable attorney's fee in the sum of \$1,500.00 and all accruing collection costs. The Court makes the following FINDINGS pursuant to the stipulations and agreement of the parties to this Judgment by Confession:

1. This Court has jurisdiction over the subject matter and all the parties hereto. The issues in this case have been resolved either by agreement between the parties or by virtue of the confession of judgment by Sellers Junior.

2. All the allegations of FDIC/Corporate's Complaint are true and correct and FDIC/Corporate is entitled to judgment under its Count I against Sellers Junior in the sum of \$34,410.09, plus interest accruing thereon at the rate of 8.04 per cent per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full, together with all costs of this action, including a reasonable attorney's fee in the sum of \$1,500.00 and all accruing collection costs.

IT IS THEREFORE ORDERED AND DECREED by this Court that the plaintiff, Federal Deposit Insurance Corporation, acting in its corporate capacity, shall ~~and~~ recover of and from the defendant, R. A. Sellers, Jr., under Count I the sum of \$34,410.09, calculated as of October 13, 1988, plus interest accruing thereon at the rate of 8.04 per cent per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full, together with all costs of this action, including a reasonable attorney's fee in the sum of \$1,500.00 and all accruing collections costs, for all of which let execution issue.

IT IS SO ORDERED.

(Signed) H. Dale Cook

HONORABLE H. DALE COOK,  
CHIEF JUDGE, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

APPROVED AND AGREED TO:



Robert S. Glass (OBA No. 10824)  
Counsel for Plaintiff, Federal Deposit Insurance  
Corporation, acting in its corporate capacity



Lee I. Levinson (OBA No. 5395)  
Counsel for Defendant, R. A. Sellers, Jr.



R. A. Sellers, Jr.

fw

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT, STATE OF OKLAHOMA

FILED

NOV 16 1988 fw

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

WILLIAM E. YARBROUGH AND )  
CYNTHIA YARBROUGH, Husband )  
and Wife, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
BRIERCROFT SERVICES CORPORATION, )  
and THE FEDERAL SAVINGS & LOAN )  
INSURANCE CORPORATION, as Receiver )  
for Briercroft Savings Association, )  
 )  
Defendants. )

Case #: 87-C-714-C ✓

Notice of DISMISSAL

COME NOW the Plaintiffs William E. Yarbrough and Cynthia Yarbrough,  
by and through their attorney, Jonathan E. Pansius, and hereby dismiss their  
causes of action against each of the defendants named herein without prejudice.

RESPECTFULLY SUBMITTED

  
JONATHAN E. PANSIUS  
OBA #: 10109  
717 South Houston  
Suite 404  
Tulsa, Oklahoma 74127  
(918) 583-2586

CERTIFICATE OF MAILING

I, JONATHAN E. PANSIUS, would hereby certify that on the 16<sup>th</sup> day of  
November, 1988, I mailed a true and correct copy of the above and foregoing  
Dismissal to: Guy W. Jackson, Attorney for Briercroft Services Corporation,  
P.O. Box 42766, Oklahoma City, Oklahoma 73123, with sufficient postage there-  
on fully prepaid.

  
JONATHAN E. PANSIUS

58

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

GREGORY EUGENE TOLIVER,  
Plaintiff,

v.

MARK GRAZIANO, et al,  
Defendants.

88-C-1379-C

**FILED**

**NOV 16 1988**

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

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed October 25, 1988 in which the Magistrate recommended that Plaintiff's Complaint should be dismissed as frivolous against both Defendants pursuant to 28 U.S.C. §1915(d).

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is, therefore, Ordered that Plaintiff's Complaint is dismissed as frivolous against both Defendants pursuant to 28 U.S.C. §1915(d).

Dated this 15<sup>th</sup> day of November, 1988.

  
H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

4

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

**F I L E D**

**NOV 16 1988**

JACK E. MILLS and	)
ALLIE JO MILLS,	)
	)
Plaintiffs,	)
	)
v.	)
	)
WINCHELL'S DONUT HOUSE, L.P.,	)
DENNY'S RESTAURANTS, INC.,	)
DENNY'S INC., WINCHELL'S DONUT	)
HOUSES OPERATING COMPANY, L.P.,	)
WDH SERVICES, INC., and	)
VICKIE MOONEY,	)
	)
Defendants.	)

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

Case No. 87-C-339-E

ORDER FOR DISMISSAL

NOW on this 14<sup>th</sup> day of November, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs and the Defendants. Based upon representations and request of these parties as set forth in the foregoing Stipulation, it is

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

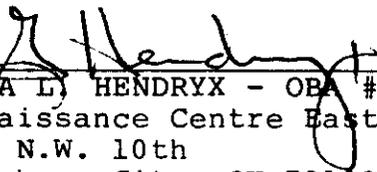
ORDERED that each party shall bear its own costs.

*[Handwritten signature]*

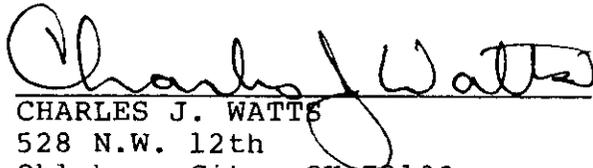
UNITED STATES DISTRICT JUDGE



LAW OFFICES OF  
JOHN W. NORMAN INCORPORATED  
ATTORNEYS FOR PLAINTIFFS

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

ATTORNEYS FOR VERMONT TALC COMPANY  
LOONEY, NICHOLS, JOHNSON & HAYES

  
CHARLES J. WATTS  
528 N.W. 12th  
Oklahoma City, OK 73103

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

FILED

NOV 16 1988

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

CB

QUAHNAH QUINTON,  
Plaintiff,

vs.

DR. ROLAND BLAND;  
THE BAPTIST HEALTH CARE  
CORPORATION; and  
WESTWORLD COMMUNITY HEALTH,  
INC.,

Defendants.

No. 87-C-910-E ✓

ORDER OF PARTIAL DISMISSAL WITH PREJUDICE

NOW on this 16<sup>th</sup> day of November, 1988, upon  
consideration of the Joint Application For Partial Dismissal  
Of Case With Prejudice,

IT IS HEREBY ORDERED that the claims of Plaintiff,  
Quahnah Quinton, against the Defendant, Baptist Health Care  
Corporation, be dismissed, with prejudice, each party to bear  
its own costs and attorney fees.

James D. [Signature]  
UNITED STATES DISTRICT JUDGE

*Entered*

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

RALPH JOHN FEUERBORN, SR., )  
LAURA FEUERBORN and )  
THE AMERICAN INSURANCE )  
COMPANY, a New Jersey )  
corporation, )

Plaintiffs, )

vs. )

STOOPS EXPRESS, INC.; and )  
SAM GUY, an individual, )

Defendants, )

EVAN AQUILLA JONES IV, )  
TRAILINER CORPORATION, )  
and DARRELL WILSON, )

Third-Party Defendants. )

PACCAR INC., dba KENWORTH )  
CORPORATION; HOLLAND HITCH, )  
INC., OZARK KENWORTH, INC., )  
THE TRAVELERS INDEMNITY )  
COMPANY; AND INTEGRAL )  
INSURANCE COMPANY )

Additional Defendants )  
and Third-Party Defendants. )

No. 87-C-159 C ✓

**FILED**  
**NOV 16 1988** *fw*  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER OF PARTIAL DISMISSAL WITH PREJUDICE

On Joint Motion of the Plaintiffs and the Defendants Stoops Express, Inc. and Sam Guy, and it being shown that these parties have fully settled and disposed of all claims and issues between them, it is ORDERED by the Court that the Complaint of the Plaintiffs and this action by the Plaintiffs be and the same hereby are dismissed by the Court as to the defendants Stoops Express, Inc., a corporation, Sam Guy, an individual, and The

Travelers Indemnity Company, a corporation, with prejudice to the bringing of another action by the Plaintiffs, or any of them, against said Defendants upon the same claims asserted herein. The Court retains jurisdiction of all other parties to this action and of all other claims asserted herein.

Entered this 15<sup>th</sup> day of November, 1988.

  
CHIEF DISTRICT JUDGE