

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

LEANN CHARON and FRANK CHARON,)
)
 Plaintiffs,)
)
 vs.)
)
 VINCENT COAK,)
)
 Defendant.) No: 87-C-944-B

JAN 13 1988
U.S. DISTRICT COURT

O R D E R

NOW ON THIS 10th day of January, 1988,
plaintiffs' Application for Dismissal with Prejudice came on for
hearing. The Court being fully advised in the premises finds
that said Application should be sustained and the defendants,
Vincent Coak and Continental Western Insurance Company, should
be dismissed from the above entitled action with prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that
plaintiffs' Application for Dismissal with Prejudice be sustained
and the above captioned action be dismissed with prejudice as to
defendants, Vincent Coak and Continental Western Insurance
Company.

S/ THOMAS R. BRETT

HONORABLE THOMAS R. BRETT,
United States District Court
Judge for the Northern District

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 13 1989

SANDRA S. PATTERSON,)
)
 Plaintiff,)
)
 vs.)
)
 THE BENHAM GROUP, INC., a)
 Delaware corporation, W. N.)
 HOLWAY, an individual,)
 DAVID BENHAM, an individual,)
 JOE R. MOODY, an individual,)
)
 Defendants.)

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

No. 88-C-245-E

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes before the Court on the Joint Stipulation of Dismissal with Prejudice of the parties. The parties represent to the Court that they have entered into an agreement for an order of dismissal in this matter. Finally, it is agreed that the obligations and requirements assumed by the parties in their Mutual, General and Complete Release shall be entered and made part of the instant Order.

IT IS THEREFORE ORDERED that this matter is dismissed with prejudice in its entirety. Each party shall bear their own attorney fees and costs.

S/ JAMES O. BLISSON

Judge of the District Court

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

FILED

JAN 13 1989

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

PATTY PRECISION PRODUCTS COMPANY,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
BROWN & SHARPE MANUFACTURING CO.,)
a corporation; GENERAL ELECTRIC)
COMPANY, a corporation; and)
TOOLS CAPITAL CORPORATION, a)
corporation,)
)
Defendants.)

Case No. 78-C-213-E

ORDER

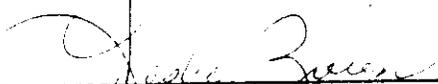
ON this 13th day of January, 1989 came on for consideration the motion of Plaintiff, Patty Precision Products Company, to dismiss Defendants Brown & Sharpe Manufacturing Company and Tools Capital Corporation with prejudice. Upon due consideration, this Court finds that the motion should be granted.

IT IS THEREFORE ORDERED that Defendants Brown & Sharpe Manufacturing Company and Tools Capital Corporation are dismissed with prejudice.

S/ JAMES O. ELLISON

THE HONORABLE JAMES O. ELLISON

Approved as Form and Content:



Lance Stockwell, OBA No. 8650
Leslie Zieren, OBA No. 9999
of BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza
100 West Fifth Street
Tulsa, OK 74103
(918) 583-1777

ATTORNEYS FOR PLAINTIFF
FEDERAL DEPOSIT INSURANCE
CORPORATION



J. Randall Miller, Esq.
320 South Boston, Suite 920
Tulsa, OK 74103

ATTORNEY FOR DEFENDANT
IRL, INC.

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

WANDA LINDA O'LEARY,
Plaintiff,

vs.

OKLAHOMA DEPARTMENT OF
HUMAN SERVICES, THE
DELAWARE COUNTY
DEPARTMENT OF HUMAN
SERVICES, WINSTON
DUNAWAY, PAT WEAVER,
BOARD OF COMMISSIONERS OF
DELAWARE COUNTY, STATE
OF OKLAHOMA, and STATE OF
OKLAHOMA PUBLIC WELFARE
COMMISSION, d/b/a DEPARTMENT
OF PUBLIC WELFARE,

Defendants.

Case No. 88-C1621 B

F I L E D

JAN 13 1989

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

Notice of
DISMISSAL

COMES NOW the Plaintiff, Wanda Linda O'Leary, and hereby
dismisses her cause of action against the Board of County
Commissioners of Delaware County.

Respectfully submitted.



Rick W. Bisher
Boettcher & Ryan
Attorneys for Plaintiff
4200 East Skelly Drive, #180
Tulsa, Oklahoma 74135
(918) 492-1614

CERTIFICATE OF MAILING

I, Rick W. Bisher, do hereby certify that on the 10th day of January, 1989, true and correct copies of the above and foregoing Dismissal were mailed, postage prepaid to the following:

State of Oklahoma
c/o Risk Management Administrator
Purchasing Division
Office of Public Affairs
Room B-4
Capitol Building
Oklahoma City, Oklahoma 73105

State of Oklahoma
c/o Attorney General
Tort Defense Division
4500 North Lincoln Boulevard
Lower Level, #102
Oklahoma City, Oklahoma 73105

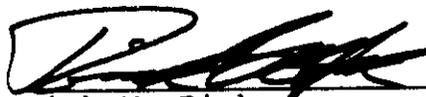
Board of Commissioners of Delaware County
c/o Robert C. Jenkins
Assistant District Attorney
P. O. Box 528
Jay, Oklahoma 74346

Delaware County Department of Human Services
Drawer 750
Jay, Oklahoma 74346

Mr. Winston Dunaway, County Administrator
c/o Delaware County Department of Human Services
Drawer 750
Jay, Oklahoma 74346

Mr. Pat Weaver, Unit Supervisor
c/o Oklahoma County Dept. of Human Services
Drawer 750
Jay, Oklahoma 74346

Oklahoma Department of Human Services
Sequoyah Building
P. O. Box 25352
Oklahoma City, Oklahoma 73125


Rick W. Bisher

FILED

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

JAN 1 1989

VERNON L. JONES,)	
)	
Plaintiff,)	
)	
v.)	No. 81-C-902-B
)	
ETHICON, INC.,)	
)	
Defendant.)	

AMENDED ADMINISTRATIVE CLOSING ORDER

On January 20, 1983, this matter was stayed pending the outcome of a related matter in Tulsa County District Court. On May 17, 1984, an Administrative Closing Order was entered whereby the Clerk was ordered to administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation. The Administrative Closing Order entered May 17, 1984, is hereby amended and modified as follows:

If, within 60 days of a final adjudication of the related matter (including a subsequent action commenced in accordance with 12 O.S.1981 § 100) in Tulsa County District Court, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 12 day of January, 1989.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

§633a. Nondiscrimination on account of age in
Federal Government Employment

. . .

a. All personnel actions affecting employees or applicants for employment who are at least 40 years of age ... in executive agencies as defined in section 105 of Title 5 ... shall be made free from any discrimination based on age.

c. Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter.

d. When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

In the instant case, Plaintiff did not file a complaint with the EEOC; he filed it with the Complaint Center. Section 633d contemplates a situation when no complaint to the EEOC has been had. Here, a complaint was made to the Complaint Center. No complaint to the EEOC has been made. The Complaint Center denied his request. 42 U.S.C. §2000e-16(c) states in pertinent part:

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, ... an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the

failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant. (emphasis added.)

Here, the Plaintiff was given notice of his right to sue in the letter he received November 2, 1987. His thirty days began to run on November 2, 1988. This Court cannot extend this time frame. Makroom v. Hook, 563 F.2d 1369, 1374-5 (9th Cir. 1977). The Court was also persuaded by the argument set out by Judge Stanton in Bornholdt v. United States Department of Treasury, Lexis 673 (S.D. N.Y. 1988).

Looking at the statute another way since no appeal was filed with the EEOC, 29 U.S.C. §633a(d)'s 180-day rule applies. Again, Plaintiff's lawsuit is clearly untimely. Castro v. United States, 775 F.2d 399, 403 (1st Cir. 1985).

As this Court is without jurisdiction over Plaintiff's complaint, it must be dismissed.

Defendant's Application to Reply to Plaintiff's
Second Reply Brief and Plaintiff's Motion to Amend Complaint

In light of the above holding, the other matters now pending are moot.

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss is granted; the other pending matters are moot.

ORDERED this 12th day of January, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

JAN 11 1986

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

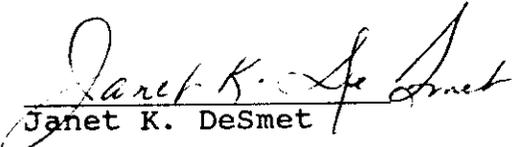
JANET K. DESMET,)
)
 Plaintiff,)
)
 v.)
)
 SERVPRO INDUSTRIES, INC.,)
)
 Defendant,)

Case No. 86-C-761-E

STIPULATION OF DISMISSAL

Plaintiff and Defendant in this case having reached a settlement of all issues raised in the Complaint and Amended Complaint of Plaintiff and in the Counterclaims and Amended Counterclaims of Defendant, do herewith stipulate that the captioned case shall be dismissed as to all issues raised by Plaintiff and by Defendant in their respective pleadings in the matter.

PLAINTIFF


Janet K. DeSmet

DEFENDANT

William G. Bernhardt
Servpro Industries, Inc.
BY: William G. Bernhardt
Its: Attorney-In-Fact

Approved:

R. Thomas Seymour
R. THOMAS SEYMOUR
Attorney for Plaintiff

Kent L. Jones
Hall, Estill, Hardwick, Gable, Golden & Nelson
Attorneys for Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

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

FILED

JAN 11 1989

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

CIVIL ACTION NO. 88-C-242-E

DEFICIENCY JUDGMENT

Now on this 11 day of Jan, 1989, there came *before the Court*
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 12th day of December, 1988, and a copy
of said Motion being mailed to Donald G. Carter a/k/a Donald Gene
Carter, Box 235, APO, New York 09378-6346, 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 Nancy Nesbitt Blevins, Assistant United
States Attorney, and the Defendant, Donald G. Carter a/k/a
Donald Gene Carter, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that
the amount of the Judgment rendered herein on May 31, 1988, in
favor of the Plaintiff United States of America, and against the
Defendant, Donald G. Carter a/k/a Donald Gene Carter, with
interest and costs to date of sale is \$58,223.54.

The Court further finds that the appraised value of the real property at the time of sale was \$40,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered May 31, 1988, for the sum of \$35,700.00 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 16th day of December, 1988.

The Court further finds that the Plaintiff, United States of America on behalf of the Administrator of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Donald G. Carter a/k/a Donald Gene Carter, as follows:

Principal Balance as of 05/31/88	\$48,783.44
Interest	8,127.46
Late Charges to Date of Judgment	325.36
Appraisal by Agency	175.00
Management Broker Fees to Date of Sale	200.00
Abstracting	380.74
Appraisers' Fees	105.00
Publication Fees of Notice of Sale	<u>126.54</u>
TOTAL	\$58,223.54
Less Credit of Appraised Value	- <u>40,000.00</u>
DEFICIENCY	\$18,223.54

plus interest on said deficiency judgment at the legal rate of 9.20 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, Donald G. Carter a/k/a Donald Gene Carter, a deficiency judgment in the amount of \$18,223.54, plus interest at the legal rate of 9.20 percent per annum on said deficiency judgment from date of judgment until paid.

S/ JAMES G. [unclear]

UNITED STATES DISTRICT JUDGE

NNB/css

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

DOYLE W. COTTON, JR.; COTTON)
PROPERTIES, INC.; PRISCILLA C.)
COTTON AND DOYLE W. COTTON,)
TRUSTEES OF THE ALLISON COTTON)
TRUST NO. 1 AND THE ELIZABETH)
COTTON TRUST NO. 1; PRISCILLA C.)
COTTON AND BARRY J. GALT,)
TRUSTEES OF THE ALLISON COTTON)
BI-CENTENNIAL TRUST AND THE)
ELIZABETH COTTON BI-CENTENNIAL)
TRUST; AND DOYLE W. COTTON,)
TRUSTEE OF THE DWC TRUST,)

Plaintiffs,)

v.)

UNITED ENERGY RESOURCES, INC.)
AND J. HUGH ROFF, JR.,)

Defendants.)

F I L E D

JAN 11 1989

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

CASE NO. 86-C-997-E ✓

ORDER

Upon motion of the parties,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the parties' Motion for Dismissal With Prejudice be granted and that this action, including all claims, counterclaims and demands which have been asserted or could have been asserted in this cause are dismissed with prejudice to any further action, each party to bear its own attorneys' fees and costs.

James D. Quinn
UNITED STATES DISTRICT JUDGE

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

F I L E D

JAN 11 1989

SANDRA S. PATTERSON,)
)
 Plaintiff,)
)
 vs.) No. 88-C-245-E
)
 THE BENHAM GROUP, INC.,)
 et al.,)
)
 Defendants.)

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

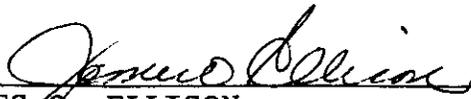
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

IT IS 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 11th day of January, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
JAN 10 1989

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TWO VEHICLES . . . ,)
)
 TWO PARCELS OF REAL PROPERTY)
 WITH BUILDINGS, APPURTENANCES,)
 AND IMPROVEMENTS, KNOWN AS)
 32 EASTRIDGE DRIVE, SANTA CRUZ,)
 CALIFORNIA,)
)
 ALL OF THE RIGHT, TITLE AND)
 INTEREST OF STEPHEN JAY SONGER)
 IN AND TO: . . . ,)
)
 ALL OF THE RIGHT, TITLE AND)
 INTEREST OF STEPHEN JAY SONGER)
 IN AND TO ALL RECEIVABLES OWED)
 TO STEPHEN J. SONGER . . . ,)
)
 Defendants.)

Civil Action No. 86-C-1100-B ✓
 86-C-1101-B
 86-C-1102-B
 86-C-1103-B
 (Consolidated)

NOTICE OF DISMISSAL

Plaintiff, the United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, hereby gives notice that a certain defendant property in the above-styled action is hereby dismissed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, specifically, the defendant property described as:

All of the Right, Title, and Interest of Stephen Songer in Barclay's Leasing, Investment.

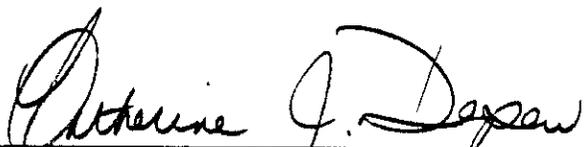
Respectfully submitted,
 TONY M. GRAHAM
 United States Attorney
Catherine J. Depew
 CATHERINE J. DEPEW
 Assistant United States Attorney
 3600 U.S. Courthouse
 Tulsa, Oklahoma 74103
 (918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 10th day of January, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Clark O. Brewster
5314 South Yale, Suite 600
Tulsa, OK 74135

Bernard L. Segal
595 Market Street, Suite 2010
San Francisco, CA 94105


Assistant United States Attorney

ldp

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 10 1989

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TWO VEHICLES ,)
)
 TWO PARCELS OF REAL PROPERTY)
 WITH BUILDINGS, APPURTENANCES,)
 AND IMPROVEMENTS, KNOWN AS)
 32 EASTRIDGE DRIVE, SANTA CRUZ,)
 CALIFORNIA,)
)
 ALL OF THE RIGHT, TITLE AND)
 INTEREST OF STEPHEN JAY SONGER)
 IN AND TO: ,)
)
 ALL OF THE RIGHT, TITLE AND)
 INTEREST OF STEPHEN JAY SONGER)
 IN AND TO ALL RECEIVABLES OWED)
 TO STEPHEN J. SONGER ,)
)
 Defendants.)

Civil Action No. 86-C-1100-B ✓
 86-C-1101-B
 86-C-1102-B
 86-C-1103-B
 (Consolidated)

NOTICE OF DISMISSAL

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All of the Right, Title, and Interest of Stephen Songer in Barclay's Leasing, Investment.

Respectfully submitted,

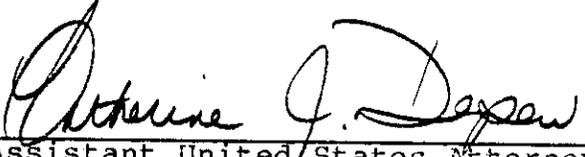
TONY M. GRAHAM
 United States Attorney
Catherine J. Depew
 CATHERINE J. DEPEW
 Assistant United States Attorney
 3600 U.S. Courthouse
 Tulsa, Oklahoma 74103
 (918) 581-7463

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Tulsa, OK 74135

Bernard L. Segal
595 Market Street, Suite 2010
San Francisco, CA 94105


Assistant United States Attorney

ldp

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 10 1989

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TWO VEHICLES ,)
)
 TWO PARCELS OF REAL PROPERTY)
 WITH BUILDINGS, APPURTENANCES,)
 AND IMPROVEMENTS, KNOWN AS)
 32 EASTRIDGE DRIVE, SANTA CRUZ,)
 CALIFORNIA,)
)
 ALL OF THE RIGHT, TITLE AND)
 INTEREST OF STEPHEN JAY SONGER)
 IN AND TO: ,)
)
 ALL OF THE RIGHT, TITLE AND)
 INTEREST OF STEPHEN JAY SONGER)
 IN AND TO ALL RECEIVABLES OWED)
 TO STEPHEN J. SONGER ,)
)
 Defendants.)

Civil Action No. 86-C-1100-B ✓
 86-C-1101-B
 86-C-1102-B
 86-C-1103-B
 (Consolidated)

NOTICE OF DISMISSAL

Plaintiff, the United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, hereby gives notice that a certain defendant property in the above-styled action is hereby dismissed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, specifically, the defendant property described as:

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Respectfully submitted,

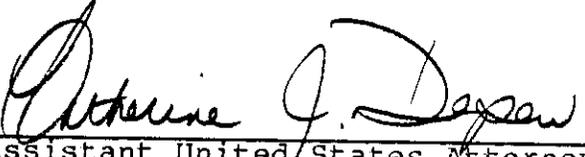
TONY M. GRAHAM
 United States Attorney
Catherine J. Depew
 CATHERINE J. DEPEW
 Assistant United States Attorney
 3600 U.S. Courthouse
 Tulsa, Oklahoma 74103
 (918) 581-7463

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Clark O. Brewster
5314 South Yale, Suite 600
Tulsa, OK 74135

Bernard L. Segal
595 Market Street, Suite 2010
San Francisco, CA 94105


Assistant United States Attorney

ldp

Entered

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

FILED

JAN 10 1989

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

ADESCO, INC., an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
HERITAGE LIFE INSURANCE COMPANY, et al.,)
)
Defendants.)

No. 87-C-827-C

ORDER

Now before the Court for its consideration is the objection of the plaintiff to the Report and Recommendation of the United States Magistrate, the latter filed on September 13, 1988.

Plaintiff contends that defendant Heritage Life Insurance Company (Heritage) committed intentional acts against plaintiff which constitute slander, tortious interference with existing and prospective economic advantage and business relations, and unfair competition. All three causes of action arise out of statements disseminated by Heritage allegedly imputing financial difficulty of various degrees to the plaintiff. Plaintiff moved for summary judgment as to liability on Count I, on a slander per se theory. Defendant moved for summary judgment on all three causes of action. The Magistrate recommended that the cross motions for summary judgment be denied as to the first cause of action, and that the defendant's motion be granted as to the second and third causes of action.

Slander is defined in Oklahoma by statute. 12 O.S. §1442 provides in pertinent part as follows:

Slander is a false and unprivileged communication, other than libel, which: *** Tends directly to injure [any person] in respect to his office, profession, trade or business, *** by imputing something with reference to his office, profession, trade or business that has a natural tendency to lessen its profit.

Plaintiff argues that the statements involved herein are properly characterized as slander per se. A publication is actionable per se "when the language used therein is susceptible of but one meaning, and that an opprobrious one" Fite v. Okla. Publ. Co. 293 P. 1073, 1075 (1930). This issue of characterization is one of law for the Court. Continental Casualty Co. v. S.W. Bell Tele. Co., 860 F.2d 970, 975 (10th Cir. 1988).

The Magistrate concluded that the defendant merely made "inquiries" concerning a rumor of plaintiff's financial difficulties, that these inquiries are susceptible to both a defamatory and an innocent meaning, and that they therefore were not slanderous per se. See Sellers v. Okla. Publ. Co., 687 P.2d 116, 119-20 (Okla. 1984) (words alleged to be defamatory may be divided into three classes; only those "clearly defamatory on their face" are defamatory per se).

The plaintiff contends that the Magistrate overlooks the "critical fact" that Heritage knew prior to making certain of the statements/inquiries that there was no truth to the rumor of plaintiff's financial difficulties. (Plaintiff's Sept. 27 Brief at 7). The issue presented is a difficult one. It seems to the Court contrary to the notion of slander per se to examine the defendant's knowledge at the time of the utterance. Rather, the

focus must be on the language used and the possible meaning conveyed. However, a hypothetical set of facts could surely be constructed in which a false statement was clearly "thinly veiled as an inquiry", as plaintiff argues here, such determination being made by the Court based upon what defendant knew at the time. The Court has determined that the case at bar is not such an instance. First, no testimony by Heritage officials indicates that they knew the rumor was false when additional inquiries were made. Rather, information had come back to that effect from one source. Plaintiff relies upon Undisputed Fact No. 18 in its Summary Judgment Brief which states:

Upon [Heritage president] Yoshioka's return to the office on September 14, [Senior Vice President] Knott told him of his conversation with [general insurance agent] Davis on September 11, and that there was no truth to the assertion that Adesco had financial difficulties. (Knott Depo., App.Exh."M", p.64).

This "undisputed" fact is disputed. In Section M of its Appendix to its own summary judgment motion, Heritage avers:

The date of Knott's discussion with Yoshioka about the conversation with Davis has not been determined. Knott states that he is unsure of the day but thinks it may have been September 14. (Knott Depo., App.Ex.F, p.63-65.) Yoshioka does not believe the conversation took place on September 14, but perhaps it occurred on September 15 (Yoshioka Depo., App.Ex.A, p.61, lines 3 through 18.) Knott did not tell Yoshioka that "there was no truth to the assertion that Adesco had financial difficulties." Rather, Knott related to Yoshioka what Jim Davis had told Knott about the closing of the Adesco office and the explanation of the closing by Tandy Jackson's sister. Knott testified that he related to Yoshioka that Davis had said that Tandy Jackson's sister said there were no financial problems. This was not enough to dispose of the inquiry to the rumor at the time, as Yoshioka told Knott "If you hear anything else, let me know." (Yoshioka Depo., App.Ex.A., p.61, line 3 through p.64, line 10; Knott Depo., App.Ex.F, p.63, line 6 through p.65, line 13.)

While this paragraph contains defendant's interpretation of facts, it also contains references to factual matter. The Court's independent examination of the deposition transcripts persuades it

that subsequent inquiry by Heritage did not expose it to liability for slander per se under these facts.¹

As previously stated, the central focus in a slander per se determination is on the language used and the meaning conveyed by that language. The Magistrate concluded that these statements were susceptible of two meanings. The plaintiff responds that "[f]alse reports of financial problems or bankruptcy are not susceptible of two meanings." (Sept. 27 Brief at 9). (footnote omitted). The plaintiff also disputes what it characterizes as the Magistrate's conclusion that "slanderous comments framed as 'inquiries' are immunized from per se defamatory meaning." (Id. at 13). More precisely, the Magistrate found that the comments under review served only as inquiries and not statements of fact, and that they therefore were not slanderous per se. The plaintiff has referred the Court to authority for the proposition that "[t]he form of the statement is not important so long as the defamatory meaning is conveyed." Walters v. Linhof, 559 F.Supp. 1231, 1236 (D.Colo. 1983). See also Prosser and Keeton on Torts, §111 at 776 (5th ed. 1984). As plaintiff notes, the court in Schupmann v. Empire Fire & Marine Ins. Co., 689 S.W.2d 101 (Mo.Ct.App. 1985), implicitly recognized that statements made in the form of questions may be slanderous per se. However, the court drew a distinction between the question "was pregnancy the reason for [the minor] going there

¹The plaintiff has complained about the defendant's failure to comply with Local Rule 15(B) regarding proper recitation of disputed and undisputed material facts in the summary judgment context. Defendant's briefing has been unorthodox. However, with persistence, the Court believes it has attained a grasp of the relevant factual and legal contentions. Therefore, no modifications or supplemental briefing shall be ordered. Defendant's counsel should not expect leniency in the future.

[to a hospital]?" and the question "How did you set the fire?" The court said that the first question was not an assertion of fact and not defamatory per se, in contrast to the second question. It appears to this Court that this distinction, between a question which unambiguously conveys an assertion of fact and one which does not, is applicable here as a means of distinguishing between inquiries and slanderous comments "thinly veiled" as inquiries. In Ramos v. Henry C. Beck Co., 711 S.W.2d 331 (Tex.Ct.App. 1986), a decision cited by the plaintiff, the court noted that "[i]f there is a question whether the bearer could reasonably understand the statement in a defamatory sense, an ambiguity exists, and a fact issue is presented." Upon review, the Court finds that none of the statements involved herein unambiguously impute financial difficulty to the plaintiff. The comments were either phrased as inquiries or labelled as rumor or hearsay; they were not set forth as assertions of fact.²

The plaintiff has also quoted in part from the following statement:

Technically, the requirement that a declaration must be understood in a defamatory sense applies to all defamation cases and includes both libel per se and libel per quod. For practical purposes, however, the issue does not often arise in libel per se cases. For example, where there is a false report of bankruptcy it is obviously unnecessary to prove that the recipient of the report knows the meaning of the word.

Sunward Corp. v. Dun & Bradstreet, Inc.,
811 F.2d 511, 519 n.7 (10th Cir. 1987).

²Cf. Henderson v. Pennwalt Corp., 704 P.2d 1256, 1264 (Wash.Ct.App. 1985). ("Statements often take the form of rhetorical question"). This is correct, but not all questions are rhetorical, and not all questions contain statements of fact. The Henderson court did not recite the questions which were the basis of the action there. Without the specific language used, analysis is impossible and the usefulness of Henderson as a precedent is reduced.

The statements involved in the case at bar used the less volatile phrase "financial difficulties" rather than "bankruptcy" or "Chapter 11." In any event, the issue presented here is not whether the words were understood, in a referential or definitional sense, but whether the words used were combined so as to make an inquiry or a declarative statement of fact. It is in this latter respect that the statements presented here may be said to be susceptible to two meanings.

The Court has concluded that summary judgment may not be granted the plaintiff on its claim of slander per se.³

Count II of the Complaint states a claim for tortious interference with existing and prospective economic advantage based upon the same allegedly slanderous statements. The parties agree that the elements of this cause of action are set forth in Mac Adjustment, Inc. v. Property Loss Research Bureau, 595 P.2d 427, 428 (Okla. 1979):

1. That [plaintiff] had a business or a contractual right that was interfered with.
2. That the interference was malicious and wrongful, and that such interference was neither justified, privileged nor excusable.
3. That damage was proximately sustained as a result of the complained of interference.

Count III of the Complaint states a claim for unfair competition, again based on the allegedly slanderous statements. The parties have not quarreled with the following statement:

In order to make out a case of unfair competition it is not necessary to show that any person has been actually deceived by the defendant's conduct, it being sufficient to show that such deception will be the natural and probable result of his acts, but either actual or probable deception must be shown, the true test of unfair competition being

³The defendant has not objected to the Magistrate's recommendation that its motion for summary judgment be denied on Count I as well. Upon review, the Court agrees with the Magistrate that a slander per quod action could still be proved by plaintiff. Therefore, this aspect of the Report and Recommendation will be affirmed as well.

whether the defendant's acts are such as are calculated to deceive the ordinary buyer making his purchase under the ordinary conditions which prevail in the particular trade to which the controversy relates.

Coca-Cola Co. v. Cahill, 350 F.Supp. 1231, 1233 (W.D.Okla. 1972), aff'd 480 F.2d 153 (10th Cir. 1973).

The Magistrate recommended that summary judgment be granted the defendant on both the second and third causes of action on the same basis:

The Magistrate finds that the record does not show that any statements were made to plaintiff's customers, who then decided not to deal with plaintiff. The evidence is only that inquiries were made of plaintiff's competitors. The only customer of plaintiff's which received an inquiry from defendant was Charles Tuttle of the Colletto Group, who stated in his affidavit that the inquiry had nothing to do with the Colletto Group terminating business relations with plaintiff. Evidence of contracts which were interfered with or customers that were misled is notably absent from the record. No intentional interference or unfair competition by defendant has been shown.

(Report and Recommendation at 17-18)
(emphasis in original) (footnotes omitted).

The plaintiff argues generally that the issue of proximate cause is best left to the jury (citing Yazzie v. Sullivent, 561 F.2d 183 (10th Cir. 1977)) and specifically that the Magistrate's conclusion is contrary to Continental Casualty Co. v. Southwestern Bell Tele. Co., 860 F.2d 970 (10th Cir. 1988). In that case, the plaintiff brought an action for libel and tortious interference and a jury awarded plaintiff \$21,423 on the second claim. On appeal, defendant opposed plaintiff's argument that the damage award was against the weight of the evidence by asserting that the testimony of defendant's expert supported a maximum award of \$83,255, which amount might have been reduced by the jury through the use of certain variables. One variable was that not all of the contracts cancelled were necessarily cancelled as a result of defendant's statements. The appellate court stated:

While the evidence does not establish the motivation of every independent contractor in cancelling their CNA policies, plaintiff's exhibit 53 shows the following: Within one week of receiving the strong-arm letter, 105 policies were canceled; within two weeks,

288 policies; three weeks, 334 policies; one month, 357 policies; and two months, 393 policies. By 1984, CNA insured no cable layers. ... Other testimony, including that of the independent insurance agents who dealt directly with the contractors, established that the majority, if not the totality, of cancellations were directly related to Southwestern Bell's actions. ... Southwestern Bell offered no testimony concerning cancellations that were unrelated to its actions. Whatever number of cancellations might theoretically be attributed to causes other than the damaging statements, the record fails to support defendant's argument.

Id. at 973-74. (emphasis in original).

Based upon this passage, plaintiff in the case at bar argues that its evidence of over five hundred terminations by its customers and a "precipitous downturn" in plaintiff's business after the allegedly slanderous statements were made is sufficient to satisfy the proximate cause element for summary judgment purposes. This Court disagrees. The court in Continental Casualty did take account of the number of lost policies, but also noted testimony of a direct causal relationship between the statements and the cancellations. Such testimony, coupled with the statistical evidence, made for a permissible jury finding of causation in Continental Casualty. No such testimony is present in this record.⁴ The evidence presented by the plaintiff, standing alone, is insufficient for a rational

⁴As a subsidiary issue on this point, the plaintiff points to contact between Heritage and the Colletto Group, customer of plaintiff who switched to Heritage. In his Report and Recommendation, the Magistrate relied upon an affidavit executed by Charles Tuttle, who was a General Sales Manager for the Colletto Group during the relevant time, and who had a conversation with David Bostic of Heritage. In the affidavit Tuttle stated:

The Colletto Group's decision not to transact business with Adesco was completely unrelated to any discussion that I had with Bostic concerning Adesco.

The Magistrate denied plaintiff's motion to depose Tuttle out of time. (Report and Recommendation at 18 n.8). Plaintiff now advises the Court that "[f]ollowing entry of the Report and Recommendation Tuttle was deposed." (October 28, 1988 Reply Brief at 10). Neither party has explained why a deposition was taken in direct contravention of the Magistrate's order. Plaintiff asks this Court to take account of statements in the deposition in which Tuttle states that, in fact, he did not know why the Colletto business was moved to Heritage. Even taking account of these statements, the plaintiff does not survive summary judgment. Tuttle's ignorance is of little probative value. Presumably, whoever in the Colletto Group made the decision to move its business to Heritage would know the reason for the move. No evidence of any sort on this point has been presented.

fact-finder to conclude proximate causation. The totality of the evidence merely shows that one series of events followed another. Such evidence seems particularly inadequate here, where the causation sought is not the etiology of a disease, for example, but the effect of actions on other persons' intents and action. Such causation can be discerned, not by the microscope or in the laboratory rat, but by the use of depositions and interrogatories. Plaintiff has failed to find it. In Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986), the United States Supreme Court stated:

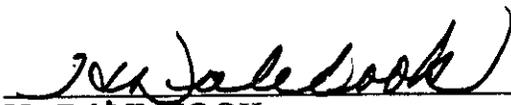
In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

This is such a case.

It is the Order of the Court that the motion of the plaintiff for partial summary judgment is hereby denied.

It is the further Order of the Court that the motion of the defendant for summary judgment is hereby denied as to Count I and is hereby granted as to Counts II and III.

IT IS SO ORDERED this 10th day of January, 1989.



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

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

FILED

JAN 10 1989

ADESCO, INC., an Oklahoma
corporation,

Plaintiff,

vs.

HERITAGE LIFE INSURANCE
COMPANY, et al.,

Defendants.

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

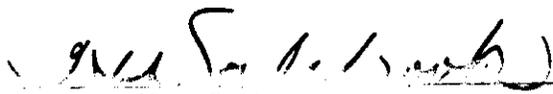
No. 87-C-827-C

J U D G M E N T

This matter came before the Court for consideration of plaintiff's motion for partial summary judgment and the defendant Heritage Life Insurance Company's motion for summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby granted in favor of the defendant Heritage Life Insurance Company and against the plaintiff as to Count II and Count III of the Complaint.

IT IS SO ORDERED this 10th day of January, 1989.


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

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

FILED

JAN 10 1988

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

WALTER WESLEY WILLIAMS,

Debtor,

WALTER W. WILLIAMS,

Appellant,

vs.

EDWARD CLAIRE GAVAGAN and
DOROTHY WENGER GAVAGAN,
husband and wife,

Appellees.

No. 88-C-415-C

ORDER

Now before the Court for its consideration is the appeal of the debtor-appellant from the Bankruptcy Court's Order of April 27, 1988. In that Order, the Bankruptcy Court found that a debt owed by debtor to appellees was nondischargeable in bankruptcy.

On or about July 21, 1981, appellees agreed to purchase from April Builders, Inc., (of which debtor was an officer), a newly-constructed home. Debtor represented to appellees that the exterior and interior weight-bearing walls had been "piered".¹ After appellees purchased the home, extensive damage began

¹Piering is a technique whereby steel and concrete posts are placed in the ground prior to construction to prevent cracking and shifting when a structure is built on fill. (Bankruptcy Court's April 27, 1988 Order at 2).

appearing in various portions of the home. The damage was consistent with lack of "piercing" support.

The Bankruptcy Court found that the debt due from the debtor/appellant to the appellees was a nondischargeable debt under 11 U.S.C. §523(a)(2)(A). That section provides in pertinent part:

- (a) A discharge ... does not discharge an individual debtor from any debt--
 - (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--
 - (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

The elements which must be proven to establish nondischargeability are as follows:

the debtor made a false representation or willful misrepresentation; the representation was made with the intent to deceive the creditor; the creditor relied on the representation; the creditor's reliance was reasonable; and the creditor sustained a loss as a result of the debtor's representation.

In re Mullet, 817 F.2d 677, 680 (10th Cir. 1987).

These elements must be proven by clear and convincing evidence. In re Hunter, 780 F.2d 1577, 1579 (11th Cir. 1986).

As a basis for concluding by inference the debtor's intent, the Bankruptcy Court found that there were no internal piers in the home. Debtor disputes this conclusion. In reviewing a dischargeability proceeding, the reviewing court applies the clearly erroneous standard to the Bankruptcy Court's findings of fact. Mullet, 817 F.2d at 678-79. This Court has reviewed the evidence and has concluded that this factual finding was not clearly erroneous. The issue of intent under the statute is also a question of fact. In re Sayler, 68 B.R. 111, 116 (Bankr. D.Kan. 1986). Again, the Bankruptcy Court's conclusion is not clearly erroneous. Finally, debtor asserts that there was no evidence that

he personally gained from the alleged fraud. This is not a requisite element under Mullet, supra, and is irrelevant.

The Court has concluded that the Bankruptcy Court correctly found that all elements had been proven under §523(a)(2)(A) and correctly found that the debt was nondischargeable.

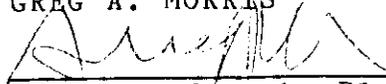
It is the Order of the Court that the appeal of the debtor/appellant is hereby DENIED. The Bankruptcy Court's Order of April 27, 1988 is hereby AFFIRMED in all respects.

IT IS SO ORDERED this 9th day of January, 1989.


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

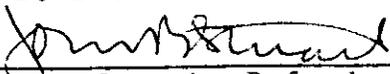
APPROVALS AS TO FORM:

GREG A. MORRIS



Attorney for the Plaintiff

JOHN B. STUART



Attorney for the Defendant

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

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate
capacity,

Plaintiff,

vs.

ROBERT K. ADAMS,

Defendant,

vs.

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its capacity
as Liquidating Agent of
Bank of Commerce and Trust
Company,

Third-Party Defendant.

No. 84-C-933-C

FILED

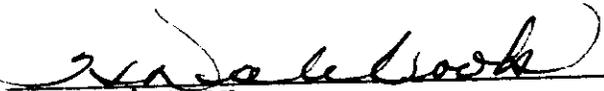
JAN 10 1989

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

ORDER DISMISSING COMPLAINT, COUNTER-CLAIM
AND THIRD-PARTY COMPLAINT WITH PREJUDICE

NOW, on this 10th day of January, 1989, upon Stipulation of
counsel for Plaintiff, Defendant and Third-Party Defendant:

IT IS BY THE COURT ORDERED that Plaintiff's Complaint and
Defendant's Counter-Claim and Third-Party Complaint be and are hereby
dismissed with prejudice.


H. DALE COOK
Chief United States District Judge

APPROVED:

GABLE & GOTWALS

BY Richard D. Koljack, Jr.

RICHARD D. KOLJACK, JR.
OBA #11662
2000 Fourth National Bank Bldg.
Tulsa, OK 74119
(918) 582-9201
Attorneys for Plaintiff and
Third-Party Defendant

UNRUH & LEITER

BY William Leiter

William Leiter OBA#5368
320 So. Boston, Suite 525
Tulsa, OK 74103
(918) 582-7236
Attorneys for Defendant

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

FILED

JAN 10 1989

CLERK
U.S. DISTRICT COURT

JOHN W. GREGORY, III,

Plaintiff,

vs.

ZIMMER, INC.,

Defendant.

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Case No. 88-C-215 B

STIPULATION FOR DISMISSAL

It is hereby stipulated pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure that the above-entitled action be dismissed with prejudice, each party to bear his or its own cost.

DATED this 10 day of January, 1989.

Respectfully submitted,



Mr. Ken Ray Underwood
1424 Terrace Drive
Tulsa, Oklahoma 74104

ATTORNEY FOR PLAINTIFF
JOHN R. GREGORY, III

Joel R. Hogue

Sidney G. Dunagan
Joel R. Hogue
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-9201

R. Steven Hearn
RASOR, HARRIS, LEMON & REED
210 North Buffalo Street
Post Office Box 818
Warsaw, Indiana 46850

ATTORNEYS FOR DEFENDANT
ZIMMER, INC.

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

FILED

JAN 10 1989

JACOB D. SILVER, CLERK
U.S. DISTRICT COURT

BURLINGTON NORTHERN RAILROAD
COMPANY,

Plaintiff,

vs.

NICKELL TRUCKING COMPANY, a
Corporation, and FORUM INSURANCE
COMPANY, an Insurance Corporation,

Defendants,

JACK R. ANDERSON, Administrator
of the Estate of William Harold
Walker, Deceased,

Defendant and
Third Party Plaintiff,

vs.

PHILLIP WAYNE HAIR,

Third Party Defendant.

No. 84-C-213-B

OBA #8308

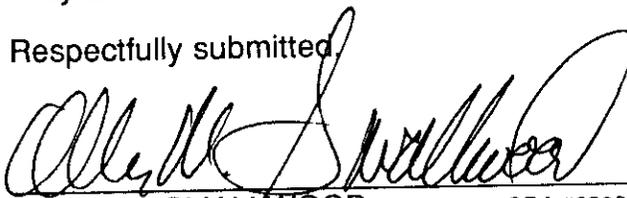
VOLUNTARY DISMISSAL OF TWO OF THREE HEIRS TO
THE ESTATE OF DEFENDANT AND THIRD PARTY PLAINTIFF

COME NOW Allen M. Smallwood and Jon B. Wallis, as attorneys of record for the above-named defendant and third party plaintiff, and hereby voluntarily dismisses Charles Leslie Walker and Margarey Olive Walker for the reasons that Charles Leslie Walker is currently deceased, and Margarey Olive Walker no longer desires to pursue any cause of action she might have against the plaintiff under her counterclaim.

Counsel thereby state that the counterclaim against the plaintiff will be pursue solely for the benefit of the deceased's minor son, Daniel Ray Smith.

WHEREFORE, defendant and third party plaintiff hereby voluntarily dismiss two of the three heirs of the estate of William Harold Walker, Charles Leslie Walker and Margarey Olive Walker, by and for the reasons stated above, leaving as sole heir of the estate in the defendant and third party plaintiff's counterclaim, the son of William Harold Walker, deceased, Daniel Ray Smith.

Respectfully submitted,



ALLEN M. SMALLWOOD

OBA #8308

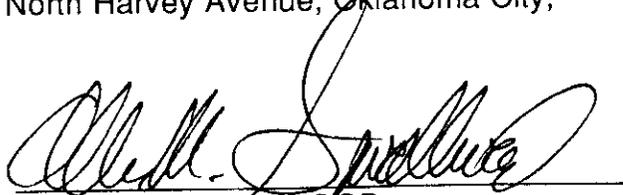
JON B. WALLIS

OBA #

Attorneys for Defendant and
Third Party Plaintiff
1310 South Denver Avenue
Tulsa, Oklahoma 74119
(918) 582-1993

CERTIFICATE OF MAILING

I hereby certify that on this 10 day of January, 1989, a true and correct copy of the above and foregoing Voluntary Dismissal of Two of Three Heirs to the Estate of Defendant and Third Party Plaintiff was mailed, with correct postage thereon prepaid, to John A. Mackechnie, Attorney at Law, The Harvey Parkway, Suite 600, 301 Northwest 63rd Street, Oklahoma City, Oklahoma 73116-7906, and Alex Cheek, Attorney at Law, Law Center Building, 311 North Harvey Avenue, Oklahoma City, Oklahoma 73102.



ALLEN M. SMALLWOOD

F I L E D

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

JAN 10 1989

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

DONEGAL PETROLEUM CORP.

Plaintiff,

vs.

ROBERT G. ANDERSON,

Defendant.

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No. 88-C-243-E

STIPULATION OF DISMISSAL

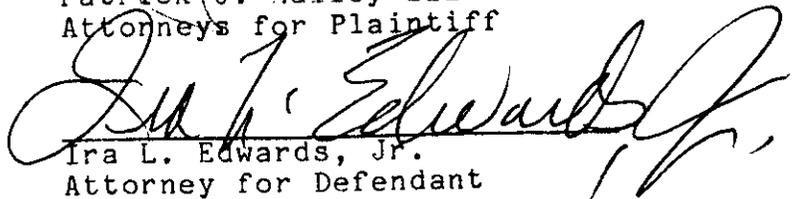
COME NOW the parties in the above styled matter and do hereby stipulate that the above styled matter may be dismissed with prejudice to any further action.

Respectfully submitted,

MALLOY & MALLOY, INC.



Patrick J. Malloy III
Attorneys for Plaintiff



Ira L. Edwards, Jr.
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 10 1989

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TWO VEHICLES . . . ,)
)
 TWO PARCELS OF REAL PROPERTY)
 WITH BUILDINGS, APPURTENANCES,)
 AND IMPROVEMENTS, KNOWN AS)
 32 EASTRIDGE DRIVE, SANTA CRUZ,)
 CALIFORNIA,)
)
 ALL OF THE RIGHT, TITLE AND)
 INTEREST OF STEPHEN JAY SONGER)
 IN AND TO: . . . ,)
)
 ALL OF THE RIGHT, TITLE AND)
 INTEREST OF STEPHEN JAY SONGER)
 IN AND TO ALL RECEIVABLES OWED)
 TO STEPHEN J. SONGER . . . ,)
)
 Defendants.)

Civil Action No. 86-C-1100-B ✓
 86-C-1101-B
 86-C-1102-B ✓
 86-C-1103-B ✓
 (Consolidated)

NOTICE OF DISMISSAL

Plaintiff, the United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, hereby gives notice that a certain defendant property in the above-styled action is hereby dismissed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, specifically, the defendant property described as:

All of the Right, Title, and Interest of Stephen Songer in Barclay's Leasing, Investment.

Respectfully submitted,

TONY M. GRAHAM
 United States Attorney
Catherine J. Depew
 CATHERINE J. DEPEW
 Assistant United States Attorney
 3600 U.S. Courthouse
 Tulsa, Oklahoma 74103
 (918) 581-7463

ex

CERTIFICATE OF SERVICE

This is to certify that on the 10th day of January, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Clark O. Brewster
5314 South Yale, Suite 600
Tulsa, OK 74135

Bernard L. Segal
595 Market Street, Suite 2010
San Francisco, CA 94105


Assistant United States Attorney

ldp

4
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 10 1988

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
TWO VEHICLES . . . ,)
)
TWO PARCELS OF REAL PROPERTY)
WITH BUILDINGS, APPURTENANCES,)
AND IMPROVEMENTS, KNOWN AS)
32 EASTRIDGE DRIVE, SANTA CRUZ,)
CALIFORNIA,)
)
ALL OF THE RIGHT, TITLE AND)
INTEREST OF STEPHEN JAY SONGER)
IN AND TO: . . . ,)
)
ALL OF THE RIGHT, TITLE AND)
INTEREST OF STEPHEN JAY SONGER)
IN AND TO ALL RECEIVABLES OWED)
TO STEPHEN J. SONGER . . . ,)
)
Defendants.)

Civil Action No. 86-C-1100-B ✓
86-C-1101-B
86-C-1102-B ✓
86-C-1103-B
(Consolidated)

NOTICE OF DISMISSAL

Plaintiff, the United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, hereby gives notice that a certain defendant property in the above-styled action is hereby dismissed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, specifically, the defendant property described as:

All of the Right, Title, and Interest of Stephen Songer in Barclay's Leasing, Investment.

Respectfully submitted,

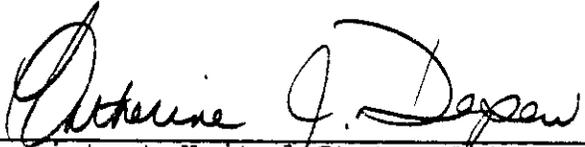
TONY M. GRAHAM
United States Attorney
Catherine J. Depew
CATHERINE J. DEPEW
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 10th day of January, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Clark O. Brewster
5314 South Yale, Suite 600
Tulsa, OK 74135

Bernard L. Segal
595 Market Street, Suite 2010
San Francisco, CA 94105


Assistant United States Attorney

ldp

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

F I L E D

JAN 10 1989

LILLIAN REESE, surviving)
spouse of CHARLES OTTO REESE,)
)
Plaintiff,)
)
vs.)
)
OTASCO, INC., et al.,)
)
Defendants.)

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

No. 88-C-240-E

ADMINISTRATIVE CLOSING ORDER

The Defendant Otasco, Inc. having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 10th day of January, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

MCW/vlc

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

F I L E D

JAN 10 1989

LILLIAN REESE, surviving)
 spouse of CHARLES OTTO REESE,)
)
 Plaintiff,)
 vs.)
)
 MERCER FOOD, INC., an)
 Oklahoma corporation,)
)
 Defendant.)

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

No. 88-C-241-E

JOURNAL ENTRY OF JUDGMENT AND DISMISSAL

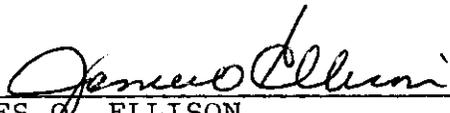
On the 14th day of December, 1988, the above captioned matter came before the Honorable James O. Ellison, United States District Judge, on the defendant's Motion for Summary Judgment. Plaintiff appeared by and through her attorney, James Gotwals; the defendant appeared by and through its attorney, Melvin C. Weiman of Secrest & Hill. The Court, after reviewing the pleadings filed herein and hearing the arguments of counsel, issued its Order on December 14, 1988, granting the defendant's Motion for Summary Judgment.

The Court held that plaintiff's decedent, at the time of the incident complained of in plaintiff's Complaint, was shopping at the defendant store and was an invitee. The Court held that defendant, Mercer Foods, owed a duty to the decedent to protect him from third party criminal acts which defendant, Mercer, could have reasonably anticipated or had notice of and guarded against. Inasmuch as no one could have

reasonably anticipated a murder, the Court held that defendant, Mercer, breached no duty to Mr. Reese and that defendant's Motion for Summary Judgment should be granted.

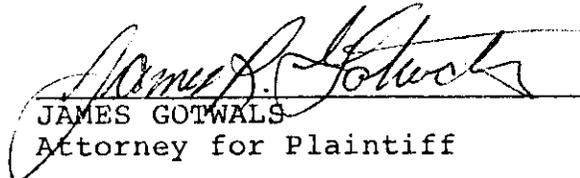
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the defendant's Motion for Summary Judgment is granted and that defendant, Mercer, be dismissed with prejudice in this matter.

DATED this 10th day of January, 1989.

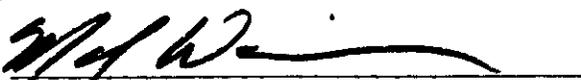


JAMES G. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



JAMES GOTWALS
Attorney for Plaintiff



MELVIN C. WEIMAN
SECRET & HILL
Attorney for Defendant

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

FILED

JAN 10 1989

THE PRUDENTIAL INSURANCE)
COMPANY OF AMERICA, a New)
Jersey corporation,)
)
Plaintiff,)
)
vs.)
)
SAMSON RESOURCES COMPANY, an)
Oklahoma corporation,)
)
Defendant.)

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

Case No. 88-C-188 E

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to Stipulation of Dismissal with Prejudice and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure entered into by all parties to this action,

IT IS HEREBY ORDERED that this action be and it hereby is dismissed with prejudice.

BY JAMES W. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

HARRY E. STANDLEY,)

Defendant.)

JAN 1 1989

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

CIVIL ACTION NO. 88-C-959-B

DEFAULT JUDGMENT

This matter comes on for consideration this 10th day of January, 1989, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Harry E. Standley, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Harry E. Standley, was served with Summons and Complaint on October 25, 1988. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

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

Harry E. Standley, for the principal sum of \$14,902.28, plus accrued interest of \$1,076.27 as of May 31, 1988, plus interest thereafter at the rate of four (4) percent per annum until judgment, plus interest thereafter at the current legal rate of 9.20 percent per annum until paid, plus costs of this action.

s/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 10 1989

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TWO VEHICLES ,)
)
 TWO PARCELS OF REAL PROPERTY)
 WITH BUILDINGS, APPURTENANCES,)
 AND IMPROVEMENTS, KNOWN AS)
 32 EASTRIDGE DRIVE, SANTA CRUZ,)
 CALIFORNIA,)
)
 ALL OF THE RIGHT, TITLE AND)
 INTEREST OF STEPHEN JAY SONGER)
 IN AND TO: ,)
)
 ALL OF THE RIGHT, TITLE AND)
 INTEREST OF STEPHEN JAY SONGER)
 IN AND TO ALL RECEIVABLES OWED)
 TO STEPHEN J. SONGER ,)
)
 Defendants.)

Civil Action No. 86-C-1100-B ✓
 86-C-1101-B ✓
 86-C-1102-B
 86-C-1103-B
 (Consolidated)

NOTICE OF DISMISSAL

Plaintiff, the United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, hereby gives notice that a certain defendant property in the above-styled action is hereby dismissed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, specifically, the defendant property described as:

All of the Right, Title, and Interest of Stephen Songer in Barclay's Leasing, Investment.

Respectfully submitted,

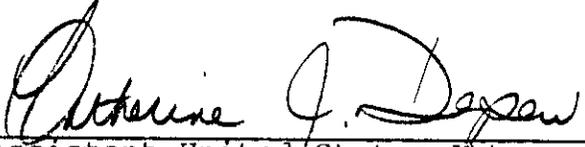
TONY M. GRAHAM
 United States Attorney
Catherine J. Depew
 CATHERINE J. DEPEW
 Assistant United States Attorney
 3600 U.S. Courthouse
 Tulsa, Oklahoma 74103
 (918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 10th day of January, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Clark O. Brewster
5314 South Yale, Suite 600
Tulsa, OK 74135

Bernard L. Segal
595 Market Street, Suite 2010
San Francisco, CA 94105


Assistant United States Attorney

ldp

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
JAN -9 1989

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
SWEARINGIN AIRCRAFT ENGINE)
SERVICE,)
)
Defendants.)

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

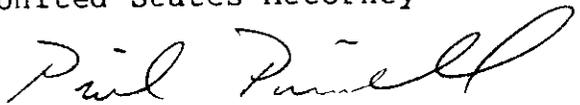
Civil Action No. 88-C-1117-B

NOTICE OF DISMISSAL

Plaintiff, the United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, hereby gives notice that the above-styled action is hereby dismissed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Respectfully submitted,

TONY M. GRAHAM
United States Attorney


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

CERTIFICATE OF MAILING

This is to certify that on the _____ day of January, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Swearingin Aircraft Engine Service, P.O. Box 517, Bristow, Oklahoma 74010.


Assistant United States Attorney

ldp

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

FILED

JAN 9 1989

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

MALCOLM BARNETT, Personal Representa-)
tive of the Estate of Regina Anginetta)
Barnett, Deceased, and the Estate of)
Baby Andrew Jordeamon Barnett,)
Individually and as Natural Parent and)
Grandparent,)

Plaintiff,)

vs.)

GERALD C. ZUMWALT, M.D., ROBERT G.)
WHITE, M.D., SAPULPA DOCTORS, INC.,)
an Oklahoma corporation, BARTLETT)
MEDICAL CENTER, INC., an Oklahoma)
corporation, and CHARLES J.)
GEBETSBERGER, M.D.)

Defendants.)

No. 87-C-277-B

O R D E R

This matter comes before the Court on Defendants' motion for summary judgment on any claims of Kristy Barnett for the death of her sister, Regina Barnett.

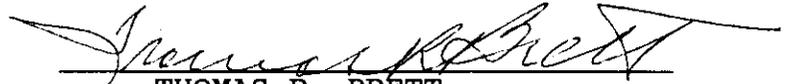
Plaintiff contends Regina Barnett stood in the position of *loco parentis* to her sister, Kristy Barnett. Plaintiff contends Kristy Barnett should therefore be allowed to recover for Regina's wrongful death under Okla. Stat. tit. 12 §1053. Defendants move for summary judgment stating Oklahoma has not yet allowed recovery for siblings claiming *in loco parentis*.

The motion for summary judgment is granted. Plaintiffs inserted this issue into the case at the pretrial conference stage of this case. This claim has still not been added to Plaintiffs' complaint and trial is scheduled this month.

Moreover, both Plaintiffs and Defendants rely on Clark v. Jones, 658 P.2d 1147 (Okla. 1983). It is clear from the case that Oklahoma has not yet allowed this exception to the statutory provisions.

Therefore, summary judgment is hereby granted against Plaintiffs' claim for recovery for Kristy Barnett.

DATED this 9th day of January, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

ROBERT W. MALLOY)

Defendant.)

CIVIL ACTION NO. 88-C-956-E

1-6-89

DEFAULT JUDGMENT

This matter comes on for consideration this 4 day of ~~December~~^{Jan}, 1988, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Robert W. Malloy, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Robert W. Malloy, acknowledged receipt of the Summons and Complaint on August 18, 1988. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

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

Robert W. Malloy, for the principal sum of \$9,521.98, plus accrued interest of \$1,483.68 as of May 31, 1988, plus interest thereafter at the rate of 4 percent per annum until Judgment, plus interest thereafter at the current legal rate of 9.20 percent per annum, until paid, plus costs of this action.

J. JAMES O. ELISON

UNITED STATES DISTRICT JUDGE

NNB:do

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 THE UNKNOWN HEIRS, EXECUTORS,)
 ADMINISTRATORS, DEVISEES,)
 TRUSTEES, SUCCESSORS AND)
 ASSIGNS OF ROSANNA VANN,)
 Deceased; CULLIS VANN; CULLIE)
 VANN; STATE OF OKLAHOMA ex rel.)
 OKLAHOMA TAX COMMISSION; TULSA)
 URBAN RENEWAL AUTHORITY, now)
 TULSA DEVELOPMENT AUTHORITY;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED
JAN 6 1989
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 88-C-247-B ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 6th day
of January, 1988⁸⁹. 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, State of Oklahoma ex rel. Oklahoma Tax
Commission, appears not, having previously filed its Disclaimer;
the Defendant, Tulsa Urban Renewal Authority, now Tulsa
Development Authority, appears by its attorney Darven L. Brown;
and the Defendants, The Unknown Heirs, Executors, Administrators,

Devises, Trustees, Successors and Assigns of Rosanna Vann, Deceased; Cullis Vann; and Cullie Vann, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Cullis Vann, was served with Summons and Complaint on June 1, 1988; that the Defendant, Cullie Vann, was served with Summons and Complaint on May 2, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on April 20, 1988; that the Defendant, Tulsa Urban Renewal Authority, now Tulsa Development Authority, was served with Summons and Complaint on May 4, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 15, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 15, 1988.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devises, Trustees, Successors and Assigns of Rosanna Vann, Deceased, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning October 13, 1988, and continuing to November 17, 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, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Rosanna Vann, Deceased, 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, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Rosanna Vann, Deceased. 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 April 4, 1988 and their Answers to Amended Petition on April 25, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Disclaimer herein on May 2, 1988; that the Defendant, Tulsa Urban Renewal Authority, now Tulsa Development Authority, filed its Answer and Cross-Complaint on June 7, 1988; and that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Rosanna Vann, Deceased; Cullis Vann; and Cullie Vann, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on July 27, 1988, an Order was filed herein appointing Thomas R. Schoenenberger as guardian ad litem for Cullis Vann and Cullie Vann to represent their interests in this case. Mr. Schoenenberger's affidavit stating his findings is attached hereto as Exhibit "A" and incorporated.

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 Eighteen (18), Block Forty-seven (47),
VALLEY VIEW ACRES THIRD ADDITION to the City
of Tulsa, Tulsa County, State of Oklahoma,
according to the recorded plat thereof.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of

Rosanna Vann and judicially terminating the joint tenancy of Cullis Vann, Cullie Vann, and Rosanna Vann.

The Court further finds that Rosanna Vann became the record owner of the real property involved in this action, by virtue of that certain Warranty Deed dated December 19, 1974, from Richard L. Roudebush, as Administrator of Veterans Affairs, to Rosanna Vann, a single person, which Warranty Deed was filed of record on January 2, 1975, in Book 4149, Page 1278, in the records of the County Clerk, Tulsa County, Oklahoma.

The Court further finds that by General Warranty Deed dated February 16, 1984, Rosanna Vann, a single person, conveyed the real property involved in this action to Cullie Vann, Cullis Vann, and Rosanna Vann, as joint tenants and not as tenants in common, with full right of survivorship, the whole estate to vest in the survivors in the event of the death of one of them, which General Warranty Deed was filed of record on February 16, 1984, in Book 4767, Page 1687, in the records of the County Clerk, Tulsa County, Oklahoma.

The Court further finds that Rosanna Vann died on March 12, 1987, while seized and possessed of the subject property. The Certificate of Death No. 09217 was issued by the Oklahoma State Department of Health certifying Rosanna Vann's death. Upon the death of Rosanna Vann the subject property vested in the surviving joint tenants, Cullie Vann and Cullis Vann, by operation of law.

The Court further finds that on December 20, 1974, Rosanna Vann, now deceased, executed and delivered to the United

States of America, acting on behalf of the Administrator of Veterans Affairs, her mortgage note in the amount of \$8,000.00, payable in monthly installments, with interest thereon at the rate of nine and one-half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Rosanna Vann, now deceased, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated December 20, 1974, covering the above-described property. Said mortgage was recorded on January 2, 1975, in Book 4149, Page 1280, in the records of Tulsa County, Oklahoma.

The Court further finds that Rosanna Vann, now deceased, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof Plaintiff alleges that there is now due and owing under the note and mortgage, after full credit for all payments made, the principal sum of \$7,013.45, plus interest at the rate of 9.5 percent per annum from May 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 Plaintiff is entitled to a judicial determination of the death of Rosanna Vann, and to a judicial termination of the joint tenancy of Cullis Vann, Cullie Vann, and Rosanna Vann.

The Court further finds that Tulsa Urban Renewal Authority is now known as Tulsa Development Authority.

The Court further finds that the Defendant, Tulsa Urban Renewal Authority, now Tulsa Development Authority, has a lien on the property which is the subject matter of this action by virtue of a real estate mortgage dated March 14, 1984, and recorded on March 20, 1984, in Book 4776, Page 645, in the records of Tulsa County, Oklahoma, in the current amount of \$6,500.00, plus an attorney's fee in the amount of \$1,000.00. Said lien is inferior to the interest of the Plaintiff, United States of America.

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, State of Oklahoma ex rel. Oklahoma Tax Commission, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Rosanna Vann, Deceased; Cullis Vann; and Cullie Vann, 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 in the principal sum of \$7,013.45, plus interest at the rate of 9.5 percent per annum from May 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.20 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during

this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the death of Rosanna Vann be and the same is hereby judicially determined to have occurred on March 12, 1987, in the City of Tulsa, County of Tulsa, State of Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the joint tenancy of Cullie Vann, Cullis Vann, and Rosanna Vann in the above-described real property be and the same hereby is judicially terminated as of the date of the death of Rosanna Vann on March 12, 1987.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Tulsa Urban Renewal Authority, now Tulsa Development Authority, have and recover judgment in rem in the amount of \$6,500.00 by virtue of a real estate mortgage dated March 14, 1984, and recorded on March 20, 1984, in Book 4776, Page 645, in the records of Tulsa County, Oklahoma, plus an attorney's fee in the amount of \$1,000.00.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all of the findings of Thomas R. Schoenenberger, guardian ad litem for Cullis Vann and Cullie Vann, set forth in the attached Exhibit "A" are adopted as true and correct by the Court, and

that the guardian ad litem's duties herein have been fully satisfied. It is further ordered that Thomas R. Schoenenberger is released from any further duties and responsibilities as guardian ad litem for Cullis Vann and Cullie Vann.

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, Tulsa Urban Renewal Authority, now Tulsa Development Authority, in the amount of \$6,500.00, plus an attorney's fee in the amount of \$1,000.00.

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

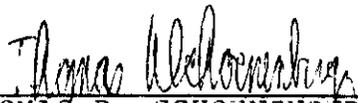
Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

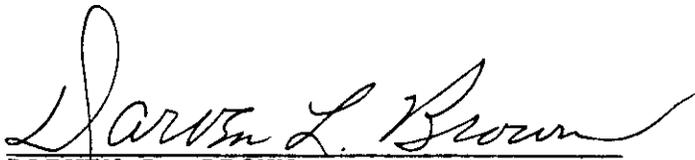

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL
Assistant United States Attorney


THOMAS R. SCHOENENBERGER
Guardian ad litem for Defendants,
Cullis Vann and Cullie Vann



DARVEN L. BROWN

Attorney for Defendant,
Tulsa Urban Renewal Authority,
now Tulsa Development Authority

Carl Robinson

~~DORIS L. FRANSEIN~~

Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 THE UNKNOWN HEIRS, EXECUTORS,)
 ADMINISTRATORS, DEVISEES,)
 TRUSTEES, SUCCESSORS AND)
 ASSIGNS OF ROSANNA VANN,)
 Deceased; CULLIS VANN; CULLIE)
 VANN; STATE OF OKLAHOMA ex rel.)
 OKLAHOMA TAX COMMISSION; TULSA)
 URBAN RENEWAL AUTHORITY; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.) CIVIL ACTION NO.
) 88-C-247-B

AFFIDAVIT

On this 19th day of December, 1988, I, Thomas R. Schoenenberger, as Guardian ad litem for Cullis Vann and Cullie Vann in this case, pursuant to Order Appointing Guardian Ad Litem dated July 27, 1988, do hereby solemnly swear:

1. That I met with Cullie Vann, Defendant in this case, on December 7, 1988 at Eastern State Hospital, Vinita, Oklahoma. Mr. Vann stated that he had no available information concerning bank accounts, insurance policies, jewelry or any other property owned by Rosanna Vann, his adoptive mother. Mr. Vann stated that Ronnie Morgan, his half-brother, would be the most likely person to know about any such property and Mr. Vann further stated that he could not name any other friends or family

EXHIBIT "A"

of Rosanna Vann. Mr. Vann further indicated that he would not be capable of maintaining the home at 5423 North Johnstown, Tulsa, Oklahoma, or any other private residence.

2. That I met with Cullis Vann, Defendant in this case, on December 9, 1988 at the Downtown Tulsa Y.M.C.A. Mr. Vann stated that he was not aware of any bank accounts owned by Rosanna Vann. He further stated that the only insurance policy of which he had knowledge was automobile insurance held by Ms. Vann. He stated that all furniture and personal property of Ms. Vann were distributed to Mary Margaret Williamson (his half-sister) and Roberta Strong (his cousin). Mr. Vann stated that the only other property owned by Ms. Vann, to his knowledge, was a 1969 Chevelle automobile. He was not certain of the whereabouts of that automobile. He further stated that Ronnie Morgan, Mary Margaret Williamson and Roberta Strong would be the only family members or friends that he could name who might have knowledge of property of Ms. Vann. Mr. Vann also indicated that he would not be capable of maintaining the home at 5423 North Johnstown, Tulsa, Oklahoma as a private residence.

3. That I spoke by phone on December 5, 1988, with Ronnie Morgan, half-brother of Cullie and Cullis Vann. Mr. Morgan stated that the only insurance policy covering Rosanna Vann of which he was aware was a very small policy that was cashed in soon after her death in March, 1987. Mr. Morgan stated that the proceeds from this policy were

not sufficient to cover the burial expenses for Ms. Vann and that he had to pay the remaining expenses from his personal funds. He stated that he knew of no bank accounts or other property owned by Ms. Vann. He stated that there was no property of value when he first went through the home at 5423 North Johnstown, soon after the death of Ms. Vann. He stated that Roberta Strong and Mary Margaret Williamson were the two persons who first went through the home after Ms. Vann's death. Mr. Morgan said that the only other person who might have some information concerning property of Rosanna Vann, Cullis Vann or Cullie Vann would be Rosie Witlow, the natural mother of Cullis and Cullie.

4. That on December 5, 1988, I spoke by phone to Mary Margaret Williamson, half-sister of Cullis and Cullie Vann. Ms. Williamson stated that she went through the home at 5423 North Johnstown one day after the death of Rosanna Vann in March, 1987. She reviewed the papers of Rosanna Vann and found no evidence of bank accounts, insurance policies (other than the small policy discussed above) or any other evidence of property or assets owned by Rosanna Vann, other than limited clothing, furniture and personal belongings. Ms. Williamson stated that she, Ronnie Morgan and Roberta Strong all helped with payments for bills incurred by Rosanna Vann prior to her death. Ms. Williamson could not name any other persons who might have information concerning Ms. Vann.

5. That on December 5, 1988, I spoke by phone to Roberta Strong, niece of Rosanna Vann and cousin to Cullie and Cullis Vann. She stated that it was her belief that she was the last living person related to Rosanna Vann by blood (Cullis and Cullie being adoptive sons of Rosanna Vann). She therefore stated that she was not aware of any other persons who would have information as to Rosanna Vann other than Ronnie Morgan and Mary Beth Williamson. Ms. Strong stated that Rosanna Vann was very private in her financial dealings and that Ms. Strong had very limited information concerning the property of Ms. Vann. She did state that she was aware of the small life insurance policy that was cashed in after the death of Ms. Vann but that the funds were not sufficient to even cover the burial expense. Ms. Strong further stated that she and Mary Margaret Williamson entered the house at 5423 North Johnstown soon after the death of Rosanna Vann but were unable to find evidence of any property or assets of value, other than limited personal belongings and furniture.

6. On December 6, 1988, I spoke by phone to Rosie Witlow in New York state. Ms. Witlow is the natural mother of Cullis and Cullie Vann. She was not aware of any property owned by Rosanna Vann other than the house on North Johnstown and had no other information concerning property or assets of Cullis or Cullie Vann. She further

stated that Ronnie Morgan would be the best source of any such information.

7. On December 6, 1988, I spoke by phone with Eliza Tillman, a neighbor of the Vann residence who lives at 740 East 54th Place North, Tulsa, Oklahoma. She stated that she knew of no property held by Rosanna Vann or Cullie or Cullis Vann and she further stated that Ronnie Morgan would be the best source of any such information. I also met with Ms. Tillman on December 9 at the same time that I met with Cullis Vann. She stated that she used to feed Cullis Vann some meals at her home after the death of Rosanna Vann and she continues to see him approximately twice a week to deliver food.

8. That on December 5, 1988, I spoke by phone with Debra Gordon of the Oklahoma Department of Human Services. Ms. Gordon stated that her office has been involved in the relocation of Cullis Vann and that Mr. Vann receives a state supplemental check of approximately \$64.00 per month in addition to social security checks of approximately \$200.00 per month. I also spoke on December 6, 1988 to Nancy Ogilvie of the Oklahoma Department of Human Services. Ms. Ogilvie is the current case worker for Cullis Vann and she stated that she was aware of no property or resources held by Cullis Vann or Rosanna Vann.

9. That on December 6, 1988, I spoke by phone with Beverly Sharp of the Reimbursement Office of Eastern State Hospital. Ms. Sharp stated that the hospital files

indicated that Cullie Vann owns no property or other assets other than monthly social security checks of approximately \$200.00.

10. That on December 6, 1988, I spoke by phone with Charles Beck at Eastern State Hospital. Mr. Beck is the social worker in charge of the ward housing Cullie Vann. Mr. Beck stated that the hospital records indicated that the only family member of Cullie Vann was Rosanna Vann.

11. That on December 6, 1988, I spoke by phone with Tracey Copp of Copp's Room and Board in Claremore, Oklahoma. Cullie Vann was a resident of Copp's prior to entering Eastern State Hospital. Ms. Copp stated that Cullie Vann had resided with her for two or three periods over the last four years. She said she was unaware of any property or assets owned by Cullie Vann other than the monthly social security check which he received.

12. That on December 6, 1988, I spoke by phone with Florence Alexander of Regency Park Nursing Home, Tulsa, Oklahoma. Rosanna Vann was a resident of this home at the time of her death. Ms. Alexander stated that she had no evidence of any assets owned by Rosanna Vann and reported that, in fact, Rosanna Vann still owed the nursing home \$327.50. She stated that if they had evidence of assets held by Rosanna Vann, they would have sought to recover those assets in order to pay the outstanding bill.

13. That, pursuant to the conversations described above, I have found no evidence of any insurance policies,

bank accounts, personal property or other assets of Rosanna Vann which would be of more than marginal value. I have found no evidence of any assets or property owned by Cullis Vann or Cullie Vann other than limited personal belongings plus monthly social security benefits. I have investigated and followed any possible leads to such property which resulted from the above conversations.

14. That I have found no assets or property owned by Rosanna Vann, Cullie Vann or Cullis Vann sufficient to pay the judgment sought in the Amended Complaint as filed in this case or to reinstate mortgage payments under the terms of the note and mortgage covering the home at 5423 North Johnstown.

15. That, based upon my meetings with Cullis Vann and Cullie Vann and my conversations with the various parties described above, it is my opinion that Cullis Vann and Cullie Vann would not be capable of maintaining the home at 5423 North Johnstown and that it would therefore not be in their best interest to attempt to maintain their ownership of the house at 5423 North Johnstown by opposing the action for foreclosure.

Further affiant saith not.



Thomas R. Schoenenberger

Subscribed and sworn to before me this 19th day of December, 1988.



Notary Public

My Commission Expires:
February 13, 1991

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLES E. SAMS,)
)
 Defendant.)

F I L E D

JAN 6 1989

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

CIVIL ACTION NO. 88-C-608-E

DEFAULT JUDGMENT

This matter comes on for consideration this 4th day
of ~~December, 1988~~ ^{Jan. 1989}, the Plaintiff appearing by Tony M. Graham,
United States Attorney for the Northern District of Oklahoma,
through Nancy Nesbitt Blevins, Assistant United States Attorney,
and the Defendant, Charles E. Sams, appearing not.

The Court being fully advised and having examined the
file herein finds that Defendant, Charles E. Sams, was served
with Summons and Complaint on October 19, 1988. The time within
which the Defendant could have answered or otherwise moved as to
the Complaint has expired and has not been extended. The
Defendant has not answered or otherwise moved, and default has
been entered by the Clerk of this Court. Plaintiff is entitled
to Judgment as a matter of law.

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

Charles E. Sams, for the principal sum of \$751.84, plus interest at the rate of 4 percent per annum from October 31, 1987, until judgment, plus interest thereafter at the current legal rate of _____ percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

FILED

JAN 6 1989

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

ADEMALA MICHAEL OGUNLEYE,)
)
 Plaintiff,)
)
 vs.)
)
 STATE OF OKLAHOMA, et al.,)
)
 Defendants.)

No. 87-C-171-E ✓

AMENDED ORDER OF DISMISSAL

This Court previously ordered the dismissal of this cause on November 28, 1988 based upon Plaintiff's failure to timely amend his complaint. That order was not intended to imply that Plaintiff had been granted the opportunity to amend his complaint notwithstanding the order of March 28, 1988 dismissing all Defendants except William E. Lewis and the order of May 6, 1988 overruling Plaintiff's objection to the dismissal of those Defendants.

The record in this case shall, therefore, reflect that Plaintiff's complaint is amended as requested.

The record shall further reflect that the motions for summary judgment of 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 County of Tulsa, are granted, and all claims against these Defendants are dismissed.

So ORDERED this 4th day of January, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JAN 6 1989

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

ROBERT W. MALLOY)

Defendant.)

CIVIL ACTION NO. 88-C-956-E

DEFAULT JUDGMENT

This matter comes on for consideration this 4 day
of ~~December~~ ^{Jan}, 1989, the Plaintiff appearing by Tony M. Graham,
United States Attorney for the Northern District of Oklahoma,
through Nancy Nesbitt Blevins, Assistant United States Attorney,
and the Defendant, Robert W. Malloy, appearing not.

The Court being fully advised and having examined the
file herein finds that Defendant, Robert W. Malloy, acknowledged
receipt of the Summons and Complaint on August 18, 1988. The
time within which the Defendant could have answered or otherwise
moved as to the Complaint has expired and has not been extended.
The Defendant has not answered or otherwise moved, and default
has been entered by the Clerk of this Court. Plaintiff is
entitled to Judgment as a matter of law.

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

Robert W. Malloy, for the principal sum of \$9,521.98, plus accrued interest of \$1,483.68 as of May 31, 1988, plus interest thereafter at the rate of 4 percent per annum until Judgment, plus interest thereafter at the current legal rate of 9.20 percent per annum, until paid, plus costs of this action.

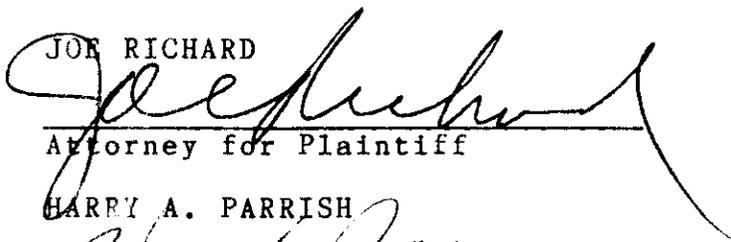
S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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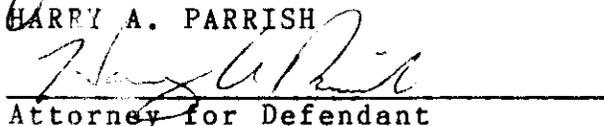
APPROVALS:

JOE RICHARD

A large, stylized handwritten signature in cursive script, written in black ink, positioned above a horizontal line.

Attorney for Plaintiff

HARRY A. PARRISH

A smaller, stylized handwritten signature in cursive script, written in black ink, positioned above a horizontal line.

Attorney for Defendant

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

FILED

Lavelda Wapskinah Jessepe ,)

Plaintiff(s),)

vs.)

United States of America ,)

Defendant(s).)

No. 88-C-337-B

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

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

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

IT IS SO ORDERED this 5th day of January, 1989.

[Signature]

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JAN 6 1989

DEMCO INTERNATIONAL, INC.,)
a Florida Corporation,)
)
Plaintiff,)
)
vs.)
)
CHEMICAL MARKETING EXCHANGE, INC.)
an Oklahoma Corporation,)
)
Defendant.)

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

Civil Action No. 88-C1550-E

ORDER OF DISMISSAL

It appearing to the court that the above-entitled action has been fully settled, adjusted, and compromised, and based on stipulation; therefore.

IT IS ORDERED, ADJUDGED AND DECREED by the court that the above-entitled action be, and it is hereby, dismissed, without cost to either party and with prejudice to the claims, counterclaims and set-off herein alleged by the plaintiff and the defendant.

Dated the 11th day of Jan, 1989, ~~December, 1988.~~



JAMES O. ELLISON, U.S.D.J.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLES E. CAGLE,)
)
 Defendant.)

JAN 11 1989
JAMES H. ...
...

CIVIL ACTION NO. 88-C-914-B

ORDER OF DISMISSAL

Now on this 6th day of January, 1989, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Charles E. Cagle, be and is dismissed without prejudice.

s/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

JAN 5 1989

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

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

W. F. MARTIN, an individual,)
)
 Plaintiff,)
)
 vs.)
)
 STEPHEN C. SIMS, an individual,)
 and FEDERAL DEPOSIT INSURANCE)
 CORPORATION, as Receiver for)
 FIRST NATIONAL BANK OF SAPULPA,)
 a national banking association,)
)
 Defendants.)

No. 87-C-244-B

ORDER OVERRULING DEFENDANTS' MOTION FOR
JUDGMENT NOTWITHSTANDING THE VERDICT AND
IN THE ALTERNATIVE MOTION FOR NEW TRIAL

The counterdefendants Stephen C. Sims and Federal Deposit Insurance Corporation's timely motion for judgment notwithstanding the verdict and in the alternative motion for new trial is before the Court for decision. The jury's verdict in this defamation action was returned on September 2, 1988 in the amount of \$500,000.00 compensatory damages and punitive damages of \$15,000.00, and a judgment entered thereon.

The judgment notwithstanding the verdict standard, pursuant to Fed.R.Civ.P. 50(b), is the same as that employed in ruling on a motion for directed verdict. Yazzie v. Sullivent, 561 F.2d 183, 188 (10th Cir. 1977). If the evidence and all inferences reasonably to be drawn therefrom, considered in a light most favorable to the nonmoving party, are such that minds of reasonable persons could not differ as to the conclusion to be drawn therefrom, the motion for directed verdict should be sustained.

Symons v. Mueller Company, 493 F.2d 972, 976 (10th Cir. 1974). To defeat a motion for judgment notwithstanding the verdict there must be substantial probative evidence in the record in support of the nonmoving party's case.

The standard relative to the alternative motion for new trial (Fed.R.Civ.P. 59(a), 50(b) and 50(c)) requires the Court to exercise its sound judicial discretion. As is stated in Allied Chemical Corporation v. Daiflon, Inc., 101 S.Ct. 188, 449 U.S. 33, 36 (1980), it is stated:

"[T]he authority to grant a new trial, moreover, is confided almost entirely to the exercise of discretion on the part of the trial court."

In Community National Life Ins. Co. v. Parker Square Savings & Loan Assn., 406 F.2d 603, 605 (10th Cir. 1969), the court quoted Tidewater Oil Co. v. Waller, 302 F.2d 638, 643 (10th Cir. 1962), and stated:

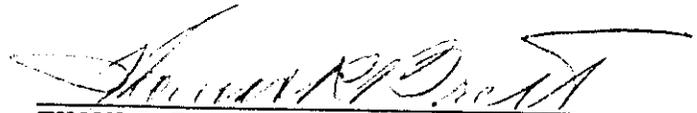
" '[T]he granting of a new trial involves an element of discretion which goes further than the mere sufficiency of the evidence. It embraces all the reasons which inhere in the integrity of the jury system itself.' "

See, Pool v. Leone, 374 F.2d 961 (10th Cir. 1967). A trial judge is not to interfere with a jury's verdict unless it is quite clear the jury reached a seriously erroneous result. Moore v. Shultz, 491 F.2d 294 (10th Cir. 1974), cert. denied, 419 U.S. 930, 95 S.Ct. 203, 47 L.Ed.2d 161 (1974); Daiflon, Inc. v. Bohanon, 612 F.2d 1249, 1261 (10th Cir. 1979).

After a thorough review of the relevant evidence in the record the Court concludes there is substantial probative evidence from which the trier of fact could infer that the Defendants acted with reckless disregard as to the truth or falsity of the accusations that Plaintiff committed dishonesty and fraud against the Bank. Further, there is substantial evidence in the record from which the jury could infer that the bank published the bonding claim excessively by way of a member of its Board of Directors. Concerning the amount of compensatory damages awarded by the jury, the Court considers it under the facts and circumstances at the outer limits of reasonable, but not so excessive as to require the order of a remittitur or the grant of a new trial.

For the reasons stated above, the Defendants' motion for judgment notwithstanding the verdict and in the alternative motion for new trial are each hereby overruled.

IT IS SO ORDERED this 4th day of January, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED
JAN 5 1989
Jack C. Silver, Clerk
U. S. DISTRICT COURT

MICHAEL D. MACK,)
)
 Plaintiff,)
)
 v.)
)
 JAY DALTON, et al,)
)
 Defendants.)

88-C-1628-B

ORDER

Plaintiff's Motion to Proceed in Forma Pauperis was granted and Plaintiff brings this action pursuant to 42 U.S.C. Section 1983.

The Complaint is now to be tested under the standard set forth in 28 U.S.C. Section 1915(d). If the Complaint is found to be obviously without merit, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the Plaintiff can make a rational argument on the law or the facts to support his claim. Van Sickle v. Holloway, 791, F.2d 1431, 1434 (10th Cir. 1986). Applying this test to Plaintiff's claims, the Court finds that the instant action should be dismissed as obviously without merit for the following reasons.

Plaintiff filed this action under 42 U.S.C. §1983 and 18 U.S.C. §§1961-1968 against the judge and prosecutors, alleging that the Defendants had violated his civil rights in the course of his preliminary hearing and subsequent detainment.

The United States Supreme Court has held that a judge is absolutely immune from liability under §1983 for all judicial

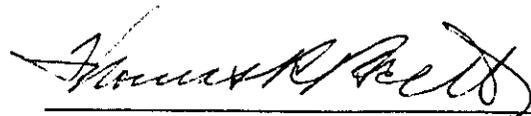
acts performed by him over which he has jurisdiction. Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d. 331 (1978), reh. denied, 436 U.S. 951, 98 S.Ct. 2862, 56 L.Ed.2d 795 (1978); Wiggins v. New Mexico State Supreme Court Clerk, 664 F.2d 812 (10th Cir. 1982). Further, the Court has held that prosecutors are immune from liability under §1983 for any act or omission which was undertaken in the scope of their duties, initiating and pursuing a criminal prosecution, and, in presenting the state's case. Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976).

The allegations against the Defendants, Judge Jay Dalton and Assistant District Attorney Donna Priore, in the case at hand, concern conduct undertaken in the course of Plaintiff's criminal prosecution and, is therefore, protected by both judicial and prosecutorial immunity.

Plaintiff's §1983 claims are thus frivolous and must be dismissed.

It is, therefore, ORDERED, that Plaintiff's Complaint be dismissed as frivolous.

Dated this 5 day of January, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

LULA B. ADAMS,)
)
Plaintiff,)
)
vs.)
)
OTIS R. BOWEN, M.D.,)
Secretary of Health and)
Human Services,)
)
Defendant.)

JAN 5 1989

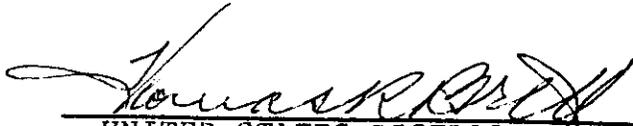
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 88-C-484-B

O R D E R

Upon Motion of the Defendant, Secretary of Health and Human Services, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that this case be remanded to the Secretary for the purpose of evaluating the credibility of Plaintiff's subjective complaints of pain pursuant to Luna v. Secretary of Health and Human Services, 834 F.2d 161 (10th Cir. 1987), and for the further purpose of obtaining the testimony of a vocational expert with regard to the exertional impairments claimed by Plaintiff.

Dated this 5 day of Jan 1989
~~November, 1988.~~


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney

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

F I L E D

JAN 5 1989

A. E. by her next friends,
DANIEL and MARGARET EVANS,

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

Plaintiffs,

vs.

Case No. 88-C-1618-B

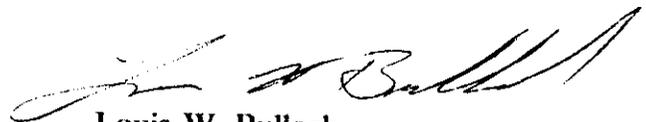
STILWELL PUBLIC SCHOOLS,

Defendant.

DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(a)(1), the Plaintiff shows that neither an answer nor a motion for summary judgment has been served. The Plaintiff therefore dismisses this action without prejudice.

Respectfully submitted,



Louis W. Bullock
Bullock & Bullock
320 South Boston, Suite 718
Tulsa, Oklahoma 74103
(918) 584-2001

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing Dismissal Without Prejudice was mailed, postage prepaid, on this 5 day of January, 1989 to:
Lloyd E. Cole, Jr., 120 West Division, Stilwell, Oklahoma 74960.


Louis W. Bullock

F I L E D

JAN 5 1989

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

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

Continental Carbonic Products,)
Inc., a Delaware Corporation,)
)
Plaintiff,)

vs.)

No. 87-C-513-E

Tulsa Dry Ice, Inc., an)
Oklahoma corporation, and)
Hodges Quality Meats Inc.,)
an Oklahoma corporation.)

Defendants.)

JUDGMENT

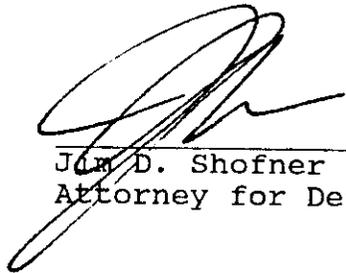
On December 19 and 20, 1988 this case came on for jury trial. After presentation of evidence and argument, the jury returned a verdict for Plaintiff in the amount of \$7375.00 for actual damages. After additional proceedings on the question of punitive damages, consisting of argument and instructions, the jury returned a verdict for Plaintiff in the amount of \$710.00 for punitive damages. Accordingly, the Court enters judgment for Plaintiff, Continental Carbonic Products, Inc., and against Defendant, Tulsa Dry Ice, Inc., in the amount of \$8085.00.

Done this 20th day of December, 1988.


James O. Ellison
U.S. District Judge

Approved as to Form:


R. THOMAS SEYMOUR
Attorney for Plaintiff


Jim D. Shofner
Attorney for Defendant

FILED

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

JAN -5 1988

SAMSON RESOURCES COMPANY,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
DELHI GAS PIPELINE)
CORPORATION, a corporation,)
)
Defendant.)

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

Case No. 88-C-374-E

STIPULATION OF PARTIAL
DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff Samson Resource Company by and through their counsel of record R.K. Pezold and Kenneth J. Treece, pursuant to F.R.Civ.P. Rule 41(a)(1), and hereby dismiss with prejudice "Count II" the "Breach of Contract (Take-or-Pay)" claim asserted within plaintiff's Complaint filed herein. Plaintiff specifically and expressly preserves and reserves all other claims asserted within its Complaint.

Kenneth J. Treece
R.K. Pezold
Kenneth J. Treece
Brune, Pezold, Richey & Lewis
700 Sinclair Building
Six East Fifth Street
Tulsa, OK 74103
(918) 584-0506
Attorneys for Plaintiff



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

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

UNIT RIG & EQUIPMENT CO.,
Plaintiff,
v.
WISEDA, LTD.,
an Oklahoma corporation,
Defendant.

1-5-89
No. CIV-86-C-496-B

ORDER

Upon the application of the Plaintiff, agreed to by the Defendant, it is hereby ordered that this case shall be continued administratively closed until February 1, 1989. The case may be reopened by either party on or before February 1, 1989.

Dated this 4 day of Jan - 9, 1988.


United States District Judge

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

FILED

JAN 5 1989

Jack C. Silver, Clerk

U. S. DISTRICT COURT

ENRON CORPORATION,)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL F. MERRICK, an)
 individual, and TEMERON, INC.,)
 an Oklahoma corporation,)
)
 Defendants.)

No. 88-C-739-B

O R D E R

Before the Court is Defendants' Motion to Dismiss or in the alternative to require Plaintiff to make its Complaint more definite and certain.¹ Plaintiff's Complaint sets out five alleged causes of action. Plaintiff's Third Cause of Action is a request for a permanent injunction if the alleged conduct in Plaintiff's First Cause of Action (Conversion), and Second Cause of Action (Tortious Interference With Business Relations) is established. In each succeeding alleged cause of action Plaintiff re-alleges all prior paragraphs of each previous cause of action. Thus, in a confusing fashion, making the allegations of the First Cause of Action for conversion an integral part of the Second, Third, Fourth, and Fifth alleged causes of action, etc.

¹Defendants urge that this action is in bad faith and retaliatory to an alleged employment discrimination case pending in this court before Judge H. Dale Cook -- Merrick v. Northern Natural Gas Company, et al., No. 87-C-290-C. Consolidation of the two cases, urged by Plaintiff and objected to by Defendants, has been previously denied. Should it ultimately be determined that this action was brought without justification and in bad faith, sanctions will be imposed pursuant to Fed.R.Civ.P. 11.

Plaintiff in its Fifth Cause of Action alleges a bad faith breach of contract claim. Defendants' motion to dismiss the Fifth Cause of Action is hereby sustained as such does not constitute a separate cause of action but evidence supportive of the alleged First (Conversion), Second (Tortious Interference With Business Relations), and Fourth (Breach of Contract) Causes of Action.

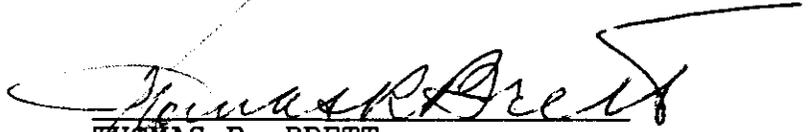
Defendants' motion to dismiss is otherwise overruled.

Plaintiff in the First Cause of Action alleges conversion of "confidential information" by the Defendants without stating the type or what Plaintiff characterizes as confidential information. Plaintiff is hereby directed within fifteen (15) days from this date to make its Complaint more definite and certain in this regard, as well as alleging the approximate date or dates of such conversion and Plaintiff's knowledge thereof.

In Plaintiff's Second Cause of Action for tortious interference with business relations in which Plaintiff seeks punitive damages (Plaintiff "incorporates" such allegations in each succeeding cause of action) there are allegations of "falsely and fraudulent" conduct and "wanton and willful and gross disregard" by Defendants. In keeping with the requirements of Fed.R.Civ.P. 9(b), within fifteen (15) days from this date, Plaintiff is hereby directed to plead such conduct with particularity setting forth the what, who and when of such alleged conduct.

Within ten (10) days following Plaintiff's filing of the Amended Complaint as set out above, Defendants will file their response or answer.

IT IS SO ORDERED this 5 day of January, 1989.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line. The signature is fluid and extends to the right of the line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

JAN 5 1989

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

MICHAEL D. MACK,)
)
 Plaintiff,)
)
 v.)
)
 DONNA PIORE, et al,)
)
 Defendants.)

88-C-1627-B

ORDER

Petitioner's Motion to Proceed in Forma Pauperis was granted and Petitioner brings this action pursuant to 28 U.S.C. Section 2254.

The Petition is now to be tested under the standard set forth in 28 U.S.C. Section 1915(d). If the Petition is found to be obviously without merit, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the Petitioner can make a rational argument on the law or the facts to support his claim. Van Sickle v. Holloway, 791, F.2d 1431, 1434 (10th Cir. 1986). Applying this test to Petitioner's claims, the Court finds that the instant action should be dismissed as obviously without merit for the following reasons.

The grounds raised in Petitioner's Application are that he was denied due process including a denial of his 5th, 6th, 8th, 9th, 10th and 11th constitutional amendment rights; discrimination due to his poor financial standing; denial of a speedy trial; malicious prosecution; and conspiracy to deny his constitutional rights.

Title 28 U.S.C. §§2254 (b) and (c) provides:

- (b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.
- (c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the state to raise, by any available procedure, the question presented. (Emphasis added.)

A review of the record shows that Petitioner has made no attempt to avail himself of available state remedies.¹

As Petitioner has shown no set of circumstances which would allow him to be granted an exception to the exhaustion rule, Petitioner's Application for a Writ of Habeas Corpus should be dismissed.

So ORDERED this 5 day of January, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹ Petitioner could, for example, attempt to file a Petition for a Writ of Mandamus in the Oklahoma Supreme Court (See, Rule 37 of the Rules of the Supreme Court of Oklahoma) seeking to procure a speedy trial as provided for in 11 O.S. §13.

Reynolds
DLP/cel

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

DON LEE REYNOLDS,)
)
 Plaintiff,)
)
 vs.)
)
 OFFICER NEMENTO, Tulsa)
 City Police Department,)
)
 Defendant.)

No. 87-C-901-B

JAN 3 1989
JACK C. ...
U.S. DISTRICT COURT

ORDER OF DISMISSAL

NOW on this 22nd day of December, 1988, upon due notice to all parties of record issued by the Court's clerk on December 5, 1988, the Objection to Report and Recommendation of Magistrate filed herein by Defendant police officer Niemitalo comes before the Court for hearing. Plaintiff appears not; Defendant Niemitalo appears by and through his attorney of record, David L. Pauling.

The Court, having carefully reviewed the file in this case and, additionally, having delayed the scheduled hearing for thirty (30) minutes in an effort to allow any intended appearance by Plaintiff and having further ascertained that Plaintiff has not made any response to Defendant Niemitalo's objections to the Magistrate's report or, otherwise, informed either the Court or its clerk concerning any inability to attend this duly scheduled hearing, the Court concludes from such circumstances that Plaintiff has apparently abandoned this lawsuit and is apparently indifferent to its adjudication on its merits. Under such

circumstances, the Court finds that this case should be dismissed.

IT IS THEREFORE THE ORDER OF THE COURT that this case be dismissed without prejudice pursuant to Federal Court Rule 41(a)(2). Parties are to bear their respective costs and attorney fees.

ST THOMAS R. BRETT

Thomas R. Brett

United States District Judge

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

FILED

JAN 5 1989

IN RE: NORTHWEST EXPLORATION)
COMPANY, et al.,)
)
Plaintiffs,)
)
vs.)
)
VALERO HYDROCARBONS COMPANY,)
et al.,)
)
Defendants.)

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

No. 87-C-331-E

O R D E R

This matter comes on before the Court following the status conference held herein on September 15, 1988. After reviewing the pleadings and hearing the statements of counsel the Court finds as follows:

The order of the Bankruptcy Court dated March 26, 1987 is hereby vacated and this matter is remanded to the Bankruptcy Court for determination of any outstanding matters including but not limited to Valero Hydrocarbons Company's application for attorney fees.

ORDERED this 5th day of January, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

~~FILED~~

~~SEP 28 1988~~

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

CANAL REFINING COMPANY,
et al.,
Defendants.

Civil Action No.

87-C-145-E

~~FILED~~

~~JAN 5 1989~~

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

CANAL REFINING COMPANY,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF ENERGY,
et al.,
Defendants.

Civil Action No.

87-C-294-E

STIPULATION OF DISMISSAL AND ORDER

The United States of America, the United States Department of Energy, Canal Refining Company and Anchor Gasoline Corporation hereby stipulate that the above-captioned civil actions have been fully settled by way of a Consent Order between the parties, which has become a final order of the Department of Energy and which, inter alia, requires that the parties stipulate to the dismissal of the above-captioned actions with prejudice. Accordingly, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the parties hereby stipulate that the complaints in both of the above-captioned civil actions should be dismissed with prejudice.

Executed this 26th day of September, 1988.

David G. Wilson

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Tel.: (202) 662-2700

Don W. Crockett

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Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103

Attorneys for United States of
America and the United States
Department of Energy

The parties in the above-captioned civil actions having fully settled all matters between them and good cause appearing therefor, it is on this 5th day of

January, 1989,

SO ORDERED

James D. Allen
UNITED STATES DISTRICT JUDGE

FILED

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

JAN 5 1989

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

In Re)	
)	
FITZGERALD, DE ARMAN &)	
ROBERTS, INC.,)	88-C-830-B
)	
Debtor.)	

ORDER

Now before the Court is the Motion for Leave to Appeal of Richardson, Berlin & Morvillo ("RB&M"). RB&M appeals the Bankruptcy Court's Order of July 27, 1988, which granted the Trustee's Application for Turnover Order. RB&M claims that its retaining lien, for legal services rendered, on documents relating to the debtor's financial affairs is not adequately protected by the Order and will be irrevocably impaired if the documents are turned over to the Trustee.

Title 28 U.S.C. § 158(a) states that:

(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title [28 USCS § 157]. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

The Bankruptcy Rule pertaining to a Motion to Appeal, Rule 8003, requires the following in section (a):

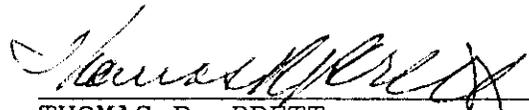
(a) CONTENT OF MOTION; ANSWER. A motion for leave to appeal under 28 U.S.C. § 158(a) shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating

thereto. Within 10 days after service of the motion, an adverse party may file with the clerk an answer in opposition.

The language of the Rule, "shall contain", is mandatory and requires adherence by a party seeking leave to appeal.

The Court finds that the Motion for Leave to Appeal of RB&M does not contain a copy of the Bankruptcy Court's Order complained of, as required by Rule 8003(a), and therefore cannot be considered by the Court and is therefore denied.

Dated this 5 day of January, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

~~FILED~~

~~SEP 28 1988~~

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

CANAL REFINING COMPANY,
et al.,
Defendants.

Civil Action No.
87-C-145-E

~~FILED~~

~~JAN 5 1989~~

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

CANAL REFINING COMPANY,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF ENERGY,
et al.,
Defendants.

Civil Action No.
87-C-294-E

STIPULATION OF DISMISSAL AND ORDER

The United States of America, the United States Department of Energy, Canal Refining Company and Anchor Gasoline Corporation hereby stipulate that the above-captioned civil actions have been fully settled by way of a Consent Order between the parties, which has become a final order of the Department of Energy and which, inter alia, requires that the parties stipulate to the dismissal of the above-captioned actions with prejudice. Accordingly, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the parties hereby stipulate that the complaints in both of the above-captioned civil actions should be dismissed with prejudice.

Executed this 26th day of September, 1988.

David G. Wilson

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Don W. Crockett

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Tulsa, Oklahoma 74103

Attorneys for United States of
America and the United States
Department of Energy

The parties in the above-captioned civil actions having fully settled all matters between them and good cause appearing therefor, it is on this 5th day of

January, 1988,
SO ORDERED

James O'Brien
UNITED STATES DISTRICT JUDGE

FILED

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

JAN 5 1989

FRANKS & SON, INC., an Oklahoma corporation,

Plaintiff,

vs.

GOOCH BRAKE AND EQUIPMENT CO., a Missouri corporation,

Defendant.

No. 87-C-1061-B

ORDER OF DISMISSAL

NOW on this 5th day of January, 1989, upon the written application of the Plaintiff, Franks & Son, Inc., and the Defendant, Gooch Brake and Equipment Co., for a dismissal with prejudice of the Complaint of Franks & Son v. Gooch, 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 said settlement is to the best interest of the Plaintiff, and that said Complaint should be dismissed pursuant to said application.

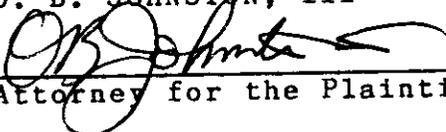
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff, Franks & Son, Inc., against the Defendant, Gooch Brake and Equipment Co., be and the same hereby are dismissed with prejudice to any future action.

S/ THOMAS R. DRETT

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

APPROVALS AS TO FORM:

O. B. JOHNSTON, III



Attorney for the Plaintiff

SCOTT D. CANNON



Attorney for the Defendant

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

HONG KONG TV VIDEO PROGRAM, INC.)

Plaintiff,)

v.)

UT LE and LOI THI VAN, individuals)
d/b/a NAM HAI MARKET,)

Defendants.)

No. 88-C-646-C ✓

FILED

JAN 5 1989 *ju*

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

CONSENT JUDGMENT AND PERMANENT INJUNCTION

The parties having reached a settlement in this case and having agreed to entry of the following judgment, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. This Court has jurisdiction of the subject matter and of all the parties to the case.

2. Plaintiff Hong Kong TV Video Program, Inc. ("HKTV") has an exclusive license in the United States to reproduce and publicly distribute copies of the Cantonese, Mandarin, Korean, Cambodian, Thai and Vietnamese versions of the motion pictures identified in Exhibit 1 attached hereto and incorporated herein by reference. Each of the motion pictures identified in Exhibit 1 contains material wholly original with the copyright owner and is copyrightable subject matter. As to each of the works identified in Exhibit 1, all statutory formalities, including notice and registration, have been fulfilled.

3. HKTV owns a valid trademark comprising the words "HONG KONG TV VIDEO PROGRAM, INC." in Chinese in combination with a design comprising red, green and blue stripes, for pre-recorded videocassette tapes. This mark is the subject of U.S. Trademark Registration No. 1,488,219, issued May 17, 1988, a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference.

4. HKTV is the exclusive United States licensee of a valid mark comprising a circle composed of colored bands of red, green and blue, for television broadcasting services. This trademark is the subject of U.S. Trademark Registration No. 1,343,342, issued June 18, 1985, a copy of which is attached hereto as Exhibit 3 and incorporated herein by reference.

5. Defendants have infringed HKTV's copyrights in the works identified in Exhibit 1.

6. Defendants have infringed HKTV's federally registered marks. Further, these infringements constitute the use of counterfeit marks, as defined in 15 U.S.C. §§ 1116(d) and 1127.

7. Except with consent from Plaintiff or one of Plaintiff's sublicensees, Defendants and their agents, servants, employees, attorneys and those in active concert or participation with them who receive actual notice of this judgment by personal service or otherwise, are permanently enjoined from:

- (a) reproducing, publicly performing or publicly distributing by rental, lease, sale, gift or otherwise, copies in any form of any of the

motion pictures listed in Exhibit 1; and
(b) using in commerce or otherwise any reproduction, counterfeit, copy, or colorable imitation of any of Plaintiff's marks, identified in Exhibits 2 and 3, in connection with the sale, offering for sale, distribution or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; and from reproducing, counterfeiting, copying or colorably imitating any of such trademarks, and from applying such reproductions, counterfeits, copies or colorable imitations to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce or otherwise upon or in connection with the sale, and offering for sale, distribution, or advertisement of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake or to deceive.

8. The Defendants are directed to deliver up immediately to Plaintiff or to Plaintiff's representative or attorney for destruction or other disposition at Plaintiff's discretion:

(a) all copies of the motion pictures listed in Exhibit 1 still in Defendants' possession or

control; and

(b) all labels, signs, prints, packages, wrappers, receptacles and advertisements in Defendants' possession or control which constitute infringements of any of Plaintiff's marks identified in Exhibits 2 and 3.

9. At the request of Plaintiff's attorney, the ~~Marshal~~ shall promptly deliver to Plaintiff's attorney all property seized from Defendants pursuant to this Court's order of July 15, 1988. The order entered herein on August 8, 1988 relating to the seized property and which required Defendants' attorney to retain copies of or the originals of Defendants' business records which were among the seized property hereby is dissolved.

10. The Defendants shall pay to Plaintiff the total amount of Ten Thousand Dollars (\$10,000.00), this amount to accrue interest as provided in 28 U.S.C. § 1961.

11. The Court shall have continuing jurisdiction to enforce the present judgment and the injunction contained therein.

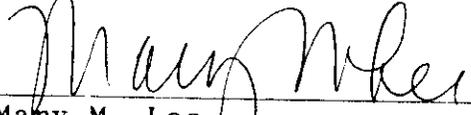
12. Each party shall pay its own costs and attorney fees incurred to date in this action.

13. This judgment is final.

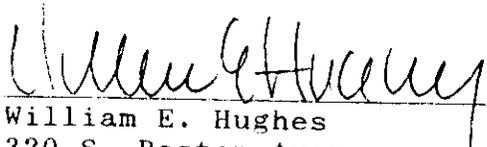
Dated this 7th day of January, 1988.


United States District Judge

AGREED:


Mary M. Lee
DUNLAP, CODDING & PETERSON
9400 North Broadway, Suite 420
Oklahoma City OK 73114
(405) 478-5344

Attorney for Plaintiff


William E. Hughes
320 S. Boston Avenue
Suite 1020
Tulsa, Oklahoma 74103
(918) 587-1400

Attorney for Defendants

HONG KONG TV VIDEO PROGRAM, INC.
COPYRIGHT REGISTRATION

PART A

TITLE	EPISODES	REGN NUMBER	REGN DATE
1983 Jade Solid Gold Selections (1st Quarter)	--	PA 291-856	02/27/86
1983 Jade Solid Gold Selections (2nd Quarter)	--	PA 291-854	02/27/86
1983 Jade Solid Gold Selections (3rd Quarter)	--	PA 291-855	02/27/86
A Baby Makes Three	1,2	PA 178-747	07/28/83
A Taste of Bachelorhood	1,2	PA 320-530	03/23/87
A Tough Fight	1,2	PA 273-471	11/14/86
Adventure of Woman Reporter, The	1,2	PA 274-339	11/14/86
Angels and Devils	1,2	PA 191-404	12/01/83
Awakening, The	1,2	PA 260-393	05/09/85
Battle Among The Clans	1,2	PA 268-175	12/11/85
Battlefield, The	1,2	PA 273-472	11/14/86
Beware of Your Bosom Buddies	1,2	PA 240-813	12/07/84
Big Boss, The	1,2	PA 240-808	12/07/84
Blood-Stained Intrigue, The	1,2	PA 304-145	10/31/86
Bold Ones, The	1,2	PA 291-858	02/27/86
Brave Squad, The	1,2	PA 268-177	12/11/85
Broken Thread #12, The	12	PA 127-110	02/02/82
Broken Thread #1, The	1	PA 127-099	02/02/82
Broken Thread #10, The	10	PA 127-108	02/02/82
Broken Thread #11, The	11	PA 127-109	02/02/82
Broken Thread #13, The	13	PA 127-111	02/02/82
Broken Thread #14, The	14	PA 127-112	02/02/82

EXHIBIT
1

HONG KONG TV VIDEO PROGRAM, INC.
COPYRIGHT REGISTRATION

TITLE	EPISODES	REGN NUMBER	REGN DATE
Broken Thread #15, The	15	PA 127-113	02/08/82
Broken Thread #16, The	16	PA 127-114	02/08/82
Broken Thread #17, The	17	PA 127-115	02/08/82
Broken Thread #18, The	18	PA 127-116	02/08/82
Broken Thread #19, The	19	PA 127-117	02/02/82
Broken Thread #2, The	2	PA 127-100	02/02/82
Broken Thread #20, The	20	PA 127-118	02/02/82
Broken Thread #3, The	3	PA 127-101	02/02/82
Broken Thread #4, The	4	PA 127-102	02/02/82
Broken Thread #5, The	5	PA 127-103	02/02/82
Broken Thread #6, The	6	PA 127-104	02/02/82
Broken Thread #7, The	7	PA 127-105	02/02/82
Broken Thread #8, The	8	PA 127-106	02/02/82
Broken Thread #9, The	9	PA 127-107	02/02/82
Brother Under the Skin	1,2	PA 288-699	04/25/85
Brothers	1,2	PA 240-807	12/07/81
Buddha's Magic Palm	1,2	PA 355-154	04/06/87
Bund I, The	2	PA 178-752	07/28/83
Bund I, The	1	PA 178-751	07/28/83
Bund Series II #1, The	1	PA 127-039	02/02/82
Bund Series II #10, The	10	PA 127-048	02/02/82
Bund Series II #11, The	11	PA 127-049	02/02/82
Bund Series II #12, The	12	PA 127-050	02/02/82
Bund Series II #13, The	13	PA 127-051	02/02/82

HONG KONG TV VIDEO PROGRAM, INC.
COPYRIGHT REGISTRATION

TITLE	EPISODES	REGN NUMBER	REGN DATE
Bund Series II #14, The	14	PA 127-052	02/02/82
Bund Series II #15, The	15	PA 127-053	02/02/82
Bund Series II #16, The	16	PA 127-054	02/02/82
Bund Series II #17, The	17	PA 127-055	02/02/82
Bund Series II #18, The	18	PA 127-056	02/02/82
Bund Series II #19, The	19	PA 127-057	02/02/82
Bund Series II #2, The	2	PA 127-040	02/02/82
Bund Series II #20, The	20	PA 127-058	02/02/82
Bund Series II #3, The	3	PA 127-041	02/02/82
Bund Series II #4, The	4	PA 127-042	02/02/82
Bund Series II #5, The	5	PA 127-043	02/02/82
Bund Series II #6, The	6	PA 127-044	02/02/82
Bund Series II #7, The	7	PA 127-045	02/02/82
Bund Series II #8, The	8	PA 127-046	02/02/82
Bund Series II #9, The	9	PA 127-047	02/02/82
Can Anybody Help	1,2	PA 207-580	04/24/84
Changing Partners	1,2	PA 280-538	05/08/86
Clones, The	1,2	PA 207-573	04/24/84
Condo, The	1,2	PA 274-338	11/14/86
Demi-Gods & Semi-Devils I, The	1,2	PA 207-574	04/24/84
Demi-Gods & Semi-Devils II, The	1,2	PA 207-575	04/24/84
Detective, The	1,2	PA 260-394	05/09/85
Dharma	1,2	PA 320-528	03/23/87
Discharged Prisoner, The	1,2	PA 334-798	09/24/86

HONG KONG TV VIDEO PROGRAM, INC.
COPYRIGHT REGISTRATION

TITLE	EPISODES	REGN NUMBER	REGN DATE
Dismayed Patriot - Qu Yuan, The	1,2	PA 304-405	09/24/86
Dragon Sword, The	13-20	PA 340-222	08/26/87
Dragon Sword, The	1,2	PA 320-527	03/23/87
Dragon Sword, The	7-12	PA 340-236	08/26/87
Dragon Sword, The	3-6	PA 340-235	08/26/87
Duke of Mount Deer, The	1,2	PA 218-806	08/15/84
Emissary, The	1,2	PA 1780742	07/28/83
Encounter With Fortune	1,2	PA 191-398	12/01/83
Fallen Family, The	1,2	PA 260-391	05/09/85
Fate #1, The	1	PA 127-019	02/02/82
Fate #10, The	10	PA 127-028	02/02/82
Fate #11, The	11	PA 127-029	02/02/82
Fate #12, The	12	PA 127-030	02/02/82
Fate #13, The	13	PA 127-031	02/02/82
Fate #14, The	14	PA 127-032	02/02/82
Fate #15, The	15	PA 127-033	02/02/82
Fate #16, The	16	PA 127-034	02/02/82
Fate #17, The	17	PA 127-035	02/02/82
Fate #18, The	18	PA 127-036	02/02/82
Fate #19, The	19	PA 127-037	02/02/82
Fate #2, The	2	PA 127-020	02/02/82
Fate #20, The	20	PA 127-038	02/02/82
Fate #3, The	3	PA 127-021	02/02/82
Fate #4, The	4	PA 127-022	02/02/82

HONG KONG TV VIDEO PROGRAM, INC.
COPYRIGHT REGISTRATION

TITLE	EPISODES	REGN NUMBER	REGN DATE
Fate #5, The	5	.PA 127-023	02/02/82
Fate #6, The	6	PA 127-024	02/02/82
Fate #7, The	7	PA 127-025	02/02/82
Fate #8, The	8	PA 127-026	02/02/82
Fate #9, The	9	PA 127-027	02/02/82
Father Knows Best	1,2	PA 207-581	04/24/84
Fearless Duo, The	1,2	PA 207-578	04/24/84
Feud of Two Brothers, The	15,16	PA 340-184	08/26/87
Feud of Two Brothers, The	11,12	PA 340-182	08/26/87
Feud of Two Brothers, The	9,10	PA 340-181	08/26/87
Feud of Two Brothers, The	19,20	PA 340-190	08/26/87
Feud of Two Brothers, The	21,22	PA 340-179	08/26/87
Feud of Two Brothers, The	23,24	PA 340-180	08/26/87
Feud of Two Brothers, The	5,6	PA 340-192	08/26/87
Feud of Two Brothers, The	3,4	PA 340-191	08/26/87
Feud of Two Brothers, The	29,30	PA 340-188	08/26/87
Feud of Two Brothers, The	27,28	PA 340-188	08/26/87
Feud of Two Brothers, The	25,26	PA 340-187	08/26/87
Feud of Two Brothers, The	7,8	PA 340-193	08/26/87
Feud of Two Brothers, The	17,18	PA 340-189	08/26/87
Feud of Two Brothers, The	19,20	.PA 340-190	08/26/87
Feud of Two Brothers, The	13,14	PA 340-183	08/26/87
Feud of Two Brothers, The	1,2	PA 297-953	08/01/86
Flying Fox of Snowy Mountain, The	1,2	PA 291-853	02/27/86

HONG KONG TV VIDEO PROGRAM, INC.
COPYRIGHT REGISTRATION

TITLE	EPISODES	REGN NUMBER	REGN DATE
Form 4D	1,2	PA 268-183	12/11/85
Fortune Teller II, The	1,2	PA 191-402	12/01/83
Fortune Teller, The	1,2	PA 178-743	07/28/83
Foundation, The	1,2	PA 207-577	04/24/84
Foundling's Progress, The	1,2	PA 343-305	04/24/87
Friendly Halves II, The	1,2	PA 260-390	05/09/85
Friendly Halves, The	1,2	PA 218-805	08/15/84
Gary's Angel	1,2	PA 207-576	04/24/84
General Father, General Son	9,10	PA 339-589	08/26/87
General Father, General Son	7,8	PA 339-592	08/26/87
General Father, General Son	13,14	PA 339-595	08/26/87
General Father, General Son	5,6	PA 339-591	08/26/87
General Father, General Son	1,2	PA 283-001	04/25/86
General Father, General Son	19,20	PA 339-594	08/26/87
General Father, General Son	15,16	PA 339-596	08/26/87
General Father, General Son	17,18	PA 339-593	08/26/87
General Father, General Son	11,12	PA 339-590	08/26/87
Ghost On the Loose	1,2	PA 191-397	12/01/83
Good Morning Mother-In-Law	1,2	PA 191-401	12/01/83
Good, The Bad and the Ugly, The	1	PA 178-749	07/28/83
Good, the Bad and the Ugly, The	2	PA 178-750	07/28/83
Grand Canal, The	1,2	PA 343-308	04/24/87
Happy Ending	1,2	PA 260-388	05/09/85

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TITLE	EPISODES	REGN NUMBER	REGN DATE
Happy Spirit	1,2	PA 291-851	07/27/86
Heavenly Swordsman & the Spoiled, The	1,2	PA 288-694	04/25/86
Heir To The Throne Is	7,8	PA 340-232	08/26/87
Heir To The Throne Is	11,12	PA 340-230	08/26/87
Heir To The Throne Is	13,14	PA 340-227	08/26/87
Heir To The Throne Is	15,16	PA 340-228	08/26/87
Heir To The Throne Is	19,20	PA 340-234	08/26/87
Heir To The Throne Is	5,6	PA 340-231	08/26/87
Heir To The Throne Is	3,4	PA 340-225	08/26/87
Heir To The Throne Is	9,10	PA 340-229	08/26/87
Heir To The Throne Is	17,18	PA 340-233	08/26/87
Heir to the Throne Is ...	1,2	PA 304-406	09/24/86
Hero Without Tears II	1,2	PA 240-806	12/07/84
It Takes All Kinds	1,2	PA 216-399	07/27/84
It Takes Three	1,2	PA 191-399	12/01/83
It's A Long Way To Home	1,2	PA 240-804	12/07/84
Lamp Lore, The	1,2	PA 288-695	04/25/86
Last Performance, The	1,2	PA 260-384	05/09/85
Least Likely to Succeed, The	1,2	PA 218-807	08/15/84
Legend of Dik Ching	9,10	PA 339-599	08/26/87
Legend of Dik Ching	11,12	PA 339-600	08/26/87
Legend of Dik Ching	13,14	PA 340-211	08/26/87
Legend of Dik Ching	5,6	PA 339-597	08/26/87
Legend of Dik Ching	19,20	PA 340-210	08/26/87

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TITLE	EPISODES	REGN NUMBER	REGN DATE
Legend of Dik Ching	7,8	PA 339-598	08/26/87
Legend of Dik Ching	17,18	PA 340-209	08/26/87
Legend of Dik Ching	3,4	PA 340-269	08/26/87
Legend of Dik Ching	15,16	PA 340-212	08/26/87
Legend of Dik Ching, The	1,2	PA 288-700	04/25/86
Legend of Lady Chung, The	5,6	PA 340-151	08/25/87
Legend of Lady Chung, The	1,2	PA 268-185	12/11/85
Legend of Lady Chung, The	13	PA 340-146	08/25/87
Legend of Lady Chung, The	11,12	PA 340-145	08/25/87
Legend of Lady Chung, The	7,8	PA 340-152	08/25/87
Legend of Lady Chung, The	3,4	PA 340-138	08/26/87
Legend of Lady Chung, The	9,10	PA 340-153	08/25/87
Legend of Master So, The	1,2	PA 178-740	07/28/83
Legend of Wong Tai Sin	13,14	PA 339-475	08/26/87
Legend of Wong Tai Sin	15,16	PA 339-476	08/26/87
Legend of Wong Tai Sin	9,10	PA 339-469	08/26/87
Legend of Wong Tai Sin	7,8	PA 339-472	08/26/87
Legend of Wong Tai Sin	5,6	PA 339-471	08/26/87
Legend of Wong Tai Sin	3,4	PA 339-473	08/26/87
Legend of Wong Tai Sin	17,18	PA 339-474	08/26/87
Legend of Wong Tai Sin	11,12	PA 339-470	08/26/87
Legend of Wong Tai Sin, The	1,2	PA 308-326	11/05/86
Legend of the Condor Heroes II	1,2	PA 186-453	10/12/83
Legend of the Condor Heroes III, The	1,2	PA 186-456	10/12/83

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Legend of the Condor Heroes, The	3,4	PA 340-147	08/25/87
Legend of the Condor Heroes, The	5,6	PA 340-143	08/25/87
Legend of the Condor Heroes, The	7,8	PA 340-139	08/25/87
Legend of the Condor Heroes, The	9,10	PA 340-144	08/25/87
Legend of the Condor Heroes, The	11,12	PA 339-514	08/25/87
Legend of the Condor Heroes, The	1,2	PA 186-454	10/12/83
Legend of the Condor Heroes, The	15,16	PA 339-519	08/25/87
Legend of the Condor Heroes, The	13,14	PA 339-528	08/25/87
Legend of the Condor Heroes, The	17,18	PA 339-513	08/25/87
Legend of the Condor Heroes, The	19	PA 339-512	08/25/87
Legend of the General Who Never Was, The	3,4	PA 340-215	08/26/87
Legend of the General Who Never Was, The	7,8	PA 340-219	08/26/87
Legend of the General Who Never Was, The	17,18	PA 340-216	08/26/87
Legend of the General Who Never Was, The	9,10	PA 340-213	08/26/87
Legend of the General Who Never Was, The	5,6	PA 340-218	08/26/87
Legend of the General Who Never Was, The	19,20	PA 340-217	08/26/87

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Legend of the General Who Never Was, The	1,2	PA 268-178	12/11/85
Legend of the General Who Never Was, The	15,16	PA 340-224	08/26/87
Legend of the General Who Never Was, The	13,14	PA 340-223	08/26/87
Legend of the General Who Never Was, The	11,12	PA 340-214	08/26/87
Legend of the Unknown, The	1,2	PA 178-741	07/28/83
Love Me-Love Me Not	1,2	PA 216-401	07/27/84
Love With Many Phases	1,2	PA 273-470	11/14/86
Love and Passion	1,2	PA 178-744	07/28/83
Lu Siniang - Legend of Ching Lady	1,2	PA 260-385	05/09/85
Master of Shaolin, The	1,2	PA 343-307	04/24/87
Master of Shaolin, The	11-20	PA 330-064	07/13/87
Master of Shaolin, The	3-10	PA 330-065	07/13/87
Memories of Hometown	1,2	PA 210-024	05/16/84
Middle-Age Fancy, The	1,2	PA 268-176	12/11/85
Movie Maze, The	1,2	PA 288-698	04/25/86
Mrs. Husband	1,2	PA 260-395	05/09/85
My Way	1,2	PA 178-745	07/28/83
New Adventures of Chor Lau Keung	37,38	PA 339-524	08/25/87
New Adventures of Chor Lau Keung	39,40	PA 339-525	08/25/87
New Adventures of Chor Lau Keung	31,32	PA 339-530	08/25/87

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New Adventures of Chor Lau Heung	7,8	PA 339-534	08/25/87
New Adventures of Chor Lau Heung	9,10	PA 339-531	08/25/87
New Adventures of Chor Lau Heung	21,22	PA 339-517	08/25/87
New Adventures of Chor Lau Heung	23,24	PA 339-518	08/25/87
New Adventures of Chor Lau Heung	11,12	PA 339-532	08/25/87
New Adventures of Chor Lau Heung	17,18	PA 339-520	08/25/87
New Adventures of Chor Lau Heung	27,28	PA 339-516	08/25/87
New Adventures of Chor Lau Heung	15,16	PA 339-527	08/25/87
New Adventures of Chor Lau Heung	3,4	PA 339-535	08/25/87
New Adventures of Chor Lau Heung	35,36	PA 339-523	08/25/87
New Adventures of Chor Lau Heung	13,14	PA 339-526	08/25/87
New Adventures of Chor Lau Heung	5,6	PA 339-533	08/25/87
New Adventures of Chor Lau Heung	29,30	PA 339-529	08/25/87
New Adventures of Chor Lau Heung	25,26	PA 339-515	08/25/87
New Adventures of Chor Lau Heung	19,20	PA 339-521	08/25/87
New Adventures of Chor Lau Heung	33,34	PA 339-522	08/25/87

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New Adventures of Chor Lau Keung, The	1,2	PA 245-416	01/07/85
New Breed Theatre-On the Rocks	--	PA 186-451	10/12/83
New Breed Theatre-the Beginning of the End	--	PA 186-455	10/12/83
New Heaven Sword & Dragon Sabre, The	35,36	PA 330-061	07/13/87
New Heaven Sword & Dragon Sabre, The	1,2	PA 317-518	03/23/87
New Heaven Sword & Dragon Sabre, The	13,14	PA 339-465	08/26/87
New Heaven Sword & Dragon Sabre, The	5,6	PA 339-481	08/26/87
New Heaven Sword & Dragon Sabre, The	39,40	PA 330-063	07/13/87
New Heaven Sword & Dragon Sabre, The	3,4	PA 339-484	08/26/87
New Heaven Sword & Dragon Sabre, The	15,16	PA 339-466	08/26/87
New Heaven Sword & Dragon Sabre, The	21,22	PA 339-479	08/26/87
New Heaven Sword & Dragon Sabre, The	11,12	PA 339-514	08/25/87
New Heaven Sword & Dragon Sabre, The	9,10	PA 339-463	08/26/87
New Heaven Sword & Dragon Sabre, The	31,32	PA 339-462	08/26/87
New Heaven Sword & Dragon Sabre, The	17,18	PA 339-477	08/26/87
New Heaven Sword & Dragon Sabre, The	27,28	PA 339-467	08/26/87
New Heaven Sword & Dragon Sabre, The	23,24	PA 339-480	08/26/87

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New Heaven Sword & Dragon Sabre, The	19,20	PA 339-478	08/26/87
New Heaven Sword & Dragon Sabre, The	29,30	PA 330-059	07/13/87
New Heaven Sword & Dragon Sabre, The	33,34	PA 330-060	07/13/87
New Heaven Sword & Dragon Sabre, The	7,8	PA 339-482	08/26/87
New Heaven Sword & Dragon Sabre, The	37,38	PA 330-062	07/13/87
New Heaven Sword & Dragon Sabre, The	25,26	PA 339-468	08/26/87
Next Year, Next Kins	1,2	PA 288-696	04/25/86
No Biz Like Show Biz #1	1	PA 126-999	02/02/82
No Biz Like Show Biz #10	10	PA 127-008	02/02/82
No Biz Like Show Biz #2	2	PA 127-000	02/02/82
No Biz Like Show Biz #3	3	PA 127-001	02/02/82
No Biz Like Show Biz #4	4	PA 127-002	02/02/82
No Biz Like Show Biz #5	5	PA 127-003	02/02/82
No Biz Like Show Biz #6	6	PA 127-004	02/02/82
No Biz Like Show Biz #7	7	PA 127-005	02/02/82
No Biz Like Show Biz #8	8	PA 127-006	02/02/82
No Biz Like Show Biz #9	9	PA 127-007	02/02/82
No One Is Innocent #1	1	PA 127-009	02/02/82
No One Is Innocent #10	10	PA 127-018	02/02/82
No One Is Innocent #2	2	PA 127-010	02/02/82
No One Is Innocent #3	3	PA 127-011	02/02/82

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No One Is Innocent #4	4	PA 127-012	02/02/82
No One Is Innocent #5	5	PA 127-013	02/02/82
No One Is Innocent #6	6	PA 127-014	02/02/82
No One Is Innocent #7	7	PA 127-015	02/02/82
No One Is Innocent #8	8	PA 127-016	02/02/82
No One Is Innocent #9	9	PA 127-017	02/02/82
Nocturnal Legends, The	1,2	PA 268-182	12/11/85
Old Maio Myth, The	1,2	PA 186-452	10/12/83
Once Upon An Ordinary Girl	1,2	PA 216-402	07/27/84
Ordeal Before the Revolution, The	1,2	PA 297-956	08/01/86
Ordeal Before the Revolution, The	3,4	PA 339-584	08/26/87
Ordeal Before the Revolution, The	7,8	PA 339-586	08/26/87
Ordeal Before the Revolution, The	9,10	PA 340-270	08/26/87
Ordeal Before the Revolution, The	5,6	PA 339-585	08/26/87
Ordeal Before the Revolution, The	13,14	PA 340-272	08/26/87
Ordeal Before the Revolution, The	17,18	PA 339-587	08/26/87
Ordeal Before the Revolution, The	19,20	PA 339-588	08/26/87
Ordeal Before the Revolution, The	15,16	PA 340-273	08/26/87
Ordeal Before the Revolution, The	11,12	PA 340-271	08/26/87

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Other Side of the Horizon, The	1,2	PA 240-805	12/07/84
Pau Ching Tin, The Law Enforcer	1,2	PA 260-383	05/09/85
Pet and Pest	1,2	PA 297-951	08/01/86
Pitfall, The	1,2	PA 268-181	12/11/85
Pleasure of His Company, The	1,2	PA 186-457	10/12/83
Police Cadet '84	1,2	PA 240-812	12/07/84
Police Cadet '85	1,2	PA 288-697	04/25/86
Possessed, The	1,2	PA 283-002	04/25/86
Prima Donnas of Hong Kong, The	1,2	PA 240-809	12/07/84
Private Eye, The	1,2	PA 191-400	12/01/83
Qiu Jin: A Woman To Remember	1,2	PA 234-443	12/07/84
Radio Tycoon, The	1,2	PA 178-748	07/28/83
Rainbow Round My Shoulder	1,2	PA 216-398	07/27/84
Reincarnated Princess, The	5,6	PA 340-141	08/26/87
Reincarnated Princess, The	7,8	PA 340-142	08/26/87
Reincarnated Princess, The	13, 14	PA 340-150	08/26/87
Reincarnated Princess, The	9,10	PA 305-636	08/26/87
Reincarnated Princess, The	1,2	PA 340-148	08/26/87
Reincarnated Princess, The	1,2	PA 291-852	02/27/86
Reincarnated Princess, The	11,12	PA 340-149	08/26/87
Restless Trio, The	1,2	PA 291-859	02/27/86
Return of Luk Siu Fung, The	21,22	PA 347-299	08/25/87
Return of Luk Siu Fung, The	19,20	PA 347-254	08/25/87
Return of Luk Siu Fung, The	35,36	PA 347-267	08/25/87
Return of Luk Siu Fung, The	23,24	PA 347-300	08/25/87

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Return of Luk Siu Fung, The	37, 38	PA 347-294	08/25/87
Return of Luk Siu Fung, The	17, 18	PA 347-253	08/25/87
Return of Luk Siu Fung, The	25, 26	PA 347-251	08/25/87
Return of Luk Siu Fung, The	15, 16	PA 347-298	08/25/87
Return of Luk Siu Fung, The	13, 14	PA 347-297	08/25/87
Return of Luk Siu Fung, The	29, 30	PA 347-275	08/25/87
Return of Luk Siu Fung, The	11, 12	PA 347-289	08/25/87
Return of Luk Siu Fung, The	27, 28	PA 347-252	08/25/87
Return of Luk Siu Fung, The	9, 10	PA 347-290	08/25/87
Return of Luk Siu Fung, The	7, 8	PA 347-291	08/25/87
Return of Luk Siu Fung, The	5, 6	PA 347-292	08/25/87
Return of Luk Siu Fung, The	39, 40	PA 347-295	08/25/87
Return of Luk Siu Fung, The	1-4	PA 347-288	08/25/87
Return of Luk Siu Fung, The	33, 34	PA 347-266	08/25/87
Return of Luk Siu Fung, The	31, 32	PA 347-276	08/25/87
Return of Luk Siu Fung, The	1, 2	PA 297-954	08/01/86
Return of Mischievous Lots, The	1, 2	PA 207-579	04/24/84
Return of Wong Fei Hung, The	1, 2	PA 240-811	12/07/84
Return of the Condor Heroes, The	1, 2	PA 191-403	12/01/83
Rise and Fall of a Stand-In, The	1, 2	PA 240-815	12/07/84
Road To Success	1, 2	PA 240-803	12/07/84
Rough Ride, The	1, 2	PA 268-184	12/11/85
S.I.B. Files, The	1, 2	PA 343-306	04/24/87

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Sacred Commandment, The	1,2	PA 240-810	12/07/84
Sandwiches	1,2	PA 273-469	11/14/86
Seekers #1	1	PA 127-119	02/02/82
Seekers #10	10	PA 127-128	02/02/82
Seekers #11	11	PA 127-129	02/02/82
Seekers #12	12	PA 127-130	02/02/82
Seekers #13	13	PA 127-131	02/02/82
Seekers #14	14	PA 127-132	02/02/82
Seekers #15	15	PA 127-133	02/02/82
Seekers #16	16	PA 127-134	02/02/82
Seekers #17	17	PA 127-135	02/02/82
Seekers #18	18	PA 127-136	02/02/82
Seekers #19	19	PA 127-137	02/02/82
Seekers #2	2	PA 127-120	02/02/82
Seekers #20	20	PA 127-138	02/02/82
Seekers #3	3	PA 127-121	02/02/82
Seekers #4	4	PA 127-122	02/02/82
Seekers #5	5	PA 127-123	02/02/82
Seekers #6	6	PA 127-124	02/02/82
Seekers #7	7	PA 127-125	02/02/82
Seekers #8	8	PA 127-126	02/02/82
Seekers #9	9	PA 127-127	02/02/82
Shell Game II #1, The	1	PA 127-079	02/02/82
Shell Game II #10, The	10	PA 127-088	02/02/82

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Shell Game II #11, The	11	PA 127-089	02/02/82
Shell Game II #12, The	12	PA 127-090	02/02/82
Shell Game II #13, The	13	PA 127-091	02/02/82
Shell Game II #14, The	14	PA 127-092	02/02/82
Shell Game II #15, The	15	PA 127-093	02/02/82
Shell Game II #16, The	16	PA 127-094	02/02/82
Shell Game II #17, The	17	PA 127-095	02/02/82
Shell Game II #18, The	18	PA 127-096	02/02/82
Shell Game II #19, The	19	PA 127-097	02/02/82
Shell Game II #2, The	2	PA 127-080	02/02/82
Shell Game II #20, The	20	PA 127-098	02/02/82
Shell Game II #3, The	3	PA 127-081	02/02/82
Shell Game II #4, The	4	PA 127-082	02/02/82
Shell Game II #5, The	5	PA 127-083	02/02/82
Shell Game II #6, The	6	PA 127-084	02/02/82
Shell Game II #7, The	7	PA 127-085	02/02/82
Shell Game II #8, The	8	PA 127-086	02/02/82
Shell Game II #9, The	9	PA 127-087	02/02/82
Siblings of Vice & Virtue	1,2	PA 297-955	08/01/86
Smiling Proud Wanderer, The	1,2	PA 210-023	05/16/84
Soldier of Fortune	1,2	PA 178-746	07/28/83
Strange Couple, The	1,2	PA 275-924	10/23/85
Summer Kisses Winter Tears	1,2	PA 260-389	05/09/85
Summer of '61 #1	1	PA 127-139	02/02/82

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Summer of '61 #10	10	PA 127-148	02/02/82
Summer of '61 #11	11	PA 127-149	02/02/82
Summer of '61 #12	12	PA 127-150	02/02/82
Summer of '61 #13	13	PA 127-151	02/02/82
Summer of '61 #14	14	PA 127-152	02/02/82
Summer of '61 #15	15	PA 127-153	02/02/82
Summer of '61 #16	16	PA 127-154	02/02/82
Summer of '61 #17	17	PA 127-155	02/02/82
Summer of '61 #18	18	PA 127-156	02/02/82
Summer of '61 #19	19	PA 127-157	02/02/82
Summer of '61 #2	2	PA 127-140	02/02/82
Summer of '61 #20	20	PA 127-158	02/02/82
Summer of '61 #3	3	PA 127-141	02/02/82
Summer of '61 #4	4	PA 127-142	02/02/82
Summer of '61 #5	5	PA 127-143	02/02/82
Summer of '61 #6	6	PA 127-144	02/02/82
Summer of '61 #7	7	PA 127-145	02/02/82
Summer of '61 #8	8	PA 127-146	02/02/82
Summer of '61 #9	9	PA 127-147	02/02/82
Superlative Affections, The	1,2	PA 303-836	09/24/86
Sword Stained With Blood, The	1,2	PA 262-111	09/10/85
Take Care Your Highness	1,2	PA 291-857	02/27/86
Temptation, The	1,2	PA 260-392	05/09/85
To Each Its Own	1,2	PA 260-387	05/09/85

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Turbulent Decade, The	1,2	PA 308-335	11/05/86
Turn Around and Die	11,12	PA 347-272	08/26/87
Turn Around and Die	3,4	PA 347-293	08/26/87
Turn Around and Die	7,8	PA 347-260	08/26/87
Turn Around and Die	5,6	PA 347-259	08/26/87
Turn Around and Die	13,14	PA 347-296	08/26/87
Turn Around and Die	9,10	PA 347-271	08/26/87
Turn Around and Die	1,2	PA 308-319	11/05/86
Twin Heirs, The	1,2	PA 304-368	09/24/86
Two More Heroes	1,2	PA 191-396	12/01/83
Under The Sun	1,2	PA 268-180	12/11/85
United We Stand	1,2	PA 216-400	07/27/84
Unyielding Master Lim, The	1,2	PA 297-952	08/01/86
Upheaval, The	1,2	PA 304-407	09/24/86
Upstart of the Self-Made Man, The	1,2	PA 320-529	03/23/87
Wacky Wife, The	1,2	PA 343-309	04/24/87
When Silken Hands Get Rough	1,2	PA 320-531	03/23/87
Wild Bunch, The	1,2	PA 306-525	10/23/86
Woman on the Beat	1,2	PA 186-450	10/12/83
Yang's Saga	5,6	PA 340-220	08/25/87
Yang's Saga	3,4	PA 340-221	08/25/87
Yangs' Saga, The	1,2	PA 288-693	04/25/86
Yesterday's Glitter	1,2	PA 240-814	12/07/84
Young Detective, The	1,2	PA 210-022	05/16/84

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Young Hearts High Hopes	1,2	PA 304-367	09/24/86
Young Heroes #1, The	1	PA 129-059	02/02/82
Young Heroes #10, The	10	PA 127-069	02/02/82
Young Heroes #11, The	11	PA 127-070	02/02/82
Young Heroes #12, The	12	PA 127-071	02/02/82
Young Heroes #13, The	13	PA 127-072	02/02/82
Young Heroes #14, The	14	PA 127-073	02/02/82
Young Heroes #15, The	15	PA 127-074	02/02/82
Young Heroes #16, The	16	PA 127-075	02/02/82
Young Heroes #17, The	17	PA 127-076	02/02/82
Young Heroes #18, The	18	PA 127-077	02/02/82
Young Heroes #19, The	19	PA 127-078	02/02/82
Young Heroes #2, The	2	PA 127-061	02/02/82
Young Heroes #20, The	20	PA 127-060	02/02/82
Young Heroes #3, The	3	PA 127-062	02/02/82
Young Heroes #4, The	4	PA 127-063	02/02/82
Young Heroes #5, The	5	PA 127-064	02/02/82
Young Heroes #6, The	6	PA 127-065	02/02/82
Young Heroes #7, The	7	PA 127-066	02/02/82
Young Heroes #8, The	8	PA 127-067	02/02/82
Young Heroes #9, The	9	PA 127-068	02/02/82
Young Wanderer, The	1,2	PA 260-386	05/09/85
Young's Female Warrior #1	1	PA 127-159	02/02/82
Young's Female Warrior #10	10	PA 127-168	02/02/82

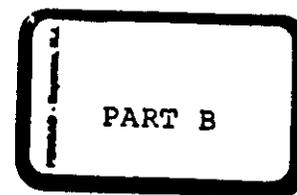
HONG KONG TV VIDEO PROGRAM, INC.
COPYRIGHT REGISTRATION

TITLE	EPISODES	REGN NUMBER	REGN DATE
Young's Female Warrior #11	11	PA 127-169	02/02/82
Young's Female Warrior #12	12	PA 127-170	02/02/82
Young's Female Warrior #13	13	PA 127-171	02/02/82
Young's Female Warrior #14	14	PA 127-172	02/02/82
Young's Female Warrior #15	15	PA 127-173	02/02/82
Young's Female Warrior #16	16	PA 127-174	02/02/82
Young's Female Warrior #17	17	PA 127-175	02/02/82
Young's Female Warrior #18	18	PA 127-176	02/02/82
Young's Female Warrior #19	19	PA 127-177	02/02/82
Young's Female Warrior #2	2	PA 127-160	02/02/82
Young's Female Warrior #20	20	PA 127-178	02/02/82
Young's Female Warrior #21	21	PA 127-179	02/02/82
Young's Female Warrior #22	22	PA 127-180	02/02/82
Young's Female Warrior #23	23	PA 127-181	02/02/82
Young's Female Warrior #24	24	PA 127-182	02/02/82
Young's Female Warrior #25	25	PA 127-183	02/02/82
Young's Female Warrior #26	26	PA 127-184	02/02/82
Young's Female Warrior #27	27	PA 127-185	02/02/82
Young's Female Warrior #28	28	PA 127-186	02/02/82
Young's Female Warrior #29	29	PA 127-187	02/02/82
Young's Female Warrior #3	3	PA 127-161	02/02/82
Young's Female Warrior #30	30	PA 127-188	02/02/82
Young's Female Warrior #4	4	PA 127-162	02/02/82
Young's Female Warrior #5	5	PA 127-163	02/02/82

HONG KONG TV VIDEO PROGRAM, INC.
COPYRIGHT REGISTRATION

TITLE	EPISODES	REGN NUMBER	REGN DATE
Young's Female Warrior #6	6	PA 127-164	02/02/82
Young's Female Warrior #7	7	PA 127-165	02/02/82
Young's Female Warrior #8	8	PA 127-166	02/02/82
Young's Female Warrior #9	9	PA 127-167	02/02/82

HONG KONG TV VIDEO PROGRAM, INC.
AWAITING COPYRIGHT REGISTRATION



TITLE	EPISODES	PENDING DATE
Beastly Beings	1-10	01/08/88
Born To Be A King	1-18	03/11/88
Conspiracy, The	1-18	01/08/88
Curtain Rises, The	1-20	03/11/88
Destined to Rebel	1-18	04/27/88
Fate Takes A Hand	1-18	01/08/88
Feud That Never Was, The	1,2	11/12/85
Formidable Lady From Shaolin, The	1-20	01/08/88
Genghis Khan	1-10	01/08/88
Greenhorns, The	1-18	01/08/88
Keung Sze Kay Bing	1-20	04/27/88
Kwong Loong	1-20	01/08/88
Legend of the Book and the Sword, The	1-28	03/11/88
Love in a Decadent City	1-20	01/08/88
Making of a Gentleman, The	1-20	03/11/88
Match-Making Game, The	1,2	03/19/87
Operation Sharkhunt	1-18	01/08/88
Police Cadet 1988	1-40	03/11/88
Price of Growing Up, The	1-59	01/08/88
Rise of a Kung Fu Master, The	1-20	01/08/88
Tin Long Kip	1-20	03/11/88
Torn Between, The	1-18	01/08/88
Withered in the Wind	1-27	04/27/88

HONG KONG TV VIDEO PROGRAM, INC.
AWAITING COPYRIGHT REGISTRATION

TITLE	EPISODES	PENDING DATE
Yi Pok Wan Tin	1-20	01/08/88
Young Beat	1-12	01/08/88
Zheng Cheng Gong	1-24	01/08/88



Nº 1488219

THE UNITED STATES OF AMERICA

CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

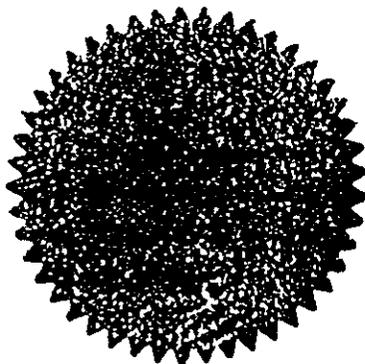
And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER

To the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this seventeenth day of May, 1988.

Commissioner of Patents and Trademarks

EXHIBIT 2

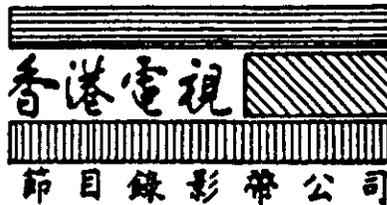
Int. Cl.: 9

Prior U.S. Cl.: 21

United States Patent and Trademark Office

Reg. No. 1,488,219
Registered May 17, 1988

TRADEMARK
PRINCIPAL REGISTER



HONG KONG TV VIDEO PROGRAM, INC.
(CALIFORNIA CORPORATION)
1177 POLK STREET
SAN FRANCISCO, CA 94109

FOR: PRE-RECORDED VIDEO CASSETTE
TAPES, IN CLASS 9 (U.S. CL. 21).

FIRST USE 11-0-1981; IN COMMERCE
11-0-1981.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE THE CHINESE CHARACTERS,
APART FROM THE MARK AS SHOWN.

THE DRAWING IS LINED FOR THE
COLORS BLUE, GREEN AND RED. THE
COLORS ARE CLAIMED AS A FEATURE OF
THE MARK.

THE ENGLISH TRANSLATION OF THE
FOREIGN CHARACTERS IN THE MARK IS
"HONG KONG T.V. VIDEO PROGRAM, INC."

SER. NO. 643,287, FILED 3-23-1987.

J. TINGLEY, EXAMINING ATTORNEY



Nº 1343342

THE UNITED STATES OF AMERICA

CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

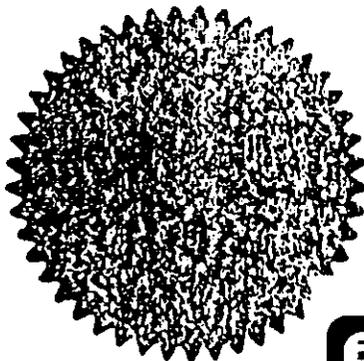
And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

PRINCIPAL REGISTER

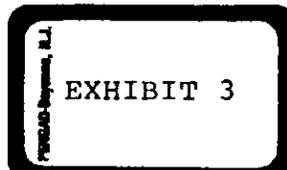
to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this eighteenth day of June, 1985.

Acting Commissioner of Patents and Trademarks



Int. Cl.: 38

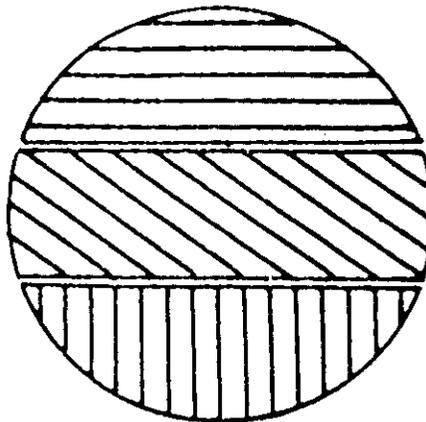
Prior U.S. Cl.: 104

United States Patent and Trademark Office

Reg. No. 1,343,342

Registered June 18, 1985

SERVICE MARK
PRINCIPAL REGISTER



TELEVISION BROADCASTS LIMITED (HONG
KONG COMPANY)
77 BROADCAST DRIVE
KOWLOON, HONG KONG

FOR: TELEVISION BROADCASTING SERV-
ICES, IN CLASS 38 (U.S. CL. 104).

FIRST USE 0-0-1976; IN COMMERCE
0-0-1978.

THE DRAWING IS LINED FOR THE
COLORS BLUE, GREEN AND RED.

SER. NO. 475,141, FILED 4-12-1984.

G. MAYERSCHOFF, EXAMINING ATTORNEY

DUNLAP, CODDING & PETERSON

ATTORNEYS AT LAW

9400 NORTH BROADWAY, SUITE 420

OKLAHOMA CITY, OKLAHOMA 73114

JERRY J. DUNLAP, INC.
CHARLES A. CODDING
GARY PETERSON
MARY M. LEE
CAROLYN D. MOON

TELEPHONE
(405) 478-5344
TELEFAX
(405) 478-5349

December 30, 1988

RECEIVED

JAN 3 1989

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

Jack C. Silver
Clerk of the Court
United States District Court
Northern District of Oklahoma
3600 U.S. Courthouse
Tulsa, Oklahoma 74103

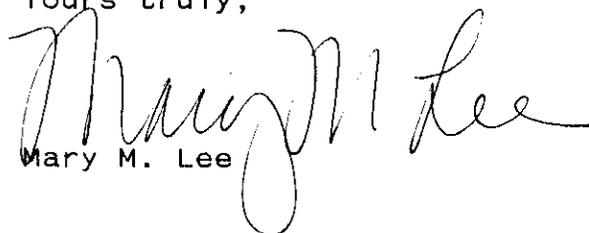
Re: Hong Kong TV Video Program, Inc.
v. Ut Le and Loi Thi Van, individuals
d/b/a Nam Hai Market
Case No. C-88-646-C

Dear Mr. Silver

Enclosed please find the original and four copies of a Consent Judgment and the original and four copies of an Agreed Order exonerating bond. Would you please submit the originals of each of these to Judge Cook for his signature, and then file them of record. Would you please certify the four copies of the Consent Judgment and return these copies along with the file-stamped copies of the agreed order to me by return mail. I have enclosed a stamped, self-addressed envelope for this purpose.

If you have any questions, please feel free to contact me.

Yours truly,


Mary M. Lee

MML/jb
Enclosures

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

FILED

JAN -5 1988

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

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION in its capacity as receiver for VICTOR SAVINGS AND LOAN ASSOCIATION, a federally chartered savings and loan association,

Plaintiff,

vs.

EDMOND INN'S INC.; A. J. DIGERONIMO; FRANCES E. DIGERONIMO; JOHN F. CANTRELL; COUNTY TREASURER, TULSA COUNTY; and BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY, OKLAHOMA,

Defendants.

No. 88-C-1067-B

ORDER

This matter comes before the Court upon Plaintiff Federal Savings and Loan Insurance Corporation's ("FSLIC") Motion to Dismiss Defendants' Counterclaims for lack of subject matter jurisdiction. The FSLIC claims that federal law and regulations require the Defendants to pursue its counterclaims through an administrative process established by the Federal Home Loan Bank Board ("Bank Board").

Defendants executed several promissory notes, mortgages, and personal guaranties to Victor Savings and Loan for the purchase or construction of office condominiums.¹ Upon Defendants' default, Victor initiated several suits in Tulsa County District Court to foreclose the mortgages. Defendants asserted three counterclaims

¹One of the promissory notes in question was executed to Pioneer Savings and Loan. Pioneer subsequently sold the note to Victor Savings and Loan.

in the state court suits. Defendants alleged that Victor violated the Home Owner's Loan Act of 1933, 12 U.S.C. §1464(q), breached its duty of good faith and fair dealing, and violated the Equal Credit and Opportunity Act, 15 U.S.C. §1691. On July 28, 1988, FSLIC was appointed receiver of Victor Savings and Loan and subsequently removed the cases to this Court pursuant to 12 U.S.C. §1730(k)(1)(C). FSLIC now moves this Court to dismiss Defendants' Counterclaims for lack of subject matter jurisdiction. For the reasons stated herein, the Plaintiff's Motion to Dismiss Defendants' Counterclaims is sustained.

The FSLIC's assertion of adjudicatory power rests first on 12 U.S.C. §1464(d)(6)(C), which states:

"Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver, or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a conservator or receiver."

The FSLIC asserts that judicial adjudication of creditors' claims would restrain or affect the exercise of its receivership powers in violation of the statute. The FSLIC relies upon North Mississippi Savings and Loan Association v. Hudspeth, 756 F.2d 1096 (5th Cir. 1985), which held that no court can adjudicate or enforce any rights against the receiver or its assets, or delay or otherwise affect any allocation or distribution of receivership assets in satisfaction of a claim. The court reasoned that "resolution of even the facial merits of claims outside the statutory reorganization process would delay the receivership

function of distribution of assets..." Given the overriding Congressional purpose of expediting the FSLIC's task as receiver, such a delay is a restraint within the scope of the statute. Hudspeth at 1102.

Several courts have construed the §1464 statute provisions to require the dismissal for lack of subject matter jurisdiction of any claims asserted by any party against the closed association, the receiver, or the receivership assets. See, Lyons Savings and Loan Association v. Westside Bancorporation, Inc., 828 F.2d 387 (7th Cir. 1987), *affirming* 636 F.Supp. 576 (N.D.Ill. 1986); First Financial Savings and Loan Association of El Dorado v. FSLIC, 651 F.Supp. 1289 (E.D. Ark. 1987); Kohlbeck v. Kis, 651 F.Supp. 1233 (D.Mont. 1987); Sunrise Savings and Loan Association v. LIR Development Co., 641 F.Supp. 744 (S.D. Fla. 1986).

The FSLIC also relies upon 12 U.S.C. §1729(d), which states:

"In connection with the liquidation of insured institutions in default, [FSLIC] shall have the power to carry on the business of and to collect all obligations to the insured institutions, to settle, compromise, or release claims in favor of or against the insured institutions, and to do all other things necessary in connection therewith, subject only to the regulation of the court or other public authority having jurisdiction over this matter."

FSLIC argues this provision demonstrates Congress' intent that the FSLIC have plenary power in connection with the liquidation of insolvent institutions. See also, §1729(a) (grant of authority to facilitate the liquidation of insured institutions), §1729 (b)(1)

(A)(v) (FSLIC authorized to liquidate assets in an orderly manner), §1729(c)(3)(B) (authority to liquidate granted). Defendants, however, rely upon the alternative construction of §1464 as held by the Ninth Circuit in Morrison-Knudson Co. v. CHG International, Inc., 811 F.2d 1209 (9th Cir. 1987). The Morrison-Knudson court held that a receiver's ordinary functions do not include adjudication. Common law receivers have never in ordinary practice had the power to adjudicate claims; that power remains vested in the courts. Id. at 1219. After a review of FSLIC's statutes and legislative history, the Ninth Circuit found that it was unable to locate a single explicit indication that Congress intended or expected the FSLIC to adjudicate claims as part of its receivership functions. Id.

The Ninth Circuit's holding in Morrison-Knudson seems to stand alone in its interpretation of §1464. Several courts have taken the posture of the Fifth Circuit's holding in Hudspeth, including the District Court for the Northern District of Florida.

"The primary purpose of this entire statutory scheme was to protect the average depositor from financial ruin resulting from the failure of a savings institution. This purpose would be defeated by the denial of even one valid depositor claim. This legislation was not designed to protect creditors.... Under Hudspeth, all claims of Fairfax are switched to the administrative process by §1464(d)(6)(C). Fairfax can challenge the FSLIC's actions before the FHLBB and, if dissatisfied, can seek judicial review under the Administrative Procedure Act. Until such time, the statute prevents Fairfax from going forward in any court before seeking review before the FHLBB.

"This Court concludes that 12 U.S.C. §1464,

§1729 (d), preclude courts from adjudicating creditor claims and thus dismissal due to lack of subject matter jurisdiction."

FSLIC v. Urquhardt, No. 86-04294 (N.D.Fla. April 7, 1987). *See also*, FSLIC v. Oldenburg, No 85-C-1481W (D.Utah April 18, 1987); Acquisition Corp. of America v. Sunrise Savings and Loan Association, No. 86-2144-CIV (S.D.Fla. April 14, 1987); Home Savings and Loan Association v. Southwood Partnership, No. 87-C-276-B (N.D. Okla. Aug. 12, 1987); Mortgage Clearing Corporation v. Territory Savings and Loan Association, 88-C-157-B (N.D. Okla. April 26, 1988). The great weight of authority leads to the conclusion that this Court has no power to affect the receiver's functions, as would the adjudication of the present claims.

Finally, Defendants argue that its counterclaims should be characterized as affirmative defenses and litigated before this Court. Allowing the counterclaims to be characterized as affirmative defenses would be a facade because Defendants' counterclaims seeks monetary relief and treble damages. It would be inappropriate for this Court to entertain a claim for monetary damages, whether asserted as a counterclaim or as an affirmative defense, because it would delay the receivership function and give priority to Defendants' claims.

"... resolution of even the facial merits of claims outside of the statutory reorganization process would delay the receivership function of distribution of assets: the FSLIC would not be able to determine how much to pay other claimants until the termination of the parallel litigation. Given the overriding Congressional purpose of expediting and facilitating the FSLIC's task as receiver, such a delay is a

'restraint' within the scope of [12 U.S.C. §1464(d)(6)(C)]."

Hudspeth at 1102. Allowing this Court to determine the amount of "affirmative" relief to which the Defendants may be entitled would undermine and unnecessarily delay the administrative process. The Defendants' claims for affirmative relief should be presented to the Bank Board for orderly determination because one of the precepts for administrative action is to allow the agencies to exercise their specialized expertise. McKart v. United States, 395 U.S. 185, 194 (1969). If Defendants are dissatisfied with the administrative adjudication, they may appeal the determination pursuant to the Administrative Procedure Act. Until Defendants' administrative remedies have been exhausted, however, they are committed to the agency process.

It is therefore ORDERED that Defendants' Counterclaims be dismissed for lack of subject matter jurisdiction.

IT IS SO ORDERED, this 5TH day of January, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

JAN 5 1989

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

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

PRUDENTIAL INSURANCE COMPANY)
OF AMERICA,)

Plaintiff,)

vs.)

SAMSON RESOURCES COMPANY,)

Defendant.)

No. 88-C-188-E

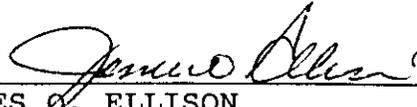
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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 5th day of January, 1989.



JAMES G. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED
JAN 4 1989
U.S. District Court
Northern District of Oklahoma

JAMES R. STUNKARD and
STUNKARD-PARKER PRODUCTIONS,
INC.,

Plaintiffs,

vs.

No. 87-C-67-C

ROLAND MARTIN ENTERPRISES,
INC.; ROLAND MARTIN; and
VIDEO SOUTH, INC.,

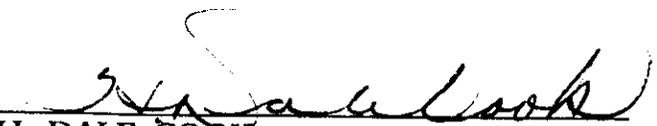
Defendants.

JUDGMENT

This matter came before the Court for consideration of defendants' motion for summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered for defendants, Roland Martin Enterprises, Inc.; Roland Martin; and Video South, Inc., over and against the plaintiffs, James R. Stunkard and Stunkard-Parker Productions, Inc., on all claims raised in plaintiffs' complaint.

IT IS SO ORDERED this 3rd day of January, 1989.


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

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

D. B. WILKERSON, JR.,)
an individual, and TINK)
WILKERSON LEASING, INC., an)
Oklahoma corporation,)
)
Plaintiffs,)
)
vs.)
)
VICTOR SAVINGS AND LOAN)
ASSOCIATION, a federal savings)
and loan association, successor)
in interest to Victor Federal)
Savings and Loan Association;)
and the FEDERAL HOME LOAN BANK)
OF TOPEKA, a federal home loan)
bank,)
)
)
Defendants.)

JAN 4 1989
Jack C. Silver, Clerk
U. S. DISTRICT COURT

✓
No. 87-C-531-B

ORDER

This matter comes before the Court on the Motion to Dismiss of Defendant, the Federal Savings and Loan Insurance Corporation (FSLIC) as receiver for Victor Savings and Loan Association ("Victor"). FSLIC contends this Court lacks subject matter jurisdiction over Plaintiffs D. B. Wilkerson, Jr. and Tink Wilkerson Leasing, Inc.'s claims against the FSLIC and also lacks jurisdiction to hear Plaintiffs' defenses raised against the FSLIC's counterclaim. Victor Savings and Loan Association has been in federal receivership since July 28, 1988.

Plaintiffs filed a complaint alleging Victor Savings and Loan Association violated anti-tying provisions of the Homeowners Loan Act of 1933, 12 U.S.C. §1464(q) by requiring the purchase of Tulsa duplexes for various loans. Plaintiffs contend they are entitled

to rescind the purchase and cancel all notes and obligations concerning the duplex.

Victor filed an answer and counterclaim seeking to enforce the notes, mortgage and guaranty agreement. Victor subsequently went into receivership.

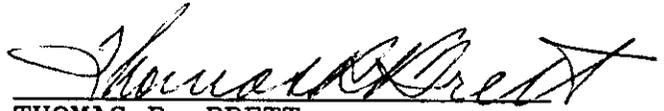
This Court has previously held, consistent with North Mississippi Savings and Loan v. Hudspeth, 756 F.2d 1056 (5th Cir. 1985), that this Court has no power to affect the functions of the receiver and the FSLIC is subject to the regulation of the Federal Home Loan Bank Board (FHLBB). Home Savings and 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).

Therefore, Plaintiffs' claims against FSLIC are dismissed for lack of subject matter jurisdiction.

FSLIC intends to proceed in this Court on its counterclaim. However, Plaintiffs' defenses to the counterclaim are similar if not identical to its claim against the FSLIC this Court is currently dismissing. Since many of the defenses, it is conceded by FSLIC, go to the validity of the loan agreements and it is disputed that the other defenses also go to the validity, this Court orders the claims of the FSLIC held in abeyance until the

administrative procedures have been concluded before the FHLBB. This will avoid inconsistent results. The previous trial scheduling is rendered moot. The matter is set for a scheduling conference on April 13, 1989, at 2:30 p.m.

IT IS SO ORDERED this 4th day of January, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JACOB FOOTE, by his natural)
parents and next friends,)
Randy and Jane Foote,)

Plaintiffs,)

vs.)

Case No. 88-C-451-C ✓

WESTINGHOUSE ELECTRIC)
CORPORATION AND SEARS,)
ROEBUCK AND CO.,)

Defendants.)

FILED

JAN 4 1989

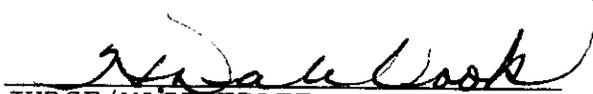
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

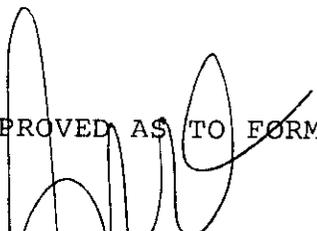
Now on this 4 day of January, 198⁸⁹~~88~~, the above captioned cause comes on for hearing upon Defendant's application for hearing this matter for approval of settlement involving a minor; the Plaintiff, Jacob Foote appears with his parents and by his attorney, Charney, Rothman & Charney; the Defendant, Sears, Roebuck and Company appears by its attorney, Dennis J. Downing; Westinghouse Electric Corporation appears by its attorney, Conner & Winters, by Amy Kempfert and the parties waive trial by jury and agree that this matter may be heard before a Judge/Magistrate and the evidence being presented, the Court finds that a verdict should be rendered in favor of the

Plaintiff and against the Defendants, jointly, in the amount of \$30,000.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that a judgment be rendered for the Plaintiff in the amount of \$30,000.00, which shall include prejudgment interest and court costs.


JUDGE/MAGISTRATE
United States District Court

APPROVED AS TO FORM:



JOHN D. ROTHMAN
Attorney for Plaintiff



AMY KEMPFERT
Attorney for Defendant
Westinghouse Electric
Corporation



DENNIS J. DOWNING
Attorney for Defendant
Sears, Roebuck and
Company

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

TULSA COMMERCE BANCSHARES, §
INC., SHERIDAN BANCSHARES, §
INC., COMMERCIAL BANK §
SERVICES, INC., LEE I. §
LEVINSON, an individual, §
RICHARD A. SELLERS, JR., §
an individual, and RAYMOND §
L. BAGWELL, an individual, §

Plaintiffs, §

vs. §

MBANK DALLAS, NATIONAL §
ASSOCIATION, MCorp, MICHAEL §
HUNTER, and JAMES GARDNER, §

Defendants. §

CIVIL ACTION NO.
87-C-467-C

FILED

JAN 4 1989

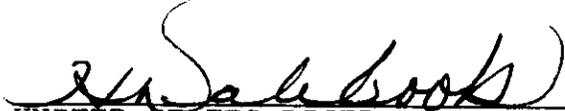
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

Came on to be heard the parties' joint motion to dis-
miss the above cause, and the Court, having been advised by
the parties that they have settled those disputes existing
between them, is of the opinion that the parties' motion
should be granted. Accordingly, it is hereby

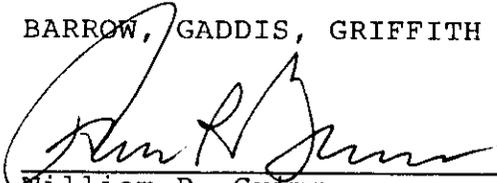
ORDERED that all of plaintiffs' claims in this cause be
and the same are dismissed with prejudice to the refileing of
same and that defendant MBank's counterclaim be and the same
is dismissed without prejudice. Costs of court are taxed
against the party incurring same.

SIGNED this 31 day of December, 1988.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

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an Individual

BAKER & BOTTS



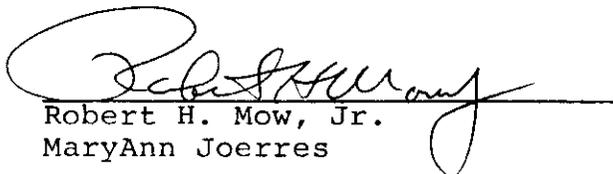
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Attorneys for Defendant,
MCORP

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

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

CIVIL ACTION NO.
88 C 601 C

v.

FITZGERALD, DEARMAN & ROBERTS, INC.,
WALTON FREDERICK CARLISLE, and
LYLE THOMAS BACHMAN,
Defendants.

FILED

JAN 4 1989

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

ORDER OF PERMANENT INJUNCTION

Plaintiff, SECURITIES AND EXCHANGE COMMISSION ("COMMISSION"), having filed its Complaint for Permanent Injunction herein, defendants FITZGERALD, DeARMAN & ROBERTS, INC., WALTON FREDERICK CARLISLE and LYLE THOMAS BACHMAN having acknowledged in their Stipulations and Consents filed herein, receipt of the Complaint filed in this matter; having waived service of the Summons and Complaint, having admitted the in personam jurisdiction of this Court, and the jurisdiction of this Court over the subject matter of this action; having acknowledged that they are represented by counsel who has entered a general appearance; having waived the entry of Findings of Fact and Conclusions of Law under Rule 52 of the Federal Rules of Civil Procedure with respect to the entry of this Order of Permanent Injunction; having agreed, for purposes of this action only, without admitting or denying any of the allegations of the COMMISSION's

Complaint, except as set forth herein, to the entry of this Order; there having been no trial in this matter, and, in view of the parties' agreement, none is necessary; it appearing that this Court has jurisdiction over the parties and subject matter of this action; it appearing that no further notice of hearing for the entry of this Order need be given; the Court being fully advised in the premises, and no just reason for delay appearing:

I.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that defendant FITZGERALD, DeARMAN & ROBERTS, INC., its agents, servants, employees, attorneys and all persons in active concert or participation with it who receive actual notice of the Order by personal service or otherwise, are permanently enjoined and restrained from, directly or indirectly, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, banker's acceptances, or commercial bills), in connection with which it engages in fraudulent, deceptive or manipulative acts and practices by commingling customers' funds and securities with funds and securities of other customers and non-customers, and hypothecating the common pool of such funds and securities to secure and collateralize loans made to it, absent written consent with such customers or without establishing procedures or making agreements to preserve and protect the amount of such customers'

funds and securities which exceed the aggregate indebtedness owed by such customers to it, in violation of Section 15(c)(2) of the Exchange Act [15 U.S.C. 78o(c)(2)] and Rule 15c2-1 [17 C.F.R. 240.15c2-1] promulgated thereunder. Further, WALTON FREDERICK CARLISLE and LYLE THOMAS BACHMAN are permanently enjoined and restrained from, directly or indirectly, aiding and abetting any broker or dealer in violation of such provision.

II.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that defendant FITZGERALD, DeARMAN & ROBERTS, INC., its agents, servants, employees, attorneys and all persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from, directly or indirectly, making use of any means or instrumentalities of interstate commerce, or of the mails, directly or indirectly, to effect transactions in, or to induce or attempt to induce the purchase or sale of any security (other than an exempted security, or commercial paper, bankers' acceptances or commercial bills) while, and at a time when, its capital is less than the amount required by Exchange Act Rule 15c3-1 [17 C.F.R. 240.15c3-1]. Further, WALTON FREDERICK CARLISLE and LYLE THOMAS BACHMAN are permanently enjoined and restrained from, directly or indirectly, aiding and abetting any broker or dealer in violations of such provision.

III.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that defendant FITZGERALD, DeARMAN & ROBERTS, INC., its agents, servants, employees, attorneys and all persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from making use of any means or instrumentality of interstate commerce, or of the mails, directly or indirectly, to effect transactions in, or induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills), while it carries customers' free credit balances and fails and neglects to maintain in a Customer Reserve Account or Accounts, through deposits made therein, cash or qualified securities in the amount required by Exchange Act 15c3-3 [17 C.F.R. 240.15c3-3]. Further, WALTON FREDERICK CARLISLE and LYLE THOMAS BACHMAN are permanently enjoined or restrained from, directly or indirectly, aiding or abetting any broker or dealer in violations of such provision.

V.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that this Court shall retain jurisdiction of this action in order to implement and carry out the terms of all Orders and Decrees that may be entered herein.

VI.

This Order shall be binding on defendants FITZGERALD, DeARMAN & ROBERTS, INC., WALTER FREDERICK CARLISLE and LYLE THOMAS BACHMAN and upon those persons in active concert or participation with them who receive actual notice of the Order, a copy of which may be served in person, by mail or by any officer of the COMMISSION.

VII.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Order of Permanent Injunction pursuant to Rule 54 of the Federal Rules of Civil Procedure.

ENTERED this 11 day of Jan, 1988.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

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

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

CIVIL ACTION NO.
88 C 601 C

v.

FITZGERALD, DeARMAN & ROBERTS, INC.,
WALTON FREDERICK CARLISLE, and
LYLE THOMAS BACHMAN,
Defendants.

FILED

JAN 4 1989

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

ORDER OF PERMANENT INJUNCTION

Plaintiff, SECURITIES AND EXCHANGE COMMISSION ("COMMISSION"), having filed its Amended Complaint for Permanent Injunction herein, defendants WALTON FREDERICK CARLISLE ("CARLISLE") and LYLE THOMAS BACHMAN ("BACHMAN") having acknowledged in their Stipulations and Consents filed herein, receipt of the Amended Complaint filed in this matter; having waived service of the Summons and Amended Complaint, having admitted the in personam jurisdiction of this Court, and the jurisdiction of this Court over the subject matter of this action; having acknowledged that they are represented by counsel who has entered a general appearance; having waived the entry of Findings of Fact and Conclusions of Law under Rule 52 of the Federal Rules of Civil Procedure with respect to the entry of this Order of Permanent Injunction; having agreed, for purposes of this action only, without admitting or denying any of the allegations of the COMMISSION's Amended Complaint, except as set forth herein, to

the entry of this Order; there having been no trial in this matter, and, in view of the parties' agreement, none is necessary; it appearing that this Court has jurisdiction over the parties and subject matter of this action; it appearing that no further notice of hearing for the entry of this Order need be given; the Court being fully advised in the premises, and no just reason for delay appearing:

I.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that defendants CARLISLE and BACHMAN, their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the Order by personal service or otherwise, are permanently enjoined and restrained from, directly or indirectly, aiding and abetting any broker or dealer in making use of any means or instruments of transportation or communication in interstate commerce or of the mails to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, banker's acceptances, or commercial bills), in connection with which the broker or dealer engages in fraudulent, deceptive or manipulative acts and practices by commingling customers' funds and securities with funds and securities of other customers and non-customers, and hypothecating the common pool of such funds and securities to secure and collateralize loans made to the broker or dealer, absent written consent with such customers or without establishing procedures or making

agreements to preserve and protect the amount of such customers' funds and securities which exceed the aggregate indebtedness owed by such customers to the broker or dealer, in violation of Section 15(c)(2) of the Exchange Act [15 U.S.C. 78o(c)(2)] and Rule 15c2-1 [17 C.F.R. 240.15c2-1] promulgated thereunder.

II.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that defendants CARLISLE and BACHMAN, their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from, directly or indirectly, aiding and abetting any broker or dealer in making use of any means or instrumentalities of interstate commerce, or of the mails, directly or indirectly, to effect transactions in, or to induce or attempt to induce the purchase or sale of any security (other than an exempted security, or commercial paper, bankers' acceptances or commercial bills) while, and at a time when, the capital of the broker or dealer is less than the amount required by Exchange Act Rule 15c3-1 [17 C.F.R. 240.15c3-1].

III.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that defendants CARLISLE and BACHMAN, their agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are permanently restrained and enjoined from aiding

and abetting any broker or dealer in making use of any means or instrumentality of interstate commerce, or of the mails, directly or indirectly, to effect transactions in, or induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills), while the broker or dealer carries customers' free credit balances and fails and neglects to maintain in a Customer Reserve Account or Accounts, through deposits made therein, cash or qualified securities in the amount required by Exchange Act 15c3-3 [17 C.F.R. 240.15c3-3].

IV.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that this Court shall retain jurisdiction of this action in order to implement and carry out the terms of all Orders and Decrees that may be entered herein.

V.

This Order shall be binding on defendants WALTON FREDERICK CARLISLE and LYLE THOMAS BACHMAN and upon those persons in active concert or participation with them who receive actual notice of the Order, a copy of which may be served in person, by mail or by any officer of the COMMISSION.

VI.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Order of Permanent Injunction pursuant to Rule 54 of the Federal Rules of Civil Procedure.

ENTERED this 4 day of Jan, 1988.

(Signed) H. Dale COOK

UNITED STATES DISTRICT JUDGE

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

DAVID LORAN UNDERWOOD and
BRENDA LEE GORDON, Personal
Representatives of the Estate
of Phyllis Rose Underwood,
Deceased, and DAVID LORAN
UNDERWOOD, individually, and
BRENDA LEE GORDON, individually,

Plaintiffs,

vs.

BILLY JAKE MYERS d/b/a
RHINELAND AGRI-SHIPPERS d/b/a
MYERS GRAIN AND FERTILIZER, and
PROTECTIVE CASUALTY INSURANCE,
a Missouri corporation,

Defendants.

and

MILDRED REYNOLDS,

Plaintiff,

vs.

BILLY JAKE MYERS d/b/a
RHINELAND AGRI-SHIPPERS d/b/a
MYERS GRAIN AND FERTILIZER,
et al.,

Defendants,

and

CHARLES OVERGARD, Personal
Representative of the Estate
of Elizabeth Ann Overgard,
Deceased, et al.,

Plaintiffs,

vs.

BILLY JAKE MYERS d/b/a
RHINELAND AGRI-SHIPPERS d/b/a
MYERS GRAIN AND Fertilizer, et al.,

Defendants.

JAN 11 1989
Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 87-C-644-B (Consolidated)

No. 87-C-645-B

No. 87-C-819-B

**ORDER SUSTAINING MOTION FOR SUMMARY JUDGMENT
OF DISMISSAL OF REINSURERS OF THE SECOND
AMENDED COMPLAINT OF CLAIMANT MYRTLE V.
MORGAN AND THE THIRD PARTY COMPLAINT
OF DEFENDANT MYERS**

Before the Court for decision are the Motions for Summary Judgment of Dismissal of the Defendants Underwriters Reinsurance Company (formerly Buffalo Reinsurance Company), Resure, Inc. Syndicate No. 018, the underwriting syndicate of the Illinois Insurance Exchange; IAT Syndicate Member Number S069A, Spear Leeds and Kellogg RE No. S073A, J&H Willis Faber Syndicate A No. S071A, the underwriting members of The New York Insurance Exchange, Inc.; Coronet Insurance Company, and Imperial Casualty and Indemnity Company, (referred to collectively as "Reinsurers" or "Defendant Reinsurers"), of the Second Amended Complaint of Claimant Myrtle V. Morgan ("Morgan") and the Third-Party Complaint of Defendant Billy Jake Myers ("Myers") d/b/a Rhineland Agri-Shippers d/b/a Myers Grain and Fertilizer.

The Defendant Reinsurers issued two reinsurance agreements to Citizens National Assurance Company ("CNAC") which became effective on January 1, 1987. The Plaintiff Morgan filed her complaint against the Defendants Myers, et al., and alleged therein, *inter alia*, that Myers had insurance or reinsurance coverage provided by CNAC and the moving Reinsurers herein which allegedly extended coverage to an automobile/truck accident in which the claimant Morgan was

involved that occurred on June 22, 1987. Morgan seeks to recover from the Defendant Reinsurers on the reinsurance agreement made between said Reinsurers and CNAC.

The Defendant and Third-Party Complainant Myers filed his Third-Party Complaint on September 26, 1988, against said Reinsurers asserting a right of action as the insured in the CNAC insurance policy which extends coverage to Myers relative to the automobile/truck accident occurring on June 22, 1987, and the various claimants therein.

On October 1, 1987, CNAC was placed in receivership by the Superintendent of Insurance of the State of New Mexico.

The Defendant Reinsurers assert that neither the Plaintiff Morgan's Second Amended Complaint nor the Third-Party Complaint of Myers state a claim against the Reinsurers upon which relief can be granted. The record consists of the complaints, answers, and copies of the reinsurance agreement between said reinsurance carriers and CNAC.¹

¹No response has been filed by Morgan to the Reinsurers motion for summary judgment of dismissal. The response of Myers did not comply with Local Rule 15(B) that states the following:

"... The brief in opposition to a motion for summary judgment (or partial summary judgment) shall begin with a section which contains a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute shall be numbered, shall refer with particularity to those portions of the record upon which the opposing party relies, and, if applicable, shall state the number of the movant's fact that is disputed. All material facts set forth in the statement of

The following are relevant uncontroverted facts:

1. As of January 1, 1987 First Casualty Excess of Loss Reinsurance Agreement RIA 1330 (hereinafter "RIA 1330") was issued and delivered to CNAC, a true and correct copy of which is attached hereto marked Exhibit "A", incorporated herein by reference and made a part hereof.

2. Certain Defendant Reinsurers set out hereinafter underwrote the coverage provided by RIA 1330 which was for \$250,000 in excess of the first \$50,000 of loss, which was retained and to be paid by CNAC, as follows, to-wit:

Underwriters Reinsurance Company (formerly Buffalo Reinsurance Company)	55%
Imperial Casualty and Indemnity Company	5%
Coronet Insurance Company	10%
IAT Syndicate Member #S069A	9.9%
Spear Leeds and Kellogg RE #S073A	10.2%
J&H Willis Faber Syndicate A #S071A	9.9%

3. As of January 1, 1987 Second Casualty Excess of Loss Reinsurance Agreement RIA 1331 (hereinafter "RIA 1331") was issued and delivered to CNAC, a true and correct copy of which is attached hereto marked Exhibit "B", incorporated herein by reference and made a part hereof.

4. Certain Defendant Reinsurers set out hereinafter underwrote 85% of the coverage provided by RIA 1331 which was for

the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party...."

\$700,000 in excess of the first \$300,000 of loss, \$50,000 of which was retained and to be paid by CNAC and \$250,000 of which was provided by RIA 1330, as follows, to-wit:

Underwriters Reinsurance Company (formerly Buffalo Reinsurance Company)	25%
IAT Syndicate Member #S069A	9.9%
Spear Leeds and Kellogg RE #S073A	10.2%
J&H Willis Faber Syndicate A #S071A	9.9%
Resure, Inc. Syndicate #018	20%

5. Reinsurers underwriting 15% of RIA 1331 are not a party to this action.

6. RIA 1330 and RIA 1331 were in force on June 22, 1987.

7. On or about October 1, 1987, the Second Judicial District Court, County of Bernalillo, State of New Mexico, entered its Order appointing Vincent B. Jasso, Superintendent of Insurance for the State of New Mexico, in Successor in Office, as Domiciliary Receiver of CNAC, in liquidation.

8. Plaintiff Morgan and Third Party Complainant Myers are not a party to RIA 1330. (See RIA 1330 marked Exhibit "A" and cover sheets marked Exhibit "C-1" to "C-9").

9. Neither Plaintiff Morgan nor Third Party Complainant Myers are a party to RIA 1331. (See RIA 1331 and Exhibit "B" and cover sheets marked Exhibit "D-1" to "D-5").

10. Neither Plaintiff Morgan nor Third Party Complainant Myers are named as a payee of RIA 1330 or RIA 1331. (See Exhibits "A" and "B".)

11. Defendant Reinsurers have not assumed CNAC's obligations under its policies. (See Exhibits "A" and "B".)

12. Neither Plaintiff Morgan nor Third-Party Complainant Myers assert that: (a) they are named as payees under RIA 1330 and RIA 1331 or (b) Defendant Reinsurers have assumed any CNAC policy obligations to said Plaintiff Morgan or Third-Party Complainant Myers, if any there be.

13. By the terms of RIA 1330, ARTICLE XIX and RIA 1331, ARTICLE XX, Pages 15-16, Exhibits "A" and "B", Defendant Reinsurers as said Defendant Reinsurers do not nominate Plaintiff Morgan or Third-Party Complainant Myers as a payee in the event of CNAC's insolvency, and said Defendant Reinsurers have not assumed CNAC's policy obligations to any payees under RIA 1330 and RIA 1331.

14. Neither Plaintiff Morgan nor Third-Party Complainant Myers relied on the existence of RIA 1330 and RIA 1331 at any time prior to June 22, 1987.

Reinsurance is the insurance of insurance companies. In exchange for a portion of the underlying premium the reinsurer agrees to indemnify the ceding insurer against all or part of the losses which the ceding company may sustain under specified insurance coverage. Excess & Cas. Reinsurance Ass'n v. Insurance Commissioner of California, 656 F.2d 491, 492 (9th Cir. 1981); Fontenot v. Marquette Casualty Co., 247 So.2d 572, 574-75 (La. 1971); see, Mid-Continent Life Ins. Co. v. Atlas Life Ins. Co., 54 P.2d 601, 604 (Okla. 1936).

Appleman, Insurance Law and Practice 13A, §7681 Reinsurance -

Transfer and Assumption of Risk, states:

"Reinsurance, to an insurance lawyer, means one thing only - the ceding by one insurance company to another of all or a portion of its risks for a stipulated portion of the premium, in which the liability of the reinsurer is solely to the reinsured, which is the ceding company and in which contract the ceding company retains all contact with the original insured, and handles all matters prior to and subsequent to loss."

The reinsurance provided by RIA 1330 (Exhibit "A") and RIA 1331 (Exhibit "B") states that as herein, in the event of insolvency of CNAC, Article XIX and Article XX, respectively, state:

"In the event of the Company's insolvency, the reinsurance afforded by this Agreement shall be payable by the Reinsurers on the basis of the Company's liability under the policies reinsured without diminution because of the Company's insolvency or because its liquidator, receiver, or statutory successor has failed to pay all or a portion of any claims. The reinsurance will be payable by the Reinsurers directly to the Company, its liquidator, receiver, or statutory successor except (a) where this Agreement specifically provides another payee of such reinsurance in the event of the Company's insolvency and (b) where the Reinsurers, with the consent of the direct insured or insureds, have assumed such policy obligations of the company as direct obligations of themselves to the payees under such policies in substitution for the Company's obligation as such payees."

On page 16 of RIA 1330 and RIA 1331 it states:

"Except as hereinabove specifically provided, nothing in this Article will in any manner create any obligations or establish any rights against the Reinsurers in favor of the third parties or any persons not parties to this Agreement."

New Mexico Insurance Code §59A-7-11, Reinsurance, E., provides:

"No person shall have any rights against the reinsurer which are not expressly stated in the reinsurance contract or in a written agreement between such person and the reinsurer."

Condition (a) and (b) set out in Article XIX and Article XX above has not occurred so are not applicable herein.

The Morgan third-party claimant question presented herein was considered in American Reinsurance Company v. The Insurance Commission of the State of California, 527 F.Supp. 444 (1981) and the court stated at page 453:

"A third-party claimant, however, has no greater right to receive direct payment of reinsurance proceeds than that of the original insured [Myers], on whose policy the third-party claimant seeks to recover."

See also, Arrow Trucking Company v. Continental Insurance Company, 465 So.2d 691 (1985), and Fontenot v. Marquette Casualty Co., 247 So.2d 572 (La. 1971).

The issue of the applicable law was addressed by the Oklahoma Supreme Court in Aetna Casualty and Surety Co. of Hartford, Conn. v. Gentry, 132 P.2d 326 (Okla. 1942), and stated:

"Contracts may be interpreted according to the law of the state where they are made and their performance contemplated. Remedy available for the enforcement of the contract is determined by the law of the forum."

It appears from the record herein that RIA 1330 and RIA 1331 were negotiated in New Mexico and expected by the parties to be

performed therein. Since the reinsurance contract does not provide for either Morgan or Myers to have any rights against the reinsurer, they have no standing as third-party beneficiaries herein. This result follows from the express provisions of RIA 1330 and RIA 1331 and the facts that neither Morgan nor Myers are parties thereto nor has any separate agreement been signed giving the claimant Morgan or Myers any rights under said reinsurance agreements and the reinsurers have not specifically assumed any CNAC policy liability directly to Morgan or Myers.

46 C.J.S. §1232 at page 217 states that the ordinary contract of reinsurance operates solely between the reinsured and the reinsurer and creates no privity between the reinsurer and the person originally insured, unless there is specific contract language to the contrary.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Where there is an absence of material issues of fact, then the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.E.2d 202 (1986); Widon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986); Commercial Iron & Metal Co. v. Bache & Co., Inc., 478 F.2d 39, 41 (10th Cir. 1973); and Ando v. Great Western Sugar Company, 475 F.2d 531, 535 (10th Cir. 1973).

For the reasons expressed above, the reinsurer's motion for summary judgment to dismiss is hereby sustained as no issue of material fact remains concerning the third-party claimant Morgan or the insured Myers' right of a direct action against the reinsurers.²

DATED this 4th day of January, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

²The Reinsurers appearing herein have conceded on the record that they have coverage totaling \$950,000.00 as reinsurers of the ceding company CNAC, now insolvent, which was in full force and effect and would provide coverage to the various claimants arising from the subject automobile/truck accident which occurred on June 22, 1987. Total liability of the reinsurers under its reinsurance contract should be paid to or with approval of the State of New Mexico Domiciliary Receiver of CNAC in liquidation.

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

FILED

JAN 4 1989

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

JAMES R. STUNKARD and
STUNKARD-PARKER PRODUCTIONS,
INC.,

Plaintiffs,

vs.

No. 87-C-67-C

ROLAND MARTIN ENTERPRISES,
INC.; ROLAND MARTIN; and
VIDEO SOUTH, INC.,

Defendants.

ORDER

The Court has reconsidered its Order of October 6, 1988, and reverses that Order and grants a motion of summary judgment for the defendants.

This case involves intellectual property. Unlike other property, intellectual property involves the expression of an author's idea. However, it is not the idea that is protected by the law but the author's particular expression of his idea. This is called a work of art. See 1 Nimmer on Copyright §2.03(D). Here, we are concerned with determining, under the Copyright Act, 17 U.S.C. §101 et seq., who owns the following works of art:

- 1) twelve videos each entitled "Fishing with Roland Martin", and
- 2) a derivative work, made from segments of those twelve videos, entitled "One on One with Roland Martin".

Before reciting the facts of this case, it is vital to identify and distinguish the parties. The plaintiffs include James R. Stunkard (plaintiff-Stunkard), an individual; and Stunkard-Parker Productions, Inc. (plaintiff-Stunkard Inc.), a corporation. The defendants include Roland Martin (defendant-Martin), an individual; Roland Martin Enterprises, Inc. (defendant-Martin Inc.), a corporation; and Video South, Inc. (defendant-Video Inc.), a corporation.

I. FACTS

In 1974, plaintiff Stunkard and defendant Martin, both individuals, met and discussed the opportunity of producing videos about fishing. The plans called for the defendant Martin to star in the videos and the plaintiff Stunkard to direct and distribute the same. Production soon began. In 1977, a contract was entered into between plaintiff Stunkard Inc. and defendant Martin Inc., both corporations. The contract was to cover the production and distribution of films for the 1978, 1979 and 1980 television seasons. The plaintiffs and defendants agree that in June of 1978 plaintiff Stunkard Inc. ceased work in the production of the videos and that the plaintiff Stunkard, an individual, began work on a salary basis. See depositions of James R. Stunkard, May 13, 1987,

at p.23,l.22 - p.26,l.6.

By 1980, the relationship between the plaintiffs, Stunkard and Stunkard Inc., and the defendants, Martin and Martin Inc., had ended altogether. A total of seventy-eight videos had been produced. In this case, we are only concerned with twelve videos produced between November of 1978 and January of 1979 for the 1979 television season.

In 1979, before the relationship terminated, the plaintiff Stunkard received copyright certificates for the twelve videos produced for the 1979 television season. The twelve certificates of copyright registration, one for each video, are contained in the plaintiffs' Second Amended Complaint and consecutively numbered by the copyright office, 46-479 through 46-490. Each certificate recites that the videos are "works made for hire" and that the plaintiff Stunkard-Inc. and defendant Martin-Inc. are joint authors.

In 1985, plaintiff Stunkard contracted with United Entertainment, Inc. to produce and distribute a video entitled "One on One with Roland Martin". Under the terms of this contract, "One on One with Roland Martin" would be a derivative work of the twelve aforementioned videos entitled "Fishing with Roland Martin". The plaintiff Stunkard took the best segments of the "Fishing with Roland Martin" videos and compiled them together to form "One on One with Roland Martin".

In July of 1986, United Enterprises was informed that the defendant Martin-Inc. owned all the rights to "Fishing with Roland Martin" and that the plaintiff Stunkard had no authorization to create or distribute a derivative work to these twelve videos. United Enterprises halted distribution of "One on One with Roland Martin" and the plaintiffs Stunkard and Stunkard Inc. brought suit. In their suit against defendants Martin, Martin Inc., and Video Inc. the plaintiffs allege that the right to create and distribute "One on One with Roland Martin" is based on an oral contract entered into in November 1985 between plaintiff Stunkard and defendant Martin, as individuals. It is further alleged that as a result of defendants' assertion to United Entertainment that the plaintiffs have no interest in the twelve "Fishing with Roland Martin" videos, the plaintiffs have been injured and are entitled to recovery for: 1) breach of the 1985 oral contract, 2) tortious interference with business relations, 3) copyright infringement, and 4) conversion. The claim for conversion also rests on the allegation that the defendant Martin is in possession of the twelve videos, "Fishing with Roland Martin", and has wrongfully refused plaintiffs access to them. Finally, the plaintiffs seek a declaratory judgment to determine who owns the twelve copyrighted videos, "Fishing with Roland Martin", as well as the derivative work, "One on One with Roland Martin".

Throughout this case, the plaintiffs have at all times asserted that they, either plaintiff Stunkard or Stunkard Inc., are

co-owner/joint authors with the defendants, either defendant Martin or Martin Inc. Additionally, the plaintiffs assert that the works in question are "works made for hire". The defendants, while agreeing that the works in question are "works made for hire", assert that neither plaintiff Stunkard nor Stunkard Inc. have any ownership interest in any of the "Fishing with Roland Martin" videos or the derivative work "One on One with Roland Martin". The defendants filed a motion for summary judgment which was granted by the Magistrate. This Court independently reviewed the Magistrate's Order and reversed on the grounds that there was a material issue of fact in dispute as to the ownership of the videos in question.

II. JUDGMENT AS TO OWNERSHIP

The plaintiff has presented the copyright certificates, which show plaintiff Stunkard Inc. and defendant Martin Inc. as co-authors, as prima facie proof of correct ownership. The Copyright Act, 17 U.S.C. §410(c), provides as follows:

(c) In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.

(emphasis added).

This presumption of prima facie validity of the facts stated in the certificate can be rebutted. See Sandwiches, Inc., v. Wendy's International, Inc., 654 F.Supp. 1066, 1071 (E.D.Wis. 1987); Lasercomb America v. Holiday Steel Rule Die Corporation, 656

F.Supp. 612 (M.D.N.C. 1987). The burden of proof to overcome the presumption is on the defendant. Durham Industries, Inc. v. Tomy Corp., 630 F.2d 905, 908 (2nd Cir. 1980). In the case at hand, the defendant offered evidence from the depositions of plaintiff Stunkard that Stunkard-Parker Production, Inc., the party named on the copyright certificates, stopped work on the production of the videos in June of 1978. See deposition of James R. Stunkard, May 13, 1987 at p.23, l.22 - p.26, l.3. At that time, the plaintiff James R. Stunkard, an individual, began work as an employee of the defendant Martin, Inc. Since the videos to which these copyright certificates pertain were created between November, 1978 and January, 1979, it can be concluded that the plaintiff Stunkard Inc. was not an author of any of the twelve works. An "author", for copyright purposes, is one who contributes to the creation of the work through his own independent efforts. See 1 Nimmer on Copyright, §1.06[A] (1978). In the case of joint or co-authors, it is the efforts of two or more people in the preparation of the work that make them authors. See 1 Nimmer on Copyright, §6.01 (1978). In the case at hand, the plaintiff Stunkard Inc. put forth no effort in the preparations of the twelve videos. Therefore, the defendants have correctly rebutted the correctness of the copyright certificates.

While it has been determined that the plaintiff Stunkard Inc. has no ownership interest in the twelve videos, this Court must now determine the ownership interest of James R. Stunkard, the in-

dividual plaintiff. The ownership interest of plaintiff Stunkard can be made clear by distinguishing the "work made for hire" doctrine under the 1909 Copyright Act and then the 1976 Act.

Under the 1909 Act, the "work made for hire" doctrine covers any works made by an employee or independent contractor, 17 U.S.C. §20 (1970), and presume that the ownership of the work vests in the employer or party commissioning the work. See Sumet & Wells, Inc. v. Shalom Toy Co., Inc., 429, 901-02 F.Supp. 875 (1977) (construing the 1909 Act) (citing Scherr v. Universal Match Corp., 417 F.2d 497, 500 (2nd Cir. 1969); Brattleboro Publishing Co. v. Winmill Publishing Corp., 369 F.2d 565 (2nd Cir. 1966); Lin-Brook Builders Hardware v. Gertler, 352 F.2d 298 (9th Cir. 1965)). If, however, the parties agree that the employee or commissioned party will hold the copyright, then the courts will honor this intent. See Sumet & Wells, Inc., supra. Under the 1909 Act the agreement that the employee will hold the copyright of a work made for hire can be inferred from the parties. See, Mary v. Morganelli-Heumann & Associates, 618 F.2d 1363 (9th Cir. 1980) (construing the 1909 Act to allow evidence of custom or usage to rebut the "work made for hire" presumptions that ownership vests in the employer).

The application of the 1909 Copyright Act "work made for hire" doctrine applies to all works made before January 1, 1978. Additionally, all works that were commenced but not completed before January 1, 1978 are also covered by the original 1909 Act. 17 U.S.C. §301(b)(1970). In the case at hand, the plaintiffs have

offered a contract made in 1977 covering the production of the 1978, 1979 and 1980 "Fishing with Roland Martin" videos. Under the terms of the 1909 Copyright Act, this 1977 contract would require that the ownership of the videos be interpreted under the 1909 "work made for hire" doctrine. Consequently, the contract, which does not expressly provide which party will own the videos, could be interpreted to determine whether the parties intended that the videos be jointly owned. This issue of intent need not be addressed. The contract offered by the plaintiffs was entered into between plaintiff Stunkard Inc. and defendant Martin Inc. It has already been determined that the plaintiff Stunkard Inc. ceased working on the production of the videos in June of 1978. Since the twelve videos that are at dispute in this case were made between November 1978 and January 1979, by the plaintiff Stunkard and defendant Martin Inc., they are not covered by the 1977 contract. Consequently, the ownership of the videos will be determined by the 1976 Copyright Act.

Under the 1976 Copyright Act, which covers all works made after January 1, 1978, a "work made for hire" is defined as follows:

A "work made for hire" is--

(1) a work prepared by an employee within the scope of his or her employment;

or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

17 U.S.C. §101 (1977) (emphasis added).

Under the 1976 Act, there is a significant distinction between the employee and the independent contractor in regard to the presumption of ownership. In contrast to the 1909 Act which views employees and contractors as the same, the 1976 Act presumes that the ownership in a commissioned work vests in the commissioned party, the independent contractor, in the absence of an agreement to the contrary. Additionally, the agreement pertaining to ownership must be express and in writing. It cannot be implied. See Meltzer v. Zoller, 520 F.Supp. 847, 856 (D.C. N.J. 1981). The agreement would then make the commissioned work a "work made for hire".

Section 201(b) of the Copyright Act provides:

In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

17 U.S.C. §201(b)(1977).

Under the terms of §201(b) of the Act, if the work is a work for hire, then the ownership vests in the employer or commissioning party. See Meltzer v. Zoller, 520 F.Supp. 847, 855 (D.C.N.J. (1981) (distinguishing the 1909 work for hire doctrine from the 1976 work for hire doctrine) (citing Brattleboro Publishing Co. v. Winmill Publishing Corp., 369 F.2d 565 (2nd Cir. 1966); 1 Nimmer on Copyright §5.03[D](1981)).

In the case at hand, if the plaintiff Stunkard was an employee of defendant Martin or Martin Enterprises, Inc., then the defendant will be considered the author. On the other hand, if the plaintiff

Stunkard is an independent contractor, commissioned by the defendant Martin or Martin Enterprises Inc., then the plaintiffs will be considered the author of the twelve videos unless there is an express agreement providing otherwise. "The key factor in deciding whether an employment relationship exists between two parties is the employer's right to control and supervise the manner in which work is performed." Aitken, Hazen, Hoffman, Miller v. Empire Construction Company, 542 F.Supp. 252, 257 (D.Neb. 1982) (citing Epoch Producing Corporation v. Killiam Shows, Inc., 522 F.2d 737, 744 (C.A. 2nd Cir. 1975), cert. denied, 424 U.S. 955, 96 S.Ct. 1429, 47 L.Ed.2d 360 1976); Donaldson Publishing Co. v. Bregman, Vocco & Conn, Inc., 375 F.2d 639, 643 (C.A. 2nd Cir. 1967), cert. denied, 389 U.S. 1036, 88, S.Ct. 768, 19 L.Ed.2d 823 (1968); 1 M. Nimmer, Nimmer on Copyright §5.03 [B][1][a] at 5-12 (1981). In this case, the plaintiff Stunkard, during deposition admitted that he was a full-time employee of the defendant Martin Enterprises, Inc. See deposition of James Stunkard May 13, 1987 p.23, l.22 - p.24, l.3; p.31, l.2 - p.31, l.9; p.15, l.7 - p.15, l.15. Additionally, the plaintiff at all times maintains that the works in question are "works made for hire". Consequently, under the terms of §§101 and 201(b) of the Copyright Act, 17 U.S.C., the author/owner of the twelve videos rests in the employer, the defendant Martin Enterprises Inc. This Court need not consider the issue of control in the employment relationship to determine if the plaintiff Stunkard was an employee or an independent contractor.

The right to create the derivative work "One on One with Roland Martin" rests in the author of the underlying video works. The Copyright Act grants a number of exclusive rights to the author of a work, one of which is the right to create derivative works. 17 U.S.C. §106(2). It has been determined that the author of the twelve videos "Fishing with Roland Martin" is defendant Martin Inc.; thus, the right to make a derivative work from this video also rests with the defendant Martin Inc. The plaintiff Stunkard asserts that he was given permission by the defendant Martin, pursuant to a 1985 oral contract, to produce the derivative work "One on One with Roland Martin". If a contract did exist, then the determination of which party is the author will rest in an analysis of whether the plaintiff was an employee or independent contractor. 17 U.S.C. §§101, 201 (1977). This Court, however, for reasons stated in a later section of this Order, does not accept the position that an oral contract was created in 1985.

After reconsideration of the previous order of October 6, 1988, this Court hereby determines that the owner of the twelve copyrighted videos "Fishing with Roland Martin" and the single derivative work "One on One with Roland Martin" is the defendant Martin Enterprises Inc. The plaintiffs are not authors of these works as that term is used in the 1976 Copyright Act and thus have no ownership interest in these works.

III. COPYRIGHT INFRINGEMENT

In order for the plaintiffs to prove copyright infringement, they must prove 1) ownership of a valid copyright, and 2) that the defendant copied the work. Childers v. High Society Magazine, Inc., 561 F.Supp. 1374 (S.D.N.Y. 1983), 217 U.S.P.Q. 1221, 1225; Kenbrooke Fabrics, Inc. v. Material Things, 223 U.S.P.Q. 1039, 1042 (S.D.N.Y. 1984). It has been determined that neither plaintiff has any ownership interest in the twelve copyrighted videos. The defendants' motion for summary judgment to the claim for copyright infringement is granted.

IV. CONVERSION

"Conversion is the unlawful and wrongful exercise of dominion, ownership or control over the property of another to the exclusion of the exercise of the same rights by the owner, either permanently or for an indefinite time." Pugh v. Hassell, 206 Okla. 290, 291, 242 P.2d 701, 702 (1952). In order to prove conversion, the plaintiffs must prove some right to ownership in the thing converted. The plaintiff has no ownership interest in the copyrighted material. Furthermore, the plaintiff has not asserted an ownership interest in the actual tapes themselves. The defendants' motion for summary judgment to the claim for conversion is granted.

V. BREACH OF ORAL AGREEMENT

The plaintiffs allege that in November, 1985 an oral agreement concerning the right to create "One on One with Roland Martin" was

made between plaintiff Stunkard and defendant Martin. The issue of whether there was a contract is a matter that the party asserting the contract has the burden to prove. Morrow v. Morrow, 612 P.2d 730, 732 (Okla.App. 1980) (citing Nat. Sur. Co. v. Bd. of Ed. of City of Hugo, 36 Okla. 569, 129 P. 25 (1912)). In this case, the plaintiff Stunkard asserts that a conversation which took place between the parties in 1985 constituted a valid contract. This Court has reviewed the depositional testimony of plaintiff Stunkard and defendant Martin regarding the November 22, 1985 conversation and concludes that no contract was created.

Usually, as an essential prerequisite to the formation of an informal contract there must be an agreement; a mutual manifestation of assent to the same terms. The agreement ordinarily is reached by a process of offer and acceptance.

Calamari & Perillo, Contracts 13 (1970).

See also Carter v. Prairie Oil & Gas Co., 160 P. 319 (Okla. 1915). In the case at hand, the deposition of defendant Martin shows that there was some hesitation on the part of Roland Martin about making the video "One on One with Roland Martin". Specifically, the defendant Martin was concerned that the "One on One with Roland Martin Video" would not be permissible to create while he, Roland Martin, was working with new sponsors. See deposition of Roland Martin, May 14, 1987, at p.78,1.13 - p.80,1.18. The plaintiff Stunkard in his deposition acknowledged that the defendant Martin was concerned with this problem. See deposition of James R. Stunkard, May 13, 1987 at p.48,1.25 - p.49,1.23. This Court concludes that no contract was entered into on November 22, 1985.

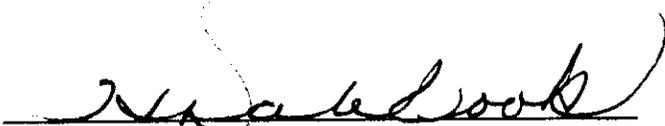
The parties failed to perform a mutual manifestation of assent as to whether "One on One with Roland Martin" should be produced.

IV. TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

The plaintiffs' claim for damages on this claim is apparently based upon a right to contract with another without unlawful interference by a third party. The business relationship which existed was between the plaintiff Stunkard and United Enterprises, Inc. The heart of this relationship focused on the plaintiff Stunkard warranting to United Enterprises that he, Stunkard, owned the twelve videos "Fishing with Roland Martin" and also that he had the right to create the derivative video "One on One with Roland Martin". Since the defendant Martin Inc. asserted to United Enterprises that he was the owner, his interference in the above business relationship is justified and not tortious.

WHEREFORE, based on the premises considered, it is the Order of the Court that the Order of October 6, 1988 is reversed and the defendant's motion for summary judgment is granted.

IT IS SO ORDERED this 30th day of December 1988.


H. DALE COOK

Chief Judge, U. S. District Court

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

1-4-89

INTERSTATE COMMERCE COMMISSION,)) CIVIL ACTION NO. 88C 1279C
Plaintiff,)	
vs.)) DEFAULT JUDGMENT AND PERMANENT INJUNCTION
WAYNE RUTHERFORD, individually)	
and doing business as MFT,)	
Defendant.)	

This cause is before the Court for entry of judgment based upon the verified Complaint filed by the Plaintiff, Plaintiff's Motion for Judgment by Default, and the Entry of Default by the Clerk of Court. Upon consideration of the pleadings and representations of the Plaintiff, the Court is of the opinion that Plaintiff is entitled to a default judgment against Defendant for the relief requested in its Complaint. The Court has made and filed its Findings of Fact and Conclusions of Law herein.

IT IS HEREBY ORDERED that Plaintiff's Motion for Judgment by Default is granted.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Wayne Rutherford, individually and doing business under any other name, his agents, employees, and representatives, and all persons in active concert or participation with him, be permanently enjoined from, in any manner or by any device:

(a) Operating as a motor carrier of property for compensation over public highways in interstate or foreign commerce unless there is in effect and on file with the Interstate Commerce Commission, in the manner and amounts prescribed, an acceptable surety bond, certificate of insurance or proof of self-insurance; and,

(b) Selling, offering for sale, negotiating for, or holding himself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation of property by motor carrier in interstate or foreign commerce for compensation, unless there is in effect an appropriate license issued by the Interstate Commerce Commission authorizing such operations; and,

(c) Selling, offering for sale, negotiating for, or holding himself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation of property by motor carrier in interstate or foreign commerce for compensation, unless there is in effect and on file with the Interstate Commerce Commission, in the manner and amounts prescribed, an acceptable surety bond to ensure the financial responsibility of Defendant; and,

(d) Failing to remit promptly the freight charges, which Defendant collects on shipments subject to the jurisdiction of

the Interstate Commerce Commission, to the motor carrier that transported the shipment.

Signed this 4 day of June, 1987.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

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

FILED
JAN 4 1989

FEDERAL DEPOSIT INSURANCE CORPORATION, acting in its corporate capacity,

Plaintiff,

vs.

R. A. SELLERS, III,

Defendant.

Case No. 88-C-1625-EC

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

JUDGMENT BY CONFESSION

This matter comes on before the Court, the Honorable Cook presiding, on this 4 day of January, 1989, pursuant to regular assignment. The plaintiff, Federal Deposit Insurance Corporation, acting in its corporate capacity ("FDIC") is represented by its counsel, Robert S. Glass of Gable & Gotwals, Inc., and the defendant, R. A. Sellers, III ("Sellers"), is represented by his counsel, Paul R. Thomas of Jarboe & Stoermer, and said counsel, having represented to the Court by virtue of their signatures together with the signature of Sellers hereinbelow, that the parties have agreed to the entry of this Judgment by confession of liability in favor of FDIC and against Sellers in the principal sum of \$69,028.86 and accrued interest in the sum of \$8,702.82, calculated as of December 9, 1988, interest accruing thereon at the rate of 18.0% per annum to the date of this Judgment, plus interest accruing thereafter at the rate of 8.04% per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full, together with all costs of collection including a reasonable attorney's fee in the sum of \$850.00. 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 the parties hereto. The issues raised in FDIC's First Count of its Complaint have been resolved either by agreement between the parties or by virtue of the confession of judgment by Sellers.

2. All of the allegations of FDIC's Complaint, First Count, are true and correct and FDIC is entitled to judgment under its First Count against Sellers in the principal sum of \$69,028.86 and accrued interest in the sum of \$8,702.82, calculated as of December 9, 1988, interest accruing thereon at the rate of 18.0% per annum to the date of this Judgment, plus interest accruing thereafter at the rate of 8.04% per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full, together with all costs of collection including a reasonable attorney's fee in the sum of \$850.00.

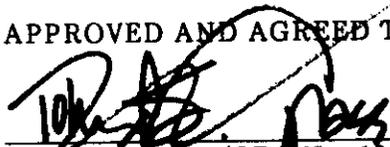
IT IS THEREFORE ORDERED and DECREED by this Court that the plaintiff, FDIC, shall recover of and from the defendant, Sellers, the principal sum of \$69,028.86 and accrued interest in the sum of \$8,702.82, calculated as of December 9, 1988, interest accruing thereon at the rate of 18.0% per annum to the date of this Judgment, plus interest accruing thereafter at the rate of 8.04% per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full, together with all costs of collection including a reasonable attorney's fee in the sum of \$850.00, for all of which let execution issue.

IT IS SO ORDERED.

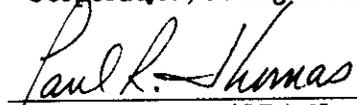
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

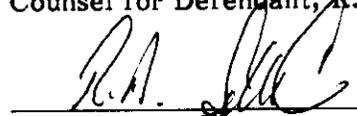
APPROVED AND AGREED TO:



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



Paul R. Thomas (OBA No. 11546)
Counsel for Defendant, R. A. Sellers, III



R. A. Sellers, III

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

~~FILED~~
DEC 1 1988

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TOMMY R. MCKNIGHT,)
)
 Defendant.)

~~FILED~~
JAN 4 1989
Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-915-C

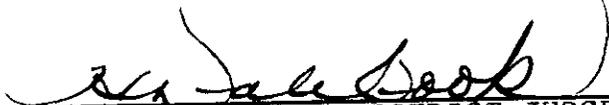
DEFAULT JUDGMENT

This matter comes on for consideration this 31 day of December, 1988, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Tommy R. McKnight, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Tommy R. McKnight, was served with Summons and Complaint on October 25, 1988. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

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

Tommy R. McKnight, for the principal sum of \$15,417.94, plus accrued interest of \$1,526.37 as of February 29, 1988, plus interest thereafter at the rate of 4 percent per annum until Judgment, plus interest thereafter at the current legal rate of 9.20 percent per annum until paid, plus costs of this action.


UNITED STATES DISTRICT JUDGE

additional collateral. (Defendant's Trial Exhibits 1 and 2.) FNB ultimately extended the maturity date to August 7, 1981 and thereafter began foreclosure proceedings. Ruggles filed for bankruptcy protection within a year after signing the new note.

II
ISSUES AND STANDARD OF REVIEW

The Trustee/Appellant contends that the Debtor's estate should have been found to include the Colorado property, pledged as part of the loan agreement. The Trustee argues that 1) FNB breached its loan agreement with the Debtor, hence, it was not entitled to receive a pledge of the property, much less, foreclose same; and 2) that the pledge and/or foreclosure should be avoided as a fraudulent transfer, as the Colorado property was, in fact, worth far more than the value Ruggles received from FNB. Thus, the Trustee seeks to set aside the Bankruptcy Court's determination allowing FNB's foreclosure.

Specifically, the Trustee alleges the Bankruptcy Court committed error:

1. In ruling FNB did not breach the April 23, 1981 Loan Agreement;
2. In ruling that Ruggles received from FNB on April 23, 1981 "reasonable equivalent value" in exchange for the pledge of additional collateral (Second Mortgages on the Mesa Store and Aspen properties in Colorado); and
3. In ruling that the pledge of additional collateral within one year of bankruptcy did not constitute a fraudulent transfer under 11 U.S.C. §548.

In reviewing the Bankruptcy Court decision, this Court is constrained to accept as true, findings of fact, unless clearly

erroneous. Bankruptcy Rule 8013. Questions of law are considered de novo, as are mixed questions of law and fact which primarily involve a consideration of legal principles. In re Ruti-Sweetwater, Inc. 836 F.2d 1263, 1266 (10th Cir. 1988).

III. DISCUSSION

A. Alleged Breach of Loan Agreement

The Trustee initially argues that FNB breached the April 23, 1981 loan agreement because it failed to advance to Ruggles a full \$50,000.00 and, further, refused to give Ruggles the "agreed" six (6) months to complete his restructuring.

Specifically, the Trustee argues that Ruggles was to have six (6) months after April 23, 1981 within which to recondition and sell his mobile home park, not merely until June 8, 1981, the date referred to in the executed note and letter agreement. In support, the Trustee points to FNB's advance of \$100,000.00 as six (6) months "prepaid interest", and the pledge of additional security "worth" \$625,000.¹

After a full trial, the Bankruptcy Court made the following determinative findings of fact:

11. In April of 1981, the loan restructuring was made. The past due notes of the Debtor were consolidated, and the Debtor executed a new promissory note and a letter agreement as shown by Defendant's Exhibits 1 and 2. At that time, Mr. Hyde [V.P., FNB] had authority to contract only as to the terms of the promissory note,

¹ Appellant argues the additional collateral (the Mesa property and Lot 19 in Colorado), was worth \$625,000, rather than \$225,000 as found by the Bankruptcy Court. However, the argument lacks merit. See III(B), infra.

and the only legal rights possessed by the Debtor were set forth in the promissory note.

12. The Debtor possessed the privilege of not entering into the loan restructuring and not pledging additional property. On April 23, 1981, however, the Debtor executed the promissory note and letter agreement with the Defendant, and received the following consideration in exchange: an extension of time for repayment of the sums due and owing from January 21, 1981, to April 23, 1981; an extension of time within which to repay sums due and owing from April 12, 1981, until June 8, 1981; the right to draw upon a line of credit up to \$50,000.00 of which \$20,000.00 was drawn; the Defendant's forbearance to call the prior notes due and take action upon such notes; the release of a mortgage on real estate adjacent to the mobile home park worth \$60,000.00 as set forth in Defendant's Exhibit 12, but agreed by the parties to possess the value of \$25,000.00.

(R. 227.)

The Bankruptcy Court's findings are supported by evidence in the record², and, while the Trustee's scenario is plausible, he has not shown from the record evidence that the Court's findings

² The April 23, 1981 note and letter agreement make no mention of a six (6) months period beginning on that date; FNB's vice president understood the maturity date to be June 8, 1981 (Tr. 188.) Any extensions contemplated were tied to Ruggles, successful liquidating of assets. (TR. 243 and 245.) FNB's vice president testified that in April, Ruggles had "already used ninety (90) days", so that the Senior Loan Committee approved only a forty five (45) day commitment to hold Ruggles' "feet to the fire". (Tr. 214.) (See also, Defendant's Exhibit No. 36 and 37.)

are clearly erroneous.³ The allegation that FNB breached the loan agreement with the Debtor is thus meritless.

B. Alleged Lack of Reasonable Equivalent Value

The Trustee next argues that the foreclosure should be set aside as an avoidable conveyance; one for which there was not reasonable equivalent value given.

The Bankruptcy Court made the following finding of fact:

The Debtor, being enamored of the Colorado area, had an affinity towards reconditioning and remodeling certain property owned by him in Colorado, known as the "Mesa Store". In an attempt to save what assets he had, the Debtor made the decision to pledge as additional security his property in Colorado, including the Mesa Store and Lot 19 in Aspen, Colorado. The value of the Mesa property at that time, and as disclosed by the documents, was \$150,000.00 in equity, with the Lot 19 property being valued at \$75,000.00.

(R. 227, ¶13), and concluded as a matter of law,

The Debtor's giving up mortgages on certain real property in Colorado within one year before commencement of the Debtor's bankruptcy does not constitute an avoidable fraudulent conveyance under 11 U.S.C. §548. Under the values given to the Court, the granting of said mortgages did not result in an unreasonably equivalent value under 11 U.S.C. §548(a)(2), and there are not allegations under 11 U.S.C. §548(2)(b) that the Debtor was insolvent or rendered insolvent by such transfer.

(R. 228, ¶6.)

³ The only evidence Appellant highlights is at page 49 of the transcript, where Ruggles notes that FNB had indicated a willingness to work with him for a six (6) month period.

Ruggles also testified that upon seeing the actual language of the note with the new forty five (45) day term, he said nothing (instead assuming FNB would extend the note on an ongoing basis). (Tr. 55.) This testimony is not sufficient to convince this Court that the Bankruptcy Court findings were clearly erroneous.

The Trustee's argument hinges on an attack of the Court's \$225,000 valuation of the Mesa Store and Lot 19 property in Colorado. The Trustee insists that the Bankruptcy Court's finding is clearly erroneous in light of the property's "true" value of \$625,000. The Trustee states:

[T]he Bankruptcy Judge reached the totally inaccurate conclusion that \$225,000.00 was the value [of the Colorado property].

In support of this contention, he points to Ruggles' estimate of the market value of his properties as \$900,000. (Tr. 50-51.)⁴ The Trustee also points to FNB's testimony that the properties were worth \$625,000. (Tr. 211.)⁵

If this was the only evidence concerning the value of the Colorado property, the Bankruptcy Court's \$225,000 finding would be clearly erroneous. This is not, however, the case.

In addition to the testimonial evidence, the Bankruptcy Court had before it pleadings verified by Ruggles during 1980, filed in Tulsa County District Court, Case No. JFD 80-613. (Defendant's Exhibits Nos. 12 and 17.) In Ruggles' sworn Answers to Interrogatories, propounded to him, he placed on the Mesa Store a fair market value of \$450,000, subject to a \$300,000 mortgage; and, on Lot 19, Aspen, a fair market value of \$175,000,

⁴ Yet, the properties were also subject to outstanding mortgages.

⁵ But a closer review of the testimony reveals that the \$625,000 valuation used by FNB came from Ruggles' own estimates of value. (Tr. 206-07.)

subject to a \$100,000 mortgage. From these answers the Bankruptcy Court could properly find the value of Ruggles' equity interest to be \$225,000.⁶

The Court in making its ruling made specific reference to Ruggles' state court filings, as follows:

I think it very important to this Court and substantial weight was given to the sworn statements of Mr. Ruggles as to the values of property, more particularly set forth in the Financial Declaration filed under oath with the State Court ... the value of the Mesa property at that time, as more fully disclosed by Mr. Ruggles in these documents aforementioned was \$150,000 in equity interest in the Mesa property, and \$75,000 in value of Lot 19.

(Tr. 325-27.)

As the error asserted by the Trustee is grounded in an attack upon the value placed by the Bankruptcy Court on the Colorado property, and, the Bankruptcy Court's finding of value is not clearly erroneous, but, in fact, is supported by evidence in the record, this second allegation of error is also without merit.

C. Alleged Fraudulent Transfer

Finally, the Trustee urges that the Bankruptcy Court should have found that the facts and circumstances, adduced at trial, established an intent by FNB to fraudulently gain ownership of the Colorado property. As a result, argues the Trustee, the

⁶ In Ruggles' State Court Pretrial Financial Declaration (Defendants' Exhibit No. 12) the Mesa Store was listed with a market value of "\$540,000" which may be a transposition of the previously referred to \$450,000 amount. In any case, the Court's finding on this point must be accepted as true.

pledge of additional collateral was a fraudulent transfer under 11 U.S.C. §548(a)(1 or 2).

The Trustee, however, cannot identify any specific evidence, in the record, of FNB's fraudulent intent, (necessary to a finding under §548(a)(1)), or, that the pledge of additional collateral rendered Ruggles insolvent (necessary to a finding under §548(a)(2)).

The Bankruptcy Court, having already determined the additional collateral pledged was reasonably equivalent in value to FNB's forbearance (and extension of time) and, the loan of new money (R. 227, ¶12), it properly concluded that the pledge did not constitute a fraudulent conveyance under either §548(a)(1) or §548(a)(2)(A) or (B). (Tr. 332.).

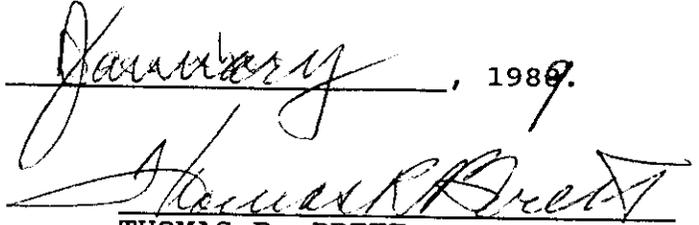
IV. CONCLUSION

Under the facts as found, the Bankruptcy Court correctly applied the law. The record does not require a finding that the Debtor's pledge of the Colorado properties was a fraudulent conveyance under any subsection of §548. The Trustee's suggestion that FNB's fraudulent intent should have been "inferred from the general scheme or plan to strip debtor of its assets ..." is only a post-petition impression of events, which, had Ruggles' restructuring succeeded, would have received as little serious consideration as the Bankruptcy Court apparently gave it. The Trustee's final allegation of error, thus, is also without merit.

The Bankruptcy Court did not, then, commit error, either in determining the facts or applying the law.

It is therefore ORDERED that the judgment of the Bankruptcy Court be **AFFIRMED**.

Dated this 3rd day of January, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Handwritten mark

BKB:ba
12-21-88

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

CUE HENDERSON, JR., deceased,)
by the Personal Representative)
of his Estate, NAOMI HENDERSON,)
et al,)

Plaintiffs,)

-vs-)

No. 87-C-313-C ✓

NEWELL MANUFACTURING CO., a)
corporation, et al,)

Defendants and,)
Third Party Plaintiffs,)

-vs-)

RIVERSIDE PRODUCTS, a division of)
SIVYER STEEL CORPORATION, et al,)

Third Party Defendants.)

FILED

JAN 3 1989 *pro*

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

ORDER OF DISMISSAL

The above matter comes on to be heard this 30th day of Dec, 1988, upon the written Stipulation of the parties for a dismissal of said action with prejudice, and the Court, having examined said Stipulation, finds that the Plaintiffs and Defendant, Newell Manufacturing Company, have entered into a compromise settlement covering all claims as between the Plaintiffs and Newell Manufacturing Company which are involved in the action. The Court being fully advised in the premises, finds that said action should be dismissed pursuant to said Stipulation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiffs' cause of action filed herein against

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Defendant, Newell Manufacturing Company, be, and the same is hereby, dismissed with prejudice to any further action.



U. S. DISTRICT JUDGE

MILLS, WHITTEN, MILLS, MILLS & HINKLE

A PROFESSIONAL CORPORATION

Attorneys and Counselors at Law

Suite 500, One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
(405) 239-2500

EARL D. MILLS
REGGIE N. WHITTEN
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W. WAYNE MILLS
MICHAEL W. HINKLE
DAVID G. MORDY
JOSEPH T. ACQUAVIVA, JR.

TIM D. CAIN
BILL M. ROBERTS
STEVE L. LAWSON
BARBARA K. BURATTI
KATHRYN D. MILLS
RANDY P. CONNER
GLYNIS C. EDGAR

December 21, 1988

RECEIVED

DEC 22 1988

Court Clerk's Office
U. S. District Court for
the Northern District
Federal Courthouse
Tulsa, Oklahoma 74103

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

Re: Our File: Henderson v. Newell Mfg., et al
Case No.: 87-C-313-C

Dear Sir:

Enclosed please find the original and two copies of our Motion to Amend Order of Dismissal, Brief in Support of Newell Manufacturing Company's Motion to Amend Order of Dismissal with accompanying Order on the above captioned case. *pn*

Please file the same and return a file-stamped copy to this office in the enclosed self-addressed and stamped envelope.

Your assistance is appreciated.

Yours truly,

MILLS, WHITTEN, MILLS,
MILLS & HINKLE

Barbara K. Buratti
BY *Barbara K. Buratti*
Barbara K. Buratti

~~BKB:ba
Enclosure~~

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

ROBERT MICHAEL BARRETT,)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL LEE SIMMONS and)
 RUTH G. SIMMONS,)
)
 Defendants,)
)
 and)
)
 SHELTER INSURANCE COMPANY,)
)
 Garnishee.)

Case No. 88-C-1145-E ✓

F I L E D

JAN 3 1989

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

ORDER

NOW on this 30th day of December, 1988, comes on for consideration the above styled matter and the Court being fully advised in all premises finds that Garnishee Shelter Insurance Company (hereinafter referred to as "Shelter") seeks to remove to this Court the instant case. Shelter asserts that original jurisdiction rests in this Court by virtue of the Oklahoma statute denying state courts the jurisdiction to render declaratory judgments concerning obligations alleged to arise under policies of insurance covering liability or indemnity against liability for tortious injuries. See 12 OKLA. STAT. tit 1651 (1981). Shelter's argument is innovative, but incorrect. Federal jurisdiction must be explicitly granted, and is simply not present here. There is no federal question pending and complete diversity is lacking. Shelter's status as a foreign corporation is insufficient to confer jurisdiction upon the original parties. See Hyde v. Carder, 310

F. Supp. 1340 (Kan. 1970). Thus removal to this Court is inappropriate and cannot stand.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Objection to Garnishee Shelter Insurance Company's Petition for Removal should be and is hereby sustained and the case is remanded back to the District Court of Creek County.


JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 3 1989 *CB*

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

EDWARD L. SEMONES and)
BERNEITA L. SEMONES,)
)
Plaintiffs,)

vs.)

JON REINHARDT, R.D. BAKARIC,)
EARLE D. WAGNER, and other)
unknown IRS agents and)
employees, RONALD REAGAN,)
and the de facto government)
of THE UNITED STATES OF)
AMERICA,)

Defendants,)
)
)

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

Case No. 88-C-599-E ✓

ORDER

NOW on this 30th day of December, 1988, comes on for consideration the above styled matter and the Court being fully advised in all premises finds that Defendants have filed a Motion to Dismiss or for Summary Judgment based on numerous grounds. The initial argument which Defendants put forth is that this Court lacks subject matter jurisdiction over the action based upon the doctrine of sovereign immunity. Defendants cite numerous cases in support of their position that the United States as sovereign, may not be sued except to the extent that it has consented to such by statute and that any claim barred by the doctrine of sovereign immunity must be dismissed for lack of subject matter jurisdiction. See United States v. Mitchell, 445 U.S. 535, 538 (1980). Further, to the extent that any such action is brought against a governmental officer in his official capacity, the action is also subject to the doctrine of sovereign immunity. See Hutchinson v.

United States, 677 F.2d 1322, 1327 (9th Cir. 1977).

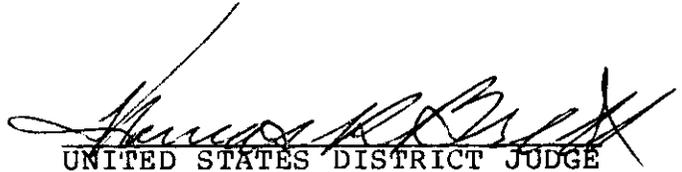
Plaintiffs cite numerous statutory sections and constitutional amendments as conferring jurisdiction upon this Court. None of these statutes or amendments, however, provide the necessary waiver of sovereign immunity. Plaintiffs also assert jurisdiction arises under 28 U.S.C. §1346(a)(1). Jurisdiction is in fact closer here than under Plaintiff's other statutory citations, but under this section jurisdiction is only conferred after a taxpayer has first paid the entire amount of tax assessed for the year in question. See Flora v. United States, 362 U.S. 145 (1960). There is nothing in the record to indicate that Plaintiffs have so paid their assessment, and Defendants assert that in fact it has not been paid. Thus, this Court lacks subject matter jurisdiction and the action must be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss should be and is hereby sustained.



JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA_

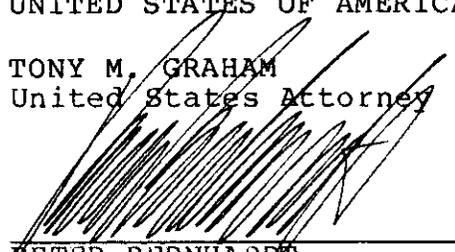
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Doyle W. Henry, a/k/a Doyle Henry, in the principal amount of \$700, plus interest thereafter at the current legal rate of 9.20 percent per annum until paid, plus the costs of this action.

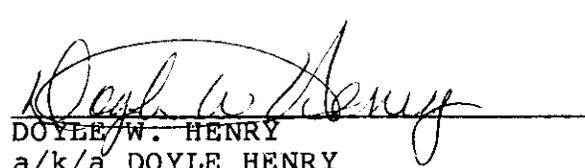

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


PETER BERNHARDT
Assistant U.S. Attorney


DOYLE W. HENRY
a/k/a DOYLE HENRY

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

FILED
JAN 3 1989
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ROBERT EUGENE COTNER,)
)
 Plaintiff,)
)
 vs.)
)
 DAVE FAULKNER,)
)
 Defendant.)

No. 80-C-401-B

ORDER

This matter comes before the Court on movant Robert E. Cotner's motion for leave to re-open this case.

Movant states he has been held in Tulsa County jail as a pretrial detainee since November 7, 1988. Movant alleges he has been denied medical treatment and access to attorneys, bondsmen and a law library. Movant also alleges he has been denied visitors and access to defense witnesses.

The motion to re-open this case originally filed in 1980 is overruled. Movant is directed to exhaust available administrative and state judicial remedies.

IT IS SO ORDERED this 3rd day of January, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Judge W. S. Dent, Court
State of Okla.

Cotter

-v-

Faulkner, County Jail, et al.

} no. 80-C-401-#B

Petition to Re-open Case

Petitioner, Robert E. Cotter, was given permission by the court to re-open this case IF petitioner was ever subjected to the defendants' "core and custody" again, (i.e. this case was dismissed "without prejudice", and an attempt to reopen it was denied only because cotter was not being held in the jail at that time).

FACTS

Petitioner has been held in the Tulsa County Jail, as a "pre-trial" detainee since Nov. 7th., 1988, and because he is poor, is expected to be held there "indefinitely".

The maximum security, PUNITIVE conditions of the jail, the refusal of jail officials to allow medical treatment plaintiff has been taking for 3 years, the refusal of jail personnel to allow enough access to telephone, to enable plaintiff to locate lawyers, bondsmen, defense witnesses, etc. to protect his defense, the refusal of proper access to a 'real' law library and/or any legal assistance, and a few other things such as denial of visits, except as would be allowed already, convicted and sentenced to life prisoners of and in the custody of the state.

ALL the above are being imposed upon petitioner to intimidate him, degrade him, PUNISH him, and ~~to~~ psychologically impair him in ways to make it easier for defendants to get him convicted, and deny him his rights, to cause him irreparable damage to his spirit, his mind, his will, his sanity and his health.

Two ministers from plaintiff's legally incorporated, non-denominational Christian Church, have also been "repeatedly" refused visit with plaintiff, even after Cotter had requested them.

Petitioner is entitled to re-open this case, especially in light of the fact that defendants are NOT even in compliance with the order of this court in Clayton v- Faulkner, 79-723, "and" in light of "the above".

For this relief, petitioner does pray.

Dated: -12-5-88

Verification/Certification

Respectfully Submitted by,
Robert E. Cotter
D-2-8, County Jail

Copies sent to defendant's attorneys, R.E.C.

FILED

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

JAN 3 1989

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

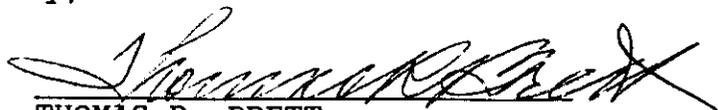
W. F. MARTIN, an individual,)
)
 Plaintiff,)
)
 vs.)
)
 STEPHEN C. SIMS, an individual,)
 and FEDERAL DEPOSIT INSURANCE)
 CORPORATION, as Receiver for)
 FIRST NATIONAL BANK OF SAPULPA,)
 a national banking association,)
)
 Defendants.)

No. 87-C-244-B

AMENDED JUDGMENT

In keeping with the verdict of the jury received and filed on September 2, 1988, Judgment is hereby entered in favor of the Plaintiff, W. F. Martin, and against the Defendants, Stephen C. Sims and the FDIC as Receiver for the First National Bank of Sapulpa in the sum of \$500,000.00 as and for compensatory damages, interest to run thereon at the rate of 9.95% per annum from the date of November 10, 1986 until paid (12 O.S. §727). Judgment is also entered in the sum of \$15,000.00 in favor of the Plaintiff W. F. Martin, and against the individual Defendant Stephen C. Sims as and for punitive damages, with interest thereon at the rate of 9.95% per annum from the date of September 2, 1988, the date of the original judgment. The costs herein are to be paid by the Defendants and the parties are to pay their own respective attorneys fees.

DATED this 3rd day of January, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

149

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

Entered
FILED

JAN 3 1989

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

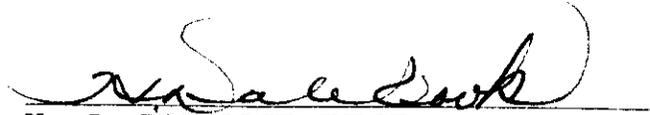
No. 88-C-205-C ✓

RONALD ROBERT WALTON)
and PATSY JUNE WALTON,)
)
Plaintiffs,)
)
vs.)
)
FIBREBOARD CORPORATION, et al.,)
)
Defendants.)

ORDER OF DISMISSAL WITH PREJUDICE
OF DEFENDANT COMBUSTION ENGINEERING, INC.

Pursuant to Joint Stipulation of Dismissal With Prejudice of Defendant Combustion Engineering, Inc. filed herein, the Court finds and **ORDERS** that plaintiffs' causes be and the same are dismissed with prejudice as against Combustion Engineering, Inc. and plaintiffs reserving their rights against all other defendants.

Done and dated this 30th day of December, 1988.



U. S. DISTRICT JUDGE