

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

INTERNATIONAL UNION, UNITED)
AUTOMOBILE, AEROSPACE AND)
AGRICULTURAL IMPLEMENT WORKERS)
OF AMERICA, AFL-CIO, CLC AND)
ITS LOCAL 952,)
)
Plaintiffs,)
)
vs.)
)
ROCKWELL INTERNATIONAL)
CORPORATION,)
)
Defendant.)

Case No. 86-C-901-C ✓

FILED

MAR 15 1989 *pw*

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

ORDER OF DISMISSAL WITH PREJUDICE

Now before the Court is the Joint Application For Order Dismissing Case With Prejudice submitted by the Plaintiffs, International Union, United Automobile, Aerospace and Agriculture Implement Workers of America, AFL-CIO, CLC and Local 952 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, CLC, and by the Defendant, Rockwell International Corporation. Premises considered, the Court hereby Orders, Adjudges and Decrees:

1. The parties have settled this case by a certain Settlement Agreement dated March 8, 1989.

2. By reason of such settlement, this action shall be dismissed with prejudice, with each party to bear its own costs and attorney fees.

IT IS SO ORDERED this 14th day of March, 1989.

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

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

FILED

MAR 15 1989 *CS*

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

R. DOBIE LANGENKAMP)
)
 Plaintiff,)
)
 v.)
)
 CITIZENS TRUST,)
)
 Defendant.)

87-C-373-E ✓

ORDER

Now before the Court is an appeal of the Bankruptcy Court Order dated May 5, 1987, allowing Citizens Trust an unsecured claim against the debtor's estate in the amount of \$23,969.77. (R. 42)

I.

The Facts

Briefly, debtor owed \$263,567.28 to Appellant prior to debtor's bankruptcy. Also prior to debtor's bankruptcy, Appellant and debtor entered into an agreement to settle the debt. As a result of the settlement agreement, debtor paid Appellant \$20,000.00. Some eleven (11) days later debtor was put into bankruptcy by the filing of an involuntary petition.

After the filing of the petition, the bankruptcy trustee, using its avoidance powers under §547, determined that the debtor's \$20,000 payment was a preferential transfer and required Appellant to disgorge and turnover the same (with accumulated interest of \$3,969.77). Appellants then filed a proof of claim, not for the \$23,967.77 (just turned over to the trustee), but for the entire amount of the pre-settlement debt: \$263,567.28. The

Bankruptcy Court determined that Appellant was entitled to claim only the amount disgorged to the trustee, and from this decision Appellants appeal.

II.

The Bankruptcy Court Order is a final order from which Appellant may appeal as of right. 28 U.S.C. §158(a); In re Saco Local Development Corp., 711 F.2d 441 (1st Cir. 1983); Matter of Morse Electric Company, Inc., 805 F.2d 262, 264 (7th Cir. 1986).

In reviewing the Bankruptcy Court decision, this Court is constrained to accept as true, findings of fact, unless clearly erroneous. ¹ Questions of law, however, are considered de novo.²

III.

In essence, Appellant asserts that when it was required to return the settlement payment of \$20,000.00, it should have been permitted to file a claim for an amount based on the relative debtor-creditor positions prior to the settlement payment. Consequently, Appellant asserts it has a valid claim for the total debt of \$263,567.28, as if the settlement was never finalized.

The issue is one of first impression. The one case which Appellants rely most heavily, In re Miller, 54 B.R. 710 (Bankr. N.D. 1985), is cited for the proposition that Appellant's original claim was not extinguished, and may be now asserted in

¹ Bankruptcy Rule 8013; In re Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988).

² Id.

original claim was not extinguished, and may be now asserted in its original amount of \$263,567.28.

The critical facts in Miller are distinct, in an important aspect, from the case at bar.

In Miller, debtors were to make three cash payments under the terms of the settlement agreement in exchange for a release of creditor's claims. Only the first of the three payments were actually made prior to the bankruptcy filing. The court in Miller construed the settlement agreement as an attempted accord and satisfaction - which was never fully satisfied. Id., at 713.

Miller held that because "the satisfaction ... remains unexecuted" or "breached", the creditors' original claims were not extinguished. (Id.) Thus, the execution of the "satisfaction" was the critical factor in the Miller decision.

Unlike the circumstances in Miller, in the case at bar the debtor had fully executed his obligations, under the settlement agreement. The \$20,000 "satisfaction" has been paid by debtor and accepted by Appellant. This, the Bankruptcy Court made clear when it found:

So we know that the \$20,000 was paid and that no parties, that is the parties involved herein, had any action against the other. That the terms and the conditions of the Settlement Agreement were met and everything is fine at this stage of the game. (R. 45, at p. 30) (Emphasis added.)³

³ Appellants do not take issue with this finding, and the same does not appear from the record to be "clearly erroneous" Thus, the finding is accepted as true. Bankruptcy Rule 8013.

Eleven (11) days thereafter, debtor was forced into bankruptcy. Appellant's claim, already voluntarily reduced in value from \$263,567.28 to \$20,000.00, was involuntarily further reduced to the value of a \$20,000.00 unsecured claim, after the trustee required it to return the hard cash (as a preferential transfer). Thus, the depreciating effect on Appellant's claim seems especially harsh.

Nevertheless, the Bankruptcy Court concluded as a matter of law, that,

... the duty of the trustee to exercise his rights under [§] 547 should not be considered as affecting the original obligation or the original Settlement Agreement and Release from unliquidated to liquidated. (R. 45, at p. 31)

The Court agrees. When debtor was forced into bankruptcy, both parties had settled the debt between them. Appellant had no claim for any remaining amount and "everything [was] fine at this stage". (R. 45, at p. 30) The accord had been fully satisfied, and no further debtor-creditor relationship remained.

Only by virtue of the trustee's exercise of its avoidance powers did this placid scenario change. Appellant then sought to take advantage of §502 to cushion the trustee's blow. Section 502(h) permits the receiver of a preferential transfer, later avoided by a trustee, to make a claim "as if such claim had arisen before the date of the filing of the petition".

Appellant attempts to stretch this language to mean that it may file a claim for the original debt, since the debt had arisen "before the date of the filing of the petition". But this

interpretation does violence to the intent of §502(h). Rather than allowing the creditor to ignore intervening settlement agreements, and look back to the genesis of a debt, §502(h) should be applied only to permit one (made a creditor by the trustee's actions) to assert the disgorged amount as a "pre-petition" debt.

Being permitted to assert the loss suffered by a post-petition disgorgement as a pre-petition debt allows such a creditor as Appellant the luxury of standing on an equal footing with other pre-petition creditors. In re Verco Industries, 704 F.2d 1134, 1139 (9th Cir. 1983); In re Independent Clearing House Company, 41 B.R. 985, 1017 (Bankr. Utah 1984) affirmed in part and reversed in part, In re Independent Clearing House, 62 B.R. 118 (D. Utah 1986). It does not, however, allow Appellant to ignore the executed settlement agreement and revert back in time to a day when debtor owed it \$263,567.28. The harshness of the result is probably best described as due to the surprise of the debtor's bankruptcy and the effect of the Bankruptcy Code's operation on all those who receive "preferential transfers".

Perhaps, as Appellant argues, such a result will discourage creditor's from settling their claims against debtors headed toward bankruptcy, at a time when settlement is most desperately needed by debtors to avoid bankruptcy.

But, if pre-petition settlement of claims is to be encouraged, by excepting such payments from the "preferential transfer" definitions, or by permitting creditors to file claims

for pre-settlement debt amounts, it is for Congress to provide the mechanism. At present, however, Congress has not done so.

Therefore, the Court finds that the Bankruptcy Court did not err in ordering Appellant's claim allowed in the disgorged amount of \$23,967.77.

It is, therefore, Ordered that the decision of the Bankruptcy Court be AFFIRMED.

Dated this 15th day of March, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 15 1989

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

JOE L. WHITE,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,
a Delaware corporation,

Defendant.

No. 82-C-755-C

ORDER

Now before the Court for its consideration are both parties' objections to the Report and Recommendation of the United States Magistrate, the latter filed on December 6, 1988.

The extended nature of this litigation makes it necessary for the Court to reach back over four years ago to trace the relevant events. On January 28, 1985, the plaintiff filed a motion for protective order regarding tape recordings of a July 17, 1981 meeting between plaintiff, O. J. Gilbert and Darrol Davidson, the latter two gentlemen also being employees of defendant. In the motion, plaintiff requested the Court to order defendant not to make any additional alterations or modifications to the tapes, i.e., implying that such had already been made. Attached to the motion was a letter to plaintiff and his counsel from their engaged

expert, Arthur A. Few, Jr., stating that the tapes had been altered.

Hearings were held before then-Magistrate Rizley on May 23, 24 and 25, 1985. The Magistrate's term expired on July 7, 1985, before the Magistrate had entered a Report and Recommendation. Therefore, the Court reviewed the relevant pleadings as well as transcripts of the hearings before the Magistrate and entered an Order on April 30, 1986. For present purposes, the relevant passages of that Order state as follows:

2. Based on the record before the Court at this time, the Court concludes that there is no credible evidence that either the Defendant, American Airlines, or its attorneys, Boone, Smith, Davis & Hurst, have caused the original tape recordings introduced into evidence as Defendant's Exhibits 1, 2 and 3 or the enhanced tapes, Exhibits 8 and 9 to be destroyed, altered, erased or modified in any way.

3. The testimony and allegations of the Plaintiff, Joe L. White, that Defendant's attorneys, Boone, Smith, Davis & Hurst, or any member, associate, or employee of that law firm, caused the original tapes introduced into evidence as Defendant's Exhibits 1, 2 and 3 or the enhanced tapes, Exhibits 8 and 9, to be destroyed, altered, erased or modified in any way, is not credible and such testimony and allegations by Mr. White are not supported by any evidence in the record before the Court at this time.

4. If, after further examination by an expert or experts, there is any credible evidence to establish that the original tapes introduced into evidence as Defendant's Exhibits 1, 2 and 3 have been destroyed, altered, erased or modified in any way so as to change the content on any of the Defendant's Exhibits 1, 2 or 3 from the original content as recorded during the termination meeting of July 17, 1981, any such destruction, alteration, erasure or modification did not occur after the original tapes, Defendant's Exhibits 1, 2 and 3, came into the possession of Defendant's attorneys, Boone, Smith, Davis & Hurst. Such contention by Plaintiff to the contrary, is not supported by any credible evidence and should not have been asserted by Plaintiff and/or his co-counsel, Mr. Donald G. Hopkins, in any pleadings filed in this case without further investigation into the matter.

5. Sanctions against the Plaintiff, Joe L. White, should be imposed by the Court.

(April 30, 1986 Order at 38-39).

The Court did not specify the nature of the sanctions, but reserved that to a later time.

In an Order entered October 10, 1986, the Court denied plaintiff's request to vacate the April 30, 1986 Order. On January 26, 1987, Magistrate Wagner held a hearing on defendant's renewed motion for sanctions and took the matter under advisement. Still another hearing was held on November 3, 1988, and the Magistrate recommended an award of sanctions in favor of defendant to compensate defendant for only those attorney fees and costs in connection with the May 23, 24 and 25, 1985 hearings on the tape matter. The amount awarded was \$6,661.25 in attorney fees and \$833.40 in costs (1/2 of the cost of the transcript of the May 23, 24 and 25, 1985 hearings), for a total sanction of \$7,494.65. On December 6, 1988, the Magistrate entered his Report and Recommendation memorializing his decision. Both parties have filed objections.

Plaintiff objects on two grounds: (1) the Magistrate did not award sanctions in his favor against defendant, and (2) sanctions should not have been awarded against plaintiff. On the first point, plaintiff raises several alleged discovery abuses by defendant. In response, defendant relies on this Court's November 19, 1987 Order denying plaintiff's October 26, 1987 application for attorney fees. However, that application dealt with an entry on the verdict form by the jury in this case which purported to award attorney fees to plaintiff. Clearly, the jury was not seeking to award plaintiff fees regarding discovery matters. It was attempting to award plaintiff his attorney fees for the entire action. The Court's Order denied this attempt. As an alternative argument, plaintiff sought to invoke the "bad faith" exception to the

American rule (i.e., that each party pay its own fees). Again, the Court reviewed this request as seeking an award of all fees, which request the Court denied. To the extent that the plaintiff raised discovery matters as evidence of bad faith on defendant's part, the Court viewed these as irrelevant. The October 26, 1987 application was an "all or nothing" application. Thus, this Court is of the view that the plaintiff's cross-appeal from the November 19, 1987 Order has not divested this Court of jurisdiction as to specific requests for sanctions as to specific discovery abuses.¹ Plaintiff has cited seven separate instances of alleged discovery abuse. The Court has reviewed these along with defendant's responses to each. On the record before it, the Court cannot conclude that any of the instances merit the imposition of sanctions. Therefore, the Court affirms the Magistrate insofar as he recommended no sanctions against the defendant.

Defendant also raises two grounds in its objection: (1) the Magistrate's recommended amount is "grossly inadequate"; (2) the Magistrate did not award sanctions against Donald G. Hopkins, plaintiff's counsel at the time the January 28, 1985 motion for protective order was filed. As to the first point, defendant seeks an award of \$46,221.25 in attorney fees and \$8,971.73 in costs. The Court first notes that defendant seeks an award for work expended with regard to state court actions in which plaintiff also

¹On March 18, 1988, defendant filed its notice of appeal from the judgment in this case. However, a request for attorney fees or sanctions is a collateral matter which can be entertained after the notice of appeal has been filed. Thomas v. Capital Sec. Services, Inc., 812 F.2d 984 (5th Cir. 1987), modified on reh'g, 836 F.2d 866 (1988).

sought to litigate the tape controversy. Defendant has cited no authority whereby Rule 11 F.R.Cv.P. or 28 U.S.C. §1927 may be used to award sanctions regarding a state court action. During the hearing before Magistrate Wagner on January 26, 1987, defendant's counsel stated that sanctions had not been sought in the state court itself. See Defendant's December 30, 1988 Addendum, Ex.8. The Court declines to award such fees.

Admirably, the defendant states that the Magistrate's award of fees based on the May 23, 24 and 25 hearings is \$132.50 too high, and should actually be \$6,528.75. Defendant argues that the Magistrate incorrectly denied the fees generated in preparation for the hearings, in that the tape controversy was "fabricated" by plaintiff. As the Court has already noted, attached to plaintiff's motion for protective order was a letter to plaintiff by his retained expert reciting conclusions of tape alteration. This Court has already found in its April 30, 1986 Order that plaintiff should have investigated further before filing his motion. However, the use of the term "fabricated" suggests fraudulent intent. The letter attached to the motion indicates that, to some extent, plaintiff was relying upon conclusions made by his expert. The conclusions were unfounded, and plaintiff's failure to further investigate constitutes a Rule 11 violation, but there is no evidence before the Court that plaintiff "fabricated" the tape controversy. The Court is persuaded that the Magistrate's recommended award strikes an appropriate balance.

Finally, defendant requests that sanctions be imposed on attorney Donald G. Hopkins. The signature line of plaintiff's January 28, 1985 motion for protective order has beneath it two typed names: Joe L. White, pro se, and Donald G. Hopkins. What purports to be the signature of Joe L. White appears on the signature line. Rule 11 focuses on the individual who signs the document in question. The Court agrees with the Magistrate's recommendation in this regard.

It is the Order of the Court that the request for sanctions by the defendant is hereby granted. It is the further Order of the Court that the request of the plaintiff for sanctions is hereby denied. The Report and Recommendation of the Magistrate is affirmed, with the exception of reducing the recommended attorney fees as noted in defendant's objection. Defendant is hereby awarded attorney fees in the amount of \$6,528.75 and costs in the amount of \$833.40, for a total sanction against plaintiff of \$7,362.15.

IT IS SO ORDERED this 15th day of March, 1989.


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

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

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

87-C-296-C

FILED

MAR 15 1989

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

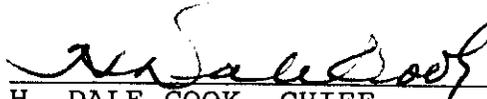
ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed February 24, 1989 in which the Magistrate recommended that defendant's Application to Assess Attorney's Fees be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that defendant's Application to Assess Attorney's Fees under 42 O.S. § 176 is denied.

Dated this 15th day of March, 1989.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

FIRE FIGHTERS CREDIT UNION,)
an Oklahoma not-for-profit)
corporation,)

Plaintiff,)

vs.)

Case No. 88-C-759-E

SWINK & COMPANY, INC., an)
Arkansas corporation; and)
RANDY WALKER, an individual,)

Defendants.)

RULE 41(a)(1) DISMISSAL BY STIPULATION

Plaintiff, Firefighters Credit Union, and Defendant,
Swink & Company, Inc., hereby stipulate to a dismissal of
Plaintiff's Complaint, with prejudice to the refiling of the
same, in accordance with Rule 41(a)(1) of the Federal Rules of
Civil Procedure. The parties further stipulate that each
party shall bear its own costs and attorneys fees.

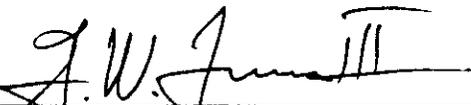
FIREFIGHTERS CREDIT UNION

BY Donald R. Bradford
Donald R. Bradford

BLACKSTOCK, JOYCE, POLLARD &
MONTGOMERY
515 South Main, Suite 300
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Attorneys for FIREFIGHTERS
CREDIT UNION

SWINK & COMPANY, INC.

By 
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CONNER & WINTERS
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and


Patrick B. James
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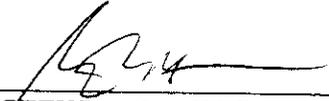
Attorneys for SWINK & COMPANY, INC.

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

SHERDELL ABERNATHY,)
)
 Plaintiff,)
)
 vs.) No. 88-C-898-C
)
 DELTA SOLVENTS AND CHEMICALS)
 CO., a Texas corporation,)
 d/b/a DELTA DISTRIBUTORS,)
)
 Defendant.)

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the plaintiff, Sherdell Abernathy, hereby stipulates with the defendant, Delta Solvents and Chemicals Co., d/b/a Delta Distributors, that this action shall be dismissed with prejudice. Each party is to bear its own costs and attorney fees.



STEVEN R. HICKMAN

Of the Firm:

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ATTORNEY FOR THE PLAINTIFF
SHERDELL ABERNATHY

Gayle L. Barrett

GAYLE L. BARRETT

- Of the Firm -

CROWE & DUNLEVY
A Professional Corporation
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Oklahoma City, Oklahoma 73102
(405) 235-7700

ATTORNEYS FOR DEFENDANT
DELTA SOLVENTS & CHEMICALS CO.,
d/b/a DELTA DISTRIBUTORS

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

F I L E D

Jan 31 1986

DYCO PETROLEUM CORPORATION,
a corporation,

Plaintiff,

v.

EL PASO NATURAL GAS COMPANY,
a corporation,

Defendant.

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

Case No. 86-C-897-E

ORDER

Upon the joint stipulation of the parties hereto, the
respective claims and causes of Plaintiff and Defendant are
dismissed with prejudice to refiling.

UNITED STATES DISTRICT JUDGE

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

TRANSPower CONSTRUCTORS, a
Division of Harrison International
a South Carolina corporation,

vs.

GRAND RIVER DAM AUTHORITY, an
Oklahoma public corporation, and
THE BENHAM GROUP, INC.,
a Delaware corporation,

Defendants.

F I L E D

MAR 15 1989

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

Case No. 86-C-14-E

JUDGMENT

This matter came on for trial before the Court, The Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered by the jury on March 10, 1989,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff Transpower Constructors recover of the Defendant Grand River Dam Authority the sum of One Million One Hundred Twenty-four Thousand Three Hundred Twelve Dollars and Forty-nine Cents (\$1,124,312.49), with interest thereon from the date of judgment at the statutory rate of 9.32%, compounded annually.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Transpower Constructors recover of the Defendants Grand River Dam Authority and The Benham Group, Inc., jointly and severally, the additional sum of Six Hundred Sixty-three Thousand Two Hundred Twenty Dollars and Seventy-two Cents (\$663,220.72), with interest thereon from the date of judgment at the statutory rate of 9.32%, compounded annually.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Transpower Constructors shall recover of the Defendant Grand River Dam Authority its attorney's fees incurred herein, and Plaintiff Transpower Constructors shall recover of

the Defendants Grand River Dam Authority and The Benham Group, Inc. the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the stipulation of the parties, the Court shall, upon motion by Plaintiff and response thereto, hereafter and forthwith determine whether prejudgment interest is awardable to the Plaintiff Transpower Constructors and, if the Court determine it so, the amount thereof.

Dated this 14th day of March, 1989.


James O. Ellison, U. S. District Judge

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

FILED

March 17 1989
Jack C. Silver, Clerk
U.S. DISTRICT COURT

MIKE PAUL FLOYD,
Plaintiff,

-vs-

NICK EPPERSON, ALAN
BIRD, THE CITY OF
MOLOGAH, OKLAHOMA,
a municipal corporation,
and BOARD OF COMMISSIONERS
OF ROGERS COUNTY, OKLAHOMA,
Defendants,

No. 88-C-262-F

ORDER

NOW on this 15 day of March, 1989,
plaintiff's Application to Dismiss with Prejudice came on for
hearing. The Court being fully advised in the premises finds
that said Application should be sustained and the defendants,
should be dismissed from the above entitled action with
prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that
plaintiff's Application to Dismiss With Prejudice be sustained
and the above captioned action be dismissed with prejudice as to
defendants.

HONORABLE JAMES O. ELLISON, JUDGE
OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT

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

FILED

MAR 15 1989

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

M & S MANAGEMENT CORPORATION,)
)
Plaintiff,)
)
vs.)
)
AMERICAN EXPRESS TRAVEL)
RELATED SERVICES COMPANY,)
INC., et al.,)
)
Defendants.)

No. 87-C-1045-E

ADMINISTRATIVE CLOSING ORDER

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 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, order, judgment, or for any other purpose required to obtain a final determination of the litigation.

ORDERED this 14th day of March, 1989.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

MAR 15 1989

Jack C. Siler, Jr.
U. S. DISTRICT COURT

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

LORENZA WASHINGTON,)	
)	
Plaintiff,	)	Case No. 88-C-1215B
)	
v.)	
)	
AM-TRACK RAILROAD CONSTRUCTION AND MAINTENANCE, INC.,)	
)	
Defendant.)	

ORDER OF DISMISSAL WITH PREJUDICE

It appearing that plaintiff has failed to obtain other counsel or file an entry of appearance pro se as directed in the Court's Order of February 9, 1989,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this action be dismissed with prejudice for failure of plaintiff to prosecute said action.

S/ THOMAS R. BRETT

Thomas R. Brett
U.S. District Judge

FILED

MAR 15 1989

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

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

BURLINGTON NORTHERN RAILROAD
COMPANY,)
)
)
Plaintiff,)
)
)
vs.)
)
)
NICKELL TRUCKING COMPANY,)
)
)
a Corporation, and FORUM)
)
)
INSURANCE COMPANY, an)
)
)
Insurance Company,)
)
)
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

ORDER

For good cause shown, and upon the application for dismissals with prejudice on file,

IT IS THEREFORE ORDERED that this case and all claims and causes of action arising in this case and from the accident of which this case was concerned are hereby dismissed with prejudice.

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

Approved:

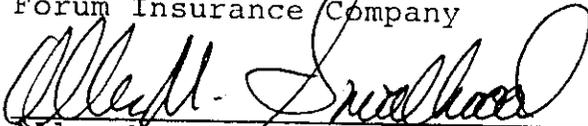
John A. Mackechnie
John A. Mackechnie, OBA No. 5603

Defense Counsel for Nickell
Trucking Co. and its insurer
Forum Insurance Co.

Kornfeld & Franklin
Attorneys for Plaintiff Burlington
Northern Railroad Company and
Third-Party Defendant, P. W. Hair



Alex or Tim Cheek
Cheek, Cheek & Cheek
Attorneys for Defendants,
Nickell Trucking Company and
Forum Insurance Company



Allen M. Smallwood
Attorney for Defendant/Third-Party
Plaintiff, Jack R. Anderson,
Administrator of the Estate of
W. H. Walker, Deceased, and
Betty Jean Smith, Guardian of the
Estate of Daniel Ray Smith



Jon B. Wallis
Attorney for Defendant/Third-Party
Plaintiff, Jack R. Anderson,
Administrator of the Estate of
W. H. Walker, Deceased, and
Betty Jean Smith, Guardian of the
Estate of Daniel Ray Smith

FILED

MAR 15 1989

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

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

SAMSON RESOURCES CO. et al)

Plaintiffs,)

vs.)

NORTHERN NATURAL GAS CO.)

Defendant.)

Case No. 85-C-74-E ✓

JUDGMENT

Judgment is hereby granted against the defendant in favor of the plaintiffs as follows:

In favor of Samson Resources Co.; \$74,645.00 plus prejudgment interest in the amount of \$80.00 for a total judgment of \$74,725.00.

In favor of Williford; \$3,401.00 plus prejudgment interest in the amount of \$2.00 for a total judgment of \$3,403.00.

In favor of Wagner & Brown; \$3591.00 plus prejudgment interest in the amount of \$9.00 for a total judgment of \$3,600.00.

This judgment shall bear interest at the statutory rate from November 8, 1986. *Plaintiff are awarded costs of this action.*
It is so Ordered. *goc*

Date this 14th day of March, 1989.

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

FILED

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

NOV 11 1988

MARY HICKERSON, Individually and)
as Personal Representative of)
the Heirs and Estate of JAMES)
V. HICKERSON, Deceased)

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

Plaintiff,)

Case No. 87-C-160-E

vs.)

AC & S, INC., et al.,)

Defendants.)

ORDER

This matter comes on pursuant to the Plaintiff's Application for a
dismissal without prejudice. After due consideration, this Court

HEREBY ORDERS, ADJUDGES AND DECREES that said case be dismissed
without prejudice as against all Defendants.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

FILED

MAR 15 1989
U.S. DISTRICT COURT

EDDIE EVANS,)
)
 Plaintiff,)
)
 vs.)
)
 CITY OF TULSA, a municipality,)
 and PAUL PAYNE, individually)
 and jointly,)
)
 Defendants.)

No. 88-C-711-B

ORDER

This matter comes before the Court on Defendant Paul Payne's Motion to Dismiss for insufficient service of process. Plaintiff, Eddie Evans, a black male, initiated this action alleging violation of Title 42 U.S.C. §1981 against the City of Tulsa and Plaintiff's supervisor Paul Payne.

Defendant City of Tulsa employed Plaintiff on February 11, 1980 as a computer operator. In early November 1982 Plaintiff was promoted to the position of supervisor. Plaintiff retained this position until 1984 when Defendant Payne was employed by the City as supervisor of Plaintiff. After Defendant Payne was employed, Plaintiff began receiving unsatisfactory performance evaluations. On or about June 2, 1988, Plaintiff was demoted from his position as supervisor. Plaintiff alleges this demotion was racially motivated. Suit was initiated against the City of Tulsa and Paul Payne.

Defendant Paul Payne moves to dismiss this action against him for insufficient service of process. Service was attempted on Mr.

Payne by certified mail. Mr. Payne did not receive such summons and complaint. Neither did he appoint Ms. Mignon C. Reel to act as his agent to receive summons. Plaintiff again attempted service on Mr. Payne by handing him an alias summons. Such summons did not contain a copy of the original complaint.

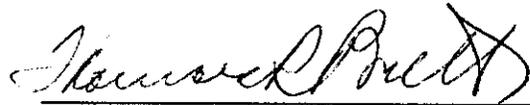
An alias summons in a civil action requires an answer to the complaint which is served with the summons within twenty (20) days after service. Fed.R.Civ.P. 4(d) requires a summons and complaint to be served together upon an individual "... by delivering a copy of the summons and the complaint to him personally..." Service of a summons in a manner prescribed by statute is a condition precedent to a valid exercise of personal jurisdiction, notwithstanding actual knowledge by the defendant. Chilcote v. Shertzer, 373 F.Supp. 86 (E.D.Wis. 1974). Plaintiff has failed to meet the requirements of Fed.R.Civ.P. 4(d) by serving Defendant with a copy of both the summons and complaint.

Plaintiff has not filed a response to Defendant's Motion to Dismiss. Rule 15 of the Rules of the United States District Court for the Northern District of Oklahoma states:

"(m)emoranda in opposition to such motion and objection shall be filed within fifteen (15) days in a civil case ... Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings."

Plaintiff has failed to adequately serve process on Paul Payne.¹ He has also failed to respond to Defendant Payne's Motion to Dismiss. This Court considers this a waiver of objection. Defendant Payne's Motion to Dismiss is GRANTED.

IT IS SO ORDERED this 15 day of March, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹ The Court is aware that an amended complaint was filed on March 10, 1989. "(T)he amended pleading supersedes and takes the place of the original complaint." Aetna Life Ins. Co. v. Phillips, 69 F.2d 901 (10th Cir. 1934). However, the Court notes the amended pleading has not been served on Defendant Payne pursuant to Fed.R.Civ.P. 4 as of March 14, 1989.

Larry S. Noland, for the principal amount of \$25,331.85, plus accrued interest of \$2,311.80 as of October 31, 1988, plus interest thereafter at the rate of 4 percent per annum until judgment, plus interest thereafter at the current legal rate of _____ percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

cen

as this. cf. Adams v. Fed. Express Corp., 547 F.2d 319 (6th Cir. 1976), cert. denied, 431 U.S. 915 (1977).

It is the Order of the Court that the application of the plaintiff for temporary restraining order is hereby DENIED.

IT IS SO ORDERED this 15 day of March, 1989.



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

FILED

MAR 15 1989

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

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

SAMSON RESOURCES CO. et al)

Plaintiffs,)

vs.)

NORTHERN NATURAL GAS CO.)

Defendant.)

Case No. 85-C-74-E ✓

JUDGMENT

Judgment is hereby granted against the defendant in favor of the plaintiffs as follows:

In favor of Samson Resources Co.; \$74,645.00 plus prejudgment interest in the amount of \$80.00 for a total judgment of \$74,725.00.

In favor of Williford; \$3,401.00 plus prejudgment interest in the amount of \$2.00 for a total judgment of \$3,403.00.

In favor of Wagner & Brown; \$3591.00 plus prejudgment interest in the amount of \$9.00 for a total judgment of \$3,600.00.

This judgment shall bear interest at the statutory rate from November 8, 1986. *Plaintiff are awarded costs of this action.*
It is so Ordered. *goc*

Date this 14th day of March, 1989.

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

MAR 15 1989

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

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

THE TRAVELERS INSURANCE COMPANY,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
NATIONAL INSURANCE SERVICES,)
INC., a corporation,)
)
Defendant.)

Case No. _____

JUDGMENT BY CONFESSION

This matter comes on before the Court, the Honorable Thomas R. Bultt presiding, on this 15th day of March, 1989, pursuant to regular assignment. Plaintiff, The Travelers Insurance Company ("Travelers") is represented by its counsel, Robert S. Glass of Gable & Gotwals, Inc., and the defendant, National Insurance Services, Inc. ("NIS"), is represented by its counsel, Randolph P. Stainer of Stainer and Stainer; and said counsel having represented to the Court by virtue of their signatures together with the signature of an authorized officer of NIS hereinbelow that the parties have agreed to the entry of this Judgment by Confession of liability in favor of Travelers and against NIS in the sum of \$105,476.26, plus reasonable attorney's fees and costs of litigation in the sum of \$9,500.00, which sum shall accrue interest at the rate of 9.32% per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full. This Court makes the following FINDINGS pursuant to the stipulations and agreement of the parties to this Judgment by Confession:

1. This Court has jurisdiction over the subject matter and all parties hereto. The issues in this case have been resolved either by agreement between the parties or by virtue of NIS's confession of judgment herein.
2. All of the allegations of Travelers' Counts I and II contained in this Complaint, as against NIS, are true and correct and Travelers is entitled to judgment

under its Counts I and II against NIS in the sum of \$105,476.26, plus reasonable attorney's fees and costs of collection and litigation in the sum of \$9,500.00 together with interest accruing thereon at the rate of 9.32% per annum, pursuant to 28 U.S.C. §1961.

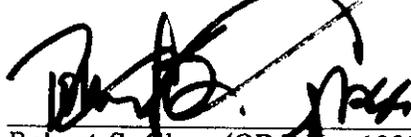
IT IS THEREFORE ORDERED and DECREED by this Court that Travelers shall have and recover of and from NIS under its Counts I and II the sum of \$105,476.26, together with reasonable attorney's fees and collection costs in the sum of \$9,500.00, which sums shall bear interest at the rate of 9.32% per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full, for all of which NIS shall be jointly and severally liable with Charles S. Kopp and for which general execution shall issue.

IT IS SO ORDERED and DATED this 15th day of March, 1989.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT COURT JUDGE

APPROVED AND AGREED TO:



Robert S. Glass (OBA No. 10824)
Gable & Gotwals, Inc.
Counsel for Plaintiff, The Travelers
Insurance Company



Randolph P. Stainer
Stainer and Stainer
Counsel for Defendant, National Insurance
Services, Inc.

NATIONAL INSURANCE SERVICES, INC.

By:



Charles S. Kopp, Its President,
authorized to execute this Judgment
on behalf of said corporation

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 GEOFFREY B. DUNSMOOR a/k/a)
 GEOFFERY B. DUNSMOOR; KAREN A.)
 DUNSMOOR; LOT TWENTY-ONE (21),)
 BLOCK FIVE (5), LAKEVIEW)
 HEIGHTS ADDITION AMENDED)
 INVESTMENT COMPANY; WILLIAM R.)
 SATTERFIELD; JAMES BEARDEN,)
 Tenant; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma)
)
 Defendants.)

FILED

MAR 14 1989

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

CIVIL ACTION NO. 88-C-535-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 13 day
of March, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Carl Robinson, Assistant District Attorney,
Tulsa County, Oklahoma; the Defendants, Lot Twenty-One (21),
Block Five (5), Lakeview Heights Addition Amended Investment
Company and William R. Satterfield, appear by their attorney
Randy A. Rankin; and the Defendants, Geoffrey B. Dunsmoor a/k/a
Geoffery B. Dunsmoor, Karen A. Dunsmoor, and James Bearden,
Tenant, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, Lot Twenty-One (21), Block Five (5), Lakeview Heights Addition Amended Investment Company and William R. Satterfield, were served with Summons and Complaint on July 20, 1988; that the Defendant, James Bearden, Tenant, was served with Summons and Complaint on August 19, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 21, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 10, 1988.

The Court further finds that the Defendants, Geoffrey B. Dunsmoor a/k/a Geoffery B. Dunsmoor and Karen A. Dunsmoor, 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 28, 1988, and continuing to December 2, 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, Geoffrey B. Dunsmoor a/k/a Geoffery B. Dunsmoor and Karen A. Dunsmoor, 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, Geoffrey B. Dunsmoor a/k/a Geoffery B. Dunsmoor and Karen A. Dunsmoor. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on July 5, 1988; that the Defendants, Lot Twenty-One (21), Block Five (5), Lakeview Heights Addition Amended Investment Company and William R. Satterfield, filed their Answer herein on August 9, 1988; and that the Defendants, Geoffrey B. Dunsmoor a/k/a Geoffery B. Dunsmoor, Karen A. Dunsmoor, and James Bearden,

Tenant, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Twenty-one (21), Block Five (5), LAKEVIEW HEIGHTS ADDITION AMENDED, an addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on November 27, 1978, Geoffrey B. Dunsmoor and Karen A. Dunsmoor executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$11,200.00, 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, Geoffrey B. Dunsmoor and Karen A. Dunsmoor executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated November 27, 1978, covering the above-described property. Said mortgage was recorded on November 28, 1978, in Book 4368, Page 689, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Geoffrey B. Dunsmoor a/k/a Geoffery B. Dunsmoor and Karen A.

Dunsmoor, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Geoffrey B. Dunsmoor a/k/a Geoffery B. Dunsmoor and Karen A. Dunsmoor, are indebted to the Plaintiff in the principal sum of \$10,962.62, plus interest at the rate of 9.5 percent per annum from June 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, Lot Twenty-One (21), Block Five (5), Lakeview Heights Addition Amended Investment Company and William R. Satterfield, stated in their Answer filed herein on August 9, 1988, that they are the record title holders of the subject property. However, the Plaintiff's lien on the subject property is superior to any claim made by said Defendants.

The Court further finds that the Defendant, James Bearden, Tenant, is in default and has no right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Geoffrey B. Dunsmoor a/k/a Geoffery B. Dunsmoor and Karen A. Dunsmoor, in the principal sum of \$10,962.62, plus interest at

the rate of 9.5 percent per annum from June 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.32 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Lot Twenty-One (21), Block Five (5), Lakeview Heights Addition Amended Investment Company; William R. Satterfield; James Bearden, Tenant; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

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

(Signed) H. Dale Cook

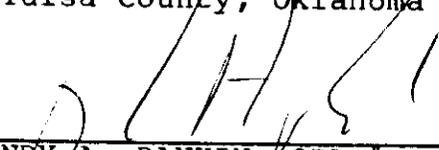
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney


CARL ROBINSON, OBA #10164
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma


RANDY A. RANKIN, OBA #
Attorney for Defendants,
Lot Twenty-One (21), Block Five (5),
Lakeview Heights Addition Amended
Investment Company and
William R. Satterfield

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

PHILLIP A. BEATY; CHERYL BEATY;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

MAR 14 1989

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

CIVIL ACTION NO. 88-C-393-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 13th day
of March, 1989. 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
Carl Robinson, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, Phillip A. Beaty and Cheryl Beaty,
appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Cheryl Beaty, acknowledged
receipt of Summons and Complaint on May 12, 1988; that Defendant,
County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on May 3, 1988; and that Defendant, Board
of County Commissioners, Tulsa County, Oklahoma, acknowledged
receipt of Summons and Complaint on May 2, 1988.

The Court further finds that the Defendant, Phillip A. Beaty, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning December 14, 1988, and continuing to January 18, 1989, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Phillip A. Beaty, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known address of the Defendant, Phillip A. Beaty. 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 party served by publication with respect to his present or last

known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on May 19, 1988; and that the Defendants, Phillip A. Beaty and Cheryl Beaty, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Six (6), Block 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 on September 20, 1974, the Defendants, Phillip A. Beaty and Cheryl Beaty, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$10,000.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Phillip A. Beaty and Cheryl Beaty, executed and delivered to the United

States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated September 20, 1974, covering the above-described property. Said mortgage was recorded on September 27, 1974, in Book 4138, Page 1405, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Phillip A. Beaty and Cheryl Beaty, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Phillip A. Beaty and Cheryl Beaty, are indebted to the Plaintiff in the principal sum of \$8,578.51, 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 the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$1.51 for the year 1981 and \$4.00 for the year 1987. Said lien is inferior to the interest of the Plaintiff, United States of America.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Phillip A. Beaty and Cheryl Beaty in the principal sum of

\$8,578.51, 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 9.32 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$5.51 for personal property taxes for the years 1981 and 1987, plus the costs of this action.

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

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

First:

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

Second:

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

Third:

In payment of the Defendant, County
Treasurer, Tulsa County, Oklahoma, in the
amount of \$5.51, personal property taxes
which are currently due and owing.

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

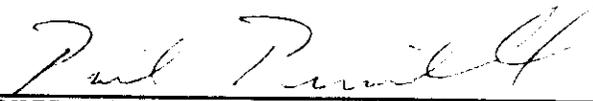
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of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

(Signed) H. Dale Cook

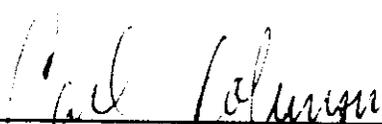
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



CARL ROBINSON, OBA #10164
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

entered

2072.001.C

FILED

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

MAR 13 1989

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

KATHERINE E. TABB, et al.,
Defendants,

)
)
)
)
)
)
)
)
)
)
)

NO. 89-C-135C ✓

CONSENT TO JUDGMENT AND DISCLAIMER

COMES now the Defendant, Katherine E. Tabb, and consents to judgment herein in the amount of FOUR THOUSAND FIVE HUNDRED THIRTY-NINE and 60/100 DOLLARS (\$4,539.60) plus interest at the rate of 7.5% per annum from August 1, 1987, until judgment, plus interest thereafter at the legal rate until fully paid, plus any additional sums advanced or to be advanced or expended during this foreclosure action by the Plaintiff for taxes, insurance, abstracting and the costs of this action and disclaims any rights, title or interest in and to the below described real property, to-wit:

Lot 15, Block 40, VALLEY VIEW ACRES II ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

KATHERINE E. TABB,

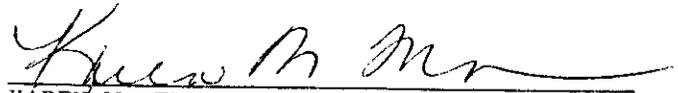
By: *Karen M. Funk*
KAREN M. FUNK, #3180
Robert E. Parker and Associates
P. O. Box 702705
Tulsa, OK 74170

(918) 745-0792

I hereby certify that a true and correct copy of the above and foregoing Consent to Judgment and Disclaimer was mailed to the attorney for the Plaintiff, Tony M. Graham, United States Attorney, 3600 United

H

States Courthouse, Tulsa, OK 74103, with sufficient postage thereon on
this 13th day of March, 1989.


KAREN M. FUNK

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

FILED

MAR 10 1988

CLERK OF DISTRICT COURT

JERALD S. LOCKE,
Plaintiff,
v.
MCDONNELL DOUGLAS CORPORATION,
Defendant.

No. 88-C-1133-C

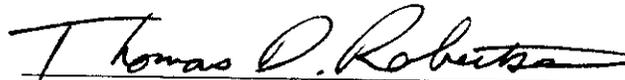
STIPULATION OF DISMISSAL WITH PREJUDICE

Come now the parties, through their attorneys of record, and pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii) hereby stipulate that this action should be, and hereby is, dismissed, with prejudice. Each party is to bear his or its own attorney's fees and costs.

For Plaintiff
Jerald S. Locke:

For Defendant
McDonnell Douglas Corporation:


Earl W. Wolfe, OBA #9824
The Hartford Building
Suite 123
110 South Hartford
Tulsa, Oklahoma 74120-1834
(918) 582-3168


Thomas D. Robertson, OBA #7665
Nichols, Wolfe, Stamper,
Nally & Fallis, Inc.
Suite 400 Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103-4004
(918) 584-5182

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, et al.,)

Plaintiffs,)

vs.)

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

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,)

FILED
MAR 10 1989
Jack C. Silver, Clerk
U. S. DISTRICT COURT

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

Case No. 87-C-645-B

Case No. 87-C-819-B

and)
)
 MYRTLE V. MORGAN,)
)
 Plaintiff,)
 vs.)
)
 BILLY JAKE MYERS, d/b/a)
 RHINELAND AGRI-SHIPPIERS, d/b/a)
 MYERS GRAIN AND FERTILIZER,)
 et al.,)
)
 Defendants,)
 and)
)
 HARRY CHEATWOOD, Personal)
 Representative of the Estate)
 of Pauline Thomas, Deceased,)
)
 Plaintiff,)
 vs.)
)
 PROTECTIVE CASUALTY INSURANCE)
 COMPANY, et al.,)
)
 Defendants,)
 and)
)
 VERA L. TRESLER,)
)
 Plaintiff,)
 vs.)
)
 BILLY JAKE MYERS, d/b/a)
 RHINELAND AGRI-SHIPPIERS,)
 d/b/a MYERS GRAIN AND)
 FERTILIZER, et al.,)
)
 Defendants.)

Case No. 87-C-863-B

Case No. 87-C-923-B

Case No. 87-C-544-B
 (Consolidated in
 87-C-644-B)

ORDER OF DISMISSAL AND RELEASE

NOW on this 10th ^{March, 1989} ~~December~~, 1988, this
 matter comes before the undersigned Judge of the District
 Court for the purpose of entering an Order of Dismissal and

a Release as to Kansas City Fire & Marine Insurance Company, intervenor by way of its Petition in Interpleader, and party defendant.

The Court finds that on September 27, 1988, Kansas City Fire & Marine deposited with the Clerk of this Court the sum of \$50,000, that being the policy limit concerning uninsured motorist coverage afforded under Policy 35PCP04901519, said policy covering the vehicle owned by Elizabeth Overgard, now deceased. Said deposit of the policy limit was made in accordance with this Court's Order of September 16, 1988. The Court further finds that the \$50,000 interplead fund has been placed in an interest-bearing account for the benefit of the various claimants.

The Court further finds that the \$50,000 policy limit for uninsured motorist coverage under Policy No. 35PCP04901519, represents the total amount of coverage available as uninsured motorist coverage available under the policy.

The Court finding that Kansas City Fire & Marine Insurance Company has fully complied with this Court's Order of September 16, 1988, and finding no objection by any party hereto, hereby orders that Kansas City Fire & Marine Insurance Company be fully discharged and released of and from any and all claims that may be asserted against it by the parties to this consolidated cause, or their heirs, personal

representatives or successors, which are now, or might be, asserted against it by way of the uninsured motorist coverage afforded under Policy No. 35PCP04901519.

IT IS FURTHER ORDERED that Kansas City Fire & Marine Insurance Company be dismissed with prejudice from this action with its costs.

S/ THOMAS R. BRETT

HONORABLE THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE


DIXIE L. COFFEY
Attorneys for Defendant,
Flintkote Company

OF COUNSEL:

McKINNEY, STRINGER & WEBSTER, P.C.
101 North Broadway
Oklahoma City, OK 73102
405/239-6444

CERTIFICATE OF SERVICE

I hereby certify that on this 9 day of March, 1989, a true and correct copy of the above and foregoing Stipulation of Dismissal has been mailed to the following:

Joan Godlove, Esq.
Jones, Givens, Gotcher, Bogan & Hilborne
3800 First National Tower
Tulsa, OK 74103
Attorneys for Defendants, Raymark
Industries, Inc. and Celotex Corporation

Scott M. Rhodes, Esq.
Huckaby, Fleming, Frailey,
Chaffin & Darrah
1215 Classen Drive
P. O. Box 60130
Oklahoma City, OK 73146
Attorneys for Defendant,
Owens-Corning Fiberglas Corp.

Joe Michael Russell, Esq.
Jody H. Randall, Esq.
Smith, Ralston, Russell & Wright
302 North Market, Suite 501
Dallas, TX 75202
Attorneys for Defendant,
Eagle-Picher Industries, Inc.

Martha Phillips, Esq.
Thomas, Glass, Atkinson, Haskins,
Nellis & Boudreaux
525 South Main, Suite 1500
Tulsa, OK 74103
Attorneys for Defendant,
Eagle-Picher Industries, Inc.

John F. McCormick, Jr., Esq.
Pray, Walker, Jackman, Williamson & Marlar
900 Oneok Plaza
Tulsa, OK 74103
Attorneys for Defendants, Fibreboard
Corporation, Pittsburgh-Corning Corp.,
Gaf Corporation, Keene Corporation,
Owens-Illinois, Inc., H. K. Porter
Company, Armstrong Cork Company and
Flexitallic Gasket Company, Inc.

Stephen S. Boaz, Esq.
Durbin, Larimore & Bialick
920 North Harvey
Oklahoma City, OK 73102-2610
Attorneys for Defendant,
Garlock, Inc.

A handwritten signature in black ink, appearing to read "John F. McCormick, Jr.", is written over a horizontal line. The signature is stylized and cursive.

\$ 2,500.00 .

IT IS ORDERED AND ADJUDGED by the Court that Plaintiff recover from Defendant Ed Shackelford d/b/a Ed Shackelford Co. the sum of \$61,156.21, with interest at the contract rate of 18.00% per annum from the date until paid, together with costs accrued in the amount of \$140.00 and costs accruing, and a reasonable attorney fee of \$2,500.00.


JUDGE OF THE DISTRICT COURT

ATTORNEY'S LIEN CLAIMED

CERTIFICATE OF MAILING

I, Don E. Gasaway, do hereby certify that I had a true and correct copy of the foregoing instrument placed in the U. S. Mail, proper postage prepaid, to Ed Shackelford d/b/a Ed Shackelford Co., 10005 E. 44th Pl., Tulsa, Okla. 74140, this 17th day of February, 1989.


Don E. Gasaway

021589a/LP

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

FILED

MAR 10 1989

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

JOYCE ANN SORRELLS and BEN)
SORRELLS,)
)
 Plaintiffs,)
)
 vs.)
)
 WAL-MART STORES, INC., a)
 Delaware corporation,)
)
 Defendant.)

No. 88-C-430E

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the Joint Stipulation of Dismissal filed by the plaintiffs, Joyce Ann Sorrells and Ben Sorrells, and the defendant, Wal-Mart Stores, Inc., the Court dismisses with prejudice the Complaint of Joyce Ann Sorrells and Ben Sorrells against the defendant, Wal-Mart Stores, Inc., with each party to be responsible for their own costs and attorney fees incurred herein.

Dated this 9 day of March, 1989.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Judge

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

DAVIS PAINT COMPANY,)
)
 Plaintiff,)
)
-vs-)
)
JOE W. GREEN, MICHAEL RIDGEWAY,)
and CHARLES BUCKMAN, individuals,)
)
 Defendants,)
)
and)
)
CHARLES BUCKMAN,)
)
 Third-Party Plaintiff,)
)
-vs-)
)
LYNN MILLER,)
)
 Third-Party Defendant.)

No. 87-C-880-E

FILED
MAR 10 1989
Jack C. Silver, Clerk
U.S. DISTRICT COURT

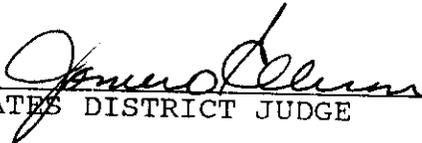
ADMINISTRATIVE CLOSING ORDER

It appearing that these proceedings should be held in abeyance pending completion of a settlement and compromise affected by the parties,

IT IS ORDERED that the Court 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 purposes required to obtain a final determination of the litigation. If within ninety (90) days hereof, the parties have not reopened the litigation for the purpose of obtaining such a final determination, this action will be deemed to be

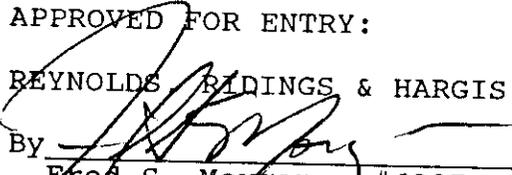
dismissed without prejudice.

IT IS SO ORDERED this 9th day of ~~February~~ ^{March}, 1989.

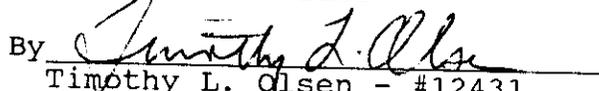

UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:

REYNOLDS, BIDINGS & HARGIS

By 
Fred S. Morgan - #6387
Attorneys for Plaintiff
2808 First National Center
Oklahoma City, Oklahoma 73102
(405) 232-8131

SAVAGE, O'DONNELL, SCOTT,
McNULTY & AFFELDT

By 
Timothy L. Olsen - #12431
Attorneys for Joe W. Green
601 S. Boulder, Suite 1100
Tulsa, Oklahoma 74119
(918) 599-9000

to the Findings and Recommendations and asserts the Magistrate improperly construed the "treating physician rule" in determining Plaintiff is disabled due to chronic alcoholism.

The Government asserts the Magistrate was incorrect to rely upon the treating physician's determination of disability because a treating physician may give an opinion as to medical disability, but the Secretary of Health and Human Services is the one who makes the ultimate conclusion as to legal disability. Barajas v. Heckler, 738 F.2d 641, 645 (5th Cir. 1984); 20 C.F.R. §416.927. The Government's argument is misplaced. Plaintiff proffered two bases on which disability could be found: chronic alcoholism and physical disability. The ALJ concluded Plaintiff's claims of physical disability were not credible and denied benefits without considering Plaintiff's alcohol problem. Therefore, the Magistrate had to determine whether Plaintiff was a chronic alcoholic in addition to determining whether the ALJ was correct in deciding Plaintiff was not physically disabled.

The Magistrate remanded the issue of physical disability so the ALJ could consider new medical evidence. The treating physician rule is inapplicable with regard to physical disability because the Magistrate did not address the ALJ's conclusion on the issue of physical disability. Because no objections have been made with regard to this issue, the Magistrate's recommendation is hereby adopted.

Although the ALJ made several findings regarding Plaintiff's alcohol dependency, the ALJ did not address the issue of disability

based on chronic alcoholism. Therefore, the Magistrate addressed the issue and concluded the Plaintiff is disabled due to chronic alcoholism. Contrary to the Government's assertion, the Magistrate's Findings do not rely solely upon the treating physician's opinion, but also upon the ALJ's findings that Plaintiff has a long history of alcohol dependency. Despite Plaintiff's history of alcohol dependency and its related problems, the ALJ concluded Plaintiff could perform light work when not under the influence of alcohol. The ALJ's decision, however, failed to take into consideration whether Plaintiff could perform light work when coupled with his alcohol dependency. The Magistrate addressed this issue and concluded Plaintiff could not perform light work because he is a chronic alcoholic and would spend his disposable income on alcohol.² The evidence supports the Magistrate's conclusion the Plaintiff is a chronic alcoholic, but such a conclusion is only the first step in finding disability.

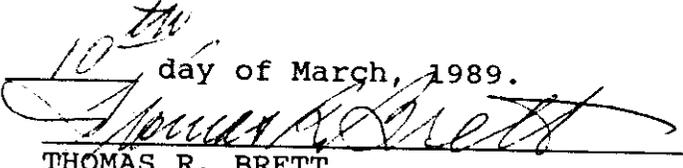
Chronic alcoholism alone may justify a finding of disability under the Social Security Act. Griffis v. Weinberger, 509 F.2d 837 (9th Cir. 1975). For a person to be entitled to disability benefits for alcohol addiction, however, the person must establish a clear addiction to alcohol and the lack of ability to control its use voluntarily. Burton v. Heckler, 622 F.Supp. 1140, 1146

²The ALJ's findings noted that Plaintiff is currently dry due to a lack of money. Therefore, the Magistrate assumed that the disposable income generated by the light work would be used to purchase alcohol. This assumption is at the heart of whether Plaintiff can voluntarily control his alcohol dependency and should be addressed by the Administrative Law Judge.

(D.C.Utah 1985); Griffis v. Weinberger, 509 F.2d 837 (9th Cir. 1975). The ALJ's findings made several references to Plaintiff's history of alcohol dependency, but made no conclusions as to whether Plaintiff is a chronic alcoholic and whether Plaintiff can voluntarily control his addiction to alcohol. Similarly, the Magistrate made no determination whether Plaintiff could control his alcoholism. If Plaintiff is unable to control his alcohol dependency, the ALJ's conclusion the Plaintiff can perform light work would be seriously undermined. Furthermore, the ALJ should consider referring Plaintiff to treatment pursuant to 20 C.F.R. §§ 416.935-939 and § 416.1720 if he finds Plaintiff cannot voluntarily control his alcoholism.

It is therefore ORDERED the case be remanded to the Administrative Law Judge to make specific findings regarding whether Plaintiff can voluntarily control his addiction. It is further ORDERED that the Magistrate's recommendation to remand the case for further consideration in light of Plaintiff's new evidence of physical disability be AFFIRMED.

IT IS SO ORDERED, this ^{10th} day of March, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 10 1989

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

MIKE PAUL FLOYD,)
)
 Plaintiff,)
)
 vs.)
)
 NICK EPPERSON, et al.,)
)
 Defendants.)

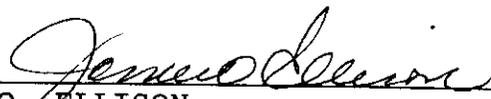
No. 88-C-262-E

ADMINISTRATIVE CLOSING ORDER

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 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, order, judgment, or for any other purpose required to obtain a final determination of the litigation.

ORDERED this 9th day of March, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 10 1989

JACK C. ...
U. S. DISTRICT COURT

NEW YORK LIFE INSURANCE COMPANY,)
a New York corporation,)

Plaintiff,)

v.)

No. 88-C-1635-B

MICHAEL L. SMITH; and MARY K.)
BAIRD, Next Friend of Caroline)
K. Cowie, and Elizabeth Baird,)
Minor Children,)

Defendants.)

AGREED JOURNAL ENTRY OF JUDGMENT

This matter comes before the Court on this 10th day of March, 1989. The Plaintiff, New York Life Insurance Company, and the Defendants, Michael L. Smith and Mary K. Baird, Next Friend and Guardian of Caroline K. Cowie and Elizabeth Baird, minor children, each appear individually and by and through their counsel of record. Upon agreement of the parties, the Court finds as follows:

1. This is an action in interpleader which was commenced by New York Life Insurance Company. The Court has subject matter jurisdiction of this dispute and venue properly lies in this Court.

2. A true controversy exists as to the proceeds of a certain life insurance policy more specifically described herein, in that Michael L. Smith, a citizen and resident of Tulsa County, Oklahoma, and Mary K. Baird, Next Friend and Guardian of Caroline K. Cowie and Elizabeth Baird, minor children, all citizens and residents of Tulsa County, State of Oklahoma, each claim entitlement to the proceeds of that insurance policy.

3. Plaintiff has tendered into registry of this Court the sum of \$78,962.67, which represents the total amount presently due and owing under a policy of insurance issued by Plaintiff, being No. 42-162-380, in the face amount of \$100,000, insuring the life of William Douglas Cowie.

4. William Douglas Cowie, the named insured, died on April 1, 1988, and the proceeds of policy No. 42-162-380, \$100,000, became due and owing. Thereafter, Mary K. Baird, as "Trustee" for Caroline K. Cowie and Elizabeth Baird, submitted a claim on behalf of each for the insurance proceeds, dated April 15, 1988. Caroline K. Cowie and Elizabeth Baird are the minor children of the deceased insured, William Douglas Cowie, and Mary K. Baird. The parties agree that Mary K. Baird should be appointed Guardian Ad Litem to protect the interests of said minors, and the Court hereby appoints Mary K. Baird as Guardian Ad Litem to protect the interests of said minors.

5. Michael L. Smith, the business partner of the insured decedent, submitted a claim for the insurance proceeds dated April 13, 1988. Plaintiff paid to Michael L. Smith the sum of \$25,000, representing 25% of the insurance proceeds, pursuant to that claim. No controversy exists as to the payment of the \$25,000 in proceeds to Defendant Michael L. Smith, and none of the Defendants have objected thereto.

6. A controversy does exist as to the remaining insurance proceeds and interest, \$78,962.67, which Plaintiff has tendered into Court. Michael Smith and Douglas Cowie, as business partners, agreed that Michael Smith was to be sole beneficiary to the proceeds of the insurance policy. However, due to a mutual mistake Michael Smith was not the sole beneficiary to the proceeds of the policy at the time of Douglas Cowie's death. As the intended beneficiary to the proceeds of the policy, the entire balance of the proceeds to the policy, less attorneys fees and costs incurred by Plaintiff, New York Life Insurance Company, should be disbursed to Michael Smith. The Counterclaim of Defendant Michael Smith against New York Life Insurance Company should be dismissed.

7. The Defendants, Michael L. Smith and Mary K. Baird, as Next Friend and Guardian to Caroline K. Cowie and Elizabeth T. Baird, are hereby restrained from bringing suit or further prosecuting any pending suit against the Plaintiff, New York Life Insurance Company, with respect to insurance policy No. 42-162-380 or any other matter raised in this lawsuit. New York Life Insurance Company is hereby discharged from any

and all further liability with respect thereto. New York Life Insurance Company is entitled to a reasonable attorney's fee of \$587.50 and costs of \$168.68 to be paid from the proceeds on deposit with this Court.

8. The Clerk of this Court is directed to disburse to Michael Smith, c/o R. Steven Horn, a check in the sum of \$78,206.49 and to New York Life Insurance Company, c/o Gable & Gotwals, a check in the sum of \$756.18.

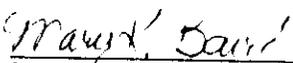
S/ THOMAS R. BRETT

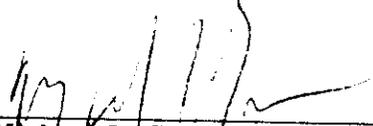
United States District Judge

AGREED AND APPROVED:


Michael Smith


R. Steven Horn
Suite 251, 2642 East 21st Street
Tulsa, Oklahoma 74114
Attorney for Michael L. Smith


Mary K. Baird, Next Friend and Guardian
of Caroline K. Cowie and Elizabeth Baird


Michael L. Greep
707 South Houston, Suite 306
Tulsa, Oklahoma 74127
Attorney for Mary K. Baird


James M. Sturdivant
Timothy A. Carney
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
Attorneys for New York Life Insurance Co.

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

FILED

MAR 10 1989

JACK E. SMITH, JR.
U. S. DISTRICT COURT

MILDRED SANDERS,

Plaintiff,

-vs-

LINDA WARNER DURHAM,

Defendant,

-vs-

ALLSTATE INSURANCE COMPANY,

Third Party
Defendant.

No. 88-C-1103-B

ORDER

NOW on this 10th day of March, 1989, plaintiff's Application to Dismiss with Prejudice came on for hearing. The Court being fully advised in the premises finds that said Application should be sustained and the defendants should be dismissed from the above entitled action with prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that plaintiff's Application to Dismiss With Prejudice be sustained and the above captioned action be dismissed with prejudice as to defendants.

S/ THOMAS R. BRETT

Thomas R. Brett
JUDGE OF THE DISTRICT COURT

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

FILED

MAR 10 1989

J. C. [unclear]
U. S. DISTRICT COURT

MOHAMMED S. A. CHOWDHURRY,)
)
Plaintiff,)
)
vs.)
)
KETTLE RESTAURANTS, INC.,)
)
GLEN TWILLEY, and)
)
CLYDE PERRY,)
)
Defendants.)

Case No. 87-C-1048-B

ORDER

Now, on this 10th day of March, 1989, there having been submitted to the Court a Joint Stipulation of Dismissal with Prejudice, filed on behalf of all parties to the above-entitled action and stipulating that said action may be dismissed with prejudice, the Court finds that the stipulated dismissal should be allowed.

NOW IT IS THEREFORE, ORDERED, that the above entitled action be, and the same hereby is, dismissed with prejudice each party to bear its own costs, in accordance with the Joint Stipulation for Dismissal filed herein.

S/ THOMAS R. BRETT

THOMAS R. BRETT
United States District Judge

IN THE UNITED STATES COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 10 1987

FRANK H. MAHAN,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

v.

W.E. ROWSEY, III and WILLIAM G.
PATTERSON,

Additional Defendants
on Counterclaim,

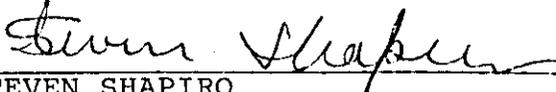
CIVIL NO. H-87-C-629-B

STIPULATION ^{OF} FOR DISMISSAL

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

WILLIAM E. YORK
525 S. Main Mall, Suite 210
Tulsa, Oklahoma 75103
(918) 585-1181

ATTORNEY FOR FRANK H. MAHAN


STEVEN SHAPIRO
Chief, Civil Trial Section
Southern Region, Tax Division
Department of Justice
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044
(202) 272-4508
ATTORNEY FOR DEFENDANT

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

DAVID STEVEN MOSHER,)
)
 Plaintiff,)
)
 vs.)
)
 VICTOR SAVINGS AND LOAN)
 ASSOCIATION, a federal)
 savings and loan association,)
 successor in interest to)
 VICTOR FEDERAL SAVINGS AND)
 LOAN ASSOCIATION,)
)
 Defendant,)
)
 BOARD OF COUNTY COMMISSIONERS)
 OF OSAGE COUNTY; WILMA BLUE,)
 OSAGE COUNTY TREASURER; THE)
 BOARD OF COUNTY COMMISSIONERS)
 OF MUSKOGEE COUNTY; JOHN H.)
 FARLEY, MUSKOGEE COUNTY)
 TREASURER; DONALD W. PRYCE;)
 LINDA M. PRYCE; and)
 SOUTH COUNTRY BUILDINGS, INC.,)
)
 Additional)
 Defendants.)

Case No. 88-C-122 B

FILED

MAR 10 1989

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

**ORDER GRANTING DISMISSAL WITHOUT PREJUDICE
OF THE SIXTH CLAIM FOR RELIEF ONLY CONTAINED IN THE
COUNTERCLAIM OF DEFENDANT, VICTOR SAVINGS AND LOAN ASSOCIATION**

NOW on this 10th day of March, 1989, the
above-styled cause comes on for consideration before me, the under-
signed United States District Judge, upon the Motion of Federal
Savings and Loan Insurance Corporation as Receiver for Victor
Savings and Loan Association for Dismissal Without Prejudice of the
Sixth Claim for Relief Only Contained in the Counterclaim of
Defendant, Victor Savings and Loan Association. The Court finds

that the motion is made for good cause shown and that the same should be and is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Sixth Claim for Relief only contained in the Answer and Counterclaim of Defendant, Victor Savings and Loan Association, is hereby dismissed without prejudice.

S/ THOMAS R. BRETT

Thomas R. Brett
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 9 1989

ADEMOLA MICHAEL OGUNLEYE,

Petitioner,

vs.

STEVE HARGETT, ATTORNEY
GENERAL FOR THE STATE OF
OKLAHOMA,

Respondent.

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

No. 87-C-560-C

ORDER

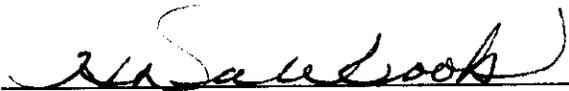
Before the Court are the objections to the Findings and Recommendations of the United States Magistrate entered on October 26, 1988, regarding habeas corpus relief of the petitioner, Ademola Michael Ogunleye.

Based upon the respondent's admission of error committed within the state court proceedings, this Court has determined that the case should be remanded back to the state court. Petitioner Ogunleye is directed to file appropriate post-conviction pleadings with the state court within sixty (60) days of the date of this

Order. Respondent Steve Hargett, Attorney General for the State of Oklahoma, is directed to file a status report with this Court within seventy-five (75) days of the date of this Order informing this Court of the case disposition before the state court.

Therefore, it is the Order of the Court that this action is remanded back to the District Court of Tulsa County, State of Oklahoma, to proceed in accordance with the terms of this Order.

IT IS SO ORDERED this 7th day of March, 1989.



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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
 vs.)
)
) RICHARD W. ADKINS a/k/a RICHARD)
) WILSON ADKINS; NANCY J. ADKINS)
) a/k/a NANCY JANE ADKINS; COUNTY)
) TREASURER, Tulsa County,)
) Oklahoma; and BOARD OF COUNTY)
) COMMISSIONERS, Tulsa County,)
) Oklahoma,)
)
) Defendants.)

FILED

MAR 9 1989

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

CIVIL ACTION NO. 88-C-1227-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 8 day
of March, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Carl Robinson, Assistant District Attorney,
Tulsa County, Oklahoma; and the Defendants, Richard W. Adkins
a/k/a Richard Wilson Adkins and Nancy J. Adkins a/k/a Nancy Jane
Adkins, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Richard W. Adkins a/k/a
Richard Wilson Adkins and Nancy J. Adkins a/k/a Nancy Jane
Adkins, acknowledged receipt of Summons and Complaint on
September 25, 1988; that Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint

on September 19, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on September 16, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on October 5, 1988; and that the Defendants, Richard W. Adkins a/k/a Richard Wilson Adkins and Nancy J. Adkins a/k/a Nancy Jane Adkins, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Four (4), Block Five (5), of ROLLING MEADOWS II, a subdivision of the Town of Glenpool, Tulsa County, according to the recorded plat thereof.

The Court further finds that on November 1, 1982, Richard W. Adkins and Nancy J. Adkins executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$38,000.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Richard W. Adkins and Nancy J. Adkins executed and delivered to the United States of America, acting through the Farmers Home Administration, a

mortgage dated November 1, 1982, covering the above-described property. Said mortgage was recorded on November 4, 1982, in Book 4648, Page 680, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 19, 1983, Richard W. Adkins and Nancy J. Adkins executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on January 4, 1984, Richard W. Adkins and Nancy Jane Adkins executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on March 14, 1984, Richard Wilson Adkins and Nancy J. Adkins executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on December 18, 1984, Richard W. Adkins and Nancy J. Adkins executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on February 18, 1986, Richard W. Adkins and Nancy J. Adkins executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement pursuant to which the total debt on that date was made principal.

The Court further finds that on March 1, 1986, Richard W. Adkins and Nancy J. Adkins, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendants, Richard W. Adkins a/k/a Richard Wilson Adkins and Nancy J. Adkins a/k/a Nancy Jane Adkins, made default under the terms of the aforesaid Note, Mortgage, Interest Credit Agreements and Reamortization and/or Deferral Agreement, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Richard W. Adkins a/k/a Richard Wilson Adkins and Nancy J. Adkins a/k/a Nancy Jane Adkins, are indebted to the Plaintiff in the principal sum of \$40,681.95, plus accrued interest in the amount of \$8,297.84 as of August 2, 1988, plus interest accruing thereafter at the rate of 11.5 percent per annum or \$12.8176 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$10,409.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action accrued and accruing.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Richard W. Adkins a/k/a Richard Wilson Adkins and Nancy J. Adkins a/k/a Nancy Jane Adkins, in the principal sum of \$40,681.95, plus accrued interest in the amount of \$8,297.84 as of August 2, 1988, plus interest accruing thereafter at the rate of 11.5 percent per annum or \$12.8176 per day until judgment, plus interest thereafter at the current legal rate of 9.52 percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$10,409.00, plus interest on that sum at the current legal rate 9.52 percent per annum from judgment until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Richard W. Adkins a/k/a Richard Wilson Adkins and Nancy J. Adkins a/k/a Nancy Jane Adkins, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the

Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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

(Signed) M. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney



CARL ROBINSON, OBA #10164
Tulsa District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

NNB/css

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

FILED

MAR 11 1989

W. C. ROACH ENTERPRISES)
d/b/a THE STABLES,)
)
Plaintiffs,)
)
vs.)
)
DAVID MOSS, District Attorney)
of Tulsa County, Oklahoma)
ex rel. STATE OF OKLAHOMA, et al.,)

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

Case No. 88-C-690ME

NOTICE

NOTICE OF DISMISSAL

The following Plaintiffs, by their counsel of record, Ed Parks III, hereby give their notice of dismissal without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. The Plaintiffs hereby dismissing this action are:

- (1) Showplace Lounge., Inc., Tulsa, Oklahoma;
- (2) Lady Godiva's, Inc., Tulsa, Oklahoma; and,
- (3) Topper's Inc., Tulsa, Oklahoma.

With this dismissal of Plaintiffs, the remaining defendants should be dismissed from this litigation:

WHEREFORE, premises considered, Plaintiffs above named hereby give their notice of dismissal without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure and also dismiss this action as to Defendants as they are no longer necessary parties to this action.

RESPECTFULLY SUBMITTED:



Ed Parks III
PARKS & BUCK
1146 East 61st St.
Tulsa, Oklahoma 74136
(918) 749-7568

CERTIFICATE OF MAILING

I, Ed Parks III, hereby certify that on the 6th day of March, 1989, I served a true and correct copy of the foregoing pleading by mailing same to:

Doris L. Fransein
Office of District Attorney
Tulsa County Courthouse
Tulsa, OK 74103

Taylor C. Stein
Office of District Attorney
Comanche County Courthouse
Lawton, OK 73501

David L. Pauling
Office of City Attorney
200 Civic Center
Tulsa, OK 74103

Wiley L. Williams, Jr.
City Attorney
103 S.W. Fourth Street
Lawton, OK 73501



Ed Parks III

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

CARLTON J. PETERS,
Plaintiff,
v.
R. M. KUROWSKI, TPD, et al,
Defendants.

88-C-1587-C FILED

MAR 9 1989

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

ORDER

Now before the court is defendants' Motion to Dismiss plaintiff's civil rights complaint. Although plaintiff failed to respond to defendants' motion in a timely manner as required by the Federal Rules of Civil Procedure and the Local Rules of the Northern District of Oklahoma, on February 6, 1989, the court, sua sponte, gave plaintiff an extension of time in which to respond to this motion. However, no such response was ever filed by plaintiff.

As the court previously advised plaintiff, all litigants, including those appearing pro se, are obligated to follow the procedural rules of court. See, Joplin v. Southwestern Bell Telephone Co., 671 F.2d 1274 (10th Cir. 1982). Plaintiff having been given every opportunity to comply with the pleading requirements of this court, the court concludes that plaintiff's failure to respond to the pending motion constitutes a waiver of objection to the motion. Rule 15A of the Local Rules for the Northern District of Oklahoma.

It is, therefore, ordered that defendants' Motion to Dismiss is granted, and plaintiff's civil rights complaint pursuant to 42 U.S.C. §1983 is hereby dismissed.

Dated this 8th day of March, 1989.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

FILED

MAR -8 1989

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

RONALD G. WADE, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 DYCO PETROLEUM CORPORATION,)
 a Minnesota corporation; and)
 LENDELL Z. WILLIAMS,)
)
 Defendants.)

No. 88-C-261-C

ORDER

Now before the Court for its consideration is the objection of the defendants to the Report and Recommendation of the Magistrate, the latter filed on February 7, 1989.

This action began in state court, with plaintiff alleging various claims arising out of his employment discharge. Among plaintiff's allegations were that defendant Dyco violated anti-discrimination provisions in Dyco's contracts with the federal government for which plaintiff is the third-party beneficiary. The defendants removed the action, arguing that the claim noted above "implicated" federal interests. See Howard v. Group Hosp. Serv., 739 F.2d 1508 (10th Cir. 1984). See also West 14th Street Commercial Corp. v. 5 West 14th Owners Corp., 815 F.2d 188, 196 (2nd Cir.), cert. denied, 108 S.Ct. 151 (1987).

The matter came before the Magistrate on defendants' motion for summary judgment. In his Report and Recommendation, the Magistrate noted that the parties had agreed that, based upon such authorities as Hodges v. Atchison, Topeka & Santa Fe Railway Co.,

728 F.2d 414, 416 (10th Cir. 1984), plaintiff had no third-party beneficiary action. The Magistrate concluded that "[t]herefore, the plaintiff no longer has a claim involving a question of federal law and this court has no subject matter jurisdiction under 28 U.S.C. §1331." The Magistrate accordingly has recommended that the case be remanded to state court. In Central Nat. Bank v. Rainbolt, 720 F.2d 1183, 1187 (10th Cir. 1983), the appellate court held that, having dismissed prior to trial all federal claims in a case, the trial court should not have considered a pendent state claim. In Carnegie-Mellon Univ. v. Cohill, 108 S.Ct. 614 (1988), the United States Supreme Court held that

a district court has discretion to remand to state court a removed case involving pendent claims upon a proper determination that retaining jurisdiction over the case would be inappropriate. The discretion to remand enables district courts to deal with cases involving pendent claims in the manner that best serves the principles of economy, convenience, fairness, and comity which underlie the pendent jurisdiction doctrine.

Id. at 622.

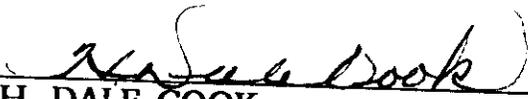
The Court indicated that this discretion should be exercised by balancing "the values of judicial economy, convenience, fairness, and comity" Id. at 618. The Magistrate noted that the remaining state law issues are questions of first impression.

Upon review, this Court agrees. For example, the area of employment law in Oklahoma is presently in flux, as evidenced by the trilogy of Hall v. Farmers Ins. Exchange, 713 P.2d 1027 (Okla. 1986), Hinson v. Cameron, 742 P.2d 549 (Okla. 1987), and Burk v. K-Mart Corp., ____ P.2d ____, 60 O.B.J. 305 (Okla. 1989). Given that remand is committed to this Court's discretion, the Court believes it is far preferable for state courts, as opposed to

federal tribunals, to develop Oklahoma's common law. This is the essence of comity. Defendants point out that discovery is complete in this case; however, the plaintiff correctly notes that there is no bar to use of this discovery material in state court. Defendants also note the procedure by which questions of state law may be certified to the Oklahoma Supreme Court. Defendants state this Court would "undoubtedly receive a response in a timely manner, thereby avoiding the delay inevitable in state court." Defendants cite as an example Burk v. K-Mart, supra, in which Judge Thomas Brett certified questions. Defendants fail to note that Judge Brett's Order of Certification was entered on November 28, 1986, and the Oklahoma Supreme Court delivered its answer on February 7, 1989. Such a delay hardly promotes judicial economy. Finally, defendants complain of a protracted appellate process in state court. Appeal is also available after a trial in federal court, and this Court is not aware that one is swifter than the other. Under the totality of circumstances, the Court believes that remand is proper.

It is the Order of the Court that this action is hereby remanded to the District Court of Tulsa County, State of Oklahoma.

IT IS SO ORDERED this 8th day of March, 1989.


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

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

GEORGE W. OWENS,
Plaintiff,
v.
TED J. STEVENS,
Defendant and
Third-Party Plaintiff,
v.
DEL MAR ANGUS FARMS, INC., an
Oklahoma corporation; DON SUMTER,
an individual; and JERRY L.
CRAWFORD, an individual,
Third-Party Defendants.

No. 88-C-358-B

FILED
MAR 8 1989
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

This matter comes before the Court on Defendant Ted J. Stevens' motion for partial summary judgment. Defendant contends the evidence shows there can be no factual dispute to the fact Plaintiff George W. Owens is not a holder in due course as he alleges.

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

party will bear the burden of proof at trial." Celotex Corporation v. Catrett, 477 U.S. 317 (1986). Plaintiff has the burden of showing that a factual dispute exists that he is a holder in due course of the note which is the subject of this lawsuit.

Plaintiff filed this suit seeking enforcement of a note against Defendant in the amount of \$28,000. Defendant answered raising affirmative defenses of fraud and violations of the Oklahoma Securities Act. Plaintiff alleges he is a holder in due course and is therefore not subject to Defendant's affirmative defenses. A holder in due course must hold a "negotiable instrument." 12 O.S. §3-302; 12 O.S. §3-102(1)(e). A negotiable instrument is an instrument signed by the maker, contains an unconditional promise to pay a sum certain in money and is made payable to order or to bearer. 12 O.S. §3-104.

The note herein states:

"For value received, Ted J. Stevens (hereinafter referred to as 'Purchaser'), promise(s) to pay Del Mar Angus Farms, Inc., the principal sum of"

The note in an assignment clause states:

"This agreement shall inure to the benefit of Del Mar Angus Farms, Inc., successors and assigns."

The Oklahoma Supreme Court recently addressed the issue of when one stands in the shoes of an assignor and is therefore subject to all defenses as distinguished from one who is a holder in due course. The Supreme Court held that "an instrument lacking the words 'pay to order or to bearer' is nonnegotiable and does not

confer holder in due course status on a party taking the document by assignment." Sunrizon Homes v. American Guaranty Investment Corp., 59 OBJ 3468 (December 10, 1988). Therefore, Plaintiff herein is not a holder in due course.¹

Partial summary judgment is therefore granted for Defendant Ted J. Stevens and against George W. Owens on the issue of whether Plaintiff is a holder in due course.

DATED this 8th day of March, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹ In interpreting 12 O.S. §3-110(1) Plaintiff argues that since the note discusses "assigns" in Paragraph R, the note is negotiable. This argument lacks merit because the necessary language of 12 O.S. §3-110(1) "pay to order" is absent.

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

FILED

CHARLES W. MCGUIRE, as personal)
representative of the estate of)
JANET LYNN MCGUIRE, and as)
father and next friend of)
CRYSTAL D. MCGUIRE and)
CHARLES W. MCGUIRE, II, minors,)
Plaintiff,)

vs.)

COMBUSTION ENGINEERING, INC.,)
a Connecticut corporation;)
THE HOME INSURANCE COMPANY, a)
New Hampshire corporation; and)
METROPOLITAN LIFE INSURANCE)
COMPANY, a New York corporation,)
Defendants.)

No. 88-C-1549-B

MAR 8 1989
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

COMES NOW the Court on this 8th day of March,
1989, upon the Joint Application for Order of Dismissal With
Prejudice of Defendant, The Home Insurance Company. The Court
having reviewed said Joint Application and being informed of the
parties' settlement of this matter and mutual desire for
dismissal with prejudice of the Defendant, The Home Insurance
Company,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that
Plaintiff's cause of action against the Defendant, The Home
Insurance Company, be dismissed with prejudice to his rights to
bring any future claim or action, and that his rights and causes
of action against the Defendants, Combustion Engineering, Inc.
and Metropolitan Life Insurance Company, be not dismissed.

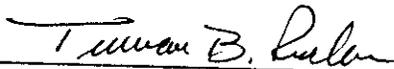
S/ THOMAS R. BRETT

THOMAS R. BRETT, Judge of the
United States District Court

APPROVED AS TO FORM:



Ernest A. Bedford
Attorney for Plaintiff



Truman B. Rucker
Attorney for The Home Insurance
Company

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

FILED

MAR 8 1989

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

W. S. ATHERTON,

Plaintiff,

vs.

JOHN A. CHANIN, et al.,

Defendants.

No. 88-C-1558-E

ORDER

This matter comes on before the Court on Defendants' Motion to Dismiss as well as Plaintiff's Motion for Preliminary Injunction. After reviewing the pleadings and the affidavits filed herein, the Court finds as follows:

The Motion to Dismiss

While the parties do not agree on the application of the law to the facts of this case, they do appear to agree on the facts. In a nutshell, Plaintiff contacted the Defendants, Hawaii lawyers, to represent Plaintiff in certain litigation in the United States District Court in Hawaii. The representation lasted approximately two years and resulted in an out of court settlement. At no time did Defendants travel to the State of Oklahoma. Their contacts consisted of telephone calls with Plaintiff, in Oklahoma, written correspondence to the Plaintiff in Oklahoma and the receipt of payment for services from the Plaintiff. Plaintiff has brought this lawsuit alleging malpractice on the part of the Defendants. Defendants have countered by bringing a lawsuit against Plaintiff

in the United States District Court for the District of Hawaii styled The Law Offices of John A. Chanin v. William S. Atherton, Civ. No. 89-00019-HMF for a past due account.

The Defendants have moved to dismiss on a number of grounds. They have also moved, in the alternative to transfer jurisdiction. This Court will address the issue of personal jurisdiction only.

The teachings of the bench mark cases of International Shoe Co. v. Washington, 326 U.S. 310 (1945), Hanson v. Denckla, 357 U.S. 235 (1958) and World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) are the stuff Hornbooks are made of and do not require excessive recitation here. In reviewing whether to assume jurisdiction, a court must look at the nature of the contacts a defendant had with a proposed forum and determine whether these contacts rise to a level that would pass constitutional examination such that the assumption of jurisdiction would not offend the "traditional notions of fair play and substantial justice." World Wide Volkswagen, 444 U.S. at 292. Oklahoma's long-arm statute dictates an assumption of jurisdiction "on any basis consistent with the constitution of this state and the constitution of the United States." 12 O.S. §2004(F). The Ninth Circuit directs us to make the following evaluation of the "nature and quality of the Defendant's contacts in relation to the cause of action":

1. The nonresident defendants must do some act or consummate some transaction with the forum or perform some act by which he purposely avails himself to the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws.
2. The claim must be one which arises out of or results from the defendant's forum-related activities.

3. Exercise of jurisdiction must be reasonable.

Data Disk, Inc. v. Systems Technology Associates, Inc., 557 F.2d 1280, 1287 (9th Cir. 1977). It is under these parameters that we proceed to analyze this case.

1. The nonresident defendants must do some act or consummate some transaction with the forum or perform some act by which he purposely avails himself to the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws.

In this case, the Court is strained to find any manner in which the Hawaiian Defendants conducted any activities which would result in their receiving any benefit or protection from the laws of the State of Oklahoma.

2. The claim must be one which arises out of or results from the defendant's forum-related activities.

This is a most crucial element to be examined in an assumption of jurisdiction. The Hawaiian attorney activities were in no way related to this forum except that their client resided here. The Defendants represented Plaintiff in Hawaii, in Hawaiian litigation arising from transactions occurring in Hawaii. To assert that somehow these are Oklahoma related activities is untenable. The mere fact that these Hawaiian attorneys client was an Oklahoma resident and that money was received from Oklahoma as well as phone calls were made to Oklahoma are contacts too casual in nature, in this case, to confer jurisdiction on this Court. The crux, the center, the essence of the parties' relationship took place in Hawaii, not Oklahoma.

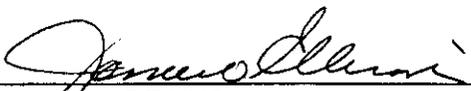
3. Exercise of jurisdiction must be reasonable.

This element states most precisely this Court's feeling. The exercise of jurisdiction here would not be reasonable. That somehow the Hawaiian attorneys could have foreseen this state would have had jurisdiction over them is not reasonable. To do so, it could be foreseen, might have a chilling effect on the future ability of Oklahoma residents to obtain competent counsel in foreign jurisdictions.

As this Court does not have jurisdiction, it cannot transfer venue. However, this Court would respectfully suggest to Plaintiff that the appropriate forum for its claim is Hawaii. As a case is presently pending between the parties that may be an appropriate vehicle for presentation of Plaintiff's claim. As this Court declines to exercise jurisdiction, the motion for preliminary injunction is denied as moot.

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss is granted and Plaintiff's Motion for Preliminary Injunction is denied as moot.

ORDERED this 8th day of March, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 RAYMOND HAROLD WILLIAMS;)
 PATRICIA R. WILLIAMS; PHOENIX)
 FEDERAL SAVINGS AND LOAN)
 ASSOCIATION; NOR-COM INVEST-)
 MENTS, an Oklahoma limited)
 partnership; COUNTY TREASURER,)
 Tulsa County, Oklahoma; BOARD)
 OF COUNTY COMMISSIONERS, Tulsa)
 County, Oklahoma; JOHN T.)
 KEOWN, JR., Co-Trustee of The)
 John T. Keown, Jr. Revocable)
 Trust; UTICA NATIONAL BANK &)
 TRUST COMPANY, Co-Trustee of)
 The John T. Keown, Jr.)
 Revocable Trust; and FRANKLIN)
 AND UNDERWOOD PROPERTIES, an)
 Oklahoma general partnership,)
)
 Defendants.)

FILED

MAR 8 1989

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

CIVIL ACTION NO. 88-C-687-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 8th day
of March, 1989. 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
Carl Robinson, Assistant District Attorney, Tulsa County,
Oklahoma; the Defendants, Phoenix Federal Savings and Loan
Association; John T. Keown, Jr., Co-Trustee of The John T.
Keown, Jr. Revocable Trust; and Utica National Bank & Trust
Company, Co-Trustee of The John T. Keown, Jr. Revocable Trust,

appear not, having previously filed their Disclaimers; and the Defendants, Raymond Harold Williams; Patricia R. Williams; Nor-Com Investments, an Oklahoma limited partnership; and Franklin and Underwood Properties, an Oklahoma general partnership, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Phoenix Federal Savings and Loan Association, acknowledged receipt of Summons and Complaint on July 28, 1988; that Defendant, Nor-Com Investments, an Oklahoma limited partnership, was served with Summons and Complaint on September 29, 1988; that Defendant, John T. Keown, Jr., Co-Trustee of The John T. Keown, Jr. Revocable Trust, acknowledged receipt of Summons and Amended Complaint on or about August 22, 1988; that Defendant, Utica National Bank & Trust Company, Co-Trustee of The John T. Keown, Jr. Revocable Trust, acknowledged receipt of Summons and Amended Complaint on August 19, 1988; that Defendant, Franklin and Underwood Properties, an Oklahoma general partnership, was served with Summons and Complaint on September 29, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 28, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 28, 1988 and Summons and Amended Complaint on August 12, 1988.

The Court further finds that the Defendants, Raymond Harold Williams and Patricia R. Williams, 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 November 29, 1988, and continuing to January 3, 1989, 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, Raymond Harold Williams and Patricia R. Williams, 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, Raymond Harold Williams and Patricia R. Williams. 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 August 17, 1988; that the Defendant, Phoenix Federal Savings and Loan Association, filed its Disclaimer herein on August 10, 1988; that the Defendants, John T. Keown, Jr., Co-Trustee of The John T. Keown, Jr. Revocable Trust and Utica National Bank & Trust Company, Co-Trustee of The John T. Keown, Jr. Revocable Trust, filed their Disclaimer herein on August 31, 1988; and that the Defendants, Raymond Harold Williams; Patricia R. Williams; Nor-Com Investments, an Oklahoma limited partnership; and Franklin and Underwood Properties, an Oklahoma general partnership, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on November 30, 1987, Donald J. Guy d/b/a Nor-Com Investments, filed his voluntary petition in bankruptcy in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-03339-C. On July 15, 1988, the United States Bankruptcy Court in the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

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

Lot Six (6), Block Seventeen (17), VALLEY VIEW ACRES ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on May 8, 1964, the Defendants, Raymond Harold Williams and Patricia R. Williams, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$9,300.00, payable in monthly installments, with interest thereon at the rate of 5.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Raymond Harold Williams and Patricia R. Williams, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated May 8, 1964, covering the above-described property. Said mortgage was recorded on May 11, 1964, in Book 3449, Page 178, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Raymond Harold Williams and Patricia R. Williams, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Raymond Harold Williams and Patricia R. Williams, are indebted to

the Plaintiff in the principal sum of \$3,583.03, plus interest at the rate of 5.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$284.37, plus penalties and interest, for the year 1987. Said lien is superior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendants, Phoenix Federal Savings and Loan Association; John T. Keown, Jr., Co-Trustee of The John T. Keown, Jr. Revocable Trust; and Utica National Bank & Trust Company, Co-Trustee of The John T. Keown, Jr. Revocable Trust, disclaim any right, title, or interest in the subject real property.

The Court further finds that the Defendants, Nor-Com Investments, an Oklahoma limited partnership, and Franklin and Underwood Properties, an Oklahoma general partnership, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Raymond Harold Williams and Patricia R. Williams, in the

principal sum of \$3,583.03, plus interest at the rate of 5.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.32 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$284.37, plus penalties and interest, for ad valorem taxes for the year 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Phoenix Federal Savings and Loan Association; Nor-Com Investments, an Oklahoma limited partnership; John T. Keown, Jr., Co-Trustee of The John T. Keown, Jr. Revocable Trust; Utica National Bank & Trust Company, Co-Trustee of The John T. Keown, Jr. Revocable; Franklin and Underwood Properties, an Oklahoma general partnership; and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$284.37, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

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

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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



CARL ROBINSON, OBA #10164
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 88-C-687-B

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

FILED

HL MAR 8 1989

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

CARRELL E. TALLENT,
Plaintiff,
vs.
OTASCO, INC.,
Defendant.

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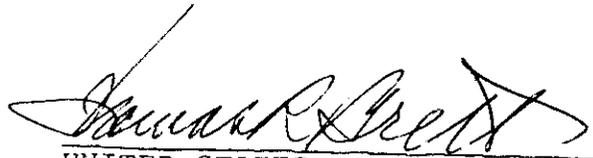
Case No. 88-C-1326-B

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and / the parties advising they have no objections, these proceeding 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 60 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.

IT IS SO ORDERED this 8 day of March, 1989.



UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ROGER LEE DAVIS I; WILLIAM R.)
 SATTERFIELD d/b/a 524 EAST 49th)
 PLACE, N., INVESTMENT COMPANY;)
 JOHN DOE, Tenant; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED
MAR 1 1989
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 88-C-233-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 8th day
of March, 1989. 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
Carl Robinson, Assistant District Attorney, Tulsa County,
Oklahoma; the Defendant, William R. Satterfield d/b/a 524 East
49th Place, N. Investment Company, appears by his attorney
Randy A. Rankin; and the Defendants, Roger Lee Davis I and John
Doe, Tenant, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, William R. Satterfield
d/b/a 524 East 49th Place, N. Investment Company, was served with
Summons and Complaint on July 20, 1988; the Defendant, John Doe,

Tenant, was served with Summons and Complaint on April 15, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 11, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 9, 1988.

The Court further finds that the Defendant, Roger Lee Davis I, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning October 12, 1988, and continuing to November 16, 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 Defendant, Roger Lee Davis I, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Roger Lee Davis I. 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 party served by publication with respect to his present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on March 30, 1988; the Defendant, William R. Satterfield d/b/a 524 East 49th Place, N. Investment Company, filed his Answer herein on August 9, 1988; and that the Defendants, Roger Lee Davis I and John Doe, Tenant, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Nine (9), Block Four (4), SUBURBAN ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on July 7, 1978, the Defendant, Roger Lee Davis I, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, his mortgage note in the amount of \$11,800.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Roger Lee Davis I, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated July 7, 1978, covering the above-described property. Said mortgage was recorded on July 10, 1978, in Book 4339, Page 1108, in the records of Tulsa County, Oklahoma.

The Court further finds that Roger Lee Davis I conveyed the subject property to 524 E. 49th Pl., N. Investment Company by General Warranty Deed dated July 10, 1978, and recorded on October 2, 1978, in Book 4356 at Page 827 in the records of Tulsa County, Oklahoma. Plaintiff did not release the Defendant, Roger Lee Davis I, from his personal liability thereon.

The Court further finds that the Defendant, William R. Satterfield d/b/a 524 East 49th Place, N. Investment Company, in his Answer filed herein on August 9, 1988, affirmatively asserted that William R. Satterfield d/b/a 524 East 49th Place, N. Investment Company is the record title holder of the subject property. Defendant, William R. Satterfield d/b/a 524 East 49th Place, N. Investment Company, failed to make the monthly installments due on the above-described note and mortgage.

The Court further finds that the Defendant, William R. Satterfield d/b/a 524 East 49th Place, N. Investment Company, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Roger Lee Davis I, is indebted to the Plaintiff in the principal sum of \$10,168.97, plus interest at the rate of 9 percent per annum from November 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, John Doe, Tenant, is in default and has no right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Roger Lee Davis I and William R. Satterfield d/b/a 524 East 49th Place, N. Investment Company, in the principal sum of \$10,168.97, plus interest at the rate of 9 percent per annum from November 1, 1986 until judgment, plus interest thereafter at the current legal rate of 9.32 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

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

First:

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

Second:

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

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

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

S/ THOMAS R. BRETT,

UNITED STATES DISTRICT JUDGE

APPROVED:

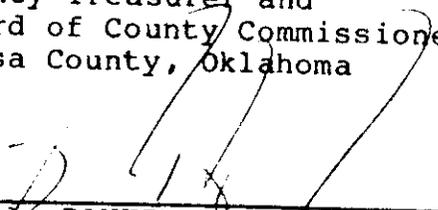
TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



CARL ROBINSON, OBA #10164
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



RANDY A. RANKIN, OBA #
Attorney for Defendant,
William R. Satterfield d/b/a
524 East 49th Place, N. Investment Company

PP/css

FILED

MR -7 1988

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

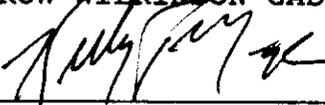
CLERK OF DISTRICT COURT
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
TULSA, OKLAHOMA

DARRYL K. PEARSON,	Plaintiff,)	
)	
v.)	
)	
NIAGARA MACHINE & TOOL WORKS,)	
a Foreign Corporation, et al,	Defendants,	)	No. 88-C-71-B
)	
OWENS-ILLINOIS INCORPORATED)	
GLASS CONTAINER DIVISION, a)	
Foreign Corporation,	Third Party)	
	Plaintiff,)	
v.)	
)	
CONTINENTAL CAN COMPANY, INC.,)	
a Foreign Corporation, and)	
PETER KIEWIT SONS', INC.,)	
a Foreign Corporation,	Third Party)	
	Defendants.)	

JOINT STIPULATION OF DISMISSAL

Owens-Illinois Incorporated Glass Container Division, a foreign corporation, Third Party Plaintiff, Continental Can Company, Inc., a foreign corporation, and Peter Kiewit Sons', Inc., a foreign corporation, Defendants, and hereby stipulate that the claim of Third Party Plaintiff be dismissed with prejudice.

BARROW WILKINSON GADDIS GRIFFITH & GRIMM

By 

610 S. Main, Suite 300
Tulsa OK 74119 1226

ATTORNEYS FOR THIRD PARTY PLAINTIFF
OWENS-ILLINOIS INCORPORATED GLASS
CONTAINER DIVISION

RHODES, HIERONYMUS, JONES, TUCKER & GABLE

By 

JOHN H. TUCKER (OBA #9110)
2800 Fourth National Bldg.
Tulsa, Oklahoma 74119
918-582-1173

ATTORNEYS FOR DEFENDANTS CONTINENTAL CAN
COMPANY, INC. AND PETER KIEWIT SONS', INC.

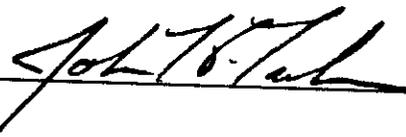
CERTIFICATE OF MAILING

I hereby certify that on the 6th day of March, 1989, a true and correct copy of the foregoing was mailed with proper postage thereon fully prepaid to the following counsel:

Dale F. McDaniel, Esq.
Suite 200, 2250 E. 73rd Street
Tulsa, OK 74136

Mark T. Koss, Esq.
2816 N.W. 57th Street
Oklahoma City, OK 73112 7055

Anthony M. Laizure, Esq.
P.O. Box 70110
Tulsa, OK 74170



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

WILBUR NICHOLS,

Plaintiff,

vs.

DAVID M. VAUGHN and M & R
CONTAINER COMPANY, a foreign
corporation,

Defendants.

Case No. 88-C-1233-E ✓

FILED

MAR 7 1989

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

ORDER

THIS MATTER comes before the Court on the Joint Application of the parties hereto. The Court finds that all of the issues between the parties have been completely settled and compromised, and therefore dismisses the above-entitled cause of action with prejudice as to any future actions.

SO ORDERED this 7th day of ~~February~~ ^{March}, 1989.


U.S. DISTRICT JUDGE
Magistrate

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

RUTH H. CREECH,

Plaintiff,

v.

CITY OF FAITH HOSPITAL; CITY OF
FAITH CLINIC; CITY OF FAITH MEDI-
CAL AND RESEARCH CENTER; MICHAEL
McGEE, M.D.; BRENT BENNETT, M.D.
MICHAEL LAUGHLIN, M.D.; JOHN DOE;
RICHARD DOE; XYZ CORPORATION; and
other unknown and unnamed entities
and individuals,

Defendants.

No. 87-C-1012-B ✓

FILED

MAR 3 1989

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

ORDER

The parties have agreed and it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to re-open 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 sixty (60) days of a final adjudication of the Ohio proceedings now on appeal to the Circuit Court of Appeals, the parties have not re-opened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

MAR 3 1989

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

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

JIM JONES,)
)
 Plaintiff,)
)
 v.)
)
 JACK E. GORDON, JR., et al,)
)
 Defendants.)

88-C-416-B



ORDER

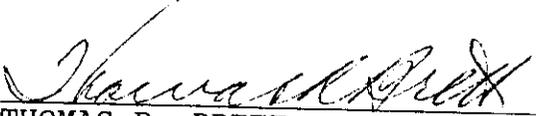
Now before the court are defendant Jack Gordon's Motion to Dismiss plaintiff's civil rights complaint pursuant to 42 U.S.C. §1983 and defendant June Lunsford's Motion for Summary Judgment. Although plaintiff failed to respond to defendants' motion in a timely manner as required by the Federal Rules of Civil Procedure and the Local Rules of the Northern District of Oklahoma, on January 24, 1989, the court, sua sponte, gave plaintiff an extension of time in which to respond to the motions. However, no such response was ever filed by plaintiff.

As the court previously advised plaintiff, all litigants, including those appearing pro se, are obligated to follow the procedural rules of court. See, Joplin v. Southwestern Bell Telephone Co., 671 F.2d 1274 (10th Cir. 1982). Plaintiff having been given every opportunity to comply with the pleading requirements of this court, the court concludes that plaintiff's failure to respond to the pending motions constitutes a waiver of objection to the motions. Rule 15A of the Local Rules for the Northern District of Oklahoma.

6

It is, therefore, ordered that defendant Jack Gordon's Motion to Dismiss plaintiff's civil rights complaint pursuant to 42 U.S.C. §1983 and defendant June Lunsford's Motion for Summary Judgment are granted. Plaintiff having failed to prosecute his action against the remaining defendants, it is further ordered that plaintiff's civil rights complaint pursuant to 42 U.S.C. §1983 is hereby dismissed as to all defendants.

Dated this 3rd day of March, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 3 1989

xl
Jack C. [unclear]
U. S. DISTRICT COURT

PHOENIX FEDERAL SAVINGS AND)
LOAN ASSOCIATION,)
)
Plaintiff,)
)
vs.)
)
DAN L. STEFANOFF, et al.)
)
Defendants.)

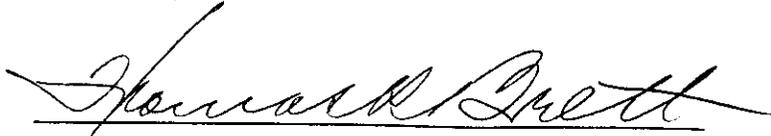
No. 88-C-1357-B

O R D E R

This matter came before the Court for a Status Conference on March 3, 1989, regarding the Federal Savings and Loan Insurance Corporation's Motion to Dismiss. The Court was informed that Wood Comm. Fund I, the title holder of the property at issue in this litigation, filed for protection under the bankruptcy code on March 2, 1989. Cimmaron Federal Savings and Loan, the current owner of the mortgage on the property held by Wood Comm. Fund I, will seek to lift the Bankruptcy Court's automatic stay.

Until the automatic stay is lifted, it is ORDERED that this case be stayed, except with regard to Richert Properties, Inc.'s claims against the FSLIC. It is FURTHER ORDERED that a status conference be held on June 5, 1989, at 8:45 a.m.

Dated, this 3rd day of March, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Mark L. Butcher, for the principal amount of \$1,282.25, plus accrued interest of \$206.71 as of June 3, 1988, plus interest thereafter at the rate of 3 percent per annum until judgment, plus interest thereafter at the current legal rate of 9.32 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

cen

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

KENNETH PALMER and LILA PALMER,
Husband and Wife,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, an Illinois
corporation,

Defendant.

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}
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}
}
}
}

Case No. 88-C-1570-C ✓

FILED
MAR 3 1989 *pm*

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

ORDER OF DISMISSAL WITH PREJUDICE

FOR GOOD CAUSE SHOWN and upon the application of the
Plaintiffs herein, this cause of action is dismissed with prejudice
as the said cause of action has been fully settled between the
parties.

Richard S. Book
UNITED STATES DISTRICT JUDGE
FOR THE NORTHERN DISTRICT OF
OKLAHOMA

JAG:pm
2/7/89
SF124-88

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

71ST & UTICA ASSOCIATES LIMITED)
PARTNERSHIP, an Oklahoma limited)
partnership, OMEGA INVESTMENTS INC.,)
an Oklahoma corporation, P. THOMAS)
MANN, an individual,)

Plaintiffs,)

vs.)

FAR WEST FEDERAL BANK, a)
foreign savings and loan)
association,)

Defendant.)

Case No. 87-C-975-E

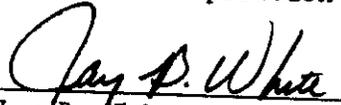
STIPULATION ^{of} FOR DISMISSAL WITH PREJUDICE

COMES NOW the parties to this action by their attorneys of record and stipulate and agree pursuant to the provisions of Rule 41 of the Federal Rules of Civil Procedure that plaintiffs' cause be dismissed by this Court with prejudice to the plaintiffs' rights to refile their cause and that defendant's counterclaim be dismissed with prejudice to defendant's right to refile its cause.

Respectfully submitted,

JONES, GIVENS, GOTCHER, BOGAN & HILBORNE,
a professional corporation

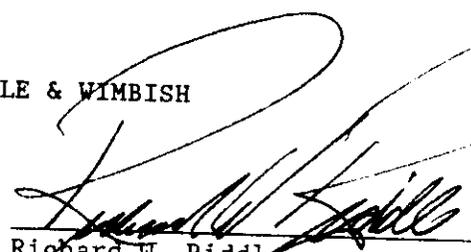
By:



Jay B. White, OBA #10152
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

ATTORNEYS FOR PLAINTIFFS

RIDDLE & WIMBISH

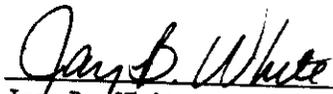
By: 

Richard W. Riddle
Charles H. Crain
5314 South Yale Avenue, Suite 200
Tulsa, Oklahoma 74135
(918) 494-3770

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of March, 1989, a true and correct copy of the above and foregoing instrument was placed in the U. S. Mail, proper postage prepaid thereon, and sent to: Charles H. Crain, Riddle & Wimbish, 5314 South Yale Avenue, Suite 200, Tulsa, Oklahoma 74135.


Jay B. White

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 2 1989

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MICHAEL L. BOOS, D.C.,)
)
Defendant.)

CIVIL ACTION NO. 88-C-1634-B

AGREED JUDGMENT

This matter comes on for consideration this 2nd
March of ~~February~~, 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, Michael L. Boos, D.C., appearing pro se.

The Court, being fully advised and having examined the
file herein, finds that the Defendant, Michael L. Boos, D.C.,
acknowledged receipt of Summons and Complaint which was filed on
December 30, 1988. The Defendant has not filed an Answer but in
lieu thereof has agreed that he is indebted to the Plaintiff in
the amount alleged in the Complaint and that judgment may
accordingly be entered against Michael L. Boos, D.C., in the
amount of \$15,827.49 as of June 30, 1988 (principal \$15,334.79,
interest \$66.37, late charges \$426.34), plus interest and late
charges accruing thereafter at the approximate rates of \$4.04
per day and \$2.13 per day respectively until judgment, plus
interest thereafter at the legal rate until paid, together with

the costs of this action and a reasonable attorney's fee, and for such other and further relief to which Plaintiff may be entitled at law or in equity.

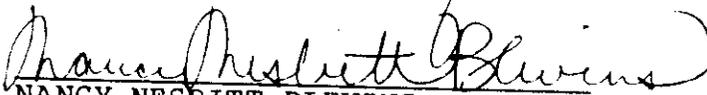
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Michael L. Boos, D.C., in the amount of \$15,827.49 as of June 30, 1988 (principal \$15,334.79, interest \$66.37, late charges \$426.34), plus interest and late charges accruing thereafter at the approximate rates of \$4.04 per day and \$2.13 per day respectively until judgment, plus interest thereafter at the legal rate until paid, together with the costs of this action and a reasonable attorney's fee, and for such other and further relief to which Plaintiff may be entitled at law or in equity.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS
Assistant U.S. Attorney


MICHAEL L. BOOS, D.C.

NNB:do

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

THOMAS R. and PATRICIA J. CASEY,)
husband and wife,)
)
Plaintiffs,)
)
vs.)
)
NORTH AMERICAN VAN LINES, INC.,)
a corporation; and CHARLES E.)
ANDERSON, JR., an individual,)
)
Defendant.)

No. 88-C-972-E

FILED

MAR 2 1989

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

ORDER OF DISMISSAL

NOW on this 1st day of March, 1989, upon the written application of the Plaintiffs, Thomas R. and Patricia J. Casey, and the Defendant, North American Van Lines, Inc., for a dismissal with prejudice of the Complaint of Casey v. North American Van Lines, 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 Plaintiffs, and that said Complaint should be dismissed pursuant to said application.

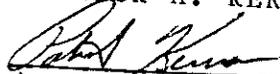
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiffs, Thomas R. and Patricia J. Casey, against the Defendant, North American Van Lines, Inc., be and the same hereby are dismissed with prejudice to any future action.



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

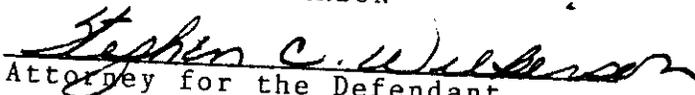
APPROVALS AS TO FORM:

PATRICK H. KERNAN



Attorney for the Plaintiffs

STEPHEN C. WILKERSON



Attorney for the Defendant

FILED

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

MAR 2 1989

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

HOWARD S. PARSONS, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 ROCKWELL INTERNATIONAL)
 CORPORATION, a Delaware)
 corporation,)
)
 Defendant.)

No. 88-C-145-B

ORDER

This matter comes before the Court on Defendant Rockwell International Corporation's Motion for Summary Judgment on the sole remaining claim for breach of contract in Plaintiff Howard S. Parsons' first cause of action.

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

JK

contract.

Plaintiff Howard S. Parsons was employed by Defendant Rockwell International on June 7, 1982. On August 15, 1986 Plaintiff was notified in writing that he was being placed on open transfer status and would be laid off as of August 29, 1986. (Defendant's Exhibit E).

Plaintiff's employment agreement with Rockwell states at paragraph 5:

"It is agreed that the employment of the undersigned by Rockwell is at the will of either party and may be terminated on notice to the other as prescribed by applicable Rockwell procedures." (Defendant's Exhibit A).

Rockwell's "Standard Operating Manual" provides:

"Employees will receive 2 weeks of advance notice in writing of impending layoff." (Defendant's Exhibit A).

Plaintiff concedes his employment was "at-will." Plaintiff also concedes that the two-week notice of termination he received was consistent with procedures set out in the Rockwell manual.

Plaintiff's claim for breach of contract centers on other provisions in Rockwell's Performance Review Program and in Rockwell's Standard Operating Manual. The "Performance Review Program" provides that Plaintiff's performance would be appraised three months after being transferred to Tulsa and then annually thereafter. The Standard Operating Manual states that employee rankings "may be used to assist in making determinations of excess employees during reductions in the work force." Plaintiff claims he never received a performance review during his twenty-one month

employment at Rockwell. Plaintiff contends Defendant was bound to follow these procedures concerning his termination. Plaintiff contends that "had he been reviewed in accordance with Rockwell's Performance Review Program, he may not have been terminated."

The Court finds summary judgment for Defendant is appropriate in this matter. Although under Oklahoma law an employee manual can create a duty on the employer's part to follow procedures outlined therein;¹ the provisions relied upon by Plaintiff do not create such a duty. The provision states the rankings "may be used in the evaluation. This does not bind Defendant to use them. Further, Plaintiff failed to bring forth any evidence to show a factual dispute that had he been evaluated, he would not have been terminated.

Therefore, summary judgment is hereby awarded Defendant Rockwell International against Plaintiff, Howard S. Parsons.

IT IS SO ORDERED this 2nd day of March, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹ Miller v. Independent School District, 609 P.2d 756, 759 (Okla. 1980); Hinson v. Cameron, 742 P.2d 549, 555 (Okla. 1987); Langdon v. Saga Corp., 569 P.2d 524 (Okla.Ct.App. 1976).

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

FILED

MAR 2 1989

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

HOWARD S. PARSONS, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 ROCKWELL INTERNATIONAL)
 CORPORATION, a Delaware)
 corporation,)
)
 Defendant.)

No. 88-C-145-B

J U D G M E N T

In keeping with the Court's Order of March 2, 1989 sustaining the Motion for Summary Judgment of Defendant, Rockwell International Corporation, Judgment is hereby entered in favor of Rockwell International Corporation and against Plaintiff, Howard S. Parsons, Jr., with costs awarded against Plaintiff. The parties are to pay their own respective attorney fees.

DATED this 2nd day of March, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

MAR 2 1989

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

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

CLYDE OIL & GAS, INC., a Delaware
corporation, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 TULSA COMMERCE BANCSHARES, INC.,)
 et al.,)
)
 Defendants.)

No. 88-C-178-B

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to Stipulation of Dismissal With Prejudice pursuant to Rule 41(a)(1) of the
Federal Rules of Civil Procedure entered into by the plaintiffs and the defendants,

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

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

ANES ELECTRONICS, INC.,)
)
Plaintiff,)
)
vs.)
)
OTASCO, INC.,)
)
Defendant.)

No. 88-C-341-E

MAR 2 1989
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Defendant 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 1st day of ~~February~~ ^{March}, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

MAR 2 1989

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

KAISER ALUMINUM & CHEMICAL
CORPORATION,

Plaintiff,

vs.

RKS, INC., CLACO, INC.,
CLAY KING AND ROBERT J.
SANDERS,

Defendants.

Case No. 87-C-93-E

ORDER OF DISMISSAL WITH PREJUDICE

On this 12th day of March, 1989, upon written motion of Plaintiff Kaiser Aluminum & Chemical Corporation ("Kaiser") for an order dismissing with prejudice all claims and causes of action against defendants Claco, Inc., Clay King and Robert J. Sanders, the Court having examined said motion finds that Kaiser, Claco, Inc., Clay King and Robert J. Sanders have entered into a Settlement Agreement and that Kaiser has requested the Court to dismiss the claims against said defendants with prejudice to any further action, and the Court having fully advised in the premises, finds that said claims should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Kaiser's claims and causes of action filed herein against defendants Claco, Inc., Clay King, and Robert J. Sanders be and the same are hereby dismissed with prejudice to any further action.


UNITED STATES DISTRICT JUDGE

MAR 2 1989

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

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

R. DOBIE LANGENKAMP, Trustee,	)	No. 89-C-121-B
)	
Plaintiff-Appellee)	
	)	No. 82-01269-W
v.	)	Chapter 11
)	
J. ANTHONY MOOTER,)	
	)	Adversary No.
Defendant-Appellant	)	84-0131-W

AGREED ORDER DISMISSING APPEAL

The Court, being duly advised in the premises hereby finds as follows:

On February 6, 1989, in the above-captioned adversary proceeding, the Bankruptcy Court entered its judgment and order in favor of plaintiff and against defendant based upon a \$50,000.00 preferential transfer by defendant in violation of 11 U.S.C. § 547.

On February 17, 1989, plaintiff filed its Motion to Amend Memorandum Decision and Order and Motion to Amend Judgment, to allow for plaintiff's recovery of pre-judgment interest pursuant to Bankruptcy Rule 9023, 28 U.S.C. § 1961, Fed.R.Civ.P. §§ 54(c) and 59. Thereafter, on the same date, defendant perfected this appeal from the Bankruptcy Court's judgment and order. Plaintiff's motion remains pending.

On the 21st day of February, 1989, plaintiff filed its Motion to Dismiss the appeal. It is hereby

ORDERED, ADJUDGED AND DECREED that pursuant to Bankruptcy Rule 8002(b), this appeal is premature, of no effect and is dismissed without prejudice.

IT IS FURTHER ORDERED that each party shall bear its costs in this matter.

DATED this 2nd day of March, 1989.

S/ THOMAS R. BRETT

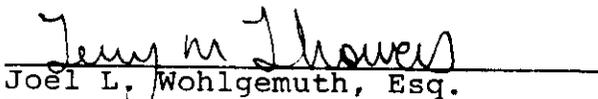
JUDGE OF THE DISTRICT COURT

APPROVED:



Sam G. Bratton II, Esq.
John J. Carwile, Esq.
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Bldg.
Tulsa, OK 74103

Attorneys for Plaintiff,
R. Dobie Langenkamp, Trustee



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Terry M. Thomas, Esq.
NORMAN, WOHLGEMUTH & THOMPSON
909 Kennedy Building
Tulsa, Oklahoma 74103
(918) 583-7571

Attorneys for Defendant,
J. Anthony Mooter

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

IN RE:)	
PENNINGTON'S DRIVE-IN)	
RESTAURANT, INC.,	)	Case No. 86-00068-W
	)	Chapter 11
Debtor,)	
SIDNEY K. SWINSON, TRUSTEE,)	
Plaintiff/Appellee,	)	Adversary No. 88-0041-W
v.)	
JUDY PENNINGTON,	)	88-C-310-C
LINDA GILBERT, Individually,)	
and LINDA GILBERT as)	
Executrix of the Estate of)	
LOLA PENNINGTON,)	
Defendants/Appellants.)	

FILED
MAR 1 1989
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

Now before the court is the appeal of Linda Gilbert, individually and as Executrix of the Estate of Lola and Arch Pennington, Deceased, from the Final Judgment of the United States Bankruptcy Court for the Northern District of Oklahoma, entered on March 22, 1988. The appellee, the Trustee of Pennington's Drive-In Restaurant, Inc. ("PDRI"), originally brought this action in the bankruptcy court to determine the priority of interests and ownership of interests in and to a certain Franchising and Licensing Agreement entered into between Archco Restaurant Systems, Inc. ("Archco") and PDRI, Lola Pennington, and Judy Pennington on August 19, 1986. The Trustee sought to establish that the Estate's interest in the Agreement was superior to the interests of Judy Pennington and Linda Pennington Gilbert, individually and as the personal

representative of the Estate of Lola Pennington, deceased. Linda Gilbert asserted that the Estate of Lola Pennington, deceased, was the sole owner of the trade name, good will, recipes, and other rights described in the Franchising and Licensing Agreement, and at no time had these items of personal property been transferred to PDRI. Linda Gilbert's appeal concerns the order of the Bankruptcy Court dated 3/21/88 and its subsequent Judgment dated 3/22/88 that the Franchise Agreement is owned exclusively by the bankruptcy estate.

Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). However, this "clearly erroneous" standard does not apply to review of mixed questions of law and fact, which are subject to the de novo standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d 677, 679 (10th Cir. 1987). The parties agree that this appeal challenges the legal conclusion drawn from the facts presented at trial, so de novo review is proper.

Pennington's Drive-In Restaurant ("Pennington's"), located in Tulsa, Oklahoma, was established in 1951 by the joint efforts of Arch and Lola Pennington, husband and wife. The business prospered under the management of Arch and Lola until 1969, when Arch became too ill to continue participating in the business's operations. At that time, Pennington's was leased to third parties who operated the business until 1970. Lease payments

were made to Arch and Lola Pennington. In 1983, Arch and Lola Pennington and their daughter, Judy, obtained funding from the Bank of Catoosa to buy back the lease. To accomplish this transaction, Arch and Lola executed a promissory note, a real estate mortgage on the property where Pennington's is located, and a security agreement on the equipment of the business.

In the meantime, Lola and Judy Pennington formed PDRI. Lola paid the corporation \$500.00 and received 500 shares of the capital stock of PDRI having \$1.00 per share par value and gave Judy 250 of the shares. There is no evidence that more than cash was given for the stock. Arch remained too ill to participate in restaurant operations and was not given PDRI stock. There is no evidence that PDRI paid consideration to Lola, Arch, or Judy Pennington for the use of the trade name, recipes, or assets of the business, and Lola and Arch Pennington executed no contracts or bills of sale transferring any business assets to PDRI. However, the evidence at trial showed that PDRI included in its schedules of assets the restaurant equipment, goods, good will, and trade name as assets owned exclusively by it (Trustee's Exhibit 5, Schedule B-2). Judy Pennington admitted at trial that no one else owned an interest in the good will and trade name (Tr. 56-57).

Due to financial difficulties, PDRI filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in 1986. PDRI functioned as a debtor in possession of Pennington's until 1987 when the appellee, Sidney

Swinson, was appointed as trustee. Following PDRI's filing of bankruptcy, negotiations for a franchise agreement were entered into between Archco and PDRI. The final franchise agreement between Archco and PDRI, Lola, and Judy, was executed with the bankruptcy court's approval on August 19, 1986. The Agreement stated that PDRI had the sole and exclusive right to convey the right to use the trade names and recipes and no other person had any claim, right, title, or interest to those rights (Trustee's Exhibit 1, page 3). Lola and Judy reserved the right to continue operation of Pennington's at the 47th and Peoria location in Tulsa.

On appeal, this court required the parties to brief the following issues: 1) Was a franchise right created; 2) Is a franchise agreement a property right; and 3) If a franchise agreement is a property right, does the bankruptcy estate or the estates of Lola and Arch Pennington, Deceased, own this right in the present case?

Although there is a lack of documentation evidencing a transaction, both parties agree that a franchise agreement was created and entered into on August 19, 1986. In addition, it is undisputed that such a franchise agreement is a property right. Generally, questions as to whether an interest is a property right are governed by state law. Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1001 (1984) (property interests are not created by the Constitution, but are created and defined by rules that stem from an independent source such as state law). Under Oklahoma

law, a franchise agreement, such as that in the present case, is a property interest because it includes the good will of the business. Under 60 O.S. §315, good will "is the expectation of continued public patronage" and under §316 "is property, transferable like any other".

The third issue involving ownership of the franchise agreement depends in part on whether Arch Pennington transferred his interest in Pennington's before his death and in part on the actions of the parties since his death. The appellee argues that Arch conveyed his interest in Pennington's prior to his death and was competent to do so. On the other hand, the appellant asserts that Arch was mentally incapable of making a conveyance and that he still had vested ownership in Pennington's assets (which were the subject matter of the franchise agreement) at the time of his death.

While it is true that parties to a contract or conveyance must be mentally competent in order for such a transaction to be valid (15 O.S. §11), it is also true that other important elements must also be present, such as consideration. Turner v. Baxter, 249 P.2d 725, 727 (Okla. 1952). In the present case, however, the record is devoid of evidence showing that Arch made a contract to convey his interest in Pennington's or that an offer was even made to purchase Arch's interest in the business. No guardian was ever appointed for him by a court of law, and no court approval was ever given for a guardian to sell his property for him. He received no stock in the corporation.

Since there is no evidence that Arch conveyed his interest, the parties dispute whether Lola and Judy conveyed his interest in addition to theirs when they entered the franchise agreement. Appellant points out that Arch and Lola's interest in Pennington's was the result of their combined efforts to create the business and that they were consequently co-owners. Appellant then contends that, after Archco was granted the franchise agreement by Judy and Lola, Arch became a co-owner of the franchise agreement with Archco.

In the case of Gilles v. Norman Plumbing Co., 549 P.2d 1351 (Okla. App. 1975), ownership of a family car was in the defendant husband's or the wife's name. The husband became individually indebted to a plumbing supply company, which was later granted an execution on the family car. The plumbing company, upon the failure to pay the judgment, towed the vehicle away and sold it. The wife sued the plumbing company, claiming that the car was partially hers and not subject to levy. The Oklahoma Court of Appeals disagreed with the wife's argument and pointed out that, only when property ownership is in the husband's and the wife's names, do both have an individual interest in the property as tenants in common.

As tenants in common, each has the ability to "sell, convey or dispose of only his interest without affecting the other tenant's interest". Id. at 1353. The evidence in the present case clearly indicates that Arch and Lola owned Pennington's as husband and wife, or as co-tenants. Therefore, Lola did not

convey Arch's interest in Pennington's when she conveyed her own to PDRI. When Archco was granted the Franchising and Licensing Agreement by PDRI, Lola Pennington, and Judy Pennington, Arch retained his half ownership rights in Pennington's Drive-In but he was not part of the Agreement. Arch's separate ownership rights did not entitle him to a share of the profits of that Agreement, which resulted solely from the efforts of PDRI, a corporation that did not include him.

In addition, through disuse a trade name can be abandoned and "intent to abandon a trademark may be inferred from the surrounding circumstances". Oklahoma Beverage Co. v. Dr. Pepper Love Bottling Company, 565 F.2d 629, 632 (10th Cir. 1977). Arch Pennington's interest in Pennington's was never used after PDRI was formed. No other Pennington's Drive-In was ever opened other than the one incorporated into PDRI.

The court finds that Linda Gilbert is now estopped from alleging her father's interest in the Franchise Agreement after failing to probate his estate following his death in 1985 so that the assets could be used, including his interest in Pennington's Drive-In. Estoppel involves "reliance of another upon the conduct of the party allegedly estopped." Bay Petroleum Corp. v. May, 264 P.2d 734, 736 (Okla. 1953). Linda Gilbert acquiesced in the statements of PDRI in its bankruptcy schedule of assets that the restaurant equipment, goods, good will, and trade name of Pennington's were owned exclusively by it. When she conveyed her interest in the Franchising Agreement, she was aware that the

Agreement stated, and she represented to Archco, that PDRI had the sole and exclusive right to convey the right to use the trade names and recipes and no other person had any claim, right, title, or interest to those rights. Her conduct established ownership of the assets exclusively in the corporation. Archco relied on those representations. In addition, Linda Gilbert has for some time been consenting to the use of the income from the Franchising Agreement for the satisfaction of debts of the bankruptcy estate.

Therefore, the court finds that the Franchise Agreement is owned exclusively by the bankruptcy estate. It is Ordered that the Bankruptcy Court's decision of March 22, 1988 be and hereby is affirmed.

It is so Ordered this 28th day of February, 1989.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

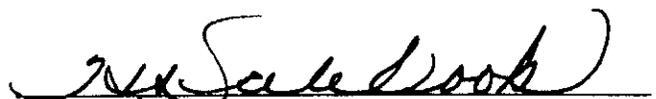
defendant. Plaintiff has not responded to the motion. Under Rule 15 of the Local Rules, plaintiff has therefore confessed the motion. The Court has independently reviewed the materials presented and finds that, based upon the present record, the motion should be granted. Mere negligence does not implicate the Due Process Clause. Daniels v. Williams, 474 U.S. 327 (1986). As for the state law claim, defendant's actions do not reach the level set forth in Eddy v. Brown, 715 P.2d 74 (Okla. 1986). 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.

The Court has concluded that this is such a case.

It is the Order of the Court that the motion of the defendant for summary judgment is hereby GRANTED.

IT IS SO ORDERED this 1st day of March, 1989.


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

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

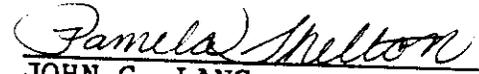
AMOCO PRODUCTION COMPANY,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. 88-C-1463B
)	
SAMSON RESOURCES COMPANY,)	
)	
Defendant.)	

**STIPULATION OF DISMISSAL, PURSUANT TO RULE 41
OF THE FEDERAL RULES OF CIVIL PROCEDURE**

COME NOW, Amoco Production Company ("Amoco"), the Plaintiff and the Defendant Samson Resources Company ("Samson"), and each of them by and through their respective attorneys, James C. Lang and Pamela Shelton of the law firm of Sneed, Lang, Adams, Hamilton & Barnett and James A. Kirk of the law firm of Kirk & Chaney and jointly advise the Court that they have settled all issues in the above, referenced cause and stipulate that the Court enter an Order of Dismissal with Prejudice to the filing of any further action in this matter. At this time, Amoco dismisses with prejudice all claims set forth in its Complaint and First Amended Complaint filed herein and Samson dismisses with prejudice all claims set forth in its Answer and Counterclaims as alleged in the above-referenced law suit. Further, it is hereby stipulated that each party shall bear its own attorney's fees and costs.

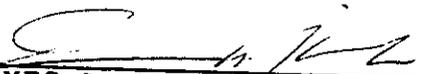
DATED this 1st day of March, 1989.

Respectfully submitted,
AMOCO PRODUCTION COMPANY,
Plaintiff,



JOHN C. LANG
PAMELA SHELTON
SNEED, LANG, ADAMS, HAMILTON,
& BARNETT
Sixth Floor
114 East 8th Street
Tulsa, Oklahoma 74119

SAMSON RESOURCES COMPANY,
Defendant,



JAMES A. KIRK, OBA #5046
KIRK & CHANEY
1300 Midland Center
134 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102
(405) 235-1333

smb;S12C/Amoco/stip

This judgment shall bear interest as prescribed by 28 U.S.C. Section 1961(c)(1) and 26 U.S.C. Section 6621.

Entered at Tulsa, Oklahoma, this 28th day of February, 1989.

James Deemi
UNITED STATES DISTRICT JUDGE

Approved for entry:

M. Kent Anderson
M. KENT ANDERSON
Trial Attorney, Tax Division
U.S. Department of Justice
5B31 Federal Office Building
1100 Commerce Street
Dallas, Texas 75242
Telephone: (FTS) 729-0293
(214) 767-0297

ATTORNEY FOR UNITED STATES -

Larry R. Saunders
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5371 East 26th Street
Tulsa, Oklahoma 74114