

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

IN RE: STOCKTON OIL/GAS CO., )  
INC., THE REMINGTON COMPANY, )  
Appellants, )  
v. )  
J. SCOTT McWILLIAMS, TRUSTEE )  
Appellee. )

Bky. Case No. 85-01974-W  
Bky. Case No. 85-02114-W

89-C-83-B ✓ L E U

MAR 31 1989 6

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

ORDER

Now before the court are the Motions for Leave to Appeal of Stockton Oil/Gas Co., Inc., by W. T. Sanders, Sr., President, and The Remington Company, by W. T. Sanders, Sr., Partner, from the "Order Granting Trustee Authority to Sell Jointly Owned Property, Noticing and Restricting the Method and Manner of Sale, and Setting Hearing for Public Auction", filed December 7, 1988 (Docket Nos. 1 & 3).<sup>1</sup>

Appellants allege that at a hearing on 1/20/89 the bankruptcy court heard a report from the trustee concerning the sale of oil and gas properties of the estate. W. T. Sanders protested at that hearing concerning a \$2,000.00 bid for the "Younger lease in Payne County, Oklahoma" by Mr. Ed Wells. Sanders informed the court that the lease was capable of producing ten to twelve barrels of oil per day and thus was worth at least \$50,000.00. At the sale held on 1/20/89, W. T. Sanders

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

was not allowed to speak and protest the bid made on the Younger lease. Appellants allege the trustee has mismanaged the estate and has failed to produce potential income from the Younger #1 well of approximately \$144,000.00.

The Trustee asks the court to deny appellants leave to appeal, alleging that the notice of appeal is not timely filed, appellants have no right to appear for Stockton Oil/Gas Co., Inc. or The Remington Company, and the appeal is moot because the sale was not stayed pending appeal.

The district court has jurisdiction to hear appeals from final decisions of the bankruptcy court under 28 U.S.C. § 158(a).<sup>2</sup> Under that section the district court has jurisdiction to hear appeals from interlocutory orders and decrees with leave of the court.

Under Bankruptcy Rules 8001(a)(b) and 8002(a), an appeal to the district court of a final or interlocutory order of the bankruptcy court must be filed within ten days of entry of the final judgment or order of the bankruptcy court. Timely filing of a notice of appeal is "mandatory and jurisdictional". See In re: 6 and 40 Investment Group, Inc., 752 F.2d 515, 515 (10th Cir. 1985).

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<sup>2</sup> 28 U.S.C. § 158(a) reads as follows:

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

W. T. Sanders appealed the bankruptcy court order entered 12/7/88 by notice of appeal filed with the Clerk of the Bankruptcy Court on 2/1/89. The time passage between the date of entry of the order and the file date of the notice of appeal was fifty-five days. No extensions of time, motions to amend, or other motions were filed to toll the ten-day appeal rule. Therefore, the court finds that the appellant should be denied leave to appeal.

The court notes also that the corporate debtor, Stockton Oil/Gas Co., Inc. may appear in a court of record only by attorney. DeVilliers v. Atlas Corp., 360 F.2d 292 (10th Cir. 1966). Its representation in the Motion for Leave to Appeal by W. T. Sanders, who is not an attorney, is thus improper. In an order dated 6/20/88, the bankruptcy judge informed Stockton Oil/Gas Co., Inc. of this fact and found that the partnership debtor, The Remington Company, was a separate entity for bankruptcy purposes, which was being jointly administered with the corporate debtor, and thus should be likewise represented by an attorney.

The Motions for Leave to Appeal should be and are denied.

Dated this 31 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 31 1989

WIL-GRO FERTILIZER, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CARDOX CORPORATION, )  
 )  
 Defendant. )

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

No. 88-C-479-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 action be dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigations is necessary.

ORDERED this 31<sup>st</sup> day of March, 1989.

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

UNITED STATES DISTRICT COURT FOR  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

MAR 31 1989

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 EIGHTY THOUSAND TWO DOLLARS AND )  
 SEVENTEEN CENTS (\$80,002.17) )  
 IN UNITED STATES CURRENCY, )  
 )  
 Defendant. )

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

*CS*

CIVIL ACTION NO. 88-C-170-E ✓

AGREED JUDGMENT OF FORFEITURE

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled. Such settlement more fully appears by the written Stipulation entered into between the claimants Milton Edwards, Charles Langham, William Lawrence, Paul D. Brunton and Allen M. Smallwood and the United States of America on March 15, 1989, and filed herein.

Stipulation reference is hereby made and is incorporated herein.

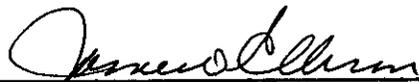
It further appearing that no other claims to said property have been filed since such property has been seized and that no other person has any right, title or interest in the defendant property,

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

ORDERED that the claims of Milton Edwards, Charles Langham, William Lawrence, Paul D. Brunton and Allen M. Smallwood be and the same hereby are dismissed with prejudice, and it is

*3 c/ops to USM in distribution*

FURTHER ORDERED AND DECREED that \$75,502.17 in United States Currency be and hereby is condemned as forfeited to the United States of America for disposition according to law.



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JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

MARK E. DUSINA, )

Defendant. )

MAR 31 1989

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

CIVIL ACTION NO. 88-C-1565-B

DEFAULT JUDGMENT

This matter comes on for consideration this 31<sup>st</sup> day of March, 1989, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Mark E. Dusina, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Mark E. Dusina, was served with Summons and Complaint on January 11, 1989. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

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

Mark E. Dusina, for the principal amount of \$1,850.00, plus accrued interest of \$702.95 as of September 19, 1988, plus interest thereafter at the rate of 9 percent per annum until judgment, plus interest thereafter at the current legal rate of 9.43 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT  

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UNITED STATES DISTRICT JUDGE

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Randy R. O'Connell, for the principal amount of \$10,434.95, plus accrued interest of \$70.49 and late charge of \$1,824.27 as of November 4, 1988, plus interest and late charges accruing thereafter at the rate of \$4.50 per day until judgment, plus interest thereafter at the current legal rate of 9 4/3 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT

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UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHIRLEY WILKINS GOODLOW,  
a/k/a SHIRLEY L. WILKINS,  
a/k/a SHIRLEY WILKINS,  
a/k/a SHIRLEY LULA R. WILKINS  
GOODLOW,

Defendant.

F I L E D

MAR 31 1989

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

CIVIL ACTION NO. 88-C-1556-B

DEFAULT JUDGMENT

This matter comes on for consideration this 31<sup>st</sup> day  
of March, 1989, the Plaintiff appearing by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States  
Attorney, and the Defendant, Shirley Wilkins Goodlow, a/k/a  
Shirley L. Wilkins, a/k/a Shirley Wilkins, a/k/a Shirley Lula R.  
Wilkins Goodlow, appearing not.

The Court being fully advised and having examined the  
court file finds that Defendant, Shirley Wilkins Goodlow, a/k/a  
Shirley L. Wilkins, a/k/a Shirley Wilkins, a/k/a Shirley Lula R.  
Wilkins Goodlow, acknowledged receipt of Summons and Complaint.  
The time within which the Defendant could have answered or  
otherwise moved as to the Complaint has expired and has not been  
extended. The Defendant has not answered or otherwise moved,  
and default has been entered by the Clerk of this Court.  
Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Shirley Wilkins Goodlow, a/k/a Shirley L. Wilkins, a/k/a Shirley Wilkins, a/k/a Shirley Lula R. Wilkins Goodlow, for the principal sum of \$1,000.00, plus accrued interest of \$258.13 as of October 4, 1988, plus interest thereafter at the rate of 3 percent per annum until judgment, plus interest thereafter at the current legal rate of 9.43 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT  

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UNITED STATES DISTRICT JUDGE

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

FILED

MAR 31 1989

PENTECO CORPORATION, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 EAST CENTRAL GAS & PIPELINE )  
 CORPORATION, et al., )  
 )  
 Defendants. )

No. 86-C-1071-E  
and 87-C-561-E  
(Consolidated)

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

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. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 30<sup>th</sup> day of 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 31 1989**

PENTECO CORPORATION, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
EAST CENTRAL GAS & PIPELINE )  
CORPORATION, et al., )  
 )  
Defendants. )

No. 86-C-1071-E  
and 87-C-561-E  
(Consolidated)

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

**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. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 30<sup>th</sup> day of 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 31 1989

AMERICAN CLASSICS, INC., )  
an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BARBARA "SUNNY" HOPPE, )  
f/k/a BARBARA "SUNNY" FIAT, )  
 )  
Defendant. )

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

No. 88-C-639-E

ORDER OF DISMISSAL

THIS cause came to be heard on Plaintiff's Motion for Voluntary Dismissal of said cause, and due deliberation has been had thereon, it is

ORDERED that this cause be and the same is hereby dismissed without prejudice.

Dated this 30 day of March, 1989.

*(Signature)*

UNITED STATES DISTRICT JUDGE

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

**F I L E D**

**MAR 31 1989**

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

JAMES R. MILLS, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 85-C-291-E ✓  
 )  
 MARGARET M. HECKLER, Secretary )  
 of Health and Human Services, )  
 )  
 Defendant. )

O R D E R

This matter comes on before the Court on Plaintiff's motion for award of attorney fees and for approval of award to Plaintiff. After reviewing the pleadings, the Court finds as follows:

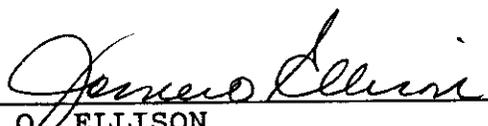
The Court approves the award to Plaintiff and finds the attorney's fees award by the Social Security Administration to be reasonable under the circumstances.

On the issue of attorney's fees for appeal and in this Court the Court approves the application by counsel for Plaintiff for \$5,162.50. Plaintiff's counsel has also requested a "bonus" of \$286.70. The Court views this as a request for an enhancement. This Court, reviewing what is a reasonable fee looked to Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983). This Court does not see the "exceptional success" requirement of Ramos met here to approve an enhancement, no matter how small. Id. at 557.

IT IS THEREFORE ORDERED that the award to Plaintiff and his counsel made by the Social Security Administration is hereby

approved by the Court; further Plaintiff is awarded attorney's fees in the sum of \$5,162.50 for the actions before this Court and the Tenth Circuit Court of Appeals.

ORDERED this 30<sup>th</sup> day of March, 1989.

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

**F I L E D**

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

**MAR 30 1989**

W. F. (BILL) NORTH,

Plaintiff,

vs.

CENTRILIFT-HUGHES, INC.,  
PUMP DIVISION, a division of  
Baker Hughes Corporation, a  
Delaware corporation, formerly  
known as CENTRILIFT-HUGHES,  
INC., PUMP DIVISION, a  
division of Hughes Tool  
Company, a Delaware  
corporation,

Defendant.

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

Case No. 88-C-1446-E

ORDER

NOW on this 29<sup>th</sup> day of March, 1989, comes on for consideration the above styled matter and the Court, being fully advised in all premises finds that Defendant seeks, via its Motion to Dismiss, dismissal of three of Plaintiff's four causes of action. This Court finds that the motion should be granted in part and denied in part.

Plaintiff's first cause of action is for tortious wrongful discharge under Oklahoma law. However, Oklahoma continues to operate under an employment-at-will doctrine. See Hinson v. Cameron, 742 P.2d 549 (Okla. 1987). The confusion engendered by the Hinson decision was recently clarified in Burk v. K-Mart Corporation, 60 O.B.J. 305 (February 11, 1989). Under Burk, the only exception to the employment-at-will doctrine would be that narrow class of cases wherein the discharge is contrary to a clear

mandate of public policy as articulated by constitutional, statutory or decisional law. Burk, supra, at 307. Narrow construction was called for, the Oklahoma Supreme Court urged, such that the tort should lie where an employee is discharged for refusing to act in violation of an established and well-defined public policy or for performing an act consistent with a clear and compelling public policy. Burk, supra, at 308. The tort may further lie where the employee's discharge is motivated by the employer's desire to avoid payment of benefits already earned by the employee, such as future commissions based on past service. Id. Based upon the above enumeration of instances of public policy violation giving rise to a cause of action, and the strictures set forth by the Oklahoma Supreme Court urging cautious judicial construction of additional instances of such cause of action, this Court finds that Plaintiff has failed to plead in his cause of action a set of facts sufficient to meet the Burk test for violation of public policy and thus the first cause of action for tortious wrongful discharge cannot lie.

Defendant urges, in its second ground for dismissal, that the presence of the Equal Employment Opportunity Statement in the Employee Handbook does not alter Plaintiff's employee-at-will status, and cites Lofton v. Wyeth Laboratories, 643 F.Supp. 170 (E.D.Pa. 1986) in support of its position. Although Plaintiff attempts to distinguish Lofton and maintain this cause of action, the Court is unconvinced by the attempted distinguishment of Lofton, and finds that the principles guiding the holding of that case are applicable here. Thus Plaintiff's second cause of action

must be dismissed.

Plaintiff urges that the existence and usage of Defendant's Employee Review Committee somehow limits Defendant's ability to terminate its employees at will. Although Defendant presents a cogent argument on this subject, the Court finds that the matter necessarily deals with factual issues yet to be resolved during discovery, i.e. the usage and understanding within the company as to the role of the Employee Review Committee, and thus dismissal of this cause of action is improper at this time.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Dismiss is granted as to Plaintiff's first and second causes of action and denied as to Plaintiff's third cause of action.

  
JUDGE JAMES O. ELLISON  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

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

**FILED**

**MAR 29 1989**

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

NATIONAL BANK OF DETROIT, )  
 as Trustee for the Masco )  
 Industries, Inc. Employees' )  
 Welfare Benefit Trust, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ARTHUR ENGLISH, CHRISTINA )  
 SMITH and THE HARTFORD )  
 INSURANCE COMPANY, )  
 )  
 Defendants. )

Case No. 88-C-1282-E

ORDER of Dismissal  
*March*

NOW on this 28<sup>th</sup> day of ~~February~~, 1989, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiff, National Bank of Detroit, as Trustee for the Masco Industries, Inc. Employees' Welfare Benefit Trust, and Defendants, Arthur English ("English"), Christina Smith ("Smith") and The Hartford Insurance Company ("Hartford"). Based upon the representations and request of these parties as set forth in the foregoing Stipulation, it is

ORDERED that Plaintiff's Complaint and claims for relief against Defendants, English, Smith and Hartford, be and the same are hereby dismissed with prejudice. It is further

ORDERED that each party shall bear its own costs.

**57 JAMES O. ELISON**

UNITED STATES DISTRICT JUDGE

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

**FILED**

**MAR 29 1989**

NORMA HILTON,

Plaintiff,

vs.

JULIAS W. BECTON, JR.,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

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

No. 88-C-1016-E

JUDGMENT

Defendant, Julias W. Becton, Jr. is hereby granted judgment against Plaintiff, Norma Hilton, on her complaint. Defendant is awarded his costs of this action.

ORDERED this 28<sup>th</sup> day of March, 1989.



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

Gene L. Mortensen  
OBA #6452  
Rosenstein, Fist & Ringold  
525 South Main, Suite 300  
Tulsa, Oklahoma 74103  
(918) 585-9211

APR 20 1988  
Dismissal  
With Prejudice  
FEDERAL DISTRICT COURT

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

CHRYSLER FINANCIAL CORPORATION, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No. 88-C1511-B  
 )  
 MICHAEL PARTRIDGE, )  
 an individual, )  
 )  
 Defendant. )

DISMISSAL WITH PREJUDICE

The plaintiff, Chrysler Financial Corporation, dismisses their claims against the Defendant, Michael Partridge, with prejudice.

ROSENSTEIN, FIST & RINGOLD

By:   
Gene L. Mortensen, OBA #6452

525 South Main Mall, Suite 300  
Tulsa, Oklahoma 74103  
(918) 585-9211

Attorneys for Plaintiff,  
Chrysler Financial Corporation

CERTIFICATE OF MAILING

I certify that on March 29<sup>th</sup>, 1989, I mailed a true copy of the foregoing document to Ron B. Barber, Esquire, Barber & Bartz, 110 Occidental Place, 110 West 7th Street, Suite 200,, Tulsa, Oklahoma 74119, with postage prepaid.

By Gene L. Mortensen  
Gene L. Mortensen

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

FILED

MAR 29 1988

CLERK  
U.S. DISTRICT COURT

GARY SCHOOLEY, et al., )  
 )  
Plaintiffs, )  
v. ) No. 88-C-400 C and  
 ) consolidated cases  
GOLDCOR, INC., et al., )  
 )  
Defendants. )

STIPULATION OF DISMISSAL

COME NOW the parties in the above consolidated actions, Gary and Gayle Schooley, Schooley and Company, Inc., Michael L. Jones, James W. and Shirley J. Concannon, Edward D. and Janet K. Robson, Jack B., Dolores, and Jeffrey Hamrick, and Bruce West, (collectively "Plaintiffs"), and James Chisholm, Charles Culp, Richard D. Brown, Keith R. Fitzgerald, Roger Remillard, and W. Fred Carlisle, (collectively "Defendants"), pursuant to Fed. R. Civ. P.41(a), for their stipulation of dismissal and state as follows:

1. Each of the consolidated actions were filed separately between May and September, 1988 against each of the Defendants, and consolidated by order of this Court on December 5, 1988.

2. Also named as defendants were Fitzgerald, DeArman & Roberts, Inc., Goldcor, Inc., Robert Bell, John Thomas, and Rudi Fickert, each of which has now received the protection of various United States Bankruptcy Courts, thus staying their involvement in these actions, and Carl W. Martin, who has never been found and served by Plaintiffs.



By \_\_\_\_\_ Date \_\_\_\_\_  
Gene Buzzard  
Gable & Gotwals  
2000 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74119

ATTORNEY FOR W. FRED CARLISLE  
AND JAMES CHISHOLM

PRO SE

By \_\_\_\_\_ Date \_\_\_\_\_  
Richard D. Brown  
957 Pelican Bay Drive  
Daytona Beach, Florida 32019

PRO SE

By \_\_\_\_\_ Date \_\_\_\_\_  
Keith R. Fitzgerald  
6400 South Lewis  
Tulsa, Oklahoma 74136

PRO SE

By James Chisholm \_\_\_\_\_ Date 3-28-89  
James Chisholm  
2640 W. El Paso  
Broken Arrow, OK 74012

PRO SE

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of March, 1989, a true and correct copy of the above and foregoing document was mailed with proper postage prepaid thereon to the following:

James Chisholm  
2640 W. El Paso  
Broken Arrow, OK 74012

Gerald W. Wright  
Attorney for Charles Culp  
707 South Houston, Suite 308  
Tulsa, Oklahoma 74127

Richard D. Brown  
108 Merganser Circle  
Daytona Beach, Florida 32019

Carl W. Martin  
590 E. 900 South  
Mapleton, Utah 84663

Keith R. Fitzgerald  
c/o Anderson, Bryant & Co.  
6400 S. Lewis  
Tulsa, OK 74136

William E. Hughes  
Attorney for Roger Remillard  
320 S. Boston Avenue  
Suite 1020  
Tulsa, OK 74103

Gene Buzzard  
Attorney for W. Fred Carlisle  
Gable & Gotwals  
2000 Fourth National Bank Building  
Tulsa, OK 74119

  
\_\_\_\_\_

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

THREE THOUSAND FIFTY-THREE )  
DOLLAS AND TWENTY-FIVE CENTS )  
(3,053.25) IN U.S. CURRENCY, )

Defendant. )

F I L E D

MAR 29 1989

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

CIVIL ACTION NO. 87-C-719-B

AGREED JUDGMENT OF FORFEITURE

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled. Such settlement more fully appears by the written Stipulation entered into between Edward Washington and the United States of America on March 27, 1989, and filed herein, to which Stipulation reference is hereby made and is incorporated herein.

It further appearing that no other claims to said property have been filed since such property has been seized and that no other person has any right, title or interest in the defendant property,

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

ORDERED that the claim of Edward Washington in the administrative proceeding be and the same hereby is dismissed with prejudice, and it is

FURTHER ORDERED AND DECREED that \$3,053.25 in United States Currency be and hereby is condemned as forfeited to the United States of America for disposition according to law.

S/ THOMAS R. BRETT  

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THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**F I L E D**

MAR 29 1989

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

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

STEEL & PIPE SUPPLY CO., INC.,	)
a Kansas corporation,	)
	)
Plaintiff,	)
	)
v.	)
	)
HOUSTON AND KLEIN, INC.;	)
DAVID F. JAMES; E. JOHN	)
EAGLETON; and JAMES R.	)
EAGLETON,	)
	)
Defendants.	)

No. 88-C-1223-B

**J U D G M E N T**

In accordance with the Order filed this date, Judgment is hereby entered in favor of Defendants, Houston and Klein, Inc., David F. James, E. John Eagleton, and James R. Eagleton, and against Plaintiff, Steel & Pipe Supply Co., Inc. Costs are assessed against Plaintiff, Steel & Pipe Supply Co., Inc. Each party is to bear their own respective attorneys fees.

DATED this 29th 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 29 1989

STEEL & PIPE SUPPLY CO., INC., )  
a Kansas corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HOUSTON AND KLEIN, INC.; )  
DAVID F. JAMES; E. JOHN )  
EAGLETON; and JAMES R. )  
EAGLETON, )  
 )  
Defendants. )

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

No. 88-C-1223-B

ORDER

This matter comes before the Court on both Plaintiff Steel & Pipe Supply Co. Inc.'s Motion for Summary Judgment and on Defendant Houston and Klein, Inc., David F. James, E. John Eagleton and James R. Eagleton's Motion for Summary Judgment. Also before the Court is Defendants' Motion to Strike Plaintiff's Supplemental Brief. The Motion to Strike is overruled.

To survive a motion for summary judgment, one "must establish that there is a genuine issue of material facts. A party "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 failed to establish an issue of

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material facts and summary judgment is granted in favor of Defendants for the following reasons.

Plaintiff filed this action against attorneys David F. James, E. John Eagleton, James R. Eagleton and the law firm of Houston and Klein, Inc. stating that this "action is arising out of an attorney/client relationship" and that Plaintiff "obtained the services of Houston and Klein." Defendants answered denying any attorney/client relationship with Plaintiffs. Defendants also counterclaimed and moved for attorneys fees and expenses incurred in this case under F.R.C.P. 11.

The United States Supreme Court decided as early as 1880 that an action for legal malpractice against an attorney may only be brought by a client, not other parties relying on the attorney's opinions and advice. National Savings Bank of the District of Columbia v. Ward, 100 U.S. 195 (1880). In Ward, the court held that when an alleged owner of property hires an attorney to render a title opinion on that property, a bank which loans money based on the title opinion, may not sue the attorney for malpractice. Under Ward, the dispositive issue is whether Plaintiff was in fact a client of Defendants or whether it was simply choosing to rely on the legal work done by Defendants for someone else.

Other modern courts have not looked at the issue so narrowly and have used a standard based on foreseeability.<sup>1</sup> In 1982, the

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<sup>1</sup> See, Croce v. Kurnit, 565 F.Supp. 884 (S.D.N.Y. 1982); Briggs v. Sterner, 529 F.Supp. 1155 (S.D.Iowa 1981); Eisenberg v. Gagnon, 766 F.2d 770 (3rd Cir. 1985); First Financial v. Title Insurance, 557 F.Supp. 654 (N.D.Ga. 1982); Bradford Securities v. Plaza Bank,

Oklahoma Supreme Court in Bradford Securities v. Plaza Bank, 653 P.2d 188 (Okla. 1982)<sup>2</sup> held that under current tort law, the dispositive issue is: Was the Defendant's conduct, "based upon the dangers he should reasonably foresee TO THE PLAINTIFF OR ONE IN HIS POSITION, in view of all the circumstances of the case such as to bring the Plaintiff within the orbit of Defendant's liability." Bradford Securities v. Plaza Bank, 653 P.2d 188 (Okla. 1982).

Plaintiff argues that it employed the services of the law firm of Houston and Klein as early as 1982 to draft leases concerning Plaintiff leasing facilities at the Port of Catoosa and again in 1984 when it desired to lease larger facilities at the Port of Catoosa. This suit was brought because Plaintiff contends the drafting of the June 1984 lease and the revisions made later were not in conformity with Plaintiff's interests and Plaintiff relied on the Defendants as its attorney.

Plaintiff contends Defendants breached a fiduciary duty to it by (1) not telling Plaintiff of a conflict of interest, and (2) by stating the revised provisions were in conformity with prior discussion. However, the evidence presented clearly shows the law firm of Houston and Klein represented lessors Freight and Container

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653 P.2d 188 (Okla. 1982).

<sup>2</sup>The Bradford court allowed a bond pledgee to sue bond counsel for negligence in preparing a bond opinion as to tax exempt status where the opinion appeared on the bond certificates. In the present case, however, Plaintiff states its claims are based on the fact Defendants were their counsel.

Services, Inc. and Port Partnership. Robert F. Pulford, Vice-President of Plaintiff Steel & Pipe Supply Co., Inc., in charge of contract negotiation, testified that he knew in 1984 that Defendants represented lessors Port Partnership and Freight and Container Services, Inc. (Pulford Depo. p. 21; David James Affidavit). He testified he was aware the attorneys were drafting the lease for Port Partnership and Freight and Container Services. Pulford also testified he knew attorney David James was a partner of Port Partnership in June of 1984. (Pulford Depo. p. 21). Mr. Pulford also testified Plaintiff Steel & Pipe Supply Co., Inc., never asked any attorney with Houston and Klein to represent Steel & Pipe Supply and the attorneys never solicited their business. (Pulford Depo. p. 119). Further, Steel & Pipe Supply never received a bill for services rendered and never paid for any representation. (Pulford Depo. pp. 119, 120).

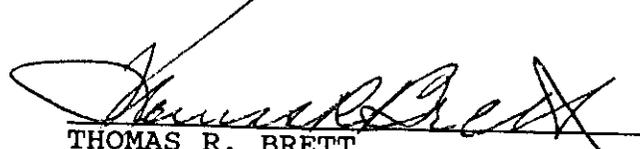
The Court finds the only conclusion to be drawn from the evidence presented is that the attorneys herein and the law firm of Houston and Klein did not represent Plaintiff. The record reflects Plaintiff and Defendants were parties with divergent interests and were dealing at arm's length in negotiating a contract. A confidential trust relationship does not arise between one negotiating party and the opponent's counsel. Williams v. Burns, 540 F.Supp. 1243 (D.Colo. 1982). Nothing prevented Plaintiff from hiring its own counsel during these negotiations. In fact, Plaintiff did have a Manhattan, Kansas attorney review an earlier draft of the 1984 lease. Two corporate vice-presidents

reviewed the revisions to the signed lease before approving those revisions; however, they did not send it to another counsel for approval. (Mullins Depo. pp. 33-43). Lessor's counsel, Defendants herein, had no fiduciary duty to a potential lessee negotiating a lease agreement. See, Bickel v. Mackie, 447 F.Supp. 1376 (N.D.Iowa 1978); Tappen v. Ager, 599 F.2d 376, 379 (10th Cir. 1979); Allied Financial Services v. Easley, 676 F.2d 422 (10th Cir. 1982).

Although Plaintiff's Complaint is based on the alleged fiduciary attorney/client relationship, the Court finds no such relationship existed. Further, the Court finds no fraudulent misrepresentation. Plaintiff states many times in its brief that the attorneys failed to disclose the attorneys involved herein had a financial interest in the lessor corporation. However, as stated before, the record clearly reflects Vice-President Pulford was aware in June 1984 that Defendant James was a partner of the lessor corporation. (Pulford Depo. p. 21). Plaintiff also contends Defendant James misrepresented to it what the revisions provided. Again, the record clearly indicates two Vice-Presidents from Plaintiff read the revisions prior to approving the changes. (Mullins Depo. pp. 33-34). The record is clear there was no justifiable reliance on any misrepresentation. Therefore no cause of action lies.

The Motion for Summary Judgment is therefore SUSTAINED in favor of Defendants and against Plaintiff. Defendant's motion for Rule 11 sanctions is OVERRULED.

DATED this 29<sup>th</sup> day of March, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

F I L E

LONNIE LISTENBEE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 U-HAUL CO. OF OKLAHOMA, )  
 INC., )  
 )  
 Defendant. )

MAR 29 1989

Jack C. Silver, Clerk  
Case No. 88-C-643-BU. S. DISTRICT COURT

**ORDER OF DISMISSAL**

COMES NOW before the Court, the Application for Dismissal filed by the Plaintiff, Lonnie Listenbee and the Defendant, U-Haul Co. of Oklahoma, Inc. The Court, having reviewed the Application for Dismissal and finding that the parties hereto have fully resolved and settled between themselves the dispute encompassed in the above-captioned litigation, hereby ORDERS that Plaintiff's lawsuit against the Defendants be and same is hereby dismissed with prejudice, all issues of law and fact having been resolved between the parties hereto.

*Thomas R. Brett*

THOMAS R. BRETT, DISTRICT JUDGE,  
UNITED STATES DISTRICT COURT,  
NORTHERN DISTRICT OF OKLAHOMA

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

**FILED**

SINCLAIR OIL CORPORATION,  
a Wyoming corporation,  
  
Plaintiff,  
  
vs.  
  
ENGINEERING ENTERPRISES, INC.,  
an Oklahoma corporation, and  
R-I LIMITED, an Oklahoma limited  
partnership,  
  
Defendants.

MAR 29 1989  
✓ Jack C. Silver, Clerk  
U.S. DISTRICT COURT  
No. 87-C-738

O R D E R

The Court has for decision Sinclair Oil Corporation's ("Sinclair") Motion for Judgment Notwithstanding the Verdict, Or In The Alternative, To Alter or Amend the Verdict. For the reasons expressed below, the Motion for Judgment Notwithstanding the Verdict is sustained.

On December 21, 1988 the jury returned a verdict on Count I of R-I Limited's ("R-I") Counterclaim against Sinclair in the amount of \$174,212.28. By its verdict the jury concluded there was a breach of the miscellaneous work agreement ("contract") entered into between R-I and Sinclair's predecessor, Texaco, Inc., by failing to allow R-I to drill additional wells for recovery of hydrocarbons beneath the Sinclair Tulsa refinery.'

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'By the Court's Order of October 25, 1988 previous to trial of the Counterclaim of Defendant it was concluded there was no renewal of the subject contract and it expired by its terms on August 26, 1987.

During trial Sinclair, at the conclusion of R-I's evidence, moved for a directed verdict pursuant to Fed.R.Civ.P. 50(a) and renewed same at the conclusion of all of the evidence.

The standards for granting a judgment n.o.v. in the Tenth Circuit require that all of the evidence points in one direction and is susceptible to only one reasonable inference. Burger Train Systems, Inc. v. Ballard, 552 F.2d 1377 (10th Cir. 1977), *cert. denied*, 434 U.S. 860 (1977), and Barnett v. Life Ins. Co. of the Southwest, 562 F.2d 15 (10th Cir. 1977). The standard requires that the evidence must be viewed in a light most favorable to the party opposing the motion. The trial court cannot deprive the nonmoving party of a jury determination unless the evidence "conclusively favors one party such that reasonable men could not arrive at a contrary verdict." EEOC v. University of Oklahoma, 774 F.2d 999 (10th Cir. 1985), *cert. denied*, 475 U.S. 1120 (1986).

The facts giving rise to the subject contract herein are as follows: On August 26, 1982 Texaco and R-I entered into a miscellaneous work agreement for the recovery of hydrocarbons from Texaco's refinery located in West Tulsa, Oklahoma. The contract provided that R-I was to "... reclaim hydrocarbons which have in past times spilled or leaked into the soils underlying ..." the Texaco, now Sinclair, refinery. The Texaco contract was assigned to Sinclair when Sinclair purchased the refinery in July 1983 and expired by its own terms on August 26, 1987. During the duration of the Texaco contract, Sinclair and R-I engaged in contract

negotiations but were unable to enter into a new agreement which would extend or replace the Texaco contract upon its expiration.

The basis for the initial contract's formation was a proposal and recommendation by R-I to Texaco on January 6, 1982 (PX-6). Texaco had contracted with R-I on a consulting basis to develop a report summarizing the volume and locations of hydrocarbons which had accumulated over time beneath the refinery. R-I developed this original study at Texaco's expense. (Trial Record, pp. 24-25, Burris Direct).

Texaco reviewed the January 1982 proposal and concluded that it would contract with R-I to implement the proposed plan. The contract provided that R-I was "to design, construct, and operate the oil recovery system at its sole risk and cost, and to pay the company [Texaco] a royalty based on the value of the recovered hydrocarbons." (PX-5, p.1).

At the time Texaco and R-I signed the contract in August 1982 Texaco was negotiating with Sinclair for the possible sale of the refinery. The contract was made subject to the express conditions contained in Section 203, pertaining to the rights of the new owner. In Section 203, Texaco and R-I agreed that if the refinery was subsequently sold, the contract would continue in effect and be assumed by the new owner. In Paragraph 203(4) it is provided that the new owner could purchase the capital investment from R-I and thereby extinguish R-I's rights under the contract:

"Throughout the duration of this contract, Texaco and/or a new owner may purchase the capital investment from the contractor and/or operate the facility at a negotiated price

mutually acceptable to each party. The contractor may continue to operate the oil recovery system during the price negotiation period."

Paragraph 203(1) of the contract provides:

"The contractor shall cooperate with the new owner in locating new production wells at sites acceptable to the new owner." (PX-5, ¶203(4), (1).

Thus, it is clear that new production wells had to be at sites acceptable to the new owner.<sup>2</sup> Before the sale of the refinery was actually completed, Sinclair advised R-I that it wanted to purchase R-I's capital investment pursuant to the contract terms. (PX-10; Trial Record pp. 298-99, Fryberger Cross). The parties continued to negotiate under the asset purchase provision for four years and all during that time R-I continued to operate the existing system. (Trial Record, pp. 250-252, Fryberger Direct).

There is no evidence in the record that R-I had an unfettered right to drill any additional wells under the terms of the contract. Thus, no breach of contract could occur. Premier Resources Ltd. v. Northern Natural Gas Co., 616 F.2d 1171, 1180 (10th Cir.), *cert. denied*, 449 U.S. 827 (1980).

R-I's contention was that Sinclair had unreasonably prevented R-I from drilling additional production wells from July 1983 through the contract's termination in August 1987.

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<sup>2</sup>Such approval was, at least in part, required because of the myriad of underground lines in the operating refinery.

The proof in support of this contention was through Mr. Burris, R-I's former project engineer on the Sinclair refinery. Mr. Burris testified that during a meeting with Ron Johnson, Sinclair's refinery manager, on August 24, 1983, Mr. Johnson orally communicated to him that no new well locations would be approved until the oil recovery contract was renegotiated. (Trial Record, pp. 52-53, Burris Direct; Tr. R. p. 105, Burris Cross). Then Burris stated:

"Now, I am going to say that my recollection is not a direct statement, that the context of the communication that came across to me was that Sinclair -- not Ron Johnson, but Sinclair -- would not okay new well locations until the contract was resolved." (Tr. R. 112, Burris Cross).

However, seven days after Mr. Burris got this "recollection" from Johnson Sinclair gave R-I permission to drill two additional wells. (PX-16; Tr. R. pp. 55-56, Burris Direct; Tr.R. p. 112, Burris Cross). Burris further testified that at no time after August 31, 1983, either orally or in writing, did he ever ask for permission to drill any additional production wells on behalf of R-I. (Tr.R. pp. 60-61, Burris Direct). In November 1985 Mr. Fryberger confirmed that Johnson granted permission for R-I to drill an additional developmental well in the vicinity of the headquarters area. R-I then did not follow up with information to Sinclair concerning the location or configuration of the new well or wells to be located in the Sinclair headquarters area of the refinery. (Tr.R. p. 285, Fryberger Cross).

Sinclair Refinery managers Johnson and Connell each testified that they never rejected a specific request for permission to drill a well which was submitted by R-I. (Tr.R. p. 335, lines 17-21; Tr.R. 349, lines 10-18). Mr. Connell further testified that he approved new exploratory wells in the spring of 1987, when requested to do so by Fryberger, even though he did not understand why R-I would want to continue its search for oil concentrations so close to the contract termination date. (Tr.R. p. 348, Connell Direct; Tr.R. p. 351, Connell Cross).

The evidence that production and exploratory wells were approved by Sinclair after August 31, 1983, and that none such wells requested were disapproved, is contrary to Burris' impression that Sinclair would not permit further wells to be drilled until the contract negotiations were resolved. The contract provided that well sites had to be acceptable to Sinclair. At no time did R-I ever, orally or in writing, give Sinclair an opportunity to accept or reject one of the six well locations in R-I's proposed development program that it kept to itself and did not reveal to Sinclair. Without first requesting of Sinclair approval of a particular well location, R-I cannot now be heard to claim damages for Sinclair's refusal to permit the drilling of such additional production wells.

Therefore, Plaintiff's motion for judgment n.o.v. is hereby sustained. Costs are assessed against the Defendant R-I if timely applied for pursuant to Local Rule 6. Each party is to pay their own respective attorneys fee as this contract dispute is not one

entitling the prevailing party to an attorney's fee either by contract or statute.

A separate Judgment will be entered contemporaneous with the filing of this Order.

DATED this 29<sup>th</sup> day of March, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

SINCLAIR OIL CORPORATION,  
a Wyoming corporation,  
  
Plaintiff,  
  
vs.  
  
ENGINEERING ENTERPRISES, INC.,  
an Oklahoma corporation, and  
R-I LIMITED, an Oklahoma limited  
partnership,  
  
Defendants.

MAR 29 1989  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT  
No. 87-C-738-B

AMENDED JUDGMENT

In keeping with the Court's Order filed this date sustaining Plaintiff Sinclair Oil Corporation's Motion for Judgment Notwithstanding the Verdict in reference to Defendant R-I Limited's Counterclaim, Judgment is hereby entered in favor of the Plaintiff Sinclair Oil Corporation, and against the Defendant R-I Limited, an Oklahoma limited partnership. Defendant R-I Limited's Counterclaim is hereby dismissed. The Judgment entered February 24, 1989 is hereby set aside and vacated.

Pursuant to the Court's Order of October 25, 1988, Plaintiff is granted judgment on its declaratory judgment request, the Court hereby declaring that the miscellaneous work agreement (contract) between Texaco, Inc., Sinclair's predecessor in interest, and R-I Limited entered into on August 26, 1982, expired by its terms on August 26, 1987.

Defendant, R-I Limited, is to pay the costs of this action if timely applied for pursuant to Local Rule 6 and each party is to pay its own respective attorneys fees.

DATED this 29<sup>th</sup> day of March, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**F I L E D**

**MAR 28 1989**

ROY L. JACKSON,  
Plaintiff,

vs.

MILLIE OTEY,  
Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)

No. 88-C-575-E

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

A M E N D E D  
O R D E R

The Court has for consideration the Report and Recommendations of the Magistrate filed January 5, 1989. 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 Recommendations of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss should be and is hereby granted.

ORDERED this 28<sup>th</sup> day of March, 1989.

  
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JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 28 1989

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

HILTI OF AMERICA, INC. and )  
SUBSIDIARIES )  
Plaintiff, )  
-vs- )  
UNITED STATES OF AMERICA, )  
Defendant. )

No. 88-C-459-E

ORDER ADMINISTRATIVELY CLOSING CASE

Upon the representation of Plaintiff that the parties to this case have entered into a written Settlement Agreement and that such Settlement Agreement is presently being processed by the Defendant, and that the settlement is expected to be finalized and this case dismissed within thirty (30) days, THE COURT HEREBY ORDERS that this case be administratively closed, and that it shall only be reopened in the event the Settlement Agreement between the parties is not finalized.

In the event the settlement of this case is not finalized and the case dismissed within thirty (30) days, the parties shall submit a written report to the Court at such time, advising the Court of the status of the settlement.

DATED this 28 day of March, 1989.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

MEDICAL AND PROFESSIONAL  
ACCOUNTS CONTROL, INC., a  
corporation,

Plaintiff,

vs.

THOMAS F. MYERS,

Defendant and Third  
Party Plaintiff,

vs.

PACIFIC MUTUAL LIFE INSURANCE  
COMPANY,

Third Party  
Defendant.

Case No. 88-C-1375-C

**FILED**

**MAR 28 1989**

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

ORDER OF DISMISSAL

On this 28 day of March, 1989, upon written application of the parties for an order of dismissal with prejudice of the complaint and all causes of action, the Court, having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the complaint and have requested the Court to dismiss the complaint with prejudice to any future action, and the Court, being fully advised in the premises, finds that said complaint should be dismissed; it is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the complaint and all causes of action are hereby dismissed with prejudice to any further action.

(Signed) H. Dale Cook

United States District Judge

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

**F I L E D**

TURBOTECH, INC., an Oklahoma  
corporation,  
  
Plaintiff,  
  
vs.  
  
BEAR TURBINES INTERNATIONAL,  
  
Defendants.

**MAR 28 1989**

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

No. 88-C-1414-C

**ORDER FOR DISMISSAL WITH PREJUDICE**

NOW on this 27 day of March, 1989, this cause comes on for hearing before this Court upon Plaintiff's Motion for Order for Dismissal with Prejudice and Brief in Support Thereof. The Court for good cause shown FINDS that the same should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, by this Court that Plaintiff's Motion for Order for Dismissal With Prejudice and Brief in Support Thereof shall be and the same is hereby granted.

(Signed) H. Dale Cook

UNITED STATES DISTRICT COURT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of March, 1989, a true and correct copy of the above and foregoing instrument was mailed to **Patrick McGettigan, Jr.**, 1220 First City National Bank Building, Houston, Texas 77002-6599, with proper postage thereon prepaid.

*Robert S. Erickson*

Robert S. Erickson



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

STEVE MACKIN, d/b/a  
WORLD TRANSPORT COMPANY,

Plaintiffs,

vs.

W.T.C. AIR FREIGHT, a  
California corporation;  
BURLINGTON AIR EXPRESS, INC.,  
a Delaware corporation,  
BURLINGTON AIR EXPRESS  
MANAGEMENT, INC., a Delaware  
corporation; and THE PITTSTON  
COMPANY, a Delaware  
corporation.

Defendants.

Case No. 88-C-684-E

**FILED**

**MAR 28 1989**

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

ORDER

NOW on this 28<sup>th</sup> day of March, 1989, comes on for consideration the above styled matter and the Court, being fully advised in all premises finds that Defendants have moved to dismiss on four separate grounds. Plaintiff has timely responded and the matter is currently at issue before this Court.

Defendants seek first to have The Pittston Company dismissed as a party to this action pursuant to Fed. R. Civ. P. 12(b)(2) for lack of jurisdiction over Pittston. This Court is well familiar with the body of law, much of which was cited by Defendants, which holds that a foreign corporation is not subject to the jurisdiction of a state merely because its wholly owned subsidiary is subject to jurisdiction in the state. Plaintiff alleges that Pittston was the parent corporation of the other Defendants, but does not allege

any other contacts between Pittston and the state of Oklahoma. In his response, Plaintiff urges that Pittston, through its control over the Defendants knowingly and intentionally participated in and caused the wrongful termination of the contract at issue. This is merely a tautological way of stating that Pittston is the parent of the other Defendants and therefore must be culpable. Bereft of additional indicia of Pittston's contacts with Oklahoma, this Court must dismiss Pittston as a party to this action.

Defendants move, in their second contention, for dismissal as to all Defendants of all claims based on alleged violations of the California Franchise Relations Act, pursuant to Fed. R. Civ. P. 12(b)(1), for lack of subject matter jurisdiction. This Court, having carefully reviewed the law with regard to such Act, finds that it does indeed lack subject matter jurisdiction over this area, as Plaintiff is neither a franchisee domiciled in California nor a franchisee operating in or formerly in California. See Premiere Wine & Spirits v. E & J Gallo Winery, 644 F.Supp. 1431, 1439 (E.D. Cal. 1986). Thus the Motion to Dismiss as to these claims must also be dismissed.

Defendants then move for dismissal as to the claim for punitive damages. It has long been this Court's practice to hold in abeyance any discussion of punitive damages before a jury until such time as the necessary thresholds have been met with regard to proof of such damages. This practice will be applied to this case. So while the Motion to Dismiss punitive damages claims will be denied, any such claims must be both proven and approved by the Court prior to submission to the jury.

Finally, Defendants move for dismissal of the breach of the April 1, 1986 Contract, promissory estoppel, unjust enrichment and recoupment claims, urging that the facts underlying such claims must be, by their very nature, violative of the merger clause contained within the instant agreement. Plaintiff responds that the statements and assertions on which he bases such claims were made not prior to execution of the agreement, but rather following execution and during the life of the contract. This Court finds that this issue is not ripe for dismissal, and that both sides should be allowed time to gather evidence in support of their contentions. This portion of the Motion to Dismiss must be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss is granted as to Defendant The Pittston Company, granted as to claims arising under the California Franchise Relations Act, denied as to the punitive damages claim and denied as to breaches of the April 1, 1986 Contract, promissory estoppel, unjust enrichment and recoupment.

  
JUDGE JAMES O. ELLISON  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

*Entered*

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

MAR 28 1989

THE ESTATE OF JAMES LITTLETON, )  
DANIEL, JR.; JOHN D. McCARTNEY )  
and DAVID S. JAMES, )

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

Plaintiffs, )

v. )

Case No. 85-C-590-C

BOWDEN ATHERTON, et al. )

Defendants. )

ORDER

On this 15th day of March, 1989 at 1:15 p.m. there came on before the Court the Scheduling Conference in this matter set by Order of the Court of January 10, 1988.

Plaintiffs were present at the Scheduling Conference by their counsel, Ronald E. Goins. The Defendants, Bernard J. Grenrood, Jr. ("Grenrood") and Township Corporation ("Township") did not appear either personally or by counsel as required in the Court's Order of January 10, 1988.

The Court, having reviewed the prior proceedings in this case relating to Defendant's Grenrood and Township and having considered the failure of Grenrood and Township to appear personally for this Scheduling Conference, to appear by counsel for this Scheduling Conference or to contact the Court in any way prior to this Scheduling Conference, concludes that the Defendants do not intend to vigorously defend this action and that the default judgment entered against Grenrood and Township should not be vacated.

It is the Order of the Court that the default judgment entered against Defendants Grenrood and Township on January 14,

1988 is hereby affirmed in all respects and constitutes a full and final Order of the Court. That portion of the Court's Order of January 10, 1989 which prevents Plaintiffs from executing on the default judgment against Grenrood and Township is hereby withdrawn. The Court further orders that Plaintiffs may commence such proceedings to execute on the judgment against Grenrood and Township as may be available to Plaintiffs in their discretion.

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

(Signed) H. Dale Cook

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H. Dale Cook  
Chief Judge, U. S. District Court

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

MAR 23 1988

JERRY HAYDEN,

Plaintiff,

vs.

PILOT LIFE INSURANCE COMPANY,

Defendant.

PILOT LIFE INSURANCE COMPANY,

Plaintiff,

vs.

JERRY HAYDEN, et al.,

Defendants.

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

No. 85-C-1029-C

(c o n s o l i d a t e d)

No. 86-C-687-C

ORDER

Before the Court are the objections to the Report and Recommendation of the Magistrate regarding the motion for summary judgment filed by the defendant, Pilot Life Insurance Company.

The following facts are relevant to a determination of this motion.

1. Pilot Life Insurance Company (Pilot) is a public corporation engaged in the marketing of life insurance throughout the United States.

2. Pilot markets its policies through independent insurance agents under contract with Pilot. Plaintiff Jerry Hayden served as a Pilot general agent in the State of Oklahoma from January 6,

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1976 until he received his termination notice of August 6, 1985. Hayden was licensed by the Oklahoma Insurance Commission to solicit life insurance applications.

3. Pilot compensates its agents through a system of commissions, bonuses and allowances based upon volume of sales. The parties' employment relationship was governed by a "General Agent's Agreement" and an "Agent's Career Contract".

4. During the course of Hayden's association with Pilot, he became eligible to, and did, participate in Pilot's pension benefit program. He accumulated approximately nine years and six months toward completion of the ten (10) year vesting requirement. Upon termination, Hayden was declared ineligible to receive the pension plan benefits for failure of the plan to vest.

5. Between 1976 and 1985, Hayden hired additional brokers and a secretary to assist in solicitation of Pilot's policies in his territory. Each was an agent or employee of Pilot. All were terminated at the time Hayden was terminated by Pilot.

6. In his complaint, Hayden asserts that during the period 1976 through 1985, Hayden's agency sales volume placed him in the top ten agencies for the company. His sales volume was approximately \$3 million in 1981, \$5 million in 1982, \$8.5 million in 1983, \$9.7 million in 1984 and \$20 million in 1985. During these years Hayden and his brokers were paid commissions and bonus payments based upon the sales.

7. Plaintiff asserts that upon termination, Pilot invoked various alleged illegal forfeiture provisions contained within the

agency agreements which required that Hayden forfeit renewal premiums, wages, commissions and payments both already earned by Hayden and which would be earned through renewals of premiums previously sold by Hayden.

8. Plaintiff brought this action as a result of his termination. In his amended complaint Hayden seeks recovery under the following causes of action: (1) Wrongful Termination<sup>1</sup>; (2) ERISA Discrimination<sup>2</sup>; (3) Illegal Restraint of Trade and Forfeiture<sup>3</sup>; (4) Tortious Interference with Business Relationships; (5) Slander and Libel; (6) Violation of 30-day notice provision<sup>4</sup>; and (7) RICO<sup>5</sup>.

The Court has reviewed the record and applicable law and based thereon the Court concludes that for the reasons set forth by the Magistrate in his Report, the Court affirms the Recommendation that defendant's motion be denied under plaintiff's claims for Wrongful Termination and ERISA Discrimination. Further the Court affirms the Recommendation that defendant's motion be granted under plaintiff's claims for Tortious Interference with Business Relationships; Sander and Libel and Violation of 36 §1431 (30-day

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<sup>1</sup>Wrongful Termination is asserted under the principles of law set forth in *Hinson v. Cameron*, 742 P.2d 549 (Okla. 1987).

<sup>2</sup>Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1140(a)

<sup>3</sup>15 O.S. §213, 214, 215 and 217

<sup>4</sup>36 O.S. §1431.1

<sup>5</sup>Racketeer Influenced and Corrupt Organizations (RICO), 18 U.S.C. §1961 et al.

notice provision). The Court will discuss the remaining claims raised by plaintiff.

#### RICO

In his responsive brief, Hayden asserts in support of his RICO claim that:

. . . Pilot Life, through its officers and employees conducting the pension fund enterprise, wrongfully terminated Hayden and other agents similarly situated in an effort to defraud and embezzle from those agents their anticipated pension rights which were within a few months of the ten-year vesting threshold. . . . As an integral part of this racketeering activity, Pilot employed the use of the United States mails to terminate Hayden and other employees. Pilot has refused to relinquish the employee contributed pension funds to Hayden and others as well as refused to vest anticipated pension rights for Hayden and others. By maintaining those property rights within the pension fund enterprise, Pilot has received income directly from racketeering activity, and before and during Pilot's termination of Hayden and others, members of Pilot entered into a conspiracy to commit embezzlement from the pension fund and mail fraud . . . .

Such actions on behalf of Pilot by and through its operation of the pension fund enterprise constitute violations of 18 U.S.C. §1962(a), (b)(c) and (d).

The Court finds plaintiff's RICO claim fails for several reasons.

RICO takes aim at "racketeering activity", which is defined as any act "chargeable" under several described state criminal laws, any act "indictable" under numerous specific federal criminal provisions, and any "offense" involving bankruptcy or securities fraud or drug-related activities that is "punishable" under federal law. 18 U.S.C. §1961(1). In this action, plaintiff asserts "racketeering activity" under the federal criminal mail fraud statute, 18 U.S.C. §1341 and embezzlement statute, 18 U.S.C. §664.

Plaintiff's assertion of racketeering activity under §664 is not supported by the facts. The necessary predicate acts under §1961(1) involve conduct that is "chargeable" or "indictable" and "offense[s]" that are "punishable" under the various criminal

statutes. As stated in Sedima v. Imrex Co., Inc., 473 U.S. 479 (1985), racketeering activity consists not of acts for which the defendant has been convicted, but of acts for which he could be. A racketeering activity must be an act in itself subject to criminal sanction. 473 U.S. at 488. Under the facts of this case, plaintiff asserts that defendant prevented his pension plan from vesting by his premature, unwarranted termination. The essence of an offense under §664 is the theft. In the context of a pension plan the offense includes a taking or appropriation that is unauthorized, if accomplished with specific criminal intent. United States v. Andreen, 628 F.2d 1236, 1241 (9th Cir. 1980). In Crawford v. La Boucherie Bernard Ltd., 815 F.2d 117 (D.C. Cir. 1987), a case involving RICO claims under §664, the Court held that although state of mind is usually a question for the jury, this does not preclude a court from finding intent, on summary judgment, where that intent may be inferred from objective facts. 815 F.2d at 122-3. In the case sub judice there is no factual basis for this Court to infer criminal intent in the activities of the defendant. Although unlawfully preventing the vesting of a pension plan is a federal civil offense under ERISA, the plaintiff has not set forth any factual basis to show that the activities of Pilot are "indictable" under §664.

Plaintiff's racketeering activity must necessarily fall under the mail fraud statute. Plaintiff alleges a "pattern of racketeering activity" by the defendant sending termination notices to plaintiff and at least nine other agents through the United States

Postal Service. Therefore plaintiff's asserted "prohibited activities" under §1962 must be analyzed in view of this alleged pattern of racketeering activity.

Under §1962(a) RICO outlaws the use or investment of income derived from a "pattern of racketeering activity" to acquire an interest in or establish an enterprise engaged in or affecting interstate commerce. In Grider v. Texas Oil and Gas Corp., slip op. (10th Cir. Jan. 4, 1989) the Court held that in order for a plaintiff to have standing to assert a civil claim for damages under §1962(a) the plaintiff must show an injury from the use or investment of the racketeering income. It is not sufficient for plaintiff merely to allege injury from the racketeering activity itself. Plaintiff has not made such a showing in this case and therefore his claim under §1962(a) fails.

Under §1962(b) plaintiff must prove that defendant (1) acquired or maintained (2) an enterprise (3) through a pattern (4) of racketeering activity. Under §1962(c) plaintiff must prove defendant (1) conducted or participated (2) in an enterprise (3) through a pattern (4) of racketeering activity. Sedima, supra at 496. Each subsection (b) and (c) requires the existence of an "enterprise" separate and distinct from the "person" charged with racketeering activity. The rule held by the majority of circuit courts is that the RICO defendant and the RICO enterprise must be separate entities. See, e.g., Bennett v. United States Trust Co. of N.Y., 770 F.2d 308 (2nd Cir. 1985); B. F. Hirsch v. Enright Refining Co., 751 F.2d 628 (3rd Cir. 1984); United States v.

Computer Sciences Corp., 689 F.2d 1181 (4th Cir. 1982 cert. denied, 459 U.S. 1105 (1983); Bishop v. Corbitt Marine Ways, Inc., 802 F.2d 122 (5th Cir. 1986); Harco, Inc. v. Am. Nat'l Bank & Trust Co., 747 F.2d 384 (7th Cir. 1984) aff'd on other grounds, 105 S.Ct. 3292 (1985) (per curiam); Bennett v. Berg, 685 F.2d 1053 (8th Cir. 1982); and Rae v. Union Bank, 725 F.2d 478 (9th Cir. 1984). In his amended complaint, plaintiff asserts that the "pension plan" is the enterprise in which Pilot was maintaining and conducting. It is the view of this Court that a corporate pension plan cannot be an "enterprise" separate and distinct from the corporate RICO defendant.

"Enterprise" is defined in §1961(4) as including: "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

"Person" is defined in §1961(3) as including: "any individual or entity capable of holding a legal or beneficial interest in property.

Plaintiff asserts that defendant Pilot is the "person" under the Act which conducted or maintained a separate and distinct enterprise through a pattern of racketeering activity. In United States v. Computer Science Corp., supra, the court concluded that "enterprise" was meant to refer to a being different from, not the same as or part of, the person whose behavior the act was designed to prohibit. 689 F.2d at 1190.

The legislative history supports the view that a corporate pension plan cannot be an "enterprise". An "enterprise" is any type of associative entity. The legislative history defines "person" (the RICO defendant) "broadly to include any individual or organization that may hold any property interest". "Enterprise" is defined to "include associations in fact, as well as legally recognizable associative entities". Thus, infiltration of any associative group by any individual or group capable of holding a property interest can be reached under RICO. See Organized Crime Control Act, Pub.L. No. 91-452, 1970 U.S. Code Cong.&Adm. News, p.4032. Therefore plaintiff's claims under §1962(b) and (c) fails.

Under §1962(d), the Court concludes that plaintiff has no standing to assert a claim for damages under the conspiracy section since he has failed to state a legally cognizable claim under any of the available substantive violations, i.e., §1962(a)(b) or (c). Grider, supra, slip op. at p.11. Further, under the law of conspiracy, there must be a showing of an agreement between two or more persons to commit an illegal act. There is no showing of two or more persons, a corporation cannot conspire with itself to commit a crime. Plaintiff's claim under §1962(d) also fails.

It is the finding and conclusion of the Court that defendant's motion for summary judgment as to plaintiff's claim under RICO should be sustained.

#### Restraint of Trade and Forfeiture

Under this claim, plaintiff asserts that upon his termination, Pilot invoked various alleged illegal forfeiture provisions

contained within his agency agreements with Pilot which required that he forfeit renewal premiums, wages, commissions and payments both already earned and which would be earned through renewal of premiums previously sold.

Plaintiff seeks a declaratory judgment that all such contractual provisions are unenforceable, and ordering that no commissions, renewals or otherwise, will be forfeited as to Hayden on account of his termination from employment with Pilot and/or his employment with a competitor of Pilot's.

Plaintiff has not designated to the Court which contractual provisions he considers illegal. This issue is strictly a question of law and should be addressed by the Court prior to trial.

The Court directs plaintiff to file with the Court a copy of the agreements he contends contain illegal provisions along with a pleading designating provisions he asserts are illegal and cases to support his allegations, within ten (10) days of the date of this Order. Defendant has ten (10) days thereafter to respond with supporting case authority. Failure of plaintiff to comply with this Order will result in dismissal of this claim.

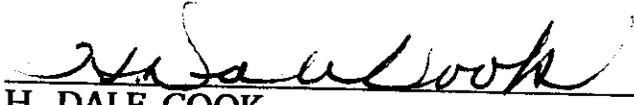
Wherefore, premises considered, IT IS THE ORDER OF THE COURT that the motion of defendant Pilot Life Insurance Company is hereby granted as to plaintiff Jerry L. Hayden's claims for Tortious Interference with Business Relationships; Slander and Libel; Violation of 36 O.S. §1431 and RICO.

IT IS THE FURTHER ORDER OF THE COURT that the motion of defendant Pilot Life Insurance Company is hereby denied as to

plaintiff Jerry L. Hayden's claims for Wrongful Termination and ERISA Discrimination.

IT IS FURTHER ORDERED that plaintiff Jerry L. Hayden has ten days in which to file supporting documentation on his claim for Restraint of Trade and Forfeiture and that defendant Pilot Life Insurance Company has ten days thereafter to respond.

IT IS SO ORDERED this 28<sup>th</sup> 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

MAR 20 1988

JAMES H. HOWARD  
CLERK OF DISTRICT COURT

CRAWFORD ENTERPRISES, INC., )

Plaintiff, )

vs. )

No. 83-C-859-C

DAVID L. HOWARD d/b/a M & H )  
GATHERING, INC., a sole )  
proprietorship; and M & H )  
GATHERING, INC., an Oklahoma )  
corporation, )

Defendants. )

ORDER

This matter is before the Court at the direction of the Tenth Circuit Court of Appeals<sup>1</sup> with instructions for this Court to determine from the record when M & H Gas Gathering, the corporation herein, became insolvent.

The Tenth Circuit approved the factual findings of the Court, however, instructed the Court to make additional findings regarding "insolvency".

In regard to "insolvency" the court said:

Based on the evidence presented at trial, the finding of the district court that the conveyance of the carriage fee did not render the corporation insolvent was not clearly erroneous. Subsequent insolvency due to economic conditions and poor management do not affect the status of the initial conveyance in this case.

The district court, however, did in fact find that "M & H Gas Gathering became insolvent because Howard was unable to obtain gas contracts with other operators in the area and was unable to secure a purchase of M & H, as he had anticipated,

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<sup>1</sup>Crawford Enterprises, Inc. v. David L. Howard, Order and Judgment Nos. 86-219, 86-2667 issued June 10, 1988.

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coupled with the declining oil prices in Oklahoma.\* The court failed to indicate when the insolvency occurred.

Order and Judgment at p.9 (citations omitted).

Through deposition testimony admitted at trial, Howard indicated that it was because of his greed that he allowed the rescission of the contract with Eugene Chorozy, the Canadian investment broker, and the buy-out with Eli Masso. He believed he could sell M & H Gas Gathering (which included the gas purchase agreement with Public Service Company and the Jenkins Lease) for \$2 million dollars.

He testified he spent at least 150 hours a week on the road, meeting with different people in an effort to make the sale. He hired an engineer in July 1982 to prepare a "reserve estimate report" at an expense of \$7,500. He mailed out approximately 300 investment packages to different investors. He also submitted the investment package to a bank in an effort to obtain a loan to restructure M & H Gas Gathering.

He testified that on or about July 5, 1982 Penn State Bank went under having a direct impact on oil and gas investments. In reference to the closing of Penn State Bank, Howard stated:

... the whole rest of the oil field just went to hell in a handbasket right quick. And you couldn't sell anything. If anything had anything to do with oil, you know, it was colder than a banker's heart. They didn't want anything to do with it.

(Howard depo. at 45).

However, on August 16, 1982, Howard believed he had a contract to sell M & H Gas Gathering. The investor, Nordak International, sent a check to Howard, but the check did not clear the bank. He

thought he had another opportunity with Ed Kalliel out of Houston, Texas, but the agreement did not materialize.

Had either of these two opportunities consummated, M & H Gas Gathering would have remained solvent. Howard could have taken the proceeds and paid his debt to Crawford Enterprises and he could have completed his buy-out with Eli Masso. However having failed, and having no other revenue except the carriage fee which was being paid to Eli Masso, the enterprise was rendered insolvent.

Therefore, based on the testimony, as offered to the Court, the Court finds and concludes that M & H Gas Gathering was rendered insolvent on August 16, 1982 under the principles of law as set forth by the Tenth Circuit in its Order and judgment filed June 10, 1988. Accordingly, any monies received by Eli Masso from August 16, 1982 until January 1983 from Public Service Company representing sums directly attributable to the carriage fee, are subject to being set aside for the benefit of creditors.

IT IS SO ORDERED this 27<sup>th</sup> 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

ROBERTA ANN MCMURRAY,  
PLAINTIFF,  
vs.  
DEERE AND COMPANY, INC.,  
DEFENDANT.

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NO: 83-C-1055-C

**FILED**  
**MAR 28 1989**

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

ORDER OF DISMISSAL WITH PREJUDICE

Upon Application of the Plaintiff herein, Roberta Ann McMurray, now Thompson, for an Order of Dismissal with Prejudice and for good cause shown, the Court finds that the above styled and numbered case should be dismissed with prejudice to the refiling of any future action.

IT IS SO ORDERED this 28 day of March, 1989.

*H. Dale Cook*  
\_\_\_\_\_  
H. DALE COOK,  
United States District Judge

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

FILED

MAR 28 1988

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

JOHNNY DOUGLAS JOHNSON,

Plaintiff,

vs.

BOB ADAMS,

Defendant.

No. 86-C-1134-C

ORDER

Now before the Court for its consideration is the motion of the defendant for summary judgment.

Plaintiff filed this action under 42 U.S.C. §1983 for the alleged violation of his civil rights by defendant Adams, a nurse at Eastern State Hospital. On December 10, 1986, plaintiff was at Eastern State Hospital in Vinita, Oklahoma, by Order of the District Court of Creek County for a determination of competency to stand trial. Plaintiff alleges that on that date he was subjected to cruel and unusual punishment.

At approximately 2:45 p.m. on December 10, 1986, plaintiff was seen by defendant in a restricted area near a possible exit. Plaintiff had previously escaped from the Creek County Jail, a fact known to defendant. Defendant asked plaintiff to leave the area,

but plaintiff refused. Apparently, the confrontation between the two grew more heated. Upon orders of the physician in charge, Dr. Lizzaraga -- not orders of defendant -- plaintiff was placed in seclusion and in restraints. Plaintiff escaped from his wrist restraints and was administered medication (10 Milligrams of Haldol). He failed to calm down, and was given additional medication (5 milligrams of Inapsine). Defendant and the hospital staff followed the policies and procedures of the hospital concerning the care of patients in restraints, checking plaintiff at least every fifteen minutes. Plaintiff was released from the restraints and seclusion at 9:00 a.m. on December 11, 1986, after approximately eighteen hours and after being interviewed by Dr. Lizzaraga.

Essentially, plaintiff does not dispute this statement of facts. But he contends that he initially became upset in the restricted area when defendant cursed him. Further, that Dr. Lizzaraga ordered drugs and restraints under the defendant's "false pretenses". Finally, plaintiff contends that his failure to calm down was due to his "being teased and aggravated" by the defendant.

Construing plaintiff's pro se documents liberally, it appears that he alleges three possible Eighth Amendment violations: (1) seclusion, (2) restraints and (3) drug administration. In the prison context, the United States Court of Appeals for the Tenth Circuit has stated that

placing an inmate in segregation as a preventive measure does not necessarily violate the Eighth Amendment. Such a decision falls within a prison official's broad

administrative and discretionary authority to manage and control the prison institution. Absent an abuse of discretion, this court cannot overturn the placement decision.

Bailey v. Shillinger, 828 F.2d 651, 653 (10th Cir. 1987) (citations omitted).

The Court finds that separating a disruptive prisoner-patient from other patients for a reasonable period of time is not a violation of the Eighth Amendment. As for restraints, in O'Donnell v. Thomas, 826 F.2d 788 (8th Cir. 1987), the court affirmed the district court's ruling that hospital restraints "did not constitute cruel and unusual punishment because they were used on the advice of a physician and were not more severe than necessary to prevent [plaintiff] from harming himself or others." Id. at 790. The Court finds that the restraints imposed in the case at bar do not constitute a violation. Finally, regarding the administration of drugs, defendant relies upon a consent form signed by plaintiff. (Defendant's Exhibit A at 42). However, the plaintiff was clearly giving consent to drug administration in connection with therapy or treatment. The drugs administered here were for sedative effect. Surprisingly, the Court has not discovered a great deal of authority on this issue. In Welsch v. Likins, 373 F.Supp. 487 (D.Minn. 1974) the court stated:

Excessive use of tranquilizing medication as a means of controlling behavior, not mainly as a part of therapy, may likewise infringe on plaintiffs' rights under the Fourteenth Amendment and the Eighth Amendment.

Id. at 503. (emphasis added)

The Court finds that the use made in the case at bar was not excessive. Also, the drugs were administered at the direction of a physician, not the defendant. From a consideration of the record

as a whole, the Court is persuaded that judgment should be entered for the defendant.

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

IT IS SO ORDERED this 27<sup>th</sup> 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

FILED

MAR 28 1989

JOHNNY DOUGLAS JOHNSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BOB ADAMS, )  
 )  
 Defendant. )

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

No. 86-C-1134-C

JUDGMENT

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for defendant, and against plaintiff, and that plaintiff take nothing by way of this action.

IT IS SO ORDERED this 27<sup>th</sup> day of March, 1989.

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

*Entered*

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

MAR 28 1989

JAMES D. BERRY, CLERK  
U.S. DISTRICT COURT

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

No. 87-C-900-C

ORDER

Before the Court is the application of defendant Transport Insurance Company for attorney fees as prevailing party pursuant to 36 O.S. §3629. The Court has previously awarded defendant the right to recover attorney fees upon submission of proper documentation supporting its request. Defendant seeks \$19,399.50 in attorney fees for 262.40 hours of work performed by fourteen different members of his law firm. No response was filed by plaintiff to defendant's fee affidavit.

On March 27, 1989, the Court conducted a hearing regarding the fee affidavit. The Court is primarily concerned that defendant's law firm has a uniform fee rate for all its members regardless of the position held. Paralegals, clerks and interns are being billed out at same rate as partners and associates. Fee rates should be

structured on a sliding scale based on education and experience. The Court therefore modifies defendant's fee request as follows:

<u>Name</u>	<u>Position</u>	<u>Total Hours</u>	<u>Rate</u>	<u>Fee</u>
Chris Rhodes	Attorney-Partner	.30	\$ 90.00	\$ 27.00
John Tucker	Attorney-Partner	16.85	90.00	1,516.50
Philard Rounds	Senior Associate	1.85	75.00	138.75
Harold Zuckerman	Senior Associate	215.00	75.00	16,125.00
William Perrine	Associate Clerk	.25	60.00	15.00
Mary Cooper	Associate Clerk	1.00	60.00	60.00
Candace Smith	Senior Paralegal	.30	45.00	13.50
Trudy Emery	Paralegal	1.25	45.00	56.25
Kimberly Steele	Clerk	.60	35.00	21.00
Ralph Taylor	Clerk	.30	35.00	10.50
Wilma Palmer	Intern	2.50	40.00	100.00
Robert Hart	Clerk	10.70	35.00	374.50
Julie Keith	Clerk	2.70	35.00	94.50
Gary Barber	Runner	8.60	15.00	129.00
		<hr/>		<hr/>
TOTAL		262.40		\$18,681.50

In that plaintiff failed to timely raise any objections to defendant's fee application, the Court hereby determines that plaintiff has waived objection and hereby acquiesces to the amount otherwise requested.

It is therefore the Order of the Court that defendant Transport Insurance Company is awarded attorney fees in the total sum of \$18,681.50 as prevailing party against plaintiff, Curlie Storey.

IT IS SO ORDERED this 28<sup>th</sup> 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

FILED

MAR 28 1989

TERESA M. REYNOLDS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DASEKE MANAGEMENT CORP., )  
 d/b/a RAMADA HOTEL RIVERVIEW, )  
 DASEKE REALTY CORPORATION, )  
 and DIRECTORY ASSOCIATES, )  
 LTD., an Oklahoma Limited )  
 Partnership, )  
 )  
 Defendants. )

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

Civil Action No.  
88-C-1325E

STIPULATION OF DISMISSAL WITH PREJUDICE

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

For Plaintiff  
TERESA M. REYNOLDS

  
David L. Weatherford, OBA #9409  
Ungerma & Iola  
1323 East 71st Street  
Tulsa, Oklahoma 74170-1917

For Defendants,  
Daseke Management Corp.,  
Daseke Realty Corporation  
and Directory Associates Ltd.

  
Thomas D. Robertson, OBA #7665  
NICHOLS, WOLFE, STAMPER,  
NALLY & FALLIS, INC.  
124 East Fourth Street  
Suite 400  
Tulsa, Oklahoma 74103-4004

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Firm Bar No. 31

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

**FILED**

**MAR 28 1989**

WORMALD FIRE SYSTEMS, INC., )  
a Delaware corporation, )  
 )  
Plaintiff, )

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

vs. )

Case No. 88-C-1596-E

)  
ROGER D. WILSON, an )  
individual; WILSON FIRE )  
PROTECTION, INC., an Oklahoma )  
corporation; and WILCO FIRE )  
SYSTEMS, INC., an Oklahoma )  
corporation, )  
 )  
Defendants. )

AGREED ORDER FOR INJUNCTION AND  
STIPULATION OF DISMISSAL WITH PREJUDICE

NOW on this 2nd day of March, 1989, there comes on for hearing before the Court the Plaintiff's Application for Preliminary Injunction. The Plaintiff appears by its designated corporate representative, Thomas V. Malorzo, and by and through its attorneys of record, Allis & Vandivort, Inc. by Thomas S. Vandivort and Richard E. Elsea. The Defendant, ROGER D. WILSON, appears in person and the Defendants, WILSON FIRE PROTECTION, INC. and WILCO FIRE SYSTEMS, INC. appear by their designated corporate representative, Roger D. Wilson, and all of said Defendants appear by and through their attorneys of record, Moyers, Martin, Santee, Imel & Tetrick by Patrick D. O'Connor.

The Court, having been advised by counsel for all parties involved that the parties and each of them have

consented to a settlement and compromise of all issues in the above-styled and numbered matter, the terms and conditions of which are set forth below, and that the parties have consented to the entry of this Order containing said settlement terms and conditions, hereby approves this Agreed Order for Injunction and Stipulation of Dismissal With Prejudice.

IT IS THEREFORE the Order of this Court that:

1. The Defendant, WILSON FIRE PROTECTION, INC., shall within thirty (30) days of the date of this Order cause itself to be dissolved as a corporate entity in the State of Oklahoma as reflected by the official records of the Secretary of State of the State of Oklahoma, OR shall within thirty (30) days of the date of this Order change its corporate name by appropriate filing with the Secretary of State of the State of Oklahoma to a name which is not prohibited by paragraph 6.8 of a certain Asset Purchase Agreement dated January 22, 1981, by and among FIRE PROTECTION CONSTRUCTION COMPANY, INC., a Wisconsin corporation, WILSON FIRE PROTECTION, INC., an Oklahoma corporation, BELL FIRE PROTECTION, INC., a Texas corporation, and WOODROW W. WILSON, ROGER D. WILSON, NORMAN BERG, CHARLES DURKEE, PAUL R. GREEN, LARRY KILLION, CHARLES D. SMITH, BERNADENE WILSON and VALERIE WILSON, the stockholders of WILSON FIRE PROTECTION, INC., a copy of said Agreement having been attached as Exhibit "A" to Plaintiff's Complaint filed herein and incorporated herein by reference;

2. The Defendant, WILSON FIRE PROTECTION, INC., shall cause to be executed on its behalf within thirty (30)

days of the date of this Order an Authorization and Consent to Use Tradename, on a form to be prepared and submitted to said Defendant by Plaintiff's counsel, permitting Plaintiff to appropriate, register and otherwise use the name Wilson Fire Protection, Inc.;

3. The Defendant, ROGER D. WILSON, individually and on behalf of the corporate Defendants, WILCO FIRE SYSTEMS, INC. and WILSON FIRE PROTECTION, INC., shall within thirty (30) days of the date of this Order notify and cause Southwestern Bell Telephone Company to delete from and not publish in its November 1989-90 Greater Tulsa Telephone Directory, both yellow and white pages, any listing containing the names prohibited by paragraph 6.8 of the aforementioned Asset Purchase Agreement in conjunction with the business telephone number (918) 582-3700 or in conjunction with any business telephone number which may be subsequently assigned to the Defendant, WILCO FIRE SYSTEMS, INC.;

4. The Defendant, WILCO FIRE SYSTEMS, INC., and in the event that it is not dissolved, any successor in interest to the Defendant, WILSON FIRE PROTECTION, INC., shall within thirty (30) days of the date of this Order and at all times thereafter, with respect to all telephone calls to said Defendants' current business telephone number of (918) 582-3700 or any subsequently assigned business telephone number wherein the caller requests "Wilson Fire Protection, Inc." or "Wilson Fire Protection", inform the caller that the business entity called is not Wilson Fire Protection, Inc.,

and that the telephone number of Wilson Fire Protection is (918) 582-6121. Further, the aforesaid corporate Defendants shall within thirty (30) days of the date of this Order and continuing for the entire calendar year 1989, cause its or their receptionist(s) to keep a log or record of all such telephone calls received by said Defendants wherein the caller requested "Wilson Fire Protection, Inc." or "Wilson Fire Protection" and said log or record shall be available for inspection by the Plaintiff from time to time upon reasonable notice to the Defendants, and said log or record shall contain the time and date of the call, the name of the person calling, and the name of the person receiving the call;

5. The Plaintiff shall within thirty (30) days of the date of this Order file with the Court its Dismissal with Prejudice of all causes of action against all Defendants as set forth in Plaintiff's Complaint and Application for Preliminary Injunction filed herein. Further, each party shall be responsible for his, her or its respective attorney fees and costs incurred in conjunction with this matter.

DATED this 28 day of March, 1989.

S/ JAMES O. ELLISON

United States District Court Judge

APPROVED AS TO FORM:

ALLIS & VANDIVORT, INC.  
Attorneys for Plaintiff,  
WORMALD FIRE SYSTEMS, INC.

By: *Richard E. Elsea*

Richard E. Elsea  
OBA No. 10285  
Mid-Continent Bldg.  
Suite 425  
401 S. Boston Ave.  
Tulsa, OK 74103-4017  
(918) 584-7700

MOYERS, MARTIN, SANTEE, IMEL  
& TETRICK,  
Attorneys for Defendants,  
ROGER D. WILSON, WILSON  
FIRE PROTECTION, INC.  
and WILCO FIRE SYSTEMS, INC.

By: *Patrick D. O'Connor*

Patrick D. O'Connor  
OBA No. 6743  
320 South Boston  
Suite 920  
Tulsa, Oklahoma 74103  
(918) 582-5281

APPROVED AS TO FORM:

ALLIS & VANDIVORT, INC.  
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WORMALD FIRE SYSTEMS, INC.

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FILED

MAR 27 1989

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

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

RANDY ARNOLD,

Plaintiff,

vs.

LANTZ McCLAIN, et al.,

Defendants.

No. 87-C-955-B ✓

ORDER

This matter comes before the Court upon Plaintiff's Objection to the U.S. Magistrate's Report and Recommendation that Defendant's Motion for Summary Judgment be sustained. Plaintiff essentially reasserts his arguments that Defendant is not a state officer, Plaintiff substantially complied with the Oklahoma Governmental Tort Claims Act, and Defendant is not entitled to absolute immunity.

After considering the applicable state statutes, the Magistrate concluded that District Attorneys are state officers. 19 O.S. §§ 215.1-215.40. Specifically, 19 O.S. § 215.1 created the Office of District Attorney in the State of Oklahoma. This statute, when read in conjunction with § 215.19 abolishing the office of county attorney, supports the Magistrate's conclusion that District Attorneys are state officers. All of Plaintiff's authority to the contrary predates the legislature's 1983 amendment to § 215.30 which changed the status of all employees of the

District Attorney to be state officers or employees.<sup>1</sup> Therefore, the Court adopts the Magistrate's recommendation that Defendant is a state officer.

As an officer and employee of the State, tort claims for acts committed within the scope of employment must be brought against the State pursuant to the Oklahoma Governmental Tort Claims Act, 51 O.S. §151 et seq. Additionally, the Eleventh Amendment prohibits federal courts from adjudicating disputes where the State is a party. Kentucky v. Graham, 105 S.Ct. 3099, 3106 n.14 (1985). Although this jurisdictional bar may be waived, the State has specifically reserved its Eleventh Amendment immunity from prosecution in a federal court. 51 O.S. §152.1.<sup>2</sup>

The remaining claim is whether Defendant violated Plaintiff's liberty interest without due process of law. It is a well established rule that prosecutors acting within the scope of their duties are entitled to absolute immunity. Imbler v. Pachtman, 424 U.S. 409 (1976); Dohaish v. Tooley, 670 F.2d 934, 938 (10th Cir. 1982). Plaintiff does not dispute that district attorneys are

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<sup>1</sup>Plaintiff relies upon Blankenship v. Atoka County, 456 P.2d 537 (Okla. 1969) for his argument that district attorneys are on the state payroll for convenience purposes only. This argument is based upon the Supreme Court's interpretation of §215.14. This section was specifically repealed January 1, 1983, and replaced by § 215.30, which states that all appointees and employees of district attorneys shall be deemed to be state officers or employees for all purposes.

<sup>2</sup>Because this Court does not have the authority to address the tort claims, the issue of whether Plaintiff substantially complied with the Oklahoma Governmental Tort Claims Act need not be addressed.

entitled to absolute immunity for acts within the scope of their duties, but asserts that Defendant's actions were quasi-judicial and beyond the scope of his authority. (Plaintiff's Objection, pp. 11-12).

"Even if a prosecutor may lose his absolute immunity for prosecutorial acts for which he has no colorable claim of authority, it does not follow that he does so immediately upon crossing the technical bounds of the power conferred on him by local law. Indeed, it has long been a fundamental tenet of immunity doctrine that when a judicial officer has absolute immunity from liability, his immunity does not become qualified simply because he acted in excess of his authority. In Bradley v. Fisher, 80 U.S. (13 Wall.) 335 (1872), the Supreme Court held that while a judge is not absolutely immune for judicial acts taken in 'the clear absence of all jurisdiction over the subject matter,' he remains immune for such acts that were merely in 'excess of [his] jurisdiction.' Id. at 351-52. . . .

While Bradley dealt with judicial immunity, it has generally been found applicable to a prosecutor's quasi-judicial immunity as well.

. . . In determining whether a prosecutor has lost his absolute immunity by committing a prosecutorial act beyond the scope of his authority, we must interpret his authority broadly. Stump v. Sparkman, 435 U.S. 349 (1978)."

Lerwill v. Joslin, 712 F.2d 435, 438 (10th Cir. 1983) (citations omitted). This Court adopts the Magistrate's findings that Defendant's actions were part of a plea bargaining process and fall within the scope of his prosecutorial discretion. Therefore, the

Court concludes Defendant is entitled to absolute immunity.<sup>3</sup>

Finally, Plaintiff asserts Defendant stigmatized him by disseminating false information at a meeting of the Fraternal Order of Police, thereby violating his liberty interest. Defendant denies the allegations by affidavit and states he did not disseminate any false information, and any statements he may have made were in response to questions raised after Plaintiff and his attorney had disseminated the information to the media and other members of the police department. (McClain Affidavit, ¶¶ 15-17; Transcript of FOP meeting at pp. 2, 10 & 14, attached as Exhibit 8 to Plaintiff's Brief in Opposition to Motion for Summary Judgment; Affidavit of Harley Hausam, Exhibit 14 to Plaintiff's Brief in Opposition to Motion for Summary Judgment). Defendant moves for summary judgment on the grounds that Plaintiff cannot prove Defendant initially disseminated to the public the events leading to Plaintiff's resignation. "The plain language of Rule 56 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 Corp. v. Catrett, 477 U.S. 317, 322 (1986). Therefore, Plaintiff has the burden of coming

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<sup>3</sup>The Court also adopts the Magistrate's conclusion that Defendant is entitled to good faith immunity from suit because he was performing a discretionary function and his actions did not violate clearly established statutory or constitutional rights. Harlow v. Fitzgerald, 457 U.S. 800 (1982); Lerwill v. Joslin, 712 F.2d 435, 440-41 n. 7 (10th Cir. 1983).

forward with some evidence, whether by affidavit or deposition, to establish that Defendant was the person who publicly disseminated the alleged stigmatizing statements.

In an attempt to show that Defendant publicly disseminated the information, Plaintiff offers a transcript of the FOP meeting wherein Defendant answered questions regarding events leading up to Plaintiff's resignation. (Exhibit 8 to Plaintiff's Opposition to Motion for Summary Judgment). Defendant appeared only in an effort to give his side of the story and to rebut charges of impropriety. (McClain Affidavit, ¶ 17). It is significant that when Defendant appeared at the FOP meeting to defend himself and explain the situation, the information had already been publicly disseminated.<sup>4</sup> Plaintiff acknowledges he spoke with the news media, although he did not solicit news interviews, and spoke at the FOP meeting regarding his resignation. (Plaintiff's Objection to the Motion for Summary Judgment, p. 25). Plaintiff has come forward with no evidence other than bare assertions that Defendant was the person who publicly disseminated the reasons behind Plaintiff's resignation. The Court concludes that Plaintiff has failed to come forward with specific facts showing there is a genuine issue for trial and that the record taken as a whole could

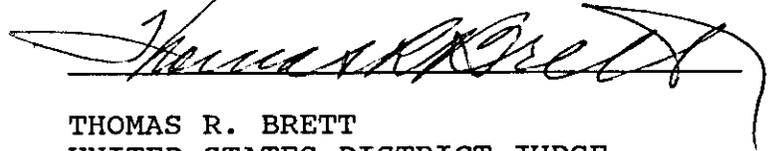
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<sup>4</sup>Although Defendant was video taped defending his actions, it is clear by the transcript that the information had already been disseminated among 50 to 70 Creek County law enforcement personnel, including the Sapulpa Police Department, the Creek County Sheriff's Office, the Highway Patrol, the Kiefer Police Department and the Kellyville Police Department. (Affidavit of Harley Hausam at ¶ 2).

not lead a rational trier of fact to find for the Plaintiff. Under such circumstances, summary judgment is appropriate. Matsushita v. Zenith, 475 U.S. 574, 587 (1986).

It is therefore ORDERED that the Magistrate's Report and Recommendations be adopted and the Defendant's Motion for Summary Judgment be sustained.

DATED, this 27<sup>th</sup> day of March, 1989.



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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 27 1989

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

ETHEL BUMGARDNER,

Plaintiff,

vs.

ROBEL TISSUE MILLS, INC.,

Defendant.

NO. 88-C-39-C

JOINT DISMISSAL WITH PREJUDICE

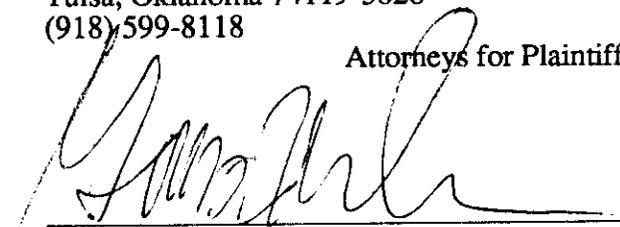
The plaintiff, Ethel Bumgardner, and the defendant, Robel Tissue Mills, Inc., pursuant to Fed.R.Civ.Proc. 41, hereby jointly dismiss the above entitled action, with prejudice.

Dated this 24<sup>th</sup> day of March, 1989.



D. Gregory Bledsoe and  
Terry H. Bitting  
1515 South Denver  
Tulsa, Oklahoma 74119-3828  
(918) 599-8118

Attorneys for Plaintiff



Gary J. Dean  
Post Office Drawer 1047  
Pryor, Oklahoma 74362-1047  
(918) 825-7400

Attorney for Defendant

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

FILED

MAR 27 1980

JAN. SCHNEIDER, CLERK  
U.S. DISTRICT COURT

NATIONAL BANK OF DETROIT, )  
 as Trustee for the Masco )  
 Industries, Inc. Employees' )  
 Welfare Benefit Trust, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ARTHUR ENGLISH, CHRISTINA )  
 SMITH and THE HARTFORD )  
 INSURANCE COMPANY, )  
 )  
 Defendants. )

Case No. 88-C-1282-E

STIPULATION FOR DISMISSAL

The parties hereto, National Bank of Detroit, as Trustee for the Masco Industries, Inc. Employees' Welfare Benefit Trust, Arthur English ("English"), Christina Smith ("Smith") and The Hartford Insurance Company ("Hartford"), by and through their respective counsel of record, hereby stipulate and agree that this Court may enter an Order, without further notice to the parties, dismissing Plaintiff's Complaint and claims for relief against the Defendants, English, Smith and Hartford, with prejudice.

It is further stipulated that each party shall bear its own costs.

Dated this \_\_\_\_ day of February, 1989.

Respectfully submitted,

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

By *Ronald A. White*  
Ronald A. White, OBA #12037  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172  
(918) 588-

ATTORNEYS FOR PLAINTIFF

RANDY A. RANKIN, ATTORNEY AT LAW

By *Randy A. Rankin*  
Randy A. Rankin  
1515 South Denver  
Tulsa, Oklahoma 74119-3828

ATTORNEYS FOR DEFENDANT  
ARTHUR ENGLISH

LAW OFFICES OF EARL R. DONALDSON

By *Robert Black*  
Robert Black  
3525 N.W. 56th, Suite B-160  
Oklahoma City, Oklahoma 73112

ATTORNEYS FOR DEFENDANTS  
CHRISTINA SMITH AND THE  
HARTFORD INSURANCE COMPANY

THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 27 1988

SHIRLEY JEAN JEFFREY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SAINT FRANCIS HOSPITAL, INC. )  
 )  
 Defendant. )

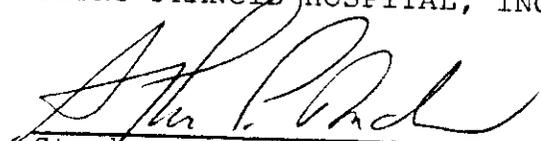
CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Case No. 87-C-949-E

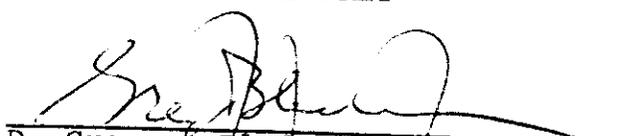
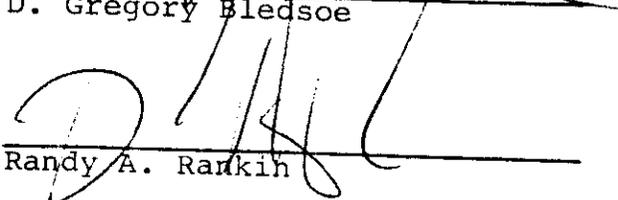
JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, SHIRLEY JEAN JEFFREY, and the Defendant, SAINT FRANCIS HOSPITAL, INC., and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, dismiss, with prejudice, the above styled cause of action.

ATTORNEYS FOR DEFENDANT,  
SAINT FRANCIS HOSPITAL, INC.

  
Stephen L. Andrew  
McCORMICK, ANDREW & CLARK  
Suite 100, Tulsa Union Depot  
111 East First Street  
Tulsa, Oklahoma 74103  
(918) 583-1111

ATTORNEYS FOR PLAINTIFF,  
SHIRLEY JEAN JEFFREY

  
D. Gregory Bledsoe  
  
Randy A. Rankin

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

**F I L E D**

MAR 27 1989

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

BABY GIRL KIRBY, a minor, deceased, )  
by her natural parents, personal )  
representatives, and next of kin, )  
JOE KIRBY and JOANN KIRBY, husband )  
and wife, and JOE KIRBY, )  
individually, and JOANN KIRBY, )  
individually, )

Plaintiffs, )

vs. )

UNITED STATES OF AMERICA d/b/a )  
PUBLIC HEALTH SERVICE (CLAREMORE )  
INDIAN HOSPITAL, CLAREMORE, OK), )  
et al., )

Defendants. )

No. 88-C-1214-B

O R D E R

This matter comes before the Court upon Defendant United States of America's Motion to Dismiss pursuant to Fed.R.Civ.P. 12 (b)(1) and (6). Pursuant to 42 U.S.C. § 233(a), Defendant seeks to dismiss the individual defendants because, as employees of the Public Health Service, the United States of America is the proper party defendant. Plaintiff states that it has no objection to dismissing the individual defendants.

Defendant also moves to have Plaintiff's request for jury trial stricken. Pursuant to 28 U.S.C. § 2402, a Plaintiff is not entitled to a jury trial in a case brought under the Federal Tort Claims Act. Plaintiff has no objections to striking the demand for a jury trial.

It is therefore ORDERED that individual defendants Dr. James Rudolf, M.D., Dr. Carl Ellison, M.D., J. W. Alden, and Gail Tidmore be dismissed from this suit.

IT IS SO ORDERED, this 27<sup>th</sup> day of March, 1989.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 21 1988

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THERMAN C. JONES, )  
 )  
 Defendant. )

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

CIVIL ACTION NO. 88-C-1090-E

DEFAULT JUDGMENT

This matter comes on for consideration this 23 day of January, 1989, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Therman C. Jones, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Therman C. Jones, acknowledged receipt of Summons and Complaint on September 5, 1988. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

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

Therman C. Jones, for the principal amount of \$12,189.52, plus accrued interest in the amount of \$52.82 as of August 31, 1986, plus interest thereafter at the rate of 4 percent per annum, until judgment, plus interest thereafter at the current legal rate of 9.43 percent per annum until paid, plus costs of this action.

BY JAMES O. ELLISON

---

UNITED STATES DISTRICT JUDGE

cen

FILED

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

MAR 24 1989

CP

JOHN S. DEL FRATE, et al., )  
 )  
 Plaintiffs, )  
 )  
 -VS- )  
 )  
 SHERIFF B. J. WHITWORTH, )  
 )  
 Defendant. )

JAMES H. SILVER, CLERK  
U.S. DISTRICT COURT

Case No. 84-C-745-E,  
Consolidated 84-C-842-E, ✓  
84-C-868-E

CONSENT DECREE

The plaintiffs, above named, as inmates of the Creek County Jail filed a complaint against the defendant, above named, in his official capacity alleging violations of their civil rights and seeking declaratory and injunctive relief and attorney fees. The Plaintiffs, by their counsel of record, Thomas E. Salisbury, and the Defendant, by his counsel of record, Lantz McClain, District Attorney for Creek County have each consented to the entry of this consent decree, without trial and without the adjudication of any issue of fact or law arising herein and the Court, having considered the matter and being duly advised, orders, adjudges and decrees as follows:

1. This Court has jurisdiction over the subject matter of this action and the parties hereto. The complaint herein properly states claims for relief against the consenting defendant pursuant to 42 U.S.C. §1983. Venue of this action is properly laid before this Court.
2. At the outset of this litigation there were conditions present at the Creek County Jail

from which a rational trier of fact could have concluded that the conditions at the Creek County Jail were unconstitutional under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Such conditions and their legal ramifications were adequately set forth in the Report of Plaintiff's Counsel Re: Status of Facility filed with this Court on October 31, 1985. Since that time the Defendant Sheriff in cooperation with the District Attorney, the Board of County Commissioners and Plaintiff's counsel has made significant strides toward improving conditions at said facility.

3. Thereafter, pursuant to an order of this Court, Deputy Sheriff Dan Cherry of the Tulsa County Sheriff's Office inspected the Creek County Jail and filed a report of his inspection with this Court. As a local expert on jail administration and conditions, Deputy Cherry found certain conditions of the jail which were in compliance both with state jail standards and, in his opinion, were constitutional. There were other conditions about which Deputy Cherry expressed concern which needed to be

corrected, although not rising to a constitutional dimension at this time. Moreover, Defendant Sheriff and his staff are now aware of these conditions and are actively working toward solutions of them.

4. At this time the parties agree that, although there are conditions in need of improvement, the Creek County Jail is currently a constitutionally acceptable facility. This finding does not preclude later litigation should these conditions not be improved or should other conditions worsen.
5. The parties agree and the Court finds that this litigation was the catalytic force behind the improvement of jail conditions in the subject facility. As such, Plaintiff's counsel is entitled to a reasonable attorney fee pursuant to 42 U.S.C. §1988. Plaintiff's counsel shall within a reasonable period of time file with this Court his Application for Attorney Fee along with supporting affidavit as to his hours expended and reasonable hourly rate. Within twenty (20) days thereafter counsel for Defendant shall either file an agreed judgment for these attorney fees or shall file written objections thereto and shall seek an order setting a hearing

before this Court on the issue of attorney fees.

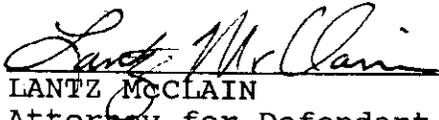
6. This consent decree shall not constitute an admission of liability or fault on the part of the consenting defendant.
7. This consent decree shall include and cover all issues of fact and law raised by the plaintiffs, and it shall act as a final judgment as to such issues and with regard to all damages sustained by plaintiffs.

DATED THIS 24<sup>th</sup> DAY OF MARCH, 1989.

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

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
THOMAS E. SALISBURY  
Attorney for Plaintiffs

  
\_\_\_\_\_  
LANTZ McCLAIN  
Attorney for Defendant

FILED

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

MAR 24 1989  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

INDEPENDENT ANESTHESIA )  
ASSOCIATES, INC., and JACOB )  
TARABOLOUS and JOHN KENNETH )  
HONEYWELL, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
OTIS R. BOWEN, M.D. Secretary )  
of Health and Human Services, )  
 )  
Defendant. )

No. 88-C-1369-B

J U D G M E N T

In accordance with the Order filed this date, Judgment is hereby entered in favor of the Defendant, Otis R. Bowen, M.D., Secretary of Health and Human Services, and against the Plaintiffs Independent Anesthesia Associates, Inc., Jacob Tarabolous and John Kenneth Honeywell.

DATED this 24<sup>th</sup> day of March, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE





FILED

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

MAR 24 1980

CB

JOHN S. DEL FRATE, et al., )  
 )  
 Plaintiffs, )  
 )  
 -VS- )  
 )  
 SHERIFF B. J. WHITWORTH, )  
 )  
 Defendant. )

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

Case No. 84-C-745-E,  
Consolidated 84-C-842-E, &  
84-C-868-E

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2. At the outset of this litigation there were conditions present at the Creek County Jail

from which a rational trier of fact could have concluded that the conditions at the Creek County Jail were unconstitutional under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Such conditions and their legal ramifications were adequately set forth in the Report of Plaintiff's Counsel Re: Status of Facility filed with this Court on October 31, 1985. Since that time the Defendant Sheriff in cooperation with the District Attorney, the Board of County Commissioners and Plaintiff's counsel has made significant strides toward improving conditions at said facility.

3. Thereafter, pursuant to an order of this Court, Deputy Sheriff Dan Cherry of the Tulsa County Sheriff's Office inspected the Creek County Jail and filed a report of his inspection with this Court. As a local expert on jail administration and conditions, Deputy Cherry found certain conditions of the jail which were in compliance both with state jail standards and, in his opinion, were constitutional. There were other conditions about which Deputy Cherry expressed concern which needed to be

corrected, although not rising to a constitutional dimension at this time. Moreover, Defendant Sheriff and his staff are now aware of these conditions and are actively working toward solutions of them.

4. At this time the parties agree that, although there are conditions in need of improvement, the Creek County Jail is currently a constitutionally acceptable facility. This finding does not preclude later litigation should these conditions not be improved or should other conditions worsen.
5. The parties agree and the Court finds that this litigation was the catalytic force behind the improvement of jail conditions in the subject facility. As such, Plaintiff's counsel is entitled to a reasonable attorney fee pursuant to 42 U.S.C. §1988. Plaintiff's counsel shall within a reasonable period of time file with this Court his Application for Attorney Fee along with supporting affidavit as to his hours expended and reasonable hourly rate. Within twenty (20) days thereafter counsel for Defendant shall either file an agreed judgment for these attorney fees or shall file written objections thereto and shall seek an order setting a hearing

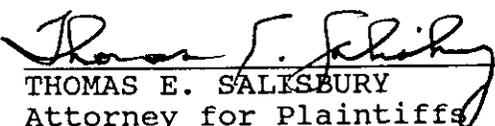
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DATED THIS 24<sup>th</sup> DAY OF MARCH, 1989.

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

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
THOMAS E. SALISBURY  
Attorney for Plaintiffs

  
\_\_\_\_\_  
LANTZ MCCLAIN  
Attorney for Defendant

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

FILED

MAR 24 1988

CLARENCE L. LINDEN, CLERK  
U.S. DISTRICT COURT

CB

JOHN S. DEL FRATE, et al., )  
 )  
 Plaintiffs, )  
 )  
 -VS- )  
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 SHERIFF B. J. WHITWORTH, )  
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Case No. 84-C-745-E,  
Consolidated 84-C-842-E, &  
84-C-868-E

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4. At this time the parties agree that, although there are conditions in need of improvement, the Creek County Jail is currently a constitutionally acceptable facility. This finding does not preclude later litigation should these conditions not be improved or should other conditions worsen.
5. The parties agree and the Court finds that this litigation was the catalytic force behind the improvement of jail conditions in the subject facility. As such, Plaintiff's counsel is entitled to a reasonable attorney fee pursuant to 42 U.S.C. §1988. Plaintiff's counsel shall within a reasonable period of time file with this Court his Application for Attorney Fee along with supporting affidavit as to his hours expended and reasonable hourly rate. Within twenty (20) days thereafter counsel for Defendant shall either file an agreed judgment for these attorney fees or shall file written objections thereto and shall seek an order setting a hearing

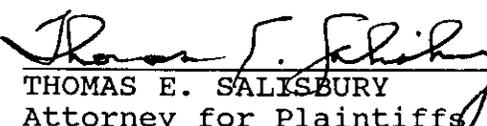
before this Court on the issue of attorney fees.

6. This consent decree shall not constitute an admission of liability or fault on the part of the consenting defendant.
7. This consent decree shall include and cover all issues of fact and law raised by the plaintiffs, and it shall act as a final judgment as to such issues and with regard to all damages sustained by plaintiffs.

DATED THIS 24<sup>th</sup> DAY OF MARCH, 1989.

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

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
THOMAS E. SALISBURY  
Attorney for Plaintiffs

  
\_\_\_\_\_  
LANTZ McCLAIN  
Attorney for Defendant

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

**F I L E D**

MAR 24 1988

RONALD W. GREGORY, et al., )

Plaintiffs, )

vs. )

FIRST FEDERAL SAVINGS BANK )  
OF OKLAHOMA, )

Defendant. )

No. 88-C-1439-E

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

O R D E R

This matter is before the Court on the Defendant's unopposed motion for summary judgment. The motion is granted for the following reasons.

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

The Court agrees with Defendant that the action of the state court is res judicata to this action. Those activities complained of by Plaintiffs were properly before the state court and decided by the state court. If Plaintiffs wished to contest those activities of the state court they should have sought relief via appeal at the state court level.

IT IS THEREFORE ORDERED that Defendant's motion for summary judgment is granted.

ORDERED this 23<sup>d</sup> day of March, 1989.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JEFFREY D. THOMPSON, )  
 a/k/a JEFFREY DON THOMPSON, )  
 )  
 Defendant. )

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

CIVIL ACTION NO. 88-C-1371-E

AGREED JUDGMENT

This matter comes on for consideration this 23  
of February, 1989, the Plaintiff appearing by Tony M. Graham,  
United States Attorney for the Northern District of Oklahoma,  
through Peter Bernhardt, Assistant United States Attorney, and  
the Defendant, Jeffrey D. Thompson, a/k/a Jeffrey Don Thompson,  
appearing pro se.

The Court, being fully advised and having examined the  
court file finds that the Defendant, Jeffrey D. Thompson, a/k/a  
Jeffrey Don Thompson, has agreed that he is indebted to the  
Plaintiff in the amount alleged in the Complaint and that  
judgment may accordingly be entered against him in the principal  
amount of \$1,180.07, plus accrued interest of \$268.55 as of  
August 22, 1988, plus interest thereafter at the rate of 9  
percent per annum until judgment, plus interest thereafter at  
the legal rate until paid, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Jeffrey D. Thompson, a/k/a Jeffrey Don Thompson, in the principal amount of \$1,180.07, plus accrued interest of \$268.55 as of August 22, 1988, plus interest thereafter at the rate of 9 percent per annum until judgment, plus interest thereafter at the current legal rate of 9.43 percent per annum until paid, plus the costs of this action.

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM  
United States Attorney

*for Nancy Nesbitt Blawie*  
PETER BERNHARDT, OBA #741  
Assistant U.S. Attorney

*J. D. Thompson*  
JEFFREY D. THOMPSON,  
a/k/a JEFFREY DON THOMPSON

FILED

MAR 24 1989

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

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

MARY E. WOODARD, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 BENEFICIAL OKLAHOMA, INC., )  
 )  
 Appellee. )

88-C-80-E ✓

ORDER

Now before the Court is an appeal from Findings of Fact and Conclusions of Law of the Bankruptcy Court filed January 22, 1988 (R. 87), and Judgment denying Appellant Woodard's Application for Attorney's Fees and Costs (R. 99).

The Bankruptcy Court decisions arise out of a challenge by the Appellee to the dischargeability of a \$1,000 debt. After a trial on the issue, the Bankruptcy Court found in favor of the Appellant, holding the debt to be dischargeable. Thereafter, Appellant asked for an award of \$2,718.10 in attorney fees consumed in defending the challenge pursuant to 11 U.S.C. §523(d). The Bankruptcy Court denied the award of fees because Appellant's conduct constituted "special circumstances" which would make the award of fees unjust. Appellant disagrees.

Specifically, Appellant received a letter from Appellee offering her a \$1,000 "guaranteed preapproved" loan. In completing a connected "financial statement" she listed her fire-damaged residence as having its pre-damage value. Because of the alleged false financial statement, Appellee challenged the dischargeability of the \$1,000 debt, asserting the debt was

obtained "due to false pretenses, false representations and fraud ... in violation of Section 523(2)(A)" (R. 3-4). After a trial, the Bankruptcy Court found Appellant did not intend to defraud Appellee and further, that Appellee did not rely on the omission or overvaluation of the fire-damaged home (R. 88-89). The Bankruptcy Court thus held the debt to be dischargeable. Id.

Upon Appellant's request for attorney fees under §523(d), the Bankruptcy Court held that Appellee was not "substantially justified" in posing the §523(2)(A) challenge to dischargeability. However, notwithstanding its findings as to the application, it did not award fees, because of the existence of "special circumstances". As shown, the "special circumstances" are, in the Bankruptcy Court's opinion, the misstatement of Appellant in her original application. The Bankruptcy Court held,

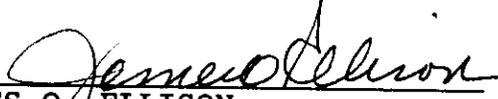
The Defendant, in order to be awarded attorney fees, must have acted fairly and have clean hands. Defendant does not meet this standard because she admittedly failed to mention the fire damage to her home and substantially overvalued it on the statement she gave to Beneficial. (R. 90).<sup>1</sup>

This Court agrees with the Bankruptcy Court application of the unclean hands doctrine. To award fees Appellant-debtor would be inequitable, therefore, it is hereby Ordered that the Bankruptcy Court's Order denying fees is upheld.

---

<sup>1</sup> In ruling that Appellant's omission/overvaluation constituted "special circumstances", the Bankruptcy Court apparently applied the "unclean hands" standards drawn from the Equal Access to Justice Act, 28 U.S.C. §2412, cases.

So Ordered this 23<sup>rd</sup> day of March,  
1988.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 24 1989

ALLENE A. RIFFE, Independent  
Executrix of the Estate of  
LAVERN E. RIFFE,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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

Civil No. 85-C-565-E ✓

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, it is hereby stipulated and agreed that the complaint in the above-entitled action be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of litigation.

*Charles D. Harrison*

CHARLES D. HARRISON  
Houston and Klein, Inc.  
320 South Boston, Suite 700  
Tulsa, Oklahoma 74103

ATTORNEY FOR PLAINTIFF

*Steven Shapiro*

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

ATTORNEY FOR DEFENDANT

TSH/jkb

IN THE UNITED STATES DISTRICT COURT FOR THE 23 1000  
NORTHERN DISTRICT OF OKLAHOMA

JACQUELINE S. GIBBS, CLERK  
U.S. DISTRICT COURT

JEFFREY J. KONEN, personal )  
representative of the estate )  
of JULIE J. MILLER, deceased, )

No. 88-C-1119E

Plaintiff, )

vs. )

HARRY L. NEAL, WILL R. )  
PHILLIPS, and RAY SELCHO )  
d/b/a SELCHO TRAILER )  
RENTALS, )

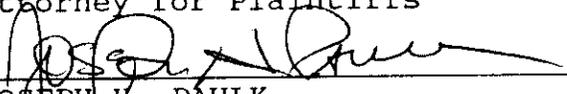
Defendants. )

STIPULATION OF DISMISSAL WITH  
PREJUDICE OF DEFENDANTS NEAL AND PHILLIPS

Comes now the parties to the above-entitled action and do hereby agree to this Stipulation of Dismissal With Prejudice in this matter. The parties herein agree to incur all respective costs and fees associated with this action. Plaintiff specifically reserves his right to proceed against Ray Selcho d/b/a Selcho Trailer Rentals.

WHEREFORE, premises considered, all parties do hereby agree to this Stipulation of Dismissal With Prejudice in the above-entitled action.

  
SCOTT D. CANNON,  
Attorney for Plaintiffs

  
JOSEPH H. PAULK,  
Attorney for Defendant,  
Harry L. Neal

  
MICHAEL P. ATKINSON,  
Attorney for Defendant,  
Will R. Phillips.

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

FILED  
1988-10-09  
COURT CLERK

GARY SCHOOLEY, et al., )  
 )  
Plaintiffs, )  
v. ) No. 88-C-400 C and  
 ) consolidated cases  
GOLDCOR, INC., et al., ) 88-C-103-C  
 ) 88-C-594-C  
 ) 88-C-1221-C  
Defendants. ) 88-C-1222-C  
 ) 88-C-1249-C

STIPULATION OF DISMISSAL

COME NOW the parties in the above consolidated actions, Gary and Gayle Schooley, Schooley and Company, Inc., Michael L. Jones, James W. and Shirley J. Concannon, Edward D. and Janet K. Robson, Jack B., Dolores, and Jeffrey Hamrick, and Bruce West, (collectively "Plaintiffs"), and James Chisholm, Charles Culp, Richard D. Brown, Keith R. Fitzgerald, Roger Remillard, and W. Fred Carlisle, (collectively "Defendants"), pursuant to Fed. R. Civ. P.41(a), for their stipulation of dismissal and state as follows:

1. Each of the consolidated actions were filed separately between May and September, 1988 against each of the Defendants, and consolidated by order of this Court on December 5, 1988.
2. Also named as defendants were Fitzgerald, DeArman & Roberts, Inc., Goldcor, Inc., Robert Bell, John Thomas, and Rudi Fickert, each of which has now received the protection of various United States Bankruptcy Courts, thus staying their involvement in these actions, and Carl W. Martin, who has never been found and served by Plaintiffs.

3. Plaintiffs and those Defendants who have been found and are not in bankruptcy have agreed and hereby stipulate that the above consolidated actions be dismissed without prejudice.

WHEREFORE, it is stipulated by the parties, by and through their attorneys and pro se, that the actions consolidated at the above docket be dismissed without prejudice, each party to bear his own costs.

Respectfully submitted,

By *Mary J. Rounds* 3/23/89  
Date  
John T. Schmidt, OBA #11,028  
R. Mark Solano, OBA #11,170  
Mary J. Rounds, OBA #7,779  
C. Kevin Morrison, OBA #11,937  
HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172  
(918) 588-2700

ATTORNEYS FOR GARY AND GAYLE SCHOOLEY,  
SCHOOLEY AND COMPANY, INC., MICHAEL L.  
JONES, JAMES W. AND SHIRLEY J.  
CONCANNON, EDWARD D. AND JANET K.  
ROBSON, JAMES B., DOLORES, AND JEFFREY  
HAMRICK AND BRUCE WEST

By *Gerald W. Wright* Mar 21 1989  
Date  
Gerald W. Wright  
707 South Houston, Suite 308  
Tulsa, Oklahoma 74127

ATTORNEY FOR CHARLES CULP

By \_\_\_\_\_ Date  
William E. Hughes  
320 S. Boston Avenue  
Suite 1020  
Tulsa, Oklahoma 74103

ATTORNEY FOR ROGER REMILLARD

By \_\_\_\_\_ Date \_\_\_\_\_  
Gene Buzzard  
Gable & Gotwals  
2000 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74119

ATTORNEY FOR W. FRED CARLISLE  
AND JAMES CHISHOLM

PRO SE

By \_\_\_\_\_ Date \_\_\_\_\_  
Richard D. Brown  
957 Pelican Bay Drive  
Daytona Beach, Florida 32019

PRO SE

By \_\_\_\_\_ Date \_\_\_\_\_  
Keith R. Fitzgerald  
6400 South Lewis  
Tulsa, Oklahoma 74136

PRO SE

By \_\_\_\_\_ Date \_\_\_\_\_  
James Chisholm  
2640 W. El Paso  
Broken Arrow, OK 74012

PRO SE

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

GARY SCHOOLEY, et al., )  
 )  
 Plaintiffs, )  
 v. ) No. 88-C-400 C and  
 ) consolidated cases  
 GOLDCOR, INC., et al., )  
 )  
 Defendants. )

STIPULATION OF DISMISSAL

COME NOW the parties in the above consolidated actions, Gary and Gayle Schooley, Schooley and Company, Inc., Michael L. Jones, James W. and Shirley J. Concannon, Edward D. and Janet K. Robson, Jack B., Dolores, and Jeffrey Hamrick, and Bruce West, (collectively "Plaintiffs"), and James Chisholm, Charles Culp, Richard D. Brown, Keith R. Fitzgerald, Roger Remillard, and W. Fred Carlisle, (collectively "Defendants"), pursuant to Fed. R. Civ. P.41(a), for their stipulation of dismissal and state as follows:

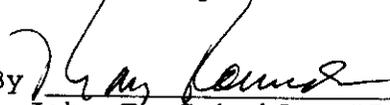
1. Each of the consolidated actions were filed separately between May and September, 1988 against each of the Defendants, and consolidated by order of this Court on December 5, 1988.

2. Also named as defendants were Fitzgerald, DeArman & Roberts, Inc., Goldcor, Inc., Robert Bell, John Thomas, and Rudi Fickert, each of which has now received the protection of various United States Bankruptcy Courts, thus staying their involvement in these actions, and Carl W. Martin, who has never been found and served by Plaintiffs.

3. Plaintiffs and those Defendants who have been found and are not in bankruptcy have agreed and hereby stipulate that the above consolidated actions be dismissed without prejudice.

WHEREFORE, it is stipulated by the parties, by and through their attorneys and pro se, that the actions consolidated at the above docket be dismissed without prejudice, each party to bear his own costs.

Respectfully submitted,

By  3/21/89  
Date  
John T. Schmidt, OBA #11,028  
R. Mark Solano, OBA #11,170  
Mary J. Rounds, OBA #7,779  
C. Kevin Morrison, OBA #11,937  
HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172  
(918) 588-2700

ATTORNEYS FOR GARY AND GAYLE SCHOOLEY,  
SCHOOLEY AND COMPANY, INC., MICHAEL L.  
JONES, JAMES W. AND SHIRLEY J.  
CONCANNON, EDWARD D. AND JANET K.  
ROBSON, JAMES B., DOLORES, AND JEFFREY  
HAMRICK, AND BRUCE WEST

By \_\_\_\_\_ Date \_\_\_\_\_  
Gerald W. Wright  
707 South Houston, Suite 308  
Tulsa, Oklahoma 74127

ATTORNEY FOR CHARLES CULP

By  3/21/89  
Date  
William E. Hughes  
320 S. Boston Avenue  
Suite 1020  
Tulsa, Oklahoma 74103

ATTORNEY FOR ROGER REMILLARD



CERTIFICATE OF SERVICE

I hereby certify that on the 23<sup>rd</sup> day of March, 1989, a true and correct copy of the above and foregoing document was mailed with proper postage prepaid thereon to the following:

James Chisholm  
2640 W. El Paso  
Broken Arrow, OK 74012

Gerald W. Wright  
Attorney for Charles Culp  
707 South Houston, Suite 308  
Tulsa, Oklahoma 74127

Richard D. Brown  
108 Merganser Circle  
Daytona Beach, Florida 32019

Carl W. Martin  
590 E. 900 South  
Mapleton, Utah 84663

Keith R. Fitzgerald  
c/o Anderson, Bryant & Co.  
6400 S. Lewis  
Tulsa, OK 74136

William E. Hughes  
Attorney for Roger Remillard  
320 S. Boston Avenue  
Suite 1020  
Tulsa, OK 74103

Gene Buzzard  
Attorney for W. Fred Carlisle  
Gable & Gotwals  
2000 Fourth National Bank Building  
Tulsa, OK 74119

  
\_\_\_\_\_

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

FILED

MAR 23 1933

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

CORDELIA THOMAS AND NANCY SUE )  
WASHINGTON, INDIVIDUALS, AND )  
UNITED KEETOOWAH BAND OF )  
CHEROKEE INDIANS In OKLAHOMA, )  
an Organized Band of Indians as )  
Recognized Under and by the )  
Laws of the United States, )  
Plaintiffs, )

vs. )

No. 88-C-637-C

ROBERT ANDERSON, CHAIRMAN OF )  
THE OKLAHOMA TAX COMMISSION, )  
THE STATE OF OKLAHOMA by and )  
through THE OKLAHOMA TAX )  
COMMISSION, DAVID L. THOMPSON, )  
THE DULY ELECTED DISTRICT )  
ATTORNEY OF OTTAWA COUNTY and )  
HON. SAMUEL C. FULLERTON, )  
PRESIDING JUDGE OF THE )  
DISTRICT COURT OF OTTAWA )  
COUNTY, OKLAHOMA, )  
Defendants. )

ORDER

Before the Court are the objections to the report and recommendation of the Magistrate, wherein the Magistrate recommended that the motions to dismiss filed by the defendants be granted.

Plaintiff Cordelia Thomas is a member of the Delaware Indian Tribe. She sells cigarettes and tobacco products in a smokeshop owned and operated by plaintiff Nancy Sue Washington who is a member of the Quapaw Indian Tribe. Plaintiff United Keetoowah

24

Bands of Cherokee Indians is authorized to license retail businesses owned and operated by Federally-recognized Indians on land which would qualify as Federally-recognized Indian Country.

However, in this case, the Keetoowah Band has no relationship or common interest with plaintiffs Thomas and Washington. Thomas and Washington are not tribal members of the Keetoowah Band and the Tribe did not own or license the smokeshop that they operated or otherwise benefit in any way from the smokeshop operation.

In the complaint plaintiffs assert that on May 8, 1986, an employee of the Oklahoma Tax Commission, accompanied by the Sheriff of Ottawa County and other Ottawa County police officers entered the smokeshop and seized plaintiff Washington's inventory of cigarettes which did not contain Oklahoma tax stamps and arrested plaintiff Thomas. Plaintiff Thomas was later convicted of a misdemeanor offense and given a suspended sentence. The Tax Commission confiscated and sold the cigarette and other tobacco inventory seized.

The two individual plaintiffs, Thomas and Washington, have requested this Court to enjoin the Oklahoma Tax Commission from enforcing cigarette and sales tax laws against them and issue an order of mandamus to the state court to expunge the record of Thomas, for conviction of crimes relating to those laws. They also allege civil rights violations under 42 U.S.C. §1983 and seek money damages for the seizure of untaxed cigarettes from Washington's store by defendants.

The Keetoowah Band alleges that the threat of action by the Oklahoma Tax Commission to enforce its cigarette taxes by seizure and criminal prosecutions has prevented the Keetoowah Band from issuing licenses to retail stores pursuant to its statutes and collecting taxes incident to sales of cigarettes. The Tribe asserts that such enforcement has had a chilling effect on exercise of its sovereign rights. The Keetoowah Band seeks a declaratory judgment as to their lawful rights to license and collect taxes incident to the sale of cigarettes on Indian lands without the interference by the Oklahoma Tax Commission.

Defendants move to dismiss the complaint asserting several different grounds. The Court finds two grounds in particular as controlling. The Court finds that the relief sought by the individual plaintiffs, Thomas and Washington, is barred by the Tax Injunctive Act, 28 U.S.C. §1341. Such a finding is supported by the opinion Brooks v. Nance, 801 F.2d 1237 (10th Cir. 1986). The Brooks case has similar facts to the case at bar and addresses each issue raised by the plaintiffs in their complaint.

In Brooks, plaintiffs (Tribal members) sought damages, injunctive relief and declaratory relief when state tax commission officials and sheriff's deputies seized untaxed cigarettes which they were selling in their smokeshop located on an Indian Trust allotment. The Tenth Circuit held that the Tax Injunctive Act limited federal court interference with the state tax matters, as it relates to injunctive actions, suit for declaratory relief, damages and civil rights actions.

In reference to the tribal plaintiff, the Magistrate recommended, and the Court so finds, that even though the Tribe has a basis for invoking federal jurisdiction to enjoin state tax collection,<sup>1</sup> the Tribe has no standing to assert its claim in this action. In order to have standing to assert a claim, the Tribe must meet the jurisdictional requirements under Article III, Section 2, of the United States Constitution, which includes presentation of a case or controversy, ripeness for decision and standing to bring suit.

Setting aside the allegations of Thomas and Washington, the allegations of the Tribe are merely that the Oklahoma Tax Commission's efforts to collect state taxes from individual citizens has had a "chilling effect" on their ability to collect tribal taxes. The inability of the Tribe to collect taxes is of no concern to the State which is also obligated to collect taxes. The Tribe has not alleged that the State has attempted to tax it or is prohibiting the Tribe from collecting its own taxes. Therefore the Tribe has not presented a genuine issue of controversy ripe for invocation of federal jurisdiction.

For the aforesaid reasons, the Court affirms the Report and Recommendation of the United States Magistrate.

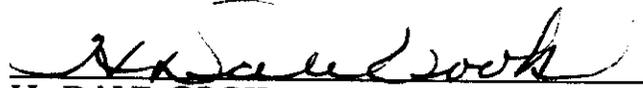
It is the Order of the Court that the motion to dismiss brought by defendants Robert Anderson and the Oklahoma Tax Commission and the motion to dismiss brought by defendants

---

<sup>1</sup>See 28 U.S.C. §1362

Honorable Samuel C. Fullerton and David L. Thompson are hereby  
GRANTED.

*IT IS SO ORDERED* this 23<sup>rd</sup> day of March, 1989.



H. DALE COOK

Chief Judge, U. S. District Court

**F I L E D**

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

MAR 23 1989

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

VICTOR G. BINTER, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 88-C-517-B  
 )  
 AMERICAN AIRLINES, INC., )  
 )  
 Defendant. )

O R D E R

This matter comes before the Court on Defendant American Airlines, Inc.'s Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56. Plaintiff, Victor G. Binter, initiated this action to enforce the provisions of a collective bargaining agreement with American Airlines ("American").

American employed Binter as a line mechanic in 1969 and subsequently promoted him to the position of structural airline mechanic until his discharge on January 14, 1987. Binter was a member of a collective bargaining unit represented by the Transport Worker's Union of America ("TWU"). American recognizes TWU as the sole and exclusive bargaining representative of its employees as to wages, hours of employment, and other conditions of employment as provided by the Railway Labor Act, 45 U.S.C. § 151 et seq. and § 181 et seq. The agreement between American and TWU provides that decisions made by the Board of Adjustment is final, exclusive, and binding upon the parties. In addition to being subject to the bargaining agreement, Binter was subject to American's rules and regulations.

American Airlines Rule 33 prohibits American employees from possessing, dispensing, or using a narcotic, barbiturate, mood-ameliorating, tranquilizing, or hallucinogenic drug either on or off duty without a doctor's prescription. On January 7, 1987, due to a belief that Binter was in violation of Rule 33, American requested Binter to submit to a urinalysis test to detect the presence of illegal drugs. Binter consented to the test because he felt he would have been terminated if he refused. Binter tested positive and American terminated his employment.

Binter filed a grievance the next day to protest his discharge. The grievance was not settled and TWU filed a grievance on Binter's behalf on February 4, 1987. The grievance was submitted to the Board of Adjustment to determine if American had just cause to terminate Binter's employment for violating Rule 33. The Board of Adjustment upheld the discharge and Binter appeals the decision alleging it is in violation of the collective bargaining agreement.

American has moved for summary judgment alleging this Court has limited jurisdiction to review the Board of Adjustment's decision and that Plaintiff's case does not meet the criteria for judicial review. American asserts that Binter's discharge for violating Rule 33 is a "minor dispute" and falls within the Board of Adjustment's exclusive jurisdiction. Labor disputes arising under the Railway Labor Act are categorized as either "major disputes" or "minor disputes". A major dispute relates to a dispute over the formation of a collective bargaining agreement or

efforts to secure an agreement. Elgin, J. & E. Ry. Co. v. Burley, 325 U.S. 711 (1944). A minor dispute arises when a collective bargaining agreement is in place and there is a disagreement as to the interpretation or application of a particular provision of the agreement. Resolving a minor dispute is left to the Board of Adjustment's discretion. Slocum v. Delaware L & W R.R., 339 U.S. 239 (1950); Chernak v. Southwest Airlines, 778 F.2d 578 (10th Cir. 1985).

The Tenth Circuit concluded that an employee's challenge of his drug related discharge is a minor dispute that is within the Board of Adjustment's jurisdiction, subject to limited review by the district courts. United Transportation Union v. Union Pacific Railroad Co., 812 F.2d 630, 631-32 (10th Cir. 1987). Binter argues that the Union Pacific decision is distinguishable because the person in that suit had been convicted of a drug related offense. Binter's argument must fail because a person's conviction of a drug related offense does not affect whether the dispute is characterized as a minor or major dispute.<sup>1</sup> Therefore, Plaintiff's dispute must be characterized as a minor dispute.

The Tenth Circuit has recognized the applicable standard for reviewing minor disputes.

"The Railway Labor Act provides that decisions of adjustment boards may be set aside by the courts only for failure to comply with the requirements of the act, failure to remain within the scope of the board's jurisdiction,

---

<sup>1</sup>Although the timing does not affect the characterization of the dispute, it may have implications on possible claims for due process violations.

or for fraud or corruption. 45 U.S.C. §153  
first (q)."

Chernak at 580. Plaintiff does not allege the Chairman of the Board of Adjustments failed to comply with the requirements of the act, acted beyond the scope of the board's jurisdiction, or committed fraud or corruption. Plaintiff merely seeks to relitigate his claim for wrongful discharge. The statutory restrictions on judicial review of the board's decisions are to be strictly construed and the scope of judicial review will not be expanded to permit the relitigation of disputed interpretations of the collective bargaining agreement. Chernak at 580-81, *citing Union Pacific Railroad Co. v. Sheehan*, 439 U.S. 89, 99 (1978).

Plaintiff also asserts Defendants may have violated the collective bargaining agreement by not giving him an opportunity to obtain an independent medical opinion regarding his urinalysis test and by not affording him a sufficient opportunity to discuss the matter with his supervisor prior to his discharge. Even if Plaintiff's assertions are true, Plaintiff has failed to establish a cause of action for which relief can be granted.<sup>2</sup>

Because Plaintiff's dispute is characterized as a minor dispute and the scope of review is limited to specific circumstances, Defendant's Motion for Summary Judgment is SUSTAINED.

---

<sup>2</sup>Plaintiff seeks additional discovery to determine whether there are additional claims. Assuming there are claims, it would be improper for the Court to assume it has original jurisdiction over violations of a collective bargaining agreement, especially in light of the distinction between major and minor disputes.

IT IS SO ORDERED, this 23<sup>rd</sup> day of March, 1989.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



FILED

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

MAR 23 1989 8

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

ROBERT A. CHILCOAT, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
JAMES E. NEWBURN, et al., )  
 )  
Defendants. )

No. 88-C-1515-E ✓

ORDER

There being no response to the motion of the Department of Housing and Urban Development's motion to dismiss and more than ten (10) days having passed since the filing of the motion to dismiss and no extension of time having been sought by Plaintiffs Chilcoat, the Court, pursuant to Local Rule 15(a), as amended effective May 1, 1988, concludes that Plaintiffs have therefore waived any objection or opposition to the motion to dismiss. See Woods Constr. Co. v. Atlas Chemical Indus. Inc., 337 F.2d 888, 890 (10th Cir. 1964). The Court has, however, additionally examined the merits of the motion and finds that it should be granted.

The motion of the Department of Housing and Urban Development should be and is therefore granted.

ORDERED this 22<sup>d</sup> day of March, 1989.

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

FILED

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

MAR 23 1989

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

THRIFTY RENT-A-CAR SYSTEM, )  
INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
HUGO R. VELASCO, et al., )  
 )  
Defendants. )

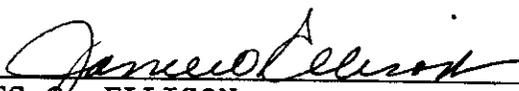
No. 88-C-1498-E

ADMINISTRATIVE CLOSING ORDER

The Defendants having filed their 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 12<sup>d</sup> 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 23 1989

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

CRYSTAL O. REED, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ST. FRANCIS HOSPITAL, INC., )  
 )  
 Defendant. )

No. 88-C-659-E ✓

ORDER OF DISMISSAL

Pursuant to Rule 35 of the Local Court Rules of the Northern District of Oklahoma, notice was previously given on January 31, 1989 that this case would be dismissed for lack of prosecution if no action was taken within thirty (30) days of the date of the Notice. No action having been taken and the requisite thirty (30) days having passed,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this case should be and is hereby dismissed for lack of prosecution, with prejudice to any subsequent refiling.

ORDERED this 22<sup>d</sup> day of March, 1989.

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



products of Datacom, one of plaintiff's vendors, and asked Kerr to obtain another source for its paper and office supply products.

3. Kerr contracted Tom McNamara, the National Sales Manager for defendant Ampad Corporation. Ampad had very little experience in the sale of products to mass merchandisers such as Sam's. Ampad primarily sold products to wholesalers, which in turn distributed the products to individual office supply retail stores.

4. Mr. McNamara expressed an interest in engaging Kerr's services to represent its product line to Sam's. Negotiations in July and August 1985 focused on products, product prices and commissions to be paid on sales of those products. These negotiations culminated in a letter dated September 17, 1985 wherein Tom McNamara agreed that Ampad would use Kerr's service from September 17, 1985, forward. The letter provided, in its entirety:

Per our conversations, this letter will confirm our agreement to engage you as our representative at Sam's Wholesale Club and Wal-Mart.

As previously stated, you will receive variable commissions dependent upon the product line and profitability. For all intents and purposes, we are engaging you from this date forward.

The commission rates will be established in the near future, usually after a product line is sold to one of the accounts. Any other accounts where you want to represent us will be looked at on a one-on-one basis.

We will issue a more formal statement very soon. It will outline our mutual responsibilities to each other. We look forward to a profitable and amiable relationship.

5. Kerr then presented Ampad's products to Sam's which promptly agreed to place Ampad's line of products in its stores. Sam's orders and deliveries commenced in November, 1985, to all of Sam's then 17 locations.

6. The follow-up "formal statement", referenced in the parties' letter agreement, was never sent to Kerr. Commissions were agreed upon orally, as evidenced by the \$85,000 in commissions received by Kerr for November-December, 1985 and all of 1986 representing total sales to Sam's of approximately \$3,500,000.

7. On November 19, 1986, Ampad notified Kerr that his services were no longer required as Ampad was going to service its accounts through its own in-house sales force. Kerr was terminated and paid commissions through December 1986 (a period of 43 days).

8. Ampad continues to sell its products to Sam's, which now has 89 stores. From 1985 until 1988, Ampad has received over twelve million dollars (\$12,000,000) in sales from its account with Sam's.

Kerr brought suit on July 28, 1988 asserting claims for (1) Breach of Contract, (2) Wrongful Termination, and (3) Quantum Meruit. Plaintiff seeks to recover damages under the contract secured by him from Sam's for commissions which have accrued after the date of his termination; and damages for defendant's alleged bad faith conduct in terminating him solely for the alleged purpose of depriving him of his renewal commission.

#### Breach of Contract

In its motion for summary judgment, defendant asserts that the language in the parties' letter agreement does not state a definite term of employment, thereby creating an employment-at-will situation, terminable at the instance of either party. Defendant asserts that plaintiff's claim for breach of contract fails, since

Ampad was merely exercising its legal power to terminate the agreement.

#### Wrongful Termination

Defendant contends that plaintiff's claim for bad faith fails in that there is no indication from the undisputed facts that defendant was motivated by bad faith. Defendant contends that the purpose of an "at-will" provision is to allow the parties to adjust to changes in the market. Defendant contends the market did, in fact, change. Ampad was being courted by a larger manufacturer who employed only in-house sales personnel; Ampad's profits were declining and Sam's had requested in-house sales personnel. These changes in the market place required plaintiff's termination. Ampad asserts it exercised its rights under the contract to terminate Kerr and therefore a recovery for bad faith is not justified under the facts.

#### Quantum Meruit

Defendant requests judgment on the quantum meruit claim since the parties' express contract precludes recovery under the alternative theory of quantum meruit.

The Court has carefully considered the parties' briefs, reviewed the authority cited therein and after independent research, finds and concludes as follows:

The parties were operating under an express agreement. Under the terms of the parties' contract, plaintiff was to recover commissions for procuring sales with Sam's and Wal-Mart, commencing on a date certain, forward. It has been a principle long

recognized in Oklahoma that a sales representative is entitled to recover commission on all contracts procured by him both before and after his discharge. See, e.g., Sooner Broadcasting Co. v. Grotkop, 280 P.2d 457 (Okla. 1955) and Shumaker v. Hazen, 372 P.2d 873 (Okla. 1962). Although the contract was for an indefinite period and could be terminated at any time, Ampad remains liable to plaintiff for his just compensation as contemplated by the parties at the time of making the contract. Sooner Broadcasting, supra at 460.

In Hall v. Farmers Insurance Exchange, 713 P.2d 1027 (Okla. 1985), the court held a terminable-at-will contract between an agent and a principle does include an implied covenant of good faith in reference to the termination of an agency relationship. The court stated; "A contract consists not only of the agreements which the parties have expressed in words, but also of obligations which are reasonably implied . . . Every contract contains implied covenants that neither party shall do anything that will destroy or injure another party's right to receive the fruits of the contract." Hall, supra at 1029 citing Wright v. Fidelity & Deposit Co., 54 P.2d 1084 (Okla. 1936). Whether Ampad was motivated by bad faith in its termination of Kerr is a disputed factual issue to be determined by a jury, rendering summary judgment inappropriate.

The Court finds merit to defendant's contention regarding plaintiff's recovery under the doctrine of quantum meruit. Recovery under the doctrine of quantum meruit is permitted in situations where it is necessary for the law to imply an agreement

between the parties and allows recovery for "what is reasonable" and for what one "reasonably deserves". Ashland Oil, Inc. v. Phillips Petroleum Co., 463 F.Supp. 619 (N.D.Okla. 1978). Recovery under quantum meruit is an alternative recovery and applicable in the absence of an express agreement. In this case, the parties were operating pursuant to an express agreement.

Wherefore premises considered, it is the Order of the Court that the motion for summary judgment brought by the defendant Ampad Corporation is denied as to plaintiff's claims for breach of contract and wrongful termination and granted as to plaintiff's claim under the doctrine of quantum meruit.

*IT IS SO ORDERED* this 23<sup>rd</sup> day of March, 1989.

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

FILED

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

MAR 21 1989

Jack C. ...  
U. S. DISTRICT COURT

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

Plaintiff, )

vs. )

No. 88-C-280-B

GREYHOUND LINES, INC., a California )  
corporation, et al., )

Defendants. )

ORDER ENTERING DEFAULT JUDGMENT

NOW on this 17th day of March, 1989, comes on before me, the undersigned United States District Judge, the above styled and numbered cause for a pretrial conference. Plaintiff is present by and through its attorney of record, Jody N. Nathan; Defendant Kenneth Miller is present by and through his attorney of record, Steven R. Hickman. Defendants Lorenza Vangus, a/k/a Lorenza Vargas, Maruicio Rueda and Patrick A. Dean are not present although notice of this pretrial conference was given to them by and through their attorneys of record when it was set for hearing originally. The Court finds that a failure to attend pretrial conference ordered by the Court is grounds for entry of a default judgment against the non-appearing defendants. The Court finds that default judgment should be entered against the non-appearing defendants herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Defendants Lorenza Vangus, a/k/a Lorenza Vargas, Maruicio Rueda and Patrick A. Dean are in default and judgment

should be entered that they should take nothing herein and that any claim they may have had herein be dismissed on the merits.

THOMAS R. BRETT

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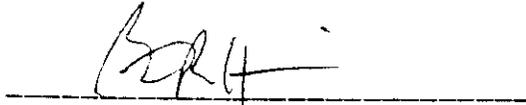
THOMAS R. BRETT,  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



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Jody N. Nathan  
Attorney for Plaintiff



---

Steven R. Hickman  
Attorney for Defendant Miller

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

FILED

MAR 23 1989

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

BITUMINOUS INSURANCE COMPANIES, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PETROLEUM MARKETERS EQUIPMENT )  
COMPANY OF TULSA, INC., and )  
KOOL-VENT ALUMINUM AWNING )  
COMPANY, INC., )  
 )  
Defendants. )

Case No. 88-C-776-B

ORDER OF DISMISSAL

ON this 23<sup>rd</sup> day of March, 1989, this cause coming on before me the undersigned Judge in and for the District Court of the United States for the Northern District of Oklahoma, each of the parties hereto having executed and properly submitted to this Court pursuant to the provisions of Rule 41, a Stipulation of Dismissal Without Prejudice, the Court herein orders as follows:

That this matter should be and is hereby, pursuant to Rule 41 and by stipulation of the parties, dismissed without prejudice as to refiling.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

**F I L E D**

MAR 22 1989

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

INDEPENDENT ANESTHESIA )  
ASSOCIATES, INC., and JACOB )  
TARABOLOUS and JOHN KENNETH )  
HONEYWELL, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
OTIS R. BOWEN, M.D. Secretary )  
of Health and Human Services, )  
 )  
Defendant. )

No. 88-C-1369-B

O R D E R

This matter comes before the Court on a Motion for Summary Judgment by Defendant Secretary of Health and Human Services.

Plaintiffs, Independent Anesthesia Associates, Inc., Jacob Tarabolous and John Kenneth Honeywell filed their Amended Complaint under 5 U.S.C. §552, the Freedom of Information Act (FOIA). On June 23, 1988, Plaintiffs requested all information compiled by the Department of Health and Human Services in connection with Plaintiffs' charges and bills to Medicare. Defendant refused to release this information and Plaintiffs brought this action.

Defendant moves for summary judgment stating there are no material facts in dispute and Defendant is entitled to judgment as a matter of law. To survive a motion for summary judgment, Plaintiff "must establish that there is a genuine issue of material fact. 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

12

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).

Defendant asserts that the records Plaintiffs are requesting are exempt from disclosure under 5 U.S.C. §552(b)(7)(A). The provision states that the Act does not apply to matters that are:

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, . . ."

Our United States Supreme Court discussed exemption 7(A) of the Freedom of Information Act in NLRB v. Robbins Tire, 437 U. S. 214 (1978). The court stated "[T]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.... FOIA was not intended to function as a private discovery tool...." NLRB v. Robbins, Inc., *supra* at 242. The Court explained, "In originally enacting Exemption 7, Congress recognized that law enforcement agencies had legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations or placed at a disadvantage when it came time to present their cases. Foremost among the purposes of this exemption was to prevent " 'harm [to]

the Government's case in court ... by not allowing litigants 'earlier or greater access' to agency investigatory files than they would otherwise have." Id. at 224. The Court concluded that "Congress did not intend to prevent the federal courts from determining that, with respect to particular kinds of enforcement proceedings, disclosure of particular kinds of investigatory records while a case is pending would generally 'interfere with enforcement proceedings.'" Id. at 236.

Plaintiffs state "there is no dispute that the records requested by the Plaintiffs were compiled by the agency for law enforcement purposes." Defendant submits an affidavit of Larry D. Morey, Assistant Inspector General for Investigations. The affidavit states:

"Premature release of information revealing the records under review in an ongoing investigation could greatly hamper this office's ability to successfully complete that investigation. Premature release greatly increases the possibility of destruction or alteration of relevant evidence or information. Also, by giving the target earlier and greater access than a party would otherwise be entitled to under discovery normally available in a law enforcement proceeding, the target is given an unfair advantage over the agency in preparing for potential proceedings. This release can be particularly damaging where the Office of Investigations is still conducting investigative interviews of targets who would not otherwise be entitled to specific information on the scope of the investigation.

Release in this case would also result in release of the identities of patients whose claims are being reviewed. This could have a chilling effect on potential sources of information and would increase the opportunities to interfere with ongoing investigations. It also creates more

opportunities for intimidation or harassment of potential witnesses."

Plaintiff complains the language in the affidavit is too broad.<sup>1</sup> A similar affidavit was submitted and allowed in Barney v. IRS, 618 F.2d 1268 (8th Cir. 1980). The Court, in discussing an affidavit providing "generic" reasons for nondisclosure, stated:

"In sum, the government in this case 'fairly describe[d] the content of the material withheld and adequately state[d] its grounds for nondisclosure, and \* \* \* those grounds are reasonable and consistent with the applicable law.' Cox v. United States Department of Justice, *supra*, 576 F.2d at 1312. Since plaintiffs offered no substantial reason to call into question to [sic] good faith of the agency, the district court was entitled to rely on the credibility of the affidavits. *Id.* Accordingly, the district court properly upheld the agency's determination of exemption without *in camera* inspection of the documents and without requiring the government to prepare a detailed index. We reiterate that in another case involving different exemption provisions a more comprehensive showing on the part of the government may be required." Barney, *supra*.

*See also*, NLRB v. Robbins Tire and Rubber, 437 U.S. 214 (1978).

This Court agrees with that reasoning and finds that there are no disputed facts presented to this Court. Defendant clearly states the records requested were created for law enforcement purposes and disclosure will interfere with the investigation.

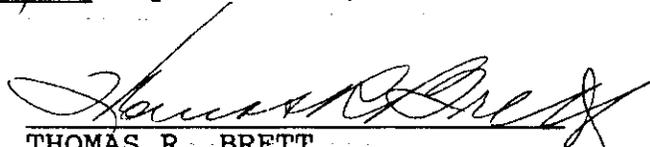
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<sup>1</sup> Plaintiff cites Stephenson v. IRS, 629 F.2d 1140 (5th Cir. 1980). The Court held that an affidavit providing generic reasons for nondisclosure would not be sufficient for summary judgment particularly after the agency admitted the affidavit contained errors as to some documents covered under the generic terms. The present case discloses no such errors.

Plaintiffs offer no affidavit or any evidence to contradict Defendant's affidavit under Fed.R.Civ.P. 56. As in the Barney case, there is no indication of agency bad faith herein.

The Motion for Summary Judgment is therefore GRANTED.

IT IS SO ORDERED this 22<sup>nd</sup> day of March, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

MAR 22 1989

WILLIAM MOSER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 W. S. ATHERTON and )  
 WILLIAM M. POULOS, )  
 )  
 Defendants. )

JACK D. SEWARD, CLERK  
U.S. DISTRICT COURT

No. 87-C-1004-C

**JUDGMENT**

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

IT IS SO ORDERED AND ADJUDGED that the defendants, W. S. Atherton and William M. Poulos recover over and against the plaintiff, William Moser, on plaintiff's claims for breach of contract, promissory fraud and fraudulent misrepresentation.

IT IS SO ORDERED this 22 day of March, 1989.

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

*Entered*

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

JOHN F. KEENER and PATSY ANN KEENER, )  
husband and wife, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 ANDREW JAMES DUNCAN and STACEY SOMERS, )  
 )  
 Defendants. )

FILED

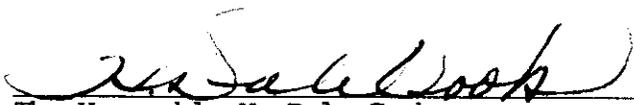
MAR 22 1989

No. 89-C-080-C

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

ORDER FOR DISMISSAL OF PROPERTY DAMAGE CLAIM ONLY

ON this 21 day of March, 1989, the Court finds that the Defendant, Andrew James Duncan has previously filed an Offer to Confess Judgment for the Property Damage portion of the Plaintiffs' Complaint. The Plaintiffs thereafter accepted such offer and the Court therefore finds that judgment should be entered on the property damage portion only of the Plaintiffs' Complaint in the amount of \$2,500.00.

  
The Honorable H. Dale Cook  
Judge of the United States District Court  
for the Northern District of Oklahoma

APPROVED AS TO FORM AND CONTENT:

  
Jefferson G. Greer  
Attorney for Plaintiffs

  
Gregory D. Nellis  
Attorney for Defendant

40-392/GDN/tjp

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

FILED

MAR 22 1989

WICK B. BULLOCK  
CLERK  
U.S. DISTRICT COURT  
No. 88-C-1574-B

GLEN SHEPPARD and BRENDA SHEPPARD, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 HARRY WHEELER and BRYNWAL )  
 PARTNERSHIPS, )  
 )  
 Defendants. )

O R D E R

This matter comes before the Court upon Defendants' Motion to Dismiss pursuant to Fed.R.Civ.P. 12 (b)(6). Plaintiffs initiated this action pursuant to 42 U.S.C. § 1983 to seek redress for alleged racial discrimination.

Title 42 Section 1983 allows redress for deprivations of federally protected rights when that deprivation occurs under the color of state law. Plaintiffs have alleged no facts to support a deprivation under the color of state law.<sup>1</sup>

It is therefore ORDERED the case be dismissed without prejudice.

IT IS SO ORDERED, this 22<sup>nd</sup> day of March, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

---

<sup>1</sup>Plaintiffs have asked for an indefinite extension of time in which to file a response to the Motion to Dimiss, pending the outcome of a complaint before the Oklahoma Human Rights Commission. Regardless of the outcome of that complaint, this Court does not have jurisdiction because there is no allegation of state action.

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

*Entered  
Already  
Closed*

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 EDGAR P. JAMES AND PETE JAMES )  
 ENTERPRISES, INC., d/b/a JAMES )  
 OIL & SUPPLY COMPANY, )  
 )  
 Defendants. )

Civ. No. 87-C-462 C

**FILED**

**MAR 22 1989**

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

CONSENT DECREE

Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint against defendants Edgar P. James and Pete James Enterprises, Inc., d/b/a James Oil & Supply Company ("Defendants"), alleging violations of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(a) ("Act"), and seeking injunctive relief and civil penalties against Defendants. Plaintiff United States and Defendants, by their undersigned counsel, having agreed that settlement is in the public interest, agree to the entry of this Consent Decree as an appropriate means of resolving the United States' claims against Defendants. This Consent Decree is entered prior to any trial or adjudication of any issue of law or fact in this action.

THEREFORE, upon the pleadings and upon consent of the parties hereto, it is ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto pursuant to 28

U.S.C. §§ 1321, 1345, 1355, and Section 1423(b)(1) of the Act, 42 U.S.C. § 300h-2(b)(1).

II.

The Complaint states a claim upon which relief may be granted against Defendants.

III.

The provisions of this Consent Decree shall apply to and be binding upon the parties hereto, their officers, directors, agents, servants, persons, firms and corporations acting under, through or for them, and upon those persons, firms and corporations in active concert or participation with them.

IV.

Defendants shall pay a civil penalty in the amount of Twenty Thousand Dollars (\$20,000.00) in full satisfaction of the United States' claim for Defendants' violations of the Safe Drinking Water Act, as set forth in the Complaint filed herein through the date of lodging this Decree. Payment shall be made as follows:

A. Ten Thousand Dollars (\$10,000.00) to be paid no later than thirty (30) days from the filing of this Consent Decree, with the remaining balance of Ten Thousand Dollars (\$10,000.00) to be paid ~~on or before March 1, 1989.~~ *within 3 months of entry of this Consent Decree. KRU by EAE per phone 2/27/89*

B. Payment shall be made by certified check payable to the Treasurer of the United States" and delivered to the Office of the United States Attorney for the Northern District of Oklahoma, U.S. Courthouse Room 3600, 333 West Fourth Street,

Tulsa, Oklahoma 74103. A copy of the check and letter tendering such check shall be mailed to EPA, Office of Regional Counsel, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, to the attention of Ms. Debora Strickley (6C), and to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Land and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Benjamin Franklin Station, Washington, D.C. 20044. Such payment shall not be deductible for federal taxation purposes.

III.

A. This Consent Decree in no way affects or relieves Defendants of the responsibility to comply with any state, federal or local law or regulation. Nothing contained in this Decree shall be construed to prevent or limit the United States' right to obtain penalties or injunctive relief under the Act or other federal statutes or regulations except as expressly specified herein.

B. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, permits. Compliance with this Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits.

C. This Consent Decree does not limit or affect the rights of third parties, not parties to this Consent Decree, against Defendants.

D. The United States reserves all legal and equitable remedies available to enforce the provisions of this Decree.

IV.

Each party shall bear its own costs and attorney's fees in this action. Should Defendants subsequently be determined to have violated the terms and conditions of this Decree, Defendants shall be liable to the United States for any costs and attorney fees incurred by the United States in any actions against Defendants for non-compliance with this Decree.

V.

Except as provided for herein, there shall be no modification of this Consent Decree without written approval of all parties to this Consent Decree and the Court.

VI.

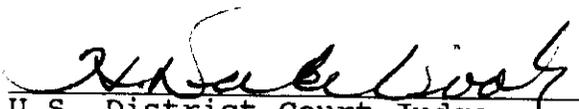
This Court shall retain Jurisdiction to enforce the terms and conditions of this Decree and to resolved disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Decree.

VII.

This Decree shall terminate when defendant has paid all penalties due, as indicated by a letter to the Court from the United States.

Dated and entered this 21<sup>st</sup> day of

March, 1989.

  
U.S. District Court Judge

The following hereby consent to the entry of this Decree.

FOR THE UNITED STATES OF AMERICA:

3-13-89  
Date

Donald Carr  
DONALD A. CARR  
Acting Assistant Attorney General  
Land and Natural Resources Division  
P.O. Box 7611  
Benjamin Franklin Station  
Washington, D.C. 20044

2/10/89  
Date

CE S P R  
Acting Assistant Administrator for  
Enforcement Compliance Monitoring  
U.S. Environmental Protection Agency  
401 Waterside Mall  
Washington, D.C. 20460

FOR DEFENDANTS:

Jan 19/89  
Date

PETE JAMES ENTERPRISES, INC.  
BY: Edgar James  
Title: President

1-25-89  
Date

BY: KEN RAY UNDERWOOD  
KEN RAY UNDERWOOD  
Attorney for Pete James and  
Pete James Enterprises, d/b/a  
James Oil & Supply Co.  
1424 Terrace Drive  
Tulsa, OK 74104  
(918) 744-7200

Entered

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

FILED

MAR 22 1980

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

WILLIAM MOSER,	}	
	}	
Plaintiff,	}	
	}	
vs.	}	
	}	
W. S. ATHERTON and	}	
WILLIAM M. POULOS,	}	
	}	
Defendants.	}	

No. 87-C-1004-C

ORDER

Now before the Court is plaintiff's motion for summary judgment and defendants' cross motions for summary judgment under Count 1 of plaintiff's complaint, and defendants' motions for summary judgment denying Counts 2 and 3. No responses to defendants' motions denying Counts 2 and 3 have been filed by plaintiff. These motions are brought pursuant to Rule 56 of the Federal Rules of Civil Procedure. This Court has reviewed the pleadings, affidavits, and exhibits filed by both parties and conducted its own research to conclude that plaintiff's motion for summary judgment should be denied, and defendants' cross motions for summary judgment denying Count 1 should be granted. Defendants should be granted summary judgment under Counts 2 and 3 pursuant to Local Rule 15(A).

Count 1 is a breach of contract action in which both parties have requested this Court to interpret the same key contract language. The language at issue states that defendants must refund

plaintiff's investment in their company if the "horse racing license currently issued" to defendants "is at any time revoked". Defendants' license expired under its own terms a few months after plaintiff signed this agreement. At the time of expiration, the Oklahoma Horse Racing Commission refused to grant defendants another license. Plaintiff contends in his brief that the contract language should be interpreted as to mean when defendants "do not maintain a horse racing license," and that since defendants do not now possess a license, they consequently are required to refund plaintiff's investment. Plaintiff does not offer any extrinsic evidence to support this contention. Defendants, of course, do not agree with plaintiff's interpretation, and contend in their cross motions that the key word to be interpreted is "revoked", which they contend means an event where the Commission takes away defendants' currently issued license through official action. Defendants claim that because the current license expired under its own terms and was not taken away by the Commission, they are not required to refund plaintiff's investment.

This Court agrees with defendants that the key word to interpret is "revoked". Therefore, the task before the Court is to determine the meaning of revoke in relation to the parties' contract.

A general rule of contract interpretation says that unless a different intention is manifested where language has a generally prevailing meaning, it is interpreted in accordance with that meaning, Restatement (Second) of Contracts §202(3)(a)(1981), or

stated another way, the words of a contract are to be understood in their ordinary and popular sense. See Mercury Inv. Co. v. F. W. Woolworth Co., 706 P.2d 523, 529 (Okla. 1985); Dilworth v. Fortier, 405 P.2d 38 (Okla. 1964); Okla.Stat.tit. 15, §160 (1981). This is because in the United States, the English Language is used far more often in a sense which would be generally understood throughout the country than in a sense peculiar to some locality or group. In the absence of some contrary indication, therefore, English words are read as having the meaning given them by general usage. This rule is a rule of interpretation in the absence of contrary evidence, not a rule excluding contrary evidence. Restatement (Second) of Contracts §202 comment e (1981). Here, neither plaintiff nor defendants offer any contrary evidence, and consequently, "revoked" will be read as having the meaning given it by general usage.

Word usages in the United States of varying degrees of generality are recorded in dictionaries, see Restatement (Second) of Contracts §201 comment a (1981), and additionally, interpretations of some specific words have also been determined in case law. The American Heritage Dictionary 1058 (2d ed. 1985), Black's Law Dictionary 1188 (5th ed. 1979), and Halfmoon v. Moore, 291 P.2d 846, 848 (Idaho 1956) all define revoke as "to annul or make void by recalling or taking back; to cancel, rescind, repeal, or reverse." The American Heritage Dictionary and Halfmoon additionally state as an example: "as to revoke a license." Thus, this Court holds that defendants' meaning for revoke matches the general

usage in the United States found in the above dictionaries and persuasive case law, and that defendants are entitled to summary judgment as a matter of law under Count 1.

Because plaintiff has not filed a response to defendants' motions for summary judgment under Counts 2 and 3, plaintiff has confessed to the matters raised by defendants' motions pursuant to Local Rule 15(A). With this confession, defendants have sufficiently shown that they are entitled to summary judgment under Counts 2 and 3.

IT IS ORDERED

1. That plaintiff's motion for summary judgment under Count 1 is DENIED;

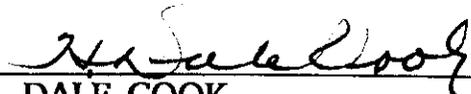
and

2. That defendants' cross motions for summary judgment denying Count 1 are GRANTED;

and

3. That defendants' motions for summary judgment denying Counts 2 and 3 are GRANTED.

IT IS SO ORDERED this 21<sup>st</sup> 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

*entered  
Gibbons  
only*

VICTOR SAVINGS AND LOAN )  
ASSOCIATION, a federal savings )  
and loan association, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
DAN L. STEFANOFF, et al., )  
 )  
 )  
Defendants. )

Case No. 88-C-1074-C

**F I L E D**

**MAR 22 1989**

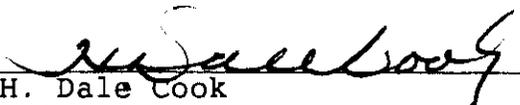
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

THIS MATTER having been heard before the Court on the Federal Savings and Loan Insurance Corporation as receiver for Victor Savings and Loan Association's Motion to Dismiss and the Court being fully advised in the premises finds that said Motion should be granted;

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint, as it relates to claims against the separate Defendant, Don Gibbons, be dismissed with prejudice, with each party to bear its own costs, including attorney' fees. All other currently pending claims against any other party shall be unaffected by this Order.

IT IS SO ORDERED.

  
\_\_\_\_\_  
H. Dale Cook  
Chief Judge, U.S. District Court

MAR 21 1989

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
DIANA HENDRICKS, )  
09604622A )  
 )  
Defendant, )

CIVIL NO. 89-C-074 B

CONSENT JUDGMENT

This matter coming on before this Court this 21st day of March, 1989, and the Court being informed in the premises and it appearing that the parties have agreed and consent to a judgment as set forth herein; in accordance therewith;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff, United States of America, have and recover judgment against the Defendant, DIANA HENDRICKS, in the principal sum of \$889.87, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$11.00. Future costs and interest at the legal rate of 9.43%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 21st day of March, 1989.

By: S/ THOMAS R. BRETT  
U.S. DISTRICT JUDGE  
NORTHERN DISTRICT OF OKLAHOMA

HERBERT N. STANDEVEN

District Counsel  
Veterans Administration  
Counsel for Plaintiff

AGREED BY: [Signature]  
LISA A. SETTLE, Attorney

AGREED: [Signature]  
DIANA HENDRICKS

CERTIFICATE OF MAILING

This is to certify that on the 21st day of March, 1989, a true and correct copy of the foregoing was mailed postage prepaid thereon to: DIANA HENDRICKS, 718 North Oklahoma Avenue, Claremore, OK 74017.

[Signature]  
LISA A. SETTLE, VA Attorney

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

ANNIE J. GOOLSBY-FORD,

Plaintiff,

v.

RIVERSIDE CHEVROLET, INC. and  
GENERAL MOTORS ACCEPTANCE  
CORPORATION,

Defendants.

No. 88-C-1029-B

FILED

MAR 21 1989

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

ORDER OF DISMISSAL WITHOUT PREJUDICE

The Court, pursuant to stipulation of the parties, hereby dismisses this lawsuit  
without prejudice.

  
UNITED STATES DISTRICT JUDGE

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

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. )

FILED

MAR 21 1989

JUD. B. ...  
U. S. DISTRICT COURT

No. 88-C-1549-B

ORDER OF DISMISSAL WITH PREJUDICE

NOW, on this 21st day of March, 1989 the above matter comes on before the Court upon the Stipulation of Dismissal of defendants Combustion Engineering, Inc. and Metropolitan Life Insurance Company. The Court, having reviewed said Stipulation of Dismissal and being informed of the parties' settlement of this matter and mutual desire for dismissal with prejudice of the defendants, Combustion Engineering, Inc. and Metropolitan Life Insurance Company, finds and orders as follows, to-wit:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that plaintiff's cause of action against the defendants,

Combustion Engineering, Inc. and Metropolitan Life Insurance Company, be dismissed with prejudice to his rights to bring any future claim or action.

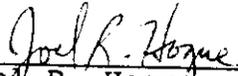
S/ THOMAS R. BRETT

THOMAS R. BRETT, Judge  
United States District Court

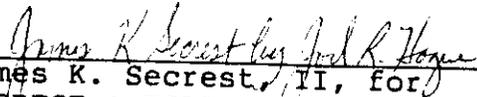
APPROVED AS TO FORM AND CONTENT:



Ernest A. Bedford, for  
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407 Center Office Building  
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Attorneys for Plaintiff



Joel R. Hogue, for  
GABLE & GOTWALS  
2000 Fourth National Building  
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Attorneys for Defendants  
Combustion and Metropolitan



James K. Secrest, II, for  
SECRET & HILL  
7134 South Yale, Suite 900  
Tulsa, Oklahoma 74136  
(918) 494-5905  
Additional Attorneys for  
Defendant Combustion

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

FILED

*Entered*

MAR 21 1989

JUDICIAL CLERK  
U.S. DISTRICT COURT

MICHAEL F. MERRICK,

Plaintiff,

vs.

NORTHERN NATURAL GAS COMPANY,  
a division of Enron Corporation;  
and LINDA ROBERTS,

Defendants.

No. 87-C-290-C

ORDER

Before the Court are the objections by the defendant to the Court Clerk's taxation of costs. In defendant's Bill of Costs, as amended, defendant sought to recover \$4,494.30 for original depositions; \$3,205.75 in costs of deposition copies; and \$1,199.65 for video depositions taken of three witnesses. Defendant requested costs in the total sum of \$9,474.74. The Court Clerk allowed the sum of \$2,886.45. The case was resolved in favor of defendant upon the Court's consideration of defendant's motion for summary judgment.

The deposition costs allowed by the Clerk reflect the cost for an original deposition of those depositions which were actually utilized by the Court in considering defendant's motion for summary judgment.

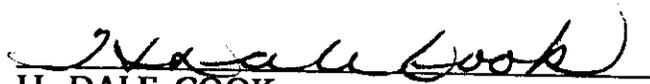
Defendant supplied the Court with cumulative and irrelevant information not necessary to consider the merits of the case under controlling principles of law.

Defendant also seeks an award of attorney fees and expenses in the sum of \$93,775.22. Defendant makes this request under 12 O.S. §936, which allows attorney fees for breach of a contract to perform labor and services. Plaintiff brought his cause of action under the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq. He invoked pendent jurisdiction asserting claims for wrongful discharge and intentional infliction of emotional distress. Under plaintiff's case defendant, as prevailing party, is not entitled to attorney fees under the provisions of 12 O.S. §936.

Therefore, it is the Order of the Court that the Bill of Costs as assessed by the Court Clerk is AFFIRMED.

It is the further Order of the Court that defendant's application for attorney fees is DENIED.

IT IS SO ORDERED this 21<sup>st</sup> 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

FILED

MAR 21 1989

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

RUBY WILSON,

Plaintiff,

vs.

OTIS R. BOWEN, M.D., Secretary  
of Health and Human Services,

Defendant.

No. 88-C-16-C

ORDER

Before the Court is the objection to the Report and Recommendation of the Magistrate filed by the plaintiff, Ruby Wilson. The Magistrate recommends that the Court affirm the decision of the Secretary of Health and Human Services in denying plaintiff's claim for disability insurance benefits under §216(i) and 223 of Title II of the Act, 42 U.S.C. §416(i) and 423, and under §1602 of Title XVI of the Act, 42 U.S.C. §1381a.

The plaintiff filed Application for Disability Insurance Benefits and Supplemental Security Benefits on October 20, 1986 alleging a disability date of August 21, 1986 due to chronic back problems resulting in severe pain with prolonged sitting or walking and inability to repeatedly lift or pull any appreciable weight.

Plaintiff objects to the recommendations of the Magistrate asserting that the Magistrate's report was premised on selective reading of the evidence, it did not consider the psychological component of pain and it did not apply the Tenth Circuit's case law as to the proper evaluation of pain.

Plaintiff primarily relies on three Tenth Circuit cases on the issue of evaluation of pain: Luna v. Bowen, 834 F.2d 161, (10th Cir. 1987), Huston v. Bowen, 838 F.2d 1125, (10th Cir. 1988), and Gatson v. Bowen, 838 F.2d 442 (10th Cir. 1988). The Court has reviewed each of these decisions in light of the record and finds that the principles of law contained therein are consistent with the findings of the administrative law judge and the recommendation of the Magistrate.

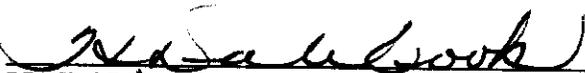
It is clear from the record that in arriving at the decision to deny plaintiff's disability benefits, a combination of relevant factors was considered including subjective pain testimony of the claimant, medical evidence, clinical and laboratory tests, treating physician records, work history, daily activity schedule of claimant and a vocational expert witness' testimony.

The record as a whole (not read selectively) contains substantial evidence to support the final decision of the Secretary of Health and Human Services.

The report and recommendation of the United States Magistrate is affirmed and adopted as the findings and conclusions of this Court.

It is the Order of the Court that the final decision of the Secretary of Health and Human Services denying the claim of Ruby Wilson for disability insurance benefits is hereby AFFIRMED.

*IT IS SO ORDERED* this 21<sup>st</sup> 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

FILED

MAR 21 1989

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

JERRY L. PULS, et al.,                    )  
  )  
  ) Plaintiffs,                    )  
  )  
vs.    ) Case No. 88-C-1353B  
  )  
QUINTON R. DODD, et al.,                )  
  )  
  ) Defendants.                )

ORDER OF DISMISSAL WITHOUT PREJUDICE

Now on this 21st day of March, 1989, the Court considers the plaintiffs' motion for an order of dismissal without prejudice, and there being no objection thereto, the Court finds and adjudges that said motion should be sustained.

IT IS, THEREFORE, ORDERED, ADJUDGED, DECREED AND DECLARED by the Court that the above entitled and numbered cause be, and the same is hereby dismissed without prejudice to any other or future cause of action or claim for relief based upon the allegations contained in the plaintiffs' original petition filed herein. Each party to pay their own costs.

S/ THOMAS R. BRETT

\_\_\_\_\_  
HONORABLE THOMAS R. BRETT  
U.S. DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA MAR 20 1989

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ONE PARCEL OF REAL PROPERTY )  
 WITH BUILDINGS, APPURTENANCES, )  
 AND IMPROVEMENTS, KNOWN AS )  
 6022 S.W. 21 STREET, MIRAMAR, )  
 FLORIDA, AND ITS CONTENTS, )  
 )  
 Defendant. )  
 )  
 )  
 )

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

Case No. 87-C-215-E

ORDER

NOW on this 17<sup>th</sup> day of March, 1989, comes on for consideration the above styled matter and the Court, being fully advised in all premises finds that Plaintiff has moved for summary judgment in this case for forfeiture in rem and that there has been no response filed with regard to such motion. Nevertheless, this Court has carefully examined the entire file, including the pleadings on file, the statement of material facts as to which no genuine issue exists, the memorandum of law filed by Plaintiff, the indictment of Nicholas Scata and Joseph Scata, the judgment and commitment order of Nicholas Scata, the Affidavit of John Gillette, the government's Chronology of Significant Events dated February 17, 1987 and October 11, 1988, the transcript of the hearing on the plea of guilty of Nick Scata on February 20, 1987, and the stipulations of the United States, TransFlorida Bank and the Gottliebs.

This Court finds that the Plaintiff is seeking forfeiture of a parcel of real property pursuant to Title 221, U.S.C. §§881(a)(6) and (a)(7). Section 881(a)(6) provides that the following is subject to forfeiture to the United States:

All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

The forfeiture statute above requires the Plaintiff to establish that probable cause exists that the property subject to forfeiture was used or intended for use to commit or facilitate the commission of a felony controlled substance offense. An un rebutted probable cause showing has been held to be sufficient to support a forfeiture. See United States v. Little Al, 712 F.2d 133, 136 (5th Cir. 1983).

This Court finds that Plaintiff has met its burden of establishing probable cause. The showing of probable cause remaining un rebutted, forfeiture of the above described property is appropriate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment should be and is hereby granted and the property which is the subject matter of this action should be and is hereby deemed forfeited to the United States.



JAMES O. ELLISON  
JUDGE JAMES O. ELLISON  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA



Plaintiffs now attempt to bring this probate matter into federal court by claiming fraud and conspiracy to commit fraud by Gene Knox, Kathleen Sue Knox and Sondra Kay Stacy. The Plaintiffs allege that they were forced to rebut fraudulent evidence produced at the previous trial by Defendants, thereby incurring considerable expense.

The Defendants assert that Plaintiffs are barred from this action by the doctrine of collateral estoppel. The Plaintiffs counter Defendants' assertion by claiming there is no identity of parties or subject matter; identity which Plaintiffs urge is essential for the doctrine of collateral estoppel to operate. The issue to be determined by this Court before examining the merits of the case is whether the doctrine of collateral estoppel bars this subsequent action. The law is well settled that one party may not relitigate issues that have been the subject of prior proceedings in which that party participated. Providential Development Co. v. U.S. Steel Co., 236 F.2d 277, 280 (10th Cir. 1956). The court in Ward v. Aryres, 376 P.2d 579, 582 (Okla. 1962) articulates the standard for appropriate usage of collateral estoppel as a bar to a subsequent litigation, and states:

A final judgment of a court of competent jurisdiction is conclusive between the parties and their privies in a subsequent action involving the same subject matter, not only as to all matters litigated and determined in the former action but also as to all matters germane to issues which could or might have been litigated therein.

The issues which Plaintiffs move this Court to determine have clearly been previously litigated. Plaintiffs assert that the matter at issue in this action was not essential to the outcome of the probate proceeding. The court in Laws v. Fisher, 513 P.2d 876 (Okla. 1973) sets out the test to determine the significance and legal implications of previously litigated issues. Citing Lewis v. Aubrey, 404 P.2d 1005 (Okla. 1965), the Laws court states:

Under the doctrine of collateral estoppel, a judgment, whether in favor of Plaintiff or Defendant, is conclusive in a subsequent action between the parties on a different claim, as to issues raised in subsequent actions which were actually litigated and determined in a prior action; the test in each case is whether a given issue was necessary to the determination in the former trial.

Additionally, the court holds: "[i]dentity of causes of action is not a necessary element in a plea of collateral estoppel. It is necessary that the point on which the plea of estoppel by prior judgment is based be an issue in the latter case, and have been an issue and decided in the former." Lewis, 513 P.2d at 877.

It is clear that the issue of Defendants' conduct in producing evidence alleged to be false at the probate trial has been determined in favor of Defendants and is now binding. The determination of these allegations was also necessary for the resolution of the previous case.

Plaintiffs argue there is no identity of parties and therefore collateral estoppel is not applicable in the present case. This Court has previously held in Ham v. Aetna Life Ins. Co., 283

F.Supp. 153 (N.D. Okla. 1968) that mutuality is not required when a stranger to the former action relies defensively upon collateral estoppel. Other courts have reached similar holdings. See, e.g., Smith v. Sinclair, 424 F.Supp. 1108, 1112 (W.D. Okla. 1976); Bower v. Union Texas Petroleum Corp., 429 F.Supp. 77, 79 (W.D. Okla. 1976); Anco Mfg. & Supply Co., Inc. v. Swank, 524 P.2d 7, 8 (Okla. 1974).

The correctness of the probate court's decision is not an issue for this Court. The Plaintiffs are barred from bringing this action by the doctrine of collateral estoppel and Defendants' motion to dismiss is granted pursuant to Fed.R.Civ.P. 12(b)(6). It is therefore unnecessary to consider or determine the merits of this case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss should be and is hereby granted pursuant to Fed.R.Civ.P. 12(b)(6).

ORDERED this 20<sup>th</sup> day of March, 1989.

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



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

MAK 20 1989  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

BONNIE M. FARRIS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 OTIS R. BOWEN, M.D., )  
 SECRETARY OF HEALTH AND )  
 HUMAN SERVICES, )  
 )  
 Defendant. )

87  
No. 88-C-742-B

ORDER

This matter comes before the Court on the Secretary of Health and Human Services' objection to the Findings and Recommendations of United States Magistrate John Leo Wagner.

The only dispute before this Court is whether claimant Bonnie M. Farris' onset of disability date is December 7, 1985, as the Administrative Law Judge (ALJ) found, or whether it is March 1, 1984, as the United States Magistrate recommended.

This Court's sole function is to determine whether the record as a whole contains substantial evidence to support the Secretary's decision. 42 U.S.C. §405(g).

The ALJ was required to apply Social Security Ruling 83-20 to determine the date of onset of disability. The relevant parts of that ruling state:

Factors relevant to the determination of disability onset include the individual's allegation, the work history, and the medical evidence. These factors are often evaluated together to arrive at the onset date. However, the individual's allegation or the date of work stoppage is significant in determining onset only if it is consistent with the

21

severity of the condition(s) shown by the medical evidence....

In the present case, the record is unclear on all three factors. First, as to claimant's allegations, the claim filed alleges an onset date of December 7, 1985. The record reflects no amendment of this date by any party or the ALJ. Although the record does contain evidence of a potential earlier onset date, claimant's counsel failed to orally or by using the appropriate form amend the date. Claimant's briefs to this Court and a letter brief to the Appeals counsel state claimant amended the allegation to March 1984 at the time of the hearing. However, the transcript of the hearing does not show this. The Secretary contends the date was amended only on appeal.

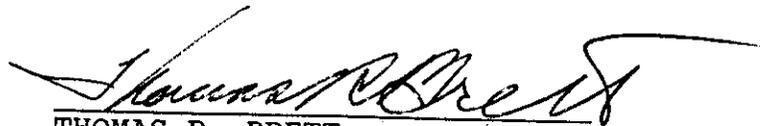
As to the second factor, work history, the social security regulation states, "The day the impairment caused the individual to stop work is frequently of great significance in selecting the proper onset date." It is undisputed that claimant stopped work in March 1984. What is unclear from the record is whether her disability was the "cause" and the reason she stopped working.

Third, the medical evidence before this Court, although dispositive as to disability, is unclear and contradictory as to the onset date.

Because the record before this Court was not developed on the issue of when the onset of disability occurred, the Court herein remands this case to the Administrative Law Judge for a hearing.

The objection to the Magistrate's ruling is therefore sustained.

IT IS SO ORDERED this 20<sup>th</sup> day of March, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FLOYD D. BEELER and VERA I.  
BEELER,

Plaintiffs,

v.

W.K. JOHNSON, an individual;  
OFFERMAN & COMPANY, INC., a  
Minnesota corporation; and  
BROCK HOTEL CORPORATION, a  
Delaware corporation,

Defendants.

Case No. 86-C-304-E

**FILED**

MAR 20 1989

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

ORDER

The above-entitled matter came before the Court on the  
Stipulation for Dismissal With Prejudice.

Upon all the records, files and proceedings herein,  
including the stipulation of the parties:

**IT IS HEREBY ORDERED** that the case shall be, and is,  
dismissed with prejudice, without costs or attorneys' fees to  
any party.

The clerk is directed to enter judgment accordingly.

Dated: 3/20/89

United States District Judge

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

F I L E D

FLOYD G. CHAMBERLAIN, on )  
behalf of himself and all )  
other trust participants )  
who are similarly situated, )

MAR 20 1989

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

Plaintiff, )

vs. )

No. 88-C-1248-E

PRINTED PRODUCTS, INC., )  
et al., )

Defendants. )

O R D E R

This matter comes on before the Court on the Plaintiff's Motion for Order Determining that Action be maintained as a class action; Defendants' Manhart and Printed Products, Inc.'s Motions to Dismiss and application to set hearing on Motion to Dismiss. After reviewing the pleadings the Court finds as follows:

Class Action Issue:

The Court suspects that this is premature. However, the Court will hear argument on this issue at the date set out herein.

Punitive Damages Issue:

This Court does not believe punitive damages are available under ERISA. Sage v. Automation, 845 F.2d 885, 888; Mass. Mutual Life Ins. Co. v. Russell, 473 U.S. 134, 105 S.Ct. 3085, 87 L.Ed.2d 96. The motions to Dismiss are granted as to this issue.

Exhaustion of Administrative Remedies Issue:

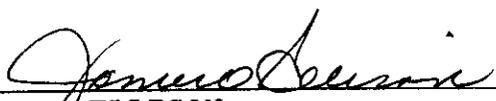
The Court will hear argument on this issue at the date set out herein.

The Issue of Printed Products Responsibility for the Damages Alleged in the Complaint:

The Motion to Dismiss as to this issue is denied. It is too early to determine, summarily, that Defendant Printed Products, Inc. was not in any way responsible for the damages alleged by Plaintiff.

IT IS THEREFORE ORDERED that Defendants' Motions to Dismiss are granted and denied as set out herein along with the Application for Oral Argument except for the issue of Exhaustion of Administrative Remedies which will be argued herein along with the Motion for Class Certification on April 27, 1989 at 12:45 \_\_\_\_\_ o'clock p.m.

ORDERED this 17<sup>th</sup> day of 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 17 1989 *K*

ALFRED R. LEWIS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SOHIO OIL COMPANY d/b/a )  
 TRUCK STOPS OF AMERICA, )  
 )  
 Defendant. )

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

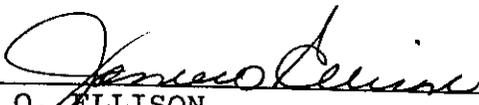
No. 88-C-657-E ✓

**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 16<sup>th</sup> day of March, 1989.

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

*Closed as  
to A Somers  
only*

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

JOHN F. KEENER and PATSY ANN )  
KEENER, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ANDREW JAMES DUNCAN and )  
STACEY SOMERS, )  
 )  
Defendants. )

No. 89-C-80-C

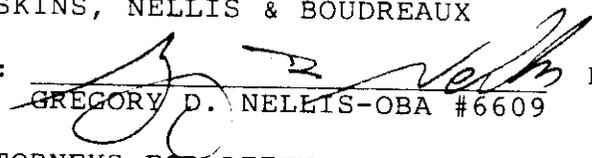
STIPULATION FOR DISMISSAL

COME NOW the Plaintiffs, JOHN F. KEENER and PATSY ANN KEENER, joined by the Defendant, STACEY SOMERS, and stipulates that this action should be dismissed as to Defendant, STACEY SOMERS, for the reason that Defendant, STACEY SOMERS, is a citizen and resident of the State of Oklahoma, and that there is no diversity of citizenship between Plaintiffs and Defendant, STACEY SOMERS.

WHEREFORE, Plaintiffs and Defendant, STACEY SOMERS, pray that this Court enter an Order dismissing this action with prejudice as to Defendant, STACEY SOMERS.

THOMAS, GLASS, ATKINSON,  
HASKINS, NELLIS & BOUDREAUX

GREER AND GREER

By:   
GREGORY D. NELLIS-OBA #6609

By:   
JEFFERSON G. GREER-OBA #3587

ATTORNEYS FOR DEFENDANT

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANNA C. WALLACE; COUNTY  
TREASURER, Craig County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Craig County,  
Oklahoma,

Defendants.

FILED

MAR 17 1989

Jack C. Silver, Clerk  
US DISTRICT COURT

CIVIL ACTION NO. 88-C-480-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17<sup>th</sup> 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, Craig County, Oklahoma, and  
Board of County Commissioners, Craig County, Oklahoma, appear by  
David R. Poplin, Assistant District Attorney, Craig County,  
Oklahoma; and the Defendant, Anna C. Wallace, appears not, but  
makes default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, County Treasurer, Craig  
County, Oklahoma, acknowledged receipt of Summons and Complaint  
on June 1, 1988; and that Defendant, Board of County  
Commissioners, Craig County, Oklahoma, acknowledged receipt of  
Summons and Complaint on June 6, 1988.

The Court further finds that the Defendant, Anna C.  
Wallace, was served by publishing notice of this action in the

Vinita Daily Journal, a newspaper of general circulation in Craig County, Oklahoma, once a week for six (6) consecutive weeks beginning December 13, 1988, and continuing to January 17, 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, Anna C. Wallace, 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, Anna C. Wallace. 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 through the Farmers Home Administration, 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 her 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, Craig County, Oklahoma, and Board of County Commissioners, Craig County, Oklahoma, filed their Answer herein on June 9, 1988; and that the Defendant, Anna C. Wallace, has failed to answer and her default has therefore been entered by the Clerk of this Court.

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

Lot Eight (8), in Block One (1), in NORTHGATE, an Addition to the City of Vinita, Oklahoma, according to the recorded Plat thereof, on file and of record in the office of the County Clerk of Craig County, Oklahoma.

The Court further finds that on August 1, 1984, the Defendant, Anna C. Wallace, executed and delivered to the United States of America, acting through the Farmers Home Administration, her credit sale promissory note in the amount of \$34,000.00, payable in monthly installments, with interest thereon at the rate of 11.8750 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Anna C. Wallace, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated

August 1, 1984, covering the above-described property. Said mortgage was recorded on August 1, 1984, in Book 342, Page 299, in the records of Craig County, Oklahoma.

The Court further finds that on August 1, 1984, the Defendant, Anna C. Wallace, 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 July 22, 1985, the Defendant, Anna C. Wallace, 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 June 5, 1986, the Defendant, Anna C. Wallace, 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 Defendant, Anna C. Wallace, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Anna C. Wallace, is indebted to the Plaintiff in the principal sum of \$34,669.67, plus accrued interest in the amount of \$5,243.94 as of February 18, 1988, plus interest accruing thereafter at the rate of 11.8750 percent per annum or \$11.2795 per day until judgment, plus interest

thereafter at the current legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$5,167.78 plus interest on that sum at the current 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, Craig 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 the Defendant, Anna C. Wallace, in the principal sum of \$34,669.67, plus accrued interest in the amount of \$5,243.94 as of February 18, 1988, plus interest accruing thereafter at the rate of 11.8750 percent per annum or \$11.2795 per day until judgment, plus interest thereafter at the current legal rate of 9.43 percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$5,167.78 plus interest on that sum at the current legal rate of 9.43 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, Craig 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.

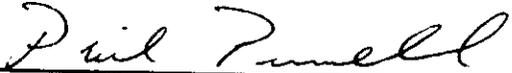
(Signed) H. Dale Cook

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UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
\_\_\_\_\_  
PHIL PINNELL, OBA #7169  
Assistant United States Attorney

  
\_\_\_\_\_  
DAVID R. POPLIN, OBA # 7221  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Craig County, Oklahoma

Judgment of Foreclosure  
Civil Action No. 88-C-480-C

*entered*

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

**FILED**

MAR 17 1989 *A*

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BROWN J. AKIN, JR., et al., )  
 )  
Defendants. )

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

Case No. 87-C-950-Conway ✓

ORDER

This matter came on for hearing this 25th day of November, 1988 on the motions of defendants to dismiss. All parties were present through counsel.

Defendants moved to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. They assert that the gravamen of the suit sounds in tort, that the tort statute of limitations applies, and that the action is barred both under the applicable Oklahoma statute of limitations (two years), OKLA. STAT. tit. 12, § 95 (Third), and under the federal tort statute of limitations (three years), 28 U.S.C. § 2415(b). Plaintiff, the Federal Deposit Insurance Corporation ("FDIC"), asserts that the action sounds in implied contract. The FDIC further asserts that the doctrine of adverse domination applies to toll the statute of limitations, and that the last allegedly culpable director resigned on November 13, 1984. The FDIC asserts that, regardless of whether this case was brought under the three-year federal statute of limitations for torts or the

six-year federal statute of limitations for contracts, it was timely filed.

The Court finds that matters outside the pleadings are presented, and that the motion shall be treated as one for summary judgment pursuant to Fed. R. Civ. P. 56.

The Court finds that the causes of action in the Complaint accrued on the dates the loans were made. FDIC v. Galloway, 856 F.2d 112 (10th Cir. 1988). The Court further finds that the last loan complained of was made July 20, 1984, and that, therefore, all causes of action accrued no later than July 20, 1984.

The Court further finds, relying on Bilby v. Morton, 119 Okla. 15, 247 P. 384 (1926), that Oklahoma would adopt the doctrine of adverse domination relating to tolling the statute of limitations.

Applying the doctrine of adverse domination to the undisputed facts presented to the Court, the Court finds that a new board of directors was elected on November 13, 1984. The Court finds that the last date that adverse domination could have ended was November 13, 1984. Since this action was filed on November 12, 1987, this action is not barred as a matter of law under the three-year federal statute of limitations.

The Court therefore finds that defendants' motions to dismiss should be and are hereby denied, and the defendants are ordered to answer within ten days from November 25, 1988.

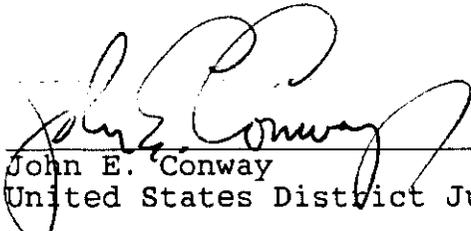
The Court, in applying the doctrine of adverse domination, is of the opinion that this Order involves a controlling

question of law as to the latest date that the alleged adverse domination could have ended. This question involves interpretation of the Pledge Agreement dated June 29, 1984 between Irving Trust Company and Sunbelt Bancorporation, Inc., and the legal effect of the undisputed facts related to rights exercised or exercisable thereunder. Defendants take the position that the alleged adverse domination ended no later than September 24, 1984, when Irving Trust Company succeeded to and exercised the rights of Sunbelt Bancorporation, Inc. pursuant to the Pledge Agreement. The FDIC takes the position that the alleged adverse domination terminated on November 13, 1984, when a new board of directors was elected. The Court finds that there is substantial ground for difference of opinion as to this issue, and that an immediate appeal from this order may materially advance the ultimate termination of the litigation.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that defendants' motions to dismiss are denied.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendants shall answer within ten days from November 25, 1988.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the controlling issue of law, i.e., the latest date that the alleged adverse domination could have ended, is hereby certified for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).

  
\_\_\_\_\_  
John E. Conway  
United States District Judge

APPROVED AS TO FORM:

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Charles V. Wheeler OBA No. 2410  
Gable & Gotwals  
2000 Fourth National Bank Building  
Tulsa, OK 74119

Attorneys for Plaintiff

*Claire V. Eagan*

---

Claire V. Eagan OBA No. 554  
Barbara L. Woltz  
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Golden & Nelson  
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Attorney for Defendant Akin

*Brian S. Gaskill*

---

James C. Lang  
Brian S. Gaskill  
Sneed, Lang, Adams,  
Hamilton & Barnett  
114 East Eighth, Sixth Floor  
Tulsa, OK 74119

Attorneys for Defendant Williford

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*[Signature]*  
Tom L. Armstrong  
Tom L. Armstrong & Associates  
601 South Boulder  
Tulsa, OK 74103

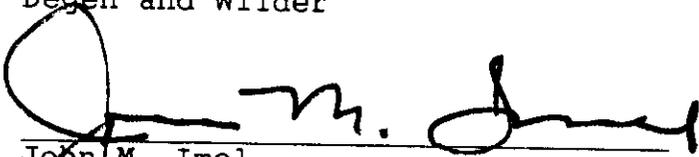
Attorneys for Defendant Ramsey

  
Jon R. Running  
Jon R. Running & Associates  
6711 South Yale, Suite 225  
Tulsa, OK 74136

Attorneys for Defendants  
Bertalot, Doyle, Oswalt,  
Porter, Wilcox and Young

  
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Jerry Reed, Inc.  
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Tulsa, OK 74170

Attorney for Anderson,  
Degen and Wilder

  
John M. Imel  
John E. Rooney, Jr.  
Meyers, Martin, Santee,  
Imel & Tetrick  
320 South Boston, Suite 920  
Tulsa, OK 74103

Attorneys for Defendant Born

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

JAMES GILBERT and INA GILBERT, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 KIMBERLY-CLARK CORPORATION, )  
 )  
 Defendant. )

No. 87-C-470-E

MAR 17 1988

CLERK  
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) Federal Rules of Civil Procedure, the parties stipulate that the above styled and numbered cause of action and any and all claims Plaintiffs may have against the Defendant be dismissed with prejudice.

  
Bruce Miller Townsend, One of  
the Attorneys for Plaintiffs

  
John R. Woodard, III, One of  
the Attorneys for Defendant

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

FILED  
MAR 16 1988  
CLERK  
DISTRICT COURT

FLORENCE G. WANTLAND,

Plaintiff,

vs.

No. 88-C-272-E

SKAGGS ALPHA-BETA, INC., a  
Delaware Corporation,

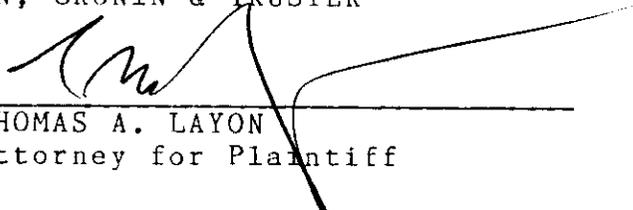
Defendant.

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the parties hereby stipulate that the Plaintiff, Florence G. Wantland, may dismiss all claims and causes of action against the Defendant, Skaggs Alpha-Beta, Inc., said Dismissal to be with prejudice.

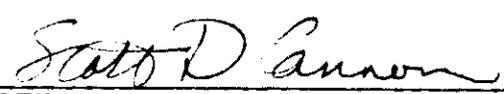
LAYON, CRONIN & TRUSTER

By:

  
THOMAS A. LAYON  
Attorney for Plaintiff

KNIGHT, WAGNER, STUART & WILKERSON

By:

  
SCOTT D. CANNON  
Attorney for Defendant

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

FILED  
MAR 16 1989

John C. Wilson, Clerk  
U.S. DISTRICT COURT

LUC J. VAN RAMPENBERG,  
Plaintiff,

UNITED STATES OF AMERICA,  
U.S. POSTAL SERVICE,  
Defendant.

Complaint no 88-C-1428-C

O R D E R .

It is hereby ordered that the above-captioned action <sup>be</sup> ~~is~~ dismissed  
without prejudice.

(Signed) H. Dale Cook

U.S. District Judge.