

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

FILED

MAY 3 1989

ARTHUR ANDREWS, BILL ROSE)
JAMES HERIFORD, GREG HOBBS,)
and GENE SHOEMAKER,)

Rock C. Silver, Cler
DISTRICT COURT

Plaintiffs,)

vs.)

Case No. 88-C-1290-C

CITY OF CLAREMORE,)

Defendant.)

ORDER OF DISMISSAL WITH PREJUDICE

The Court has for its consideration the Joint Stipulation for Dismissal with Prejudice executed and presented by all parties to this litigation. Upon consideration of the Joint Stipulation, the Court does hereby dismiss this action and each plaintiff's complaint with prejudice.

The parties shall bear their own costs.

Dated this 30 day of May, 1989.

(Signed) H. Dale Cook

H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

MAY 31 1989

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

RICKY D. PULLIAM and)
HELEN K. PULLIAM,)
husband and wife,)
)
Plaintiffs,)
)
vs.)
)
AMERICAN SERVICE LIFE)
INSURANCE COMPANY,)
)
Defendant.)

Case No. CIV-88-C-1547-C ✓

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiffs, Ricky D. Pulliam and Helen K. Pulliam,
and defendant, American Service Life Insurance Company,
stipulate that this case is dismissed with prejudice,
pursuant to Rule 41(a)(1)(ii).

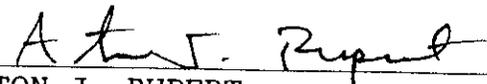


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- Of The Firm -

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ATTORNEYS FOR DEFENDANT

14

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HENRY RHEINBERGER
JACK R. DURLAND, JR.
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WESLEY C. FREDENBURG
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L. MARK WALKER
MARK S. GROSSMAN
STEPHEN L. DEGIUSTI
KEVIN D. GORDON
KAREN E. EBY
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J. DEAN HINDERLITER
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D. KENT MEYERS
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JAMES W. GEORGE
FLORINE G. CROCKETT
ROBERT A. REECE
TERRY R. HANNA
CAROL KESSINGER-KUHN

May 30, 1989

RECEIVED

MAY 31 1989

Mr. Jack C. Silver
Court Clerk
United States District Court
Northern District
Federal Courthouse
Tulsa, Oklahoma 74103

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

Re: Ricky D. Pulliam, et ux., vs. American
Service Life Insurance Company, Case No.
CIV-88-C-1547-C

Dear Mr. Silver:

Enclosed please find the original and three (3) copies of the Stipulation of Dismissal With Prejudice in the above styled and numbered case. please file the original and return the copies file stamped and certified in the enclosed self-addressed stamped envelope.

Thank you for your cooperation and assistance in this matter.

Sincerely,

Anton J. Rupert

ANTON J. RUPERT
For the Firm

AJR/rms

Enclosures

315AJR89A

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

THOMAS DAVID KIEFER, a minor, by)
JOSEPH E. CLARK, JR., his)
Guardian ad Litem, and)
WILLIAM R. KIEFER and LUMDAUN)
KIEFER, Father and Mother of)
Thomas David Kiefer, individually,)

Plaintiffs,)

v.)

No. 88 CL619C)

EMBASSY SUITES, INC., a Delaware)
corporation, d/b/a EMBASSY SUITES)
HOTEL, TULSA, OKLAHOMA; R & M)
AMUSEMENT CO., INC., an Oklahoma)
corporation, and/or ADA GAMES)
(DISTRIBUTING COMPANY), and)
ARDAC, an Ohio corporation,)

Defendants.)

FILED

MAY 31 1989

Jack C. Silver, Cler
DISTRICT COURT

ORDER OF DISMISSAL WITHOUT PREJUDICE
FOR LACK OF DIVERSITY

The above-styled and numbered cause of action comes on for initial Status Conference before the U. S. Magistrate John L. Wagner this 11th day of May, 1989. All parties were represented by their respective counsel.

Upon representation by counsel for Motor Hotel Management that the Defendant, Motor Hotel Management, Inc., is a Delaware corporation with its principal place of business in Texas, counsel agree that diversity of citizenship is lacking and that the matter should be dismissed without prejudice.

AND IT IS SO ORDERED.

W. Sale Book
JUDGE

APPROVED AS TO FORM AND CONTENT:

[Signature]
One of the Attorneys for Plaintiff

[Signature]
One of the Attorneys for
Motor Hotel Management, Inc.

[Signature]
One of the Attorneys for
R & Amusement Co., Inc.,
an Oklahoma corporation, and/or
Ada Games (Distribution Company)

[Signature]
One of the Attorneys for
ARDAC, an Ohio Corporation

FILED

MAY 31 1989

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

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

RONALD T. ERNST,

Plaintiff,

v.

BANK OF OKLAHOMA, N.A., an
Oklahoma banking corporation,

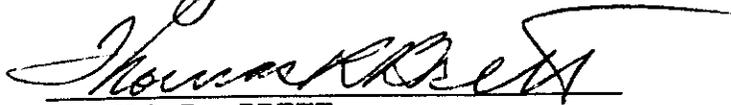
Defendant.

No. 88-C-624-B

J U D G M E N T

In accordance with the Order filed this date, Judgment is hereby entered in favor of Defendant Bank of Oklahoma, against Plaintiff, Ronald T. Ernst. Each party is to bear their own respective attorney fee.

DATED this 31st day of May, 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

MAY 31 1989

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

RONALD T. ERNST,)
)
 Plaintiff,)
)
 v.)
)
 BANK OF OKLAHOMA, N.A., an)
 Oklahoma banking corporation,)
)
 Defendant.)

No. 88-C-624-B

O R D E R

This matter comes before the Court on Defendant Bank of Oklahoma's Motion for Summary Judgment. This case was filed by Plaintiff Ronald T. Ernst for breach of contract. Plaintiff alleges Defendant has failed to pay bonuses due him under an incentive award program.¹ Defendant contends Plaintiff was not entitled to payment of bonuses because Plaintiff was not an employee when bonuses were actually paid as required under the Plan. Defendant moved for summary judgment.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v.

¹In Plaintiff's Response to Defendant's Motion for Summary Judgment, Plaintiff stated he should be allowed to recover under a *quantum meruit* theory. The Court notes no such theory was sued for in Plaintiff's state court petition, nor has any such theory been properly pled.

Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"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."

To survive a motion for summary judgment, Plaintiff "must establish that there is a genuine issue of material facts..." Plaintiff "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

Plaintiff was employed as a trust officer at the Bank of Oklahoma from February 1983 until December 1987. (Plaintiff Depo., p. 7). Plaintiff officially left the Bank of Oklahoma on December 31, 1987 for a job in Houston, Texas with Texas Commerce Bank. The Plaintiff became a participant of an incentive award benefit plan on January 1, 1987. (Dodd Depo. pp. 25-26; Owings Depo. p. 7). Throughout the year of 1987, new trust business was generated by Plaintiff. (Plaintiff's Exhibit G). The bank paid to current employees bonuses for 1987 in February 1988. Plaintiff was not paid 1987 bonuses.

Defendant points out that if Plaintiff is suing under a written agreement by the bank signed by Plaintiff November 24,

1982², the terms of the written agreement preclude payment of bonuses to Plaintiff. The written contract provides:

"Participants whose employment with the bank terminates prior to scheduled dates of payment of the Bonus Incentive Award for reasons other than retirement, disability or death shall forfeit all unpaid bonus awards." (Paragraph 4.4, Bonus Incentive Award Plan).

Plaintiff was not employed at the Bank of Oklahoma February 1988, the scheduled date of payment.

Plaintiff contends he was told by a bank official in November 1986 that he only had to be an employee through December 1987 to receive bonuses earned for 1987. (Owings Depo. p. 18). Defendant points out that this alleged oral agreement made between Plaintiff and a bank official is unenforceable under the statute of frauds. Okla. Stat. tit. 15, §136 states:

"The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent:

1. An agreement that, by its terms, is not to be performed within a year from the making thereof.

. . ."

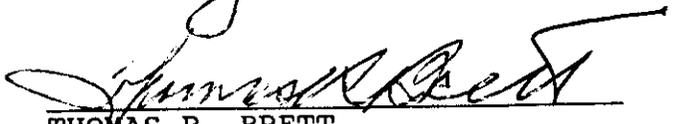
If the alleged oral agreement was made November 1986 as urged by Plaintiff, the contract could not be performed within one year from the making. Morris Plan Co. v. Campbell, 67 P.2d 52 (Okla. 1937). Plaintiff contends a memorandum was signed by Defendant

²Plaintiff testified although he signed the agreement he retrieved the bank's copy the next day, apparently in an effort to rescind the agreement. (Plaintiff Depo. p. 23).

which would satisfy the statute of fraud requirements. Plaintiff submits a memo signed by Phil Owings and James Dodd accepting Plaintiff into the "Bonus Incentive Award Plan for Pension and Institutional New Business." However, this brief memorandum does not state any of the terms of the agreement, particularly the terms under which Plaintiff is suing. No particular form or language of a memorandum is necessary to satisfy the statute of frauds, but the memo must be complete within itself of the terms of the agreement. Dennison v. Hildt, 70 P.2d 56 (Okla. 1937). The memo submitted by Plaintiff is not sufficient to satisfy the statute of frauds.

Summary judgment is therefore GRANTED Defendant Bank of Oklahoma against Plaintiff Ronald T. Ernst. Each party is to pay their own respective attorney's fees.

DATED this 31st day of May, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 31 1989

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

LUC J. VAN RAMPELBERG,)
)
 Plaintiff,)
)
 v.)
)
 UNITED STATES OF AMERICA)
 and U.S. POSTAL SERVICE,)
)
 Defendants.)

89-C-389-B

ORDER

Now before the court are plaintiff's Complaint (Docket #2)¹ and Motion to Transfer Case to Another Judge (#3), which was filed on May 15, 1989. Plaintiff was granted leave to file in forma pauperis this action with the condition that "any further proceedings ... must be specifically authorized in advance by the Court". Plaintiff is granted leave retroactively to May 15, 1989 to file his Motion to Transfer.

In his Complaint, plaintiff asks the court to find that a rule perpetrated by the U. S. Postal Service violates the Freedom of Information Act. Under 28 U.S.C. § 1915(d), an in forma pauperis complaint is subject to dismissal if found to be frivolous, improper, or obviously without merit. Henrikson v. Bentley, 664 F.2d 852 (10th Cir. 1981). The test for determining whether a complaint is frivolous or without merit is "whether plaintiff can make a rational argument on the law or facts in

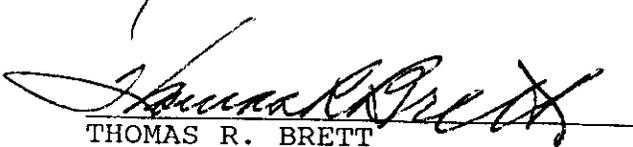
¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and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

support of his claim". Bennett v. Passic, 545 F.2d 1260 (10th Cir. 1976); Redford v. Smith, 543 F.2d 726 (10th Cir. 1976).

Plaintiff states that 39 C.F.R. 265.7(a)(1), which states that a request for information under the Freedom of Information Act must be clearly and prominently identified as such on the envelope or other cover, violates "the Privacy Act, 5 U.S.C. § 552a". The Supreme Court has found that the purpose of the Freedom of Information Act, 5 U.S.C. § 552, is to allow full disclosure of documents generated by any agency in the executive branch of the federal government. NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975). The Act does not concern the privacy rights of individuals.

Plaintiff has wholly failed to allege facts which would constitute a violation of 5 U.S.C. § 552a and his claims are frivolous and without merit. Plaintiff cannot make a rational argument on the law or facts in support of his claim and therefore this action should be and is dismissed under 28 U.S.C. § 1915(d). Plaintiff's Motion to Transfer Case to Another Judge is moot.

Dated this 31st day of May, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

has a basic duty of inquiry, 'to inform himself about facts relevant to his decision and to learn the claimant's own version of those facts.' The duty of inquiry takes a special urgency when the claimant has little education and is not represented by counsel." 811 F.2d at 510. Defendant excuses the ALJ's failure to guide the hearing through questions by the fact that he patiently listened to claimant's lengthy testimony. Since, as the Magistrate points out, claimant's "testimony consisted of a rambling soliloquy", this hardly fulfilled the ALJ's duty to "diligently explore all relevant facts". Walker v. Harris, 642 F.2d 712, 714 (4th Cir. 1981).

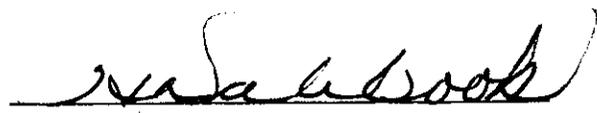
Defendant further claims that the Magistrate failed to consider the highly relevant case of Jordan v. Heckler, 835 F.2d 1314 (10th Cir. 1987). In Jordan the Tenth Circuit rejected claimant's argument that the ALJ had a duty to specifically ask Jordan to describe his pain, because he had asked a number of other questions concerning the extent of claimant's pain. Jordan had finished the twelfth grade, and he responded to questions completely and logically. Jordan offered no evidence of lingering physical disability. Here Mrs. Cole had finished only the seventh grade. Her testimony was not guided by questions from the ALJ and it rambled from picking cotton to Oral Robert's clothes. Her doctor has diagnosed arthritis, obesity, reflex esophagitis,

chronic low back pain, and ulcers. The Magistrate's failure to consider Jordan is easy to explain based on the important differences in facts and the narrow question of law.

The Court has independently reviewed the pleadings and briefs of the parties and the case file and finds that the recommendation of the Magistrate that the decision of the Secretary be reversed and remanded is reasonable under the circumstances of this case and consistent with applicable law.

It is therefore ordered that the case is remanded to the Secretary of Health and Human Services for appropriate action consistent with the terms of this Order.

IT IS SO ORDERED this 31st day of May, 1989.



H. DALE COOK, Chief Judge
United States District Court

FILED
MAY 31 1989

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

SPENCE RESEARCH INSTITUTE,)
INC.,)
)
Plaintiff,)
)
vs.)
)
BOB E. SURRETT, COLLEEN)
V. SURRETT, et. al.,)
)
Defendants.)

CASE NO. 88-C-566-E

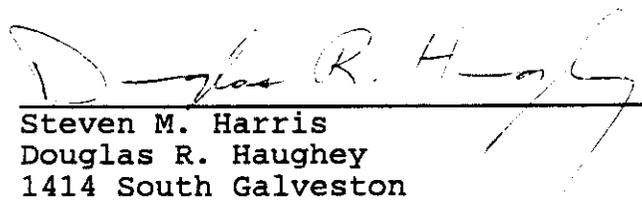
DISMISSAL WITH PREJUDICE
AS AGAINST DEFENDANT INSILCO CORPORATION

COMES NOW Plaintiff, SPENCE RESEARCH INSTITUTE, INC., and hereby dismisses with prejudice the above cause only as against Defendant INSILCO CORPORATION. Plaintiff further disclaims any interest in and to the following described real property:

NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, Township 18 North, Range 10 East, Creek County, State of Oklahoma, LESS AND EXCEPT all transfers pertaining to all oil, gas and mineral rights or interests.

DATED this 30th day of May, 1989.

DOYLE & HARRIS



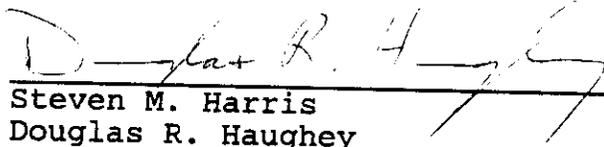
Steven M. Harris
Douglas R. Haughey
1414 South Galveston
Tulsa, OK 74127
(918) 582-0090

Attorneys for Plaintiff

CERTIFICATE OF MAILING

I do hereby certify that on the ^{3/4th}~~7th~~ day of May, 1989, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following, with proper postage prepaid thereon:

Gentra Sorem
CONNER & WINTER
2400 First National Tower
Tulsa, OK 74103



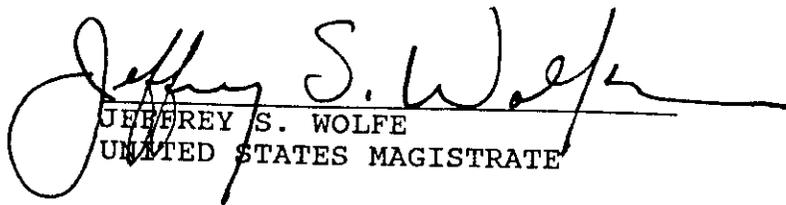
Steven M. Harris
Douglas R. Haughey

2. Defendant Carlos B. Langston is in default under and has breached that certain promissory note (the "Note") executed by him on March 4, 1986 in the principal sum of \$50,000.

3. There is due and owing the FDIC from Carlos B. Langston under the Note the principal sum of \$50,000, plus accrued and unpaid interest through April 19, 1989 in the amount of \$29,697.70, plus interest from April 19, 1989 to date of this Judgment at a per diem rate of \$30.48, plus post-judgment interest at a rate of 9.15% on the entire Judgment amount from the date of Judgment until paid.

4. Defendant Carlos B. Langston has failed to establish a valid defense to the claims of the FDIC and the FDIC is entitled to judgment against him in accordance with the FDIC's Complaint filed herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Federal Deposit Insurance Corporation, in its corporate capacity, shall have and recover of and from Carlos B. Langston a judgment in the principal sum of \$50,000, plus accrued and unpaid interest through April 19, 1989 in the amount of \$29,697.70, plus interest from April 19, 1989 to date of this Judgment at a per diem rate of \$30.48, plus post-judgment interest at a rate of 9.15% on the entire Judgment amount from the date of Judgment until paid.


JEFFREY S. WOLFE
UNITED STATES MAGISTRATE

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

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its corporate)
capacity,)
)
Plaintiff,)
)
v.)
)
CARLOS B. LANGSTON, et al,)
)
Defendants.)

89-C-122-B

FILED

MAY 30 1989

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

ORDER AND PARTIAL JUDGMENT

On this 30TH day of May, 1989, the Motion of Plaintiff Federal Deposit Insurance Corporation ("FDIC") for Partial Summary Judgment comes before the Court for consideration. Plaintiff FDIC moved for partial summary judgment on April 19, 1989. The Motion for Partial Summary Judgment was unopposed by Defendant Carlos B. Langston ("Langston"). According to Local Rule 15(a), a failure to respond will constitute a confession of the matters raised by such pleadings.

Upon hearing on May 30, 1989, counsel for Defendant, Carlos B. Langston represented to the Court that his client would not oppose Plaintiff's Motion.

The Court, having, therefore, examined the pleadings and evidence, and being fully advised as to the premises, finds that the FDIC's Motion for Partial Summary Judgment should be sustained. The Court specifically finds as follows:

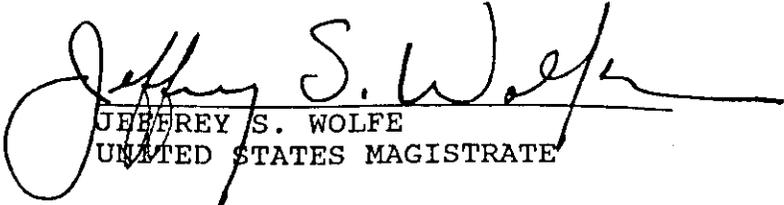
1. This Court has jurisdiction over the subject matter herein and has personal jurisdiction over Carlos B. Langston.

2. Defendant Carlos B. Langston is in default under and has breached that certain promissory note (the "Note") executed by him on March 4, 1986 in the principal sum of \$50,000.

3. There is due and owing the FDIC from Carlos B. Langston under the Note the principal sum of \$50,000, plus accrued and unpaid interest through April 19, 1989 in the amount of \$29,697.70, plus interest from April 19, 1989 to date of this Judgment at a per diem rate of \$30.48, plus post-judgment interest at a rate of 9.15% on the entire Judgment amount from the date of Judgment until paid.

4. Defendant Carlos B. Langston has failed to establish a valid defense to the claims of the FDIC and the FDIC is entitled to judgment against him in accordance with the FDIC's Complaint filed herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Federal Deposit Insurance Corporation, in its corporate capacity, shall have and recover of and from Carlos B. Langston a judgment in the principal sum of \$50,000, plus accrued and unpaid interest through April 19, 1989 in the amount of \$29,697.70, plus interest from April 19, 1989 to date of this Judgment at a per diem rate of \$30.48, plus post-judgment interest at a rate of 9.15% on the entire Judgment amount from the date of Judgment until paid.


JEFFREY S. WOLFE
UNITED STATES MAGISTRATE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OKLAHOMA
MAY 30 1989 *dt*

EMILE GOUDEAU,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF TULSA, et al,)
)
 Defendants.)

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

89-C-341-E ✓

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed May 8, 1989 in which the Magistrate recommended that the claim should be dismissed as frivolous pursuant to 28 U.S.C. §1915(d).

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

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

It is, therefore, Ordered that the claim is dismissed as frivolous pursuant to 28 U.S.C. §1915(d).

Dated this 26th day of May, 1989.

TIME STUDY CASE
Record Time Spent by Judge or Magistrate

James O. Ellison
JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

TIME STUDY CASE
Record Time Spent by Judge or Magistrate

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

FILED

MAY 26 1989

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

BANK OF OKLAHOMA, N.A.,
Grove Branch, formerly Bank
of Oklahoma, Grove,

Plaintiff,

vs.

THE ISLANDS MARINA, LTD.,
an Oklahoma corporation;
et al.,

Defendants.

Case No. 88-C-1335-E ✓

JOURNAL ENTRY OF SUMMARY JUDGMENT
AND DECREE OF FORECLOSURE

NOW, on this 26th day of May, 1989, this cause came on before the undersigned Judge of the United States District Court in and for the Northern District of Oklahoma, pursuant to Defendant The First National Bank and Trust Company of Vinita's ("FNBV") Amended Motion for Partial Summary Judgment on its Claims for Relief against Defendants The Islands Marina, Ltd. ("Marina"), Charles Gary James and Patricia K. James, and other parties to this action.

The Court having examined the files and being fully advised in the premises, hereby FINDS:

1. Defendant FNBV is a national banking association with its principal office and place of business in the State of Oklahoma.

2. Defendant Marina is an Oklahoma corporation with its principal office and place of business in the State of Oklahoma.

3. Defendants Charles Gary James and Patricia K. James are individuals residing in Spavinaw, Oklahoma.

4. The real property and improvements, which are the subject of this action, are located in Delaware County, State of Oklahoma.

5. This action was originally filed in Delaware County, State of Oklahoma, on June 13, 1988, and has since been properly removed to the United States District Court for the Northern District of Oklahoma; this Court has jurisdiction over all the parties to this action.

6. On or about March 31, 1987, Defendant Marina executed and delivered a written promissory note in the principal amount of \$315,020 in favor of FNBV. The note was given as evidence of an indebtedness to FNBV. Subsequent to March 31, 1987, FNBV renewed the original note and loaned new monies on additional notes pursuant to its loan agreement with the Marina so that two promissory notes now exist evidencing the Marina's indebtedness to FNBV: promissory

note No. 239815 in the principal amount of \$489,071 dated October 1, 1987, with interest at 12.50%, requiring one payment of \$519,721.68 on April 1, 1988 and promissory note No. 240159 in the principal amount of \$24,045 dated October 1, 1987, with interest at 12.50%, requiring one payment of \$25,115.50 on April 1, 1988 ("Notes").

7. Defendant FNBV is the holder of the Notes.

8. Non-payment of interest or principal when due, among other events, constitutes an event of default under the terms of the Notes and provides for payment by the Marina of all costs of collection incurred by the holder, including its reasonable attorneys' fees, in the event of default and if the Notes are collected through judicial proceedings.

9. The Marina, despite repeated demands for payment, has defaulted in its obligations for payment of the Notes and the unpaid principal balance due on the Notes is \$262,313, with interest accrued through May 26, 1989 of \$115,294.45 and interest accruing at the per diem rate of \$91.62.

10. Defendant FNBV is entitled to judgment against Defendant Marina, as maker of the note, for the full amount of principal and interest due and owing as of May 26, 1989 in the amount of \$377,607.45, plus interest thereafter accruing.

11. On or about March 31, 1987, Defendants Charles Gary James and Patricia K. James executed separate contracts of guaranty by which they each unconditionally guaranteed payment to FNBV of all indebtedness of the Marina to FNBV.

12. The guaranties constitute valid and binding contracts, are enforceable according to their terms, and are not subject to any defenses or off-sets. Neither Charles Gary James or Patricia K. James have paid FNBV according to the terms of the guaranties and FNBV is entitled to judgment against Charles Gary James and Patricia K. James, jointly and severally, as guarantors, for all sums due and owing under the Notes, plus its attorneys' fees and costs.

13. On or about June 30, 1988, as further security for repayment of the Notes, Charles Gary James and Patricia K. James executed and delivered to FNBV a certain mortgage with power of sale (the "Mortgage") covering the following described real property and improvements, to-wit:

Lots Fourteen (14), Seventeen (17), and Eighteen (18), Block One (1), RED ARROW SUBDIVISION NO. 3, a subdivision in Delaware County, State of Oklahoma, according to the recorded Plat thereof.

The mortgage tax was paid and on July 8, 1988, the Mortgage was recorded in Book 543, Page 365 of the records of the Delaware County Clerk.

14. FNBV is the holder of the Mortgage.

15. Non-payment of interest or principal, among other events, constitutes an event of default of the terms of the Mortgage.

16. On or about July 6, 1988, as further security for repayment of the Notes, Charles Gary James and Patricia K. James executed and delivered to FNBV a Security Agreement and vehicle title assignments covering the following described personal property:

One (1) 1984 Dodge 1-ton pickup,
Serial No. 1B7MD34W9ES243758;

One (1) 1974 Ford pickup,
Serial No. F35JLU78570;

One (1) 1953 Chevrolet Bel Air, 2-door,
Serial No. C53S154858;

One (1) 1969 Chevrolet pickup,
Serial No. CS149J865600;

One (1) 1979 Shopblt Roadstr, 2-door,
Serial No. OK192438;

One (1) 1964 Marle TTE MH,
Serial No. K255FDCAT41406;

One (1) 1957 Chevrolet 2-door,
Serial No. VB57B149190;

One (1) 1987 Olds CBR CP,
Serial No. 2G3GM11Y2H2339737;

One (1) 1988 Olds SUC CP,
Serial No. 1G3GR11Y1JP301092;

One (1) 1985 Chevrolet K20 SW,
Serial No. 1G8GK26M4FF213662.

17. FNBV is the holder of the Security Agreement and the liens have been properly entered on each vehicle title as required by law.

18. Non-payment of interest or principal, among other events, constitutes an event of default of the terms of the Security Agreement.

19. Defendants Charles Gary James and Patricia K. James have failed to make payment of principal and interest as required by the terms of the Mortgage and Security Agreement; are in default under the terms of the Mortgage and Security Agreement; and FNBV is entitled to judgment against Defendants Charles Gary James and Patricia K. James, as mortgagors, for the outstanding principal and interest balance due and owing as of May 26, 1989 in the amount of \$377,607.45, plus interest thereafter accruing.

20. FNBV is further entitled to a judgment against Defendants Charles Gary James and Patricia K. James ordering foreclosure of the Mortgage and security interest in vehicles; establishing the Mortgage and security interest in vehicles as a valid first, prior, and superior lien upon the property for the full amount of principal and interest due and owing under the Notes, and ordering the property sold to satisfy the judgment of FNBV as granted herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that FNBV have and recover judgment against The Islands Marina, Ltd., as maker of promissory note Nos. 239815 and 240159, in the amount of \$377,607.45 as of May 26, 1989, with interest accruing thereafter.

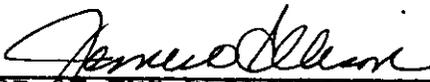
IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that FNBV is entitled to judgment against Defendants Charles Gary James and Patricia K. James, jointly and severally, as guarantors, and as mortgagors under the Mortgage and Security Agreement, in the amount of \$377,607.45 as of May 26, 1989, with interest accruing thereafter.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Mortgage and security interest in vehicles be and hereby is declared a valid, first, prior and superior lien on the property and the Mortgage and security interest is hereby foreclosed and the property is hereby ordered to be sold in satisfaction of judgment against Defendants granted herein; that a Special Execution and Order of Sale shall issue commanding the Sheriff of Delaware County to levy upon the property, to have the real property appraised as provided by law and proceed to advertise and sell the property as provided by law; and thereafter the Sheriff shall apply the proceeds arising from the sale in the following order:

- FIRST: In payment of the cost of the sale;
- SECOND: In payment to FNBV of its judgment against Defendants, as set out above;

THIRD: The residue, if any, shall be paid to and held by the Court Clerk of the United States District Court for the Northern District of Oklahoma, Tulsa, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the date of sale of the property under and by virtue of this Judgment and Decree, that all parties to the above-referenced lawsuit and all persons claiming by, through or under them since commencement of this action be and are forever barred and foreclosed from asserting any claim or liens upon, any right, title, interest, estate, or equity of redemption in or to the property, and that upon application by the purchaser, the Court Clerk of the United States District Court for the Northern District of Oklahoma shall issue a writ of assistance to the Sheriff of Delaware County, who shall thereupon place such purchaser in full and complete possession and enjoyment of the property.

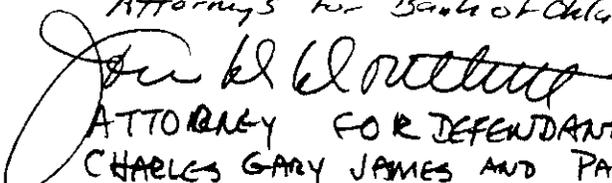

JUDGE OF THE UNITED STATES
DISTRICT COURT

APPROVED:


Attorney for Defendant Bank of the Lakes

Holloman, Langholz, Rannels & Brown

Attorneys for Bank of Oklahoma N.A. Grove Branch


ATTORNEY FOR DEFENDANTS
CHARLES GARY JAMES AND PATRICIA K. JAMES
AND THE ISLANDS MARINA, LTD.

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

E I L E D

MAY 26 1989

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

MEADOW GOLD DAIRIES, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 ED WELLS,)
)
 Defendant.)

No. 88-C-1504-B

O R D E R

This matter comes before the Court upon Plaintiff's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56. Plaintiff filed its motion on February 24, 1989. Plaintiff has yet to file its Response to the Motion for Summary Judgment.

Local Rule 15(A) provides that a party opposing a motion for summary judgment shall file its brief in opposition within 15 days. Failure to comply with this Rule will constitute a waiver of the objection, and such failure to comply will constitute a confession of the matters raised by the motion. The undisputed facts in the Motion establish the Defendant personally guaranteed an out of court settlement for \$94,752.20 on behalf of the principal, Buy-Rite Foods, Inc. As of September 13, 1988, Buy-Rite was in default on the settlement agreement in the amount of \$94,029.52 plus interest accruing at the rate of 12% per annum, and attorney's fees in the amount of \$3,875. Ed Wells has failed to abide by the personal guaranty he executed on behalf of Buy-Rite Foods, Inc. Defendant's failure to rebut these facts constitutes an admission pursuant to local Rule 15(A).

Although Plaintiff is seeking approximately \$97,904.20, plus accrued interest from September 13, 1988, Defendant's personal guaranty is limited to \$94,752.20. Any amounts due beyond Defendant's guaranty must be collected from Buy-Rite Foods, Inc. It is therefore ORDERED that Plaintiff's Motion for Summary Judgment with regard to Defendant's personal guaranty be SUSTAINED.

IT IS SO ORDERED, this 26th day of May, 1989.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 26 1989

MEADOW GOLD DAIRIES, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 ED WELLS,)
)
 Defendant.)

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

No. 88-C-1504-B

J U D G M E N T

In accord with the Order filed this date sustaining the Plaintiff's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Plaintiff, Meadow Gold Dairies, Inc., and against the Defendant, Ed Wells, individually, for the amount of \$94,752.20, plus interest from this date forward at the rate of 12 per cent per annum. Costs and attorney fees may be awarded upon proper application.

DATED this 26th day of May, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 26 1989 dt

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

BANK OF OKLAHOMA, N.A., GROVE
BRANCH, formerly Bank of Okla-
homa, Grove,

Plaintiff,

-vs-

THE ISLANDS MARINA, LTD. an
Oklahoma corporation; CHARLES
GARY JAMES; PATRICIA K. JAMES;
GENMAR INDUSTRIES, INC., a
Delaware corporation, d/b/a
Wellcraft Marine; BANK OF THE
LAKES OF LANGLEY, OKLAHOMA;
FIRST NATIONAL BANK & TRUST
COMPANY OF VINITA; CHRYSLER
FIRST WHOLESALE CREDIT, INC.;
DONZI CREDIT CORPORATION; FIRST
OKLAHOMA SAVINGS BANK; GUARANTY
NATIONAL BANK; ROBERT WILLIAMS;
ROBERT MONTGOMERY and FIRST
STATE BANK OF KETCHUM, OKLAHOMA,

Defendants,

-and-

EMERY URFER; FRANK A. JARVIS;
JERRY COURTNEY; ROGER KING;
and HARRIS-KAYOT, INC., d/b/a
HARRIS FLOTEBOAT,

Additional
Defendants.

Case No. 88-C-1335-E ✓

(District Court of
Delaware County,
Oklahoma, Case No.
C-88-148)

ORDER GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT ON ITS FOURTH, FIFTH AND SIXTH
CAUSES OF ACTION AND PARTIAL JOURNAL ENTRY OF JUDGMENT

On the 26th day of May, 1989, the above entitled cause
came on to be heard before the undersigned Judge of the District
Court. The Plaintiff, Bank of Oklahoma, N.A., Grove Branch,

formerly Bank of Oklahoma, Grove ("BOKG"), appeared by and through its attorneys, Holliman, Langholz, Runnels & Dorwart, A Professional Corporation, by Gregory A. Guerrero; the Defendants, Charles Gary James and Patricia K. James (the "Jameses"), appeared by and through their attorney, Jon D. Douthitt; and the Defendant, Bank of the Lakes of Langley, Oklahoma ("BOL"), appeared by and through its attorneys, Doerner, Stuart, Saunders, Daniel & Anderson, by Richard Foster. All of the other parties in this action have wholly failed to respond to BOKG's Motion for Summary Judgment on Its Fourth, Fifth and Sixth Causes of Action and have thereby admitted each and every Statement of Undisputed Fact contained therein. Consequently, BOKG, the Jameses and BOL are the only parties in this action asserting an interest in the Real Property described in BOKG's Petition. The parties appearing herein hereby consent to and subscribe their approval to this Order and Partial Journal Entry of Judgment and submit it to the Court for approval. The Court having examined the files and pleadings and being fully advised in the premises, hereby makes the following findings and conclusions which constitute its decision and judgment.

The Court finds that BOKG's Fourth, Fifth and Sixth Causes of Action pertain to four promissory notes and foreclosure of two Real Estate Mortgages securing one or more of the notes.

The Court further finds that on February 9, 1989, BOKG filed its Motion for Summary Judgment on Its Fourth, Fifth and Sixth Causes of Action and its Brief in Support thereof, and that the Statements of Undisputed Fact within BOKG's Brief in Support of

its said Motion, establish that there is due to BOKG, the following principal and interest amounts on the following promissory notes from the Jameses and/or Charles Gary James:

<u>Note Number</u>	<u>Principal Amount</u>	<u>Interest Accrued through 02-01-89</u>	<u>Per Diem Interest Rate</u>
The "First James Note" (4601483-0001) Charles Gary James and Patricia K. James	\$ 86,325.91	\$ 2,195.80	\$ 23.3811
The "Second James Note" (4601483-3001) Charles Gary James and Patricia K. James	8,545.00	1,617.19	2.8483
The "Third James Note" (8651695) Charles Gary James	3,102.50	398.11	1.02
The "Fourth James Note" (4601483-1001) Charles Gary James and Patricia K. James	19,677.41	2,655.10	6.8324

The Court further finds that the material allegations in BOKG's Fourth, Fifth and Sixth Causes of Action in its Petition are true and in its Statement of Undisputed Facts in its Brief in Support of its Motion for Summary Judgment on its Fourth, Fifth and Sixth Causes of Action, are true and specifically:

(1) The First James Note was secured by the First James Mortgage covering the following described real property in Delaware County, Oklahoma:

Lots One (1) and Two (2), Block Three (3), in Red Arrow Subdivision, No. 3, a subdivision according to the recorded plat thereof; and the extension of Lot 1 in Block 3 of Red Arrow Subdivision No. 3 to the GRDA taking line, being more particularly described as: Beginning at the Southeast corner of said Lot 1; thence on and along the East line thereof, North 13 degrees 48' 33" West a distance of

141.35 feet to the Northeast corner thereof; thence North 59 degrees 36' East a distance of 103.71 feet to a point on the GRDA taking line; thence on and along said taking line South 51 degrees 30' East a distance of 145.20 feet; thence South 59 degrees 36' West a distance of 196.34 feet to the point of beginning; and the extension of Lot 2 in Block 3 of Red Arrow Subdivision No. 3 to the GRDA taking line, being more particularly described as: Beginning at the Southeast corner of said Lot 2; thence on and along the East line thereof North 30 degrees 24' West a distance of 75 feet; thence North 59 degrees 36' East a distance of 74.77 feet to a point on the GRDA taking line; thence on and along said taking line South 51 degrees 30' E. a distance of 80.38 feet; thence South 59 degrees 36' W. a distance of 103.71 ft. to the point of beginning (the "First Note Real Property"); and,

(2) The Fourth James Note was secured by the Fourth James Mortgage covering the following described real property in Delaware County, Oklahoma:

Lots Eleven (11), Fifteen (15) and Sixteen (16), Block One (1), Red Arrow subdivision No. 3 a subdivision of Delaware County, State of Oklahoma, according to the recorded plat thereof (the "Fourth Note Real Property").

The First Note Real Property and the Fourth Note Real Property will sometimes hereinafter be referred to collectively as the "Real Property".

The Court further finds that the only party to this action responding to BOKG's Motion for Summary Judgment on Its Fourth, Fifth and Sixth Causes of Action and Brief in Support thereof was the Defendant, BOL, which filed a Memorandum Opposition Brief on March 9, 1989.

The Court further finds that on March 20, 1989, BOKG and BOL, among other parties to this action, entered into a

Settlement Agreement compromising and resolving certain of their claims.

The Court further finds that at the Settlement Closing held on April 21, 1989, the parties to the Settlement Agreement, including BOKG and BOL, agreed to an amendment to their Settlement Agreement, and pursuant to paragraph 10 thereof, BOL withdrew its Objection to BOKG's Motion for Summary Judgment against the Jameses, and BOKG agreed that the proceeds from the sale on the Jameses' residence (the property covered by the First James Mortgage), would only be used to satisfy the First James Note to BOKG.

The Court further finds that the lien interest of BOKG is first and prior to any lien, right, title or interest of the Defendants appearing herein, in and to the Real Property.

The Court further finds that all material allegations in BOL's First Cause of Action in BOL's Counterclaim against the Jameses filed herein pertaining to the priority of its lien against the First Note Real Property and the amount of the debt owed to it from the Jameses are true, and that all of said indebtedness is secured by a mortgage upon the First Note Real Property in favor of BOL, dated July 30, 1984, and filed with the Delaware County Clerk on the 26th day of October, 1984, in Book 474 at Page 519.

The Court further finds that the lien interest of BOKG and BOL in and to the Real Property, which is the subject of this action, are valid, that BOKG has a first lien priority on the Real Property and BOL has a second lien on the First Note Real Property.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Bank of Oklahoma, N.A., Grove Branch have and recover a judgment in personam against Defendants, Charles Gary James and Patricia K. James, jointly and severally, in the principal and interest amounts as follows:

<u>Note Number</u>	<u>Principal Amount</u>	<u>Interest Accrued through 02-01-89</u>	<u>Per Diem Interest Rate</u>
The "First James Note" (4601483-0001) Charles Gary James and Patricia K. James	\$ 86,325.91	\$ 2,195.80	\$ 23.3811
The "Second James Note" (4601483-3001) Charles Gary James and Patricia K. James	8,545.00	1,617.19	2.8483
The "Third James Note" (8651695) Charles Gary James	3,102.50	398.11	1.02
The "Fourth James Note" (4601483-1001) Charles Gary James and Patricia K. James	19,677.41	2,655.10	6.8324

together with a reasonable attorney's fee of \$3,000.00, costs incurred herein of \$500.00, and costs hereinafter incurred, and that all of the indebtedness under the First James Note is secured by a Mortgage upon the First Note Real Property, in favor of Bank of Oklahoma, N.A, Grove Branch, dated May 8, 1984, and filed with the County Clerk for Delaware County, Oklahoma, on the 22nd day of May, 1984, in Book 465 at Page 977, and that said Mortgage be foreclosed and that the First Note Real Property be sold to pay said Mortgage and judgment; and that all of the indebtedness under the Fourth James Note is secured by a Mortgage upon the Fourth Note Real Property in favor of Bank of Oklahoma,

N.A., Grove Branch, dated September 7, 1984, and filed with the County Clerk for Delaware County, Oklahoma, on the 25th day of September, 1984, in Book 473 at Page 148, and that said Mortgage be foreclosed and that the Fourth Note Real Property be sold to pay said Mortgage and judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that BOL have and recover a judgment on BOL's First Cause of Action in personam against Defendants, Charles Gary James and Patricia K. James, jointly and severally, in the principal and interest amounts as follows: Principal of \$12,000.00, interest accrued thereon of \$2,606.82, through May 9, 1989, together with a reasonable attorney's fee of \$2,000.00, and that all of the indebtedness under BOL's First Cause of Action is secured by a Mortgage upon the First Note Real Property in favor of BOL, dated the 30th day of July, 1984, and filed with the County Clerk of Delaware County on the 26th day of October, 1984, in Book 474 at Page 519, and that said Mortgage should be foreclosed and that the First Note Real Property be sold to pay said Mortgage and judgment on BOL's First Cause of Action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of the Defendants, Charles Gary James and Patricia K. James, to satisfy the respective judgments and liens of BOKG, in connection with First and Fourth James Notes indebtedness, that a Special Execution and Order of Sale in Foreclosure should issue, commanding the Sheriff of Delaware County to levy upon the Real Property hereinabove described, and after having the same appraised as provided by law, to proceed to advertise and sell the same as provided by law, in separate parcels and together,

with the highest and best price being accepted, and apply the proceeds arising from said sale or sales as follows:

FIRST NOTE REAL PROPERTY

FIRST: In payment of the judgment of the Plaintiff, Bank of Oklahoma, N.A., Grove Branch, in the principal and interest amounts set forth above for the First James Note Indebtedness, together with a reasonable attorney's fee of \$2,500.00, costs incurred herein of \$500.00, and costs hereinafter incurred.

SECOND: In payment of the judgment of the Defendant, Bank of the Lakes of Langley, Oklahoma, in the principal and interest amounts set forth above, together with a reasonable attorney's fee of \$2,000.00.

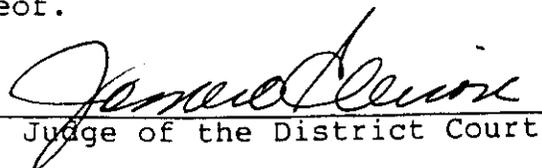
THIRD: The surplus from said sale or sales of the First Note Real Property, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

FOURTH NOTE REAL PROPERTY

FIRST: In payment of the judgment of BOKG, in the principal and interest amounts set forth above for the Fourth Note indebtedness together with a reasonable attorneys' fee of \$500.00.

SECOND: The surplus from said sale or sales of the Fourth Note Real Property, 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, and after confirmation thereof, that the parties hereto and all persons claiming under them since the filing of the Plaintiff's Petition and Notice of Pendency of Action herein, be and they are hereby forever barred and foreclosed of any right, title interest or claim in and to the Real Property or any part thereof.

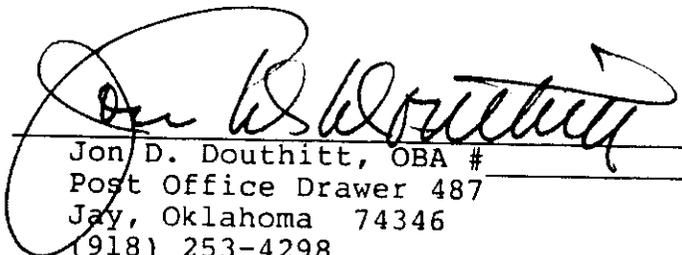


 Judge of the District Court

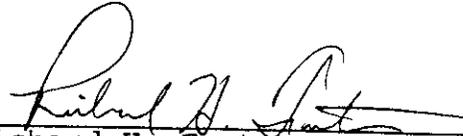
APPROVED:

HOLLIMAN, LANGHOLZ, RUNNELS & DORWART,
A Professional Corporation

By 
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DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By 
Richard H. Foster
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211
Attorneys for Defendant,
Bank of the Lakes of
Langley, Oklahoma

certified copy

FILED

IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAY 25 1989

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

LOCAL-AMERICA BANK OF TULSA,
a federal savings bank,

Plaintiff,

vs.

JOHN KLINGELHUT,

Defendant.

Case No. 88-C-592-B

JOURNAL ENTRY OF JUDGMENT

Now on this 25th day of May, 1989, the above styled case comes on and before the Court. The Court, having previously granted Plaintiff's Motion for Summary Judgment by its Order dated May 15, 1989, gave the Defendant until May 22, 1989, within which to file a Motion to Set Aside the Summary Judgment. The Court, having reviewed the pleadings on file herein finds as follow, to-wit:

1. That the Defendant, John Klingelhut, failed to respond to the summary judgment entered against him within the time granted by the Court.
2. That on or about the 25th day of September, 1986, the Defendant, John Klingelhut, for good and valuable consideration, made, executed and delivered to Plaintiff his promissory note (the "Promissory Note") in writing, wherein said Defendant promised and agreed to pay to the order of Local America Bank of Tulsa ("Local America") the principal sum of \$60,000.00 together with interest.
3. That on or about September 25, 1986, as security for payment of all indebtedness evidenced and payable under the terms of the promissory note and to secure the terms and conditions of the Promissory Note and all renewals, extensions and modifications thereof, the Defendant, John Klingelhut, executed

and delivered to Local America a written security agreement covering 24,000 shares of National Royalty Corporation Stock ("Security Agreement").

4. That Plaintiff has withdrawn its prayer for foreclosure of its lien and security interest granted by the Security Agreement because of Plaintiff's belief that the cost of selling said stock would likely exceed any proceeds which may be realized from the sale of said stock.

5. That the Defendant, John Klingelhut, has failed and refused to pay the Promissory Note according to its terms, and is in default thereunder, such that there is due and payable to Local America the principal sum of \$60,000.00, together with interest thereon through and including May 23, 1989, in the sum of \$7,730.31 plus interest thereafter at a rate of \$19.67 per diem until paid in full, and all other costs incurred and to be incurred in this action.

6. That in accordance with the terms of the Promissory Note, Local America has properly elected to declare the entire indebtedness evidence by the Promissory Note immediately due and payable.

7. That pursuant to the terms of the Promissory Note, Local America is entitled to its costs and a reasonable attorney's fee.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that Local America have and recover judgment in its favor and against the Defendant, John Klingelhut, for principal in the sum of \$60,000.00, together with interest thereon through and including May 23, 1989, in the sum of \$7,730.31 plus interest thereafter, at the rate of \$19.67 per diem until the outstanding principal balance is paid in full, together with a reasonable attorney's fee and all other costs incurred and to be incurred in this action.

IT IS FURTHER ORDERED, ADJUGED AND DECREED by this Court that Defendant, John Klingelhut is entitled to have the 24,000 shares of Nation Royalty

Corporation Stock covered by the Security Agreement returned to him by Local America within thirty (30) days after this Judgment becomes final.


United States District Court Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 25 1989

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

EDWARD L. JOHNSON a/k/a EDWARD)
LEE JOHNSON; PATRICIA JOHNSON)
a/k/a PATRICIA ANN JOHNSON;)
TULSA ADJUSTMENT BUREAU, INC.;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)

Defendants.)

CIVIL ACTION NO. 88-C-628-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25th day
of May, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Carl Robinson, Assistant District Attorney,
Tulsa County, Oklahoma; and the Defendants, Edward L. Johnson
a/k/a Edward Lee Johnson, Patricia Johnson a/k/a Patricia Ann
Johnson, and Tulsa Adjustment Bureau, Inc., appear not, but
make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Edward L. Johnson a/k/a
Edward Lee Johnson, was served with Summons and Complaint on
April 20, 1989; that the Defendant, Patricia Johnson a/k/a

Patricia Ann Johnson, was served with Summons and Complaint on December 8, 1988; that the Defendant, Tulsa Adjustment Bureau, Inc., acknowledged receipt of Summons and Complaint on July 18, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 11, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 12, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on July 26, 1988; and that the Defendants, Edward L. Johnson a/k/a Edward Lee Johnson, Patricia Johnson a/k/a Patricia Ann Johnson, and Tulsa Adjustment Bureau, Inc., have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Eleven (11), Block Twenty-two (22) AMENDED PLAT OF NORTHRIDGE SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on May 3, 1983, Edward L. Johnson and Patricia Johnson executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$41,500.00, payable in

monthly installments, with interest thereon at the rate of twelve percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, Edward L. Johnson and Patricia Johnson executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated May 3, 1983, covering the above-described property. Said mortgage was recorded on May 10, 1983, in Book 4690, Page 878, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Edward L. Johnson a/k/a Edward Lee Johnson and Patricia Johnson a/k/a Patricia Ann Johnson, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Edward L. Johnson a/k/a Edward Lee Johnson and Patricia Johnson a/k/a Patricia Ann Johnson, are indebted to the Plaintiff in the principal sum of \$41,696.07, plus interest at the rate of 12 percent per annum from August 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$5.00 which became a lien on the property as of 1987. Said lien is inferior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendant, Tulsa Adjustment Bureau, Inc., is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Edward L. Johnson a/k/a Edward Lee Johnson and Patricia Johnson a/k/a Patricia Ann Johnson, in the principal sum of \$41,696.07, plus interest at the rate of 12 percent per annum from August 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.15 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$5.00 for personal property taxes for the year 1987, plus the costs of this action.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Edward L. Johnson a/k/a Edward

Lee Johnson and Patricia Johnson a/k/a Patricia Ann Johnson, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

Third:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$5.00, personal property taxes which are currently due and owing.

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

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

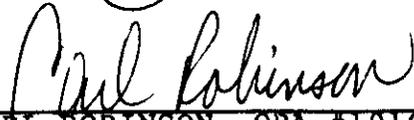
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney


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

Judgment of Foreclosure
Civil Action No. 88-C-628-B

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHRISTOPHER OMENAI; ICEY LEE)
 OMENAI; OKLAHOMA OSTEOPATHIC)
 FOUNDERS ASSOCIATION, INC.,)
 a corporation d/b/a OKLAHOMA)
 OSTEOPATHIC HOSPITAL; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma; and ESTHER SAWYERS,)
)
 Defendants.)

FILED

MAY 23 1989

U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-321-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 24 day
of May, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
Carl Robinson, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, Christopher Omenai; Icey Lee
Omenai; Oklahoma Osteopathic Founders Association, Inc., a
corporation d/b/a Oklahoma Osteopathic Hospital; and Esther
Sawyers, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Icey Lee Omenai,
acknowledged receipt of Summons and Complaint on or about
April 7, 1988; that Defendant, Oklahoma Osteopathic Founders

Association, Inc., a corporation d/b/a Oklahoma Osteopathic Hospital, acknowledged receipt of Summons and Complaint on April 5, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 6, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 5, 1988.

The Court further finds that Defendants, Christopher Omenai and Esther Sawyers, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 16, 1989, and continuing to April 20, 1989, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Christopher Omenai and Esther Sawyers, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Christopher Omenai and Esther Sawyers. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due

process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on April 25, 1988 and their Answers to Amended Complaint on May 5, 1988; and that the Defendants, Christopher Omenai; Icey Lee Omenai; Oklahoma Osteopathic Founders Association, Inc., a corporation d/b/a Oklahoma Osteopathic Hospital; and Esther Sawyers, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on November 21, 1988, Icey Lee Omenai filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-03563-W. On February 24, 1989, the United States Bankruptcy Court for the Northern District of

Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

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

Lot Seventeen (17), Block Forty-nine (49),
VALLEY VIEW ACRES THIRD ADDITION to the City
of Tulsa, Tulsa County, State of Oklahoma,
according to the Recorded Plat thereof.

The Court further finds that on May 5, 1978, the Defendants, Christopher Omenai and Icey Lee Omenai, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$14,000.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Christopher Omenai and Icey Lee Omenai, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated May 5, 1978, covering the above-described property. Said mortgage was recorded on May 18, 1978, in Book 4328, Page 2273, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Christopher Omenai and Icey Lee Omenai, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Christopher Omenai and Icey Lee Omenai, are indebted to the Plaintiff in the principal sum of \$7,862.86, plus interest at the rate of 9 percent per annum from August 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, Oklahoma Osteopathic Founders Association, Inc., a corporation d/b/a Oklahoma Osteopathic Hospital and Esther Sawyers, are in default and have no right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Christopher Omenai and Icey Lee Omenai, in the principal sum of \$7,862.86, plus interest at the rate of 9 percent per annum from August 1, 1986 until judgment, plus interest thereafter at the current legal rate of 9.15 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Oklahoma Osteopathic Founders Association, Inc., a corporation d/b/a Oklahoma Osteopathic Hospital; Esther Sawyers; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

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

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

W. JAMES C. ...

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



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

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

F I L E D

MAY 25 1989

NICHOLAS ORLANDO and)
RANDAL PETERSON,)

Plaintiffs,)

vs.)

GEORGE D. SCHUPP, JIMMIE)
WALKER, LANNY POTTS and)
TRI-TECH, INC., an Oklahoma)
corporation,)

Defendants.)

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

Case No. 89-C-141-B

ORDER DISMISSING ACTION WITH PREJUDICE

NOW this 25th day of May, 1989, the Court finds that all Plaintiffs and all Defendants have filed their Stipulation for Dismissal with Prejudice in the above entitled and numbered action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled and numbered action is hereby dismissed with prejudice.

S/ THOMAS R. BRETT

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

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

I.T. FINANCIAL CORP. and
INTERNATIONAL TOURS, INC.,
an Oklahoma corporation,

Plaintiffs,

vs.

BUDDY EARL PROFFITT and
ANNETTE PROFFITT, dba
INTERNATIONAL TOURS - ONE
MEMORIAL PLACE,

Defendants,

and

MARTIN McMILLAN d/b/a
INTERNATIONAL TOURS OF
BROOKSIDE,

Defendant,

and

HARRIS & GISH, INC., d/b/a
INTERNATIONAL TOURS OF
SAND SPRINGS,

Defendant.

No. 87-C-642-B
(Consolidated)

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties to this action, pursuant to Rule 41(a)(1), of
the Federal Rules of Civil Procedure, hereby enter into this

stipulation that the Plaintiff's action against Defendant Harris & Gish, Inc. should be dismissed with prejudice for the reason that the parties have entered into a settlement agreement.

CHAPEL, RIGGS, ABNEY, NEAL & TURPEN

BY: Stephanie L. Jones for
BENJAMIN P. ABNEY, OBA# 115
502 West Sixth Street
Tulsa, Oklahoma 74119-1010
(918) 587-3161

ATTORNEYS FOR PLAINTIFFS, I.T.
FINANCIAL CORP. and INTERNATIONAL
TOURS, INC.

LARRY L. OLIVER & ASSOCIATES

BY: Larry L. Oliver
LARRY L. OLIVER
2211 East Skelly Drive
Tulsa, Oklahoma 74105

ATTORNEYS FOR DEFENDANT,
HARRIS & GISH, INC.

FILED

MAY 24 1989

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

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

GARY SCHOOLEY, et al

Plaintiff(s)

vs.

ROBERT BELL, d/b/a FINANCIAL
MANAGEMENT RESOURCES, et al

Defendant(s)

No. 88-C-400-C
88-C-403-C
88-C-524-C

ADMINISTRATIVE CLOSING ORDER

The Defendant, Financial Mgmt Resources, having filed it's 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 30 days of final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 24 day of May,
19 89.

Jack C. Silver
UNITED STATES DISTRICT JUDGE

58

FILED

MAY 24 1989

Jack C. Silver, Clerk
DISTRICT COURT

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

GARY SCHOOLEY, et al

Plaintiff(s)

vs.

ROBERT BELL, d/b/a FINANCIAL
MANAGEMENT RESOURCES, et al

Defendant(s)

No. 88-C-400-C
88-C-403-C
88-C-524-C

ADMINISTRATIVE CLOSING ORDER

The Defendant, Financial Mgmt Resources, having filed it's 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 30 days of final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 24 day of may,
19 89.

[Signature]
UNITED STATES DISTRICT JUDGE

112 0258

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

FILED

MAY 24 1989

JACK N. MILLS,

Plaintiff,

v.

U.S. METAL CONTAINER CO.,

Defendant.

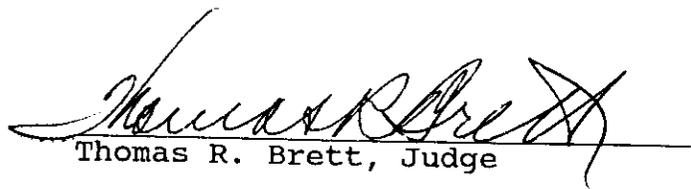
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Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 88-C-671-B

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the Joint Stipulation for Dismissal with Prejudice filed by plaintiff and defendant through counsel for each party, it is hereby ordered and decreed that this action is dismissed with prejudice. Each party shall bear its own costs.


Thomas R. Brett, Judge

5-24-89
Date

F I L E D

MAY 24 1989

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

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

JAMES C. HOFFMAN,

Plaintiff,

v.

AMOCO PRODUCTION COMPANY, a Delaware
corporation,

Defendant.

No. 88-C-634-E ✓

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 24th day of May, 1989, it appearing to the Court that this matter has been fully compromised and settled, this case is hereby dismissed with prejudice to the refiling of any future action.

JAMES O. ELISON

United States District Judge

APPROVED AS TO FORM AND CONTENT:



Attorney for Plaintiff



Attorney for Defendant

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

WALTER S. MILLER,)
)
Plaintiff,)
vs.)
)
ALLSTATE INSURANCE COMPANY,)
a foreign insurer,)
)
Defendant.)

No. 89-C-353-E

TIME STUDY CASE
Record Time Spent by Judge or Magistrate

PARTIAL NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES NOW Plaintiff and dismisses Count 3 of his Complaint in
the above styled and numbered cause without prejudice.

FRASIER & FRASIER

BY: 
Steven R. Hickman, OBA #4172
1700 Southwest Boulevard
Suite 100
P. O. Box 799
Tulsa, OK 74101
918/584-4724

CERTIFICATE OF MAILING

I hereby certify that on the 24 day of May, 1989, I mailed
a true and correct copy of the above and foregoing instrument to:

Michael P. Atkinson
525 South Main, Suite 1500
Tulsa, OK 74103

with proper postage thereon fully prepaid.


Steven R. Hickman

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

F I L E D

SOGELEASE CORPORATION,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
LEWIS E. KNIGHT and RICHARD H.)
WILLISON, individually, and)
d/b/a THE PICTURE SHOW,)
)
Defendants.)

MAY 24 1989

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

No. 88-C-296-B ✓

ORDER

On this 24th day of May, 1989, comes now the Court upon the Application for Approval of Sale, and the Court being advised of the premises, upon consideration of the Application hereby finds that on the 18th day of July, 1988, this Court entered a judgment in favor of the plaintiff and against the defendants in the amount of \$49,061.71 with a post-judgment interest rate of 7.54% from the date of judgment until paid. Additionally, the plaintiff was awarded attorney's fees in the amount of \$967.75.

That from the date of the granting of the judgment until the 21st day of February, 1989, post-judgment interest had accrued in the amount of \$2,503.33, thus resulting in the amount due under the judgment as of such date in the sum of \$51,565.04 exclusive of the amount of the attorney's fees awarded in the judgment.

The Court further finds that on the 21st day of February, 1989, the collateral set forth in the Security Agreement and Conditional Sales Contract upon which suit was brought was sold by private sale.

The Court finds that Notice of Private Sale was given in conformity with the provisions of 12 O.S. §9-504 and that the sale of the collateral was properly conducted in this matter.

The Court further finds that due to the deteriorated condition of the collateral caused through no fault of the plaintiff, the amount of \$8,000.00 received upon such sale was reasonable and just and that an Order should be entered approving the sale of the collateral under such circumstances.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the sale of the collateral was reasonable and just.

IT IS FURTHER ORDERED that the sale of the collateral in an as is condition for the amount of \$8,000.00 was justified under the circumstances of this case and that the amount of such sale is therefore approved by this Court.

IT IS FURTHER ORDERED that the plaintiff is directed to apply the amount of \$8,000.00 toward the sum of \$51,565.04 due under the judgment, exclusive of attorney's fees, as of the 21st day of February, 1989 and that after such date, the amount due under the judgment shall be \$43,565.04, exclusive of attorney's fees awarded therein, and that the interest shall continue to accrue on such sum in the amount of 7.54% per annum until paid.

A handwritten signature in cursive script, appearing to read "Ronald B. ...", is written above a horizontal line. Below the line, the text "U. S. DISTRICT JUDGE" is printed in a serif font.

U. S. DISTRICT JUDGE

APPROVED AS TO FORM:

A handwritten signature in cursive script, appearing to read "Paul A. Scott", is written above a horizontal line. Below the line, the text "PAUL A. SCOTT" and "Attorney for Plaintiff" is printed in a serif font.

PAUL A. SCOTT
Attorney for Plaintiff

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

FILED
MAY 24 1989 *alt*

ROBERT E. COTNER,)
)
 Plaintiff,)
)
 vs.)
)
 STATE OF OKLAHOMA, et al.,)
)
 Defendants.)

No. M-1506-E ✓

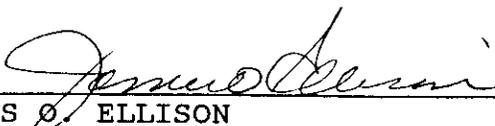
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

NOW on this 23rd day of May, 1989 comes on for consideration the above-captioned matter and the Court, being fully advised in the premises finds that the Motion of Plaintiff Cotner to Reconsider and Brief in Support fails to demonstrate any error in the Court's Order entered April 24, 1989, which Order dismisses this case for lack of subject matter jurisdiction. The Court has further determined that Plaintiff Cotner is no longer being held in custody. No error being established,

IT IS THEREFORE ORDERED that Plaintiff's Motion to Reconsider should be and is hereby denied.

ORDERED this 23rd day of May, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

BETTY L. BELL, individually and)
in her capacity as administrator)
and personal representative of)
the estate of her deceased son,)
MARTIN EUGENE KING, and JOSEPH)
EDWIN KING, RODGER ALLEN KING)
and ROBERTA SNODGRAS,)

Plaintiffs,)

vs.)

THE CITY OF LOCUST GROVE,)
OKLAHOMA, and CATHERINE BALLOU,)

Defendants.)

F I L E D

MAY 24 1989

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

No. 88-C-120-B

O R D E R

This matter comes before the Court on Defendants City of Locust Grove and Catherine Ballou's motion to dismiss or in the alternative summary judgment on Plaintiffs' Third Amended and Restated Complaint filed August 16, 1988. Plaintiffs' Complaint alleges a violation of Martin Eugene King's constitutional rights under 42 U.S.C. §1983 and a pendent state law tort claim under the Governmental Tort Claims Act, Okla. Stat. tit. 57, §151 *et seq.*

The uncontroverted facts are as follows:¹

Martin Eugene King was arrested December 27, 1986 between 10:30 P.M. and 11:00 P.M. for driving under the influence of alcohol. King was booked in at 11:23. Officer Catherine Ballou described him as being uncooperative during the booking. Ballou

¹Plaintiffs submit no contradictory affidavits.

testified King was angry about being arrested, refused to give standard information, used cuss words, refused to give a blood test for alcohol content, kicked Ballou's typewriter causing her coffee to spill, and threatened the arresting officer and her family. (Ballou Depo. pp. 28, 38, 40, 60). At 11:26 P.M. King was placed in a cell by himself and was yelling and acting in a drunk manner. (Ballou Depo. pp. 42, 44). The prisoners, including King, were checked on at 11:38 P.M. King was singing and yelling at that time. King was again checked on at 11:48 P.M. He was talking and banging on the cell. After the 11:48 P.M. check, Officer Catherine Ballou was the only law enforcement officer on duty. Ballou stated she had no reason to suspect King would attempt suicide. (Ballou Affidavit, ¶4).

At 12:31 A.M. Catherine Ballou found King hanging in his jail cell by a blanket from a ceiling beam. Ballou immediately radioed the officers out on patrol to return to the station. Ballou testified she acted consistently with police policy and did not enter the cell alone until backup arrived. (Ballou Depo. p. 53). It was only one or two minutes until the officers arrived, cut King down and administered CPR. (Ballou Depo. p. 51). Ballou testified King did not appear dead when she discovered him; however, his feet were not touching the floor. (Ballou Depo. p. 51). Ballou testified she called for an ambulance prior to the officers arriving. (Ballou Depo. p. 51). The police dispatch sheet reflects the ambulance was called at 12:31 A.M. The ambulance records reflect the call came at 12:36 A.M., or 5 minutes after

King was discovered. The ambulance report reflects the ambulance arrived at 12:39 A.M. and it took King, who was alive, to the hospital. King died several days later.

Plaintiffs' federal claim is for violation of King's constitutional rights. This claim is based on an allegation that Ballou's actions displayed a "callous disregard" for King's known medical needs. Plaintiffs also contend this callous disregard was sanctioned under Locust Grove policy.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Widon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"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."

To survive a motion for summary judgment, Plaintiff "must establish that there is a genuine issue of material facts..." Plaintiff "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

The Court finds that the undisputed facts do not rise to the

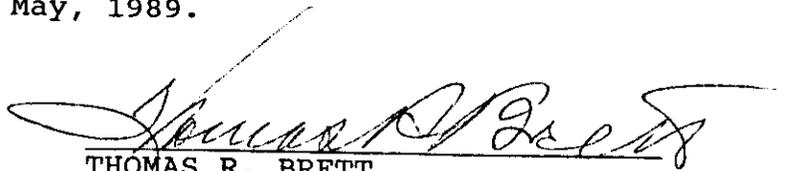
level of a constitutional violation. The Court cannot agree that Ballou's actions constituted a callous disregard for King's medical needs. Ballou's conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 818 (1982). Likewise, the Locust Grove policy did not deprive King of rights protected by the United States Constitution. The facts of this case therefore do not fall within Monell v. New York City, 436 U.S. 658 (1978).

Summary judgment is hereby GRANTED in favor of Defendants on Plaintiffs' federal claims.

This Court may have the power to exercise pendent jurisdiction over Plaintiffs' state claims. However, pendent jurisdiction's "justification lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state claims." Mine Workers v. Gibbs, 383 U.S. 726 (1966). Plaintiffs' state claims are hereby DISMISSED without prejudice.

Therefore, this Court GRANTS Defendants' Motion for Summary Judgment on Plaintiffs' federal claim and declines to assume jurisdiction over Plaintiffs' state claims and dismisses them.

DATED this 24th day of May, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 CHAD F. STITES; NOR-COM)
 INVESTMENTS, an Oklahoma)
 limited partnership; TALLANT)
 RENTAL PROPERTIES, INC.,)
 f/k/a TALLANT DEVELOPMENT)
 CORPORATION a/k/a TALLANT)
 DEVELOPMENT COMPANY;)
 E. W. FISHER III; CIMARRON)
 FEDERAL SAVINGS AND LOAN)
 ASSOCIATION, Successor in)
 Interest to PHOENIX FEDERAL)
 SAVINGS AND LOAN ASSOCIATION;)
 FRANKLIN & UNDERWOOD PROPERTIES,)
 an Oklahoma general partnership;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONRS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

MAY 24 1989

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

CIVIL ACTION NO. 88-C-1436-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23rd day
of May, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Carl Robinson, Assistant District Attorney,
Tulsa County, Oklahoma; the Defendant, E. W. Fisher III, appears
not, having previously filed his Disclaimer; and the Defendants,
Chad F. Stites; Nor-Com Investments, an Oklahoma limited
partnership; Tallant Rental Properties, Inc., f/k/a Tallant

Development Corporation a/k/a Tallant Development Company; Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association; and Franklin & Underwood Properties, an Oklahoma general partnership, appear not, but make default.

The Court being fully advised and having examined the file herein finds that Defendant, Chad F. Stites, acknowledged receipt of Summons and Complaint on or about October 24, 1988; that Defendant, E. W. Fisher III, acknowledged receipt of Summons and Complaint on November 14, 1988; that Defendant, Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association, acknowledged receipt of Summons and Complaint on November 2, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 18, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 18, 1988.

The Court further finds that the Defendant, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation a/k/a Tallant Development Company, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 2, 1989, and continuing to April 6, 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, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation a/k/a Tallant Development Company, 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, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation a/k/a Tallant Development Company. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to its present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on November 3, 1988; that John M. Freese, Sr., attorney for the Defendants, Nor-Com Investments, an Oklahoma limited partnership and Franklin & Underwood Properties, an Oklahoma general partnership, filed an Entry of Appearance of Counsel on November 4, 1988, but failed to answer and default has therefore been entered by the Clerk of this Court; that the Defendant, E. W. Fisher III, filed his Disclaimer on November 17, 1988; and that the Defendants, Chad F. Stites; Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation a/k/a Tallant Development Company; and Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on November 30, 1987, Donald J. Guy d/b/a Nor-Com Investments, filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-03339-C. On September 26, 1988, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage

securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Fifteen (15), Block Five (5), LAKE-VIEW HEIGHTS AMENDED ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on April 18, 1978, the Defendant, Chad F. Stites, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$10,400.00, payable in monthly installments, with interest thereon at the rate of eight and one-half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Chad F. Stites, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated April 18, 1978, covering the above-described property. Said mortgage was recorded on April 19, 1978, in Book 4322, Page 1700, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Chad F. Stites, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Chad F. Stites, is indebted to the Plaintiff in the principal sum of \$9,341.87, plus interest at the rate of 8.5 percent per annum from August 1, 1987 until

judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

The Court further finds that Defendant, E. W. Fisher III, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendants, Nor-Com Investments, an Oklahoma limited partnership; Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation a/k/a Tallant Development Company; Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association; and Franklin & Underwood Properties, an Oklahoma general partnership, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Chad F. Stites, in the principal sum of \$9,341.87, plus interest at the rate of 8.5 percent per annum from August 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.15 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Nor-Com Investments, an Oklahoma limited partnership; Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation a/k/a Tallant Development Company; E. W. Fisher III; Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association; Franklin & Underwood Properties, an Oklahoma general partnership; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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

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

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney


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

NNB/css

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

FILED

MAY 24 1989 *st*

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

SAN ANTONIO SAVINGS
ASSOCIATION,

Plaintiff,

vs.

GEORGE A. SHIPMAN d/b/a
Shipman Investments, et al.,

Defendants.

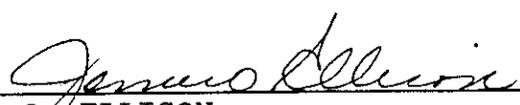
No. 88-C-1604-E ✓

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled based on the dismissal of all claims. 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 23^d day of May, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 24 1989

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JAMES B. HAMMETT and J. ANN)
HAMMETT, husband and wife,)
individually and doing business)
as Honcho's Restaurant and)
Club; ALVIN M. IVERSON;)
PETER C. IVERSON,)
)
Defendants.)

CIVIL ACTION NO. 88-C-1503-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23rd day of May, 1989. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendants, James B. Hammett and J. Ann Hammett, husband and wife, individually and doing business as Honcho's Restaurant and Club, appear not, having previously filed their Disclaimer; and the Defendants, Alvin M. Iverson and Peter C. Iverson, appear not, but make default.

The Court being fully advised and having examined the file herein finds that Defendant, Alvin M. Iverson, was served with Summons and Complaint on January 9, 1989; and that the Defendant, Peter C. Iverson, was served with Summons and Complaint on January 24, 1989.

It appears that the Defendants, James B. Hammett and J. Ann Hammett, husband and wife, individually and doing business

as Honcho's Restaurant and Club, filed their Disclaimer and Consent to Judgment In Rem on November 10, 1988; and that the Defendants, Alvin M. Iverson and Peter C. Iverson, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on the 11th day of April, 1983, at Tulsa, Oklahoma, James B. Hammett and J. Ann Hammett, husband and wife, individually and as partners of Honcho's Restaurant and Club, for value received, made, executed and delivered to Gilcrease Hills Bank (hereinafter "Bank"), their certain promissory note in the principal amount of \$325,000.00, with interest from date at the rate of 11.5 percent per annum on the unpaid balance until paid. Said promissory note was transferred to Small Business Administration on April 23, 1984.

The Court further finds that on or about January 24, 1983, and April 11, 1983, as collateral security for payment of the aforesaid note, James B. Hammett and J. Ann Hammett, husband and wife, individually and as partners of Honcho's Restaurant and Club, executed and delivered to the Bank, three certain Security Agreements on each date, thereby creating in favor of Plaintiff a purchase money security interest in certain machinery and equipment, inventory, accounts receivable, contract rights and fixtures then owned or thereafter acquired, including, but not limited to goods described therein, copies of which six Security Agreements were attached to the Complaint as Exhibits "B" through "G," inclusive. The security interest of Plaintiff in said property was perfected by a Financing Statement filed with the County Clerk of Tulsa County, Oklahoma, as follows:

1. Financing Statement No. 443308 filed March 23, 1983, assigned to SBA under filing on April 1, 1987, and continued under filing #580739 on March 29, 1988.

and Financing Statements filed with the County Clerk of Oklahoma County, Oklahoma, as follows:

2. Financing Statement No. 098769 filed November 8, 1982, assigned to SBA under #023149 filed April 8, 1987.

3. Financing Statement No. 31100 filed April 7, 1983, assigned to SBA under filing #023150 on April 8, 1987.

4. Financing Statement No. 039215 filed May 2, 1983, assigned to SBA under #023051 on April 8, 1987, and continued under filing #016220 on March 17, 1988.

The Court further finds that the Defendants, James B. Hammett and J. Ann Hammett, husband and wife, individually and doing business as Honcho's Restaurant and Club, made default under the terms of the aforesaid note and security agreements by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, James B. Hammett and J. Ann Hammett, husband and wife, individually and doing business as Honcho's Restaurant and Club, are indebted to the Plaintiff in the principal sum of \$273,715.10, together with accrued interest of \$31,961.77 as of the 29th day of March 1988, with interest thereafter at the daily rate of \$67.49 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, Alvin M. Iverson and Peter C. Iverson, are in default and have no right, title, or interest in the subject personal property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, James B. Hammett and J. Ann Hammett, husband and wife, individually and doing business as Honcho's Restaurant and Club, in the principal sum of \$273,715.10, together with accrued interest of \$31,961.77 as of the 29th day of March 1988, with interest thereafter at the daily rate of \$67.49 until judgment, plus interest thereafter at the current legal rate of 9 1/2 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Alvin M. Iverson and Peter C. Iverson, have no right, title, or interest in the subject personal 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 personal 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 personal 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 personal 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 personal property or any
part thereof.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon
application of the Plaintiff the Clerk of this Court shall issue
a writ of assistance pursuant to Rule 70 of the Federal Rules of
Civil Procedure.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAY 24 1989
Jack C. Silver, Clerk

IN THE MATTER OF THE TAX U.S. DISTRICT COURT
INDEBTEDNESS OF)
DANNY R. MCDONALD,)

NO. M-1521-C

FILED

MAY 11 1989

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

NOTICE OF DISMISSAL

The United States of America, ex rel. Internal Revenue Service, through their duly authorized employees and agents would advise the Court that the Warrant to Enter Premises to Effect Levy filed by this Court on April 24, 1989, has been duly executed as evidenced by the return of said warrant attached hereto. Accordingly, the United States of America having fully advised the Court that the Warrant to Enter Premises has been effected dismisses this action.

Respectfully submitted,

TONY M. GRAHAM
United States Attorney

Phil Pinnell

PHIL PINNELL, OBA # 7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

RECEIVED

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

MAY 22 1989

U. S. ATTORNEY
N. D. OKLAHOMA

IN THE MATTER OF THE TAX)
INDEBTEDNESS OF DANNY R. MCDONALD.)

No. M-1521-C

FILED

WARRANT TO ENTER PREMISES
TO EFFECT LEVY

APR 24 1989

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

The United States of America, having filed an application,
together with a declaration in support of the application,
requesting authorization for Jay C. Grooms, a revenue officer
of the Internal Revenue Service, and/or other designated
employees of the Internal Revenue Service to enter the premises
located at 14506 West Gomez, Sand Springs, Oklahoma 74063-4439,
in order to seize property in satisfaction of unpaid federal
taxes, and the Court finding on the basis of the declaration
that there is probable cause to believe that property or rights
to property that is subject to levy by the United States
pursuant to Section 6331 of the Internal Revenue Code is
located on or within the premises described, it is

ORDERED that Revenue Officer Jay C. Grooms and/or other
designated employees of the Internal Revenue Service are
authorized to enter the premises and to make such search as is
necessary in order to levy and seize, pursuant to Section 6331
of the Internal Revenue Code. In making this search and

Executed
4-27-89

seizure, however, the revenue officer and/or designated employees are directed to enter the premises during business hours or the daytime and within ten days of this order and to make reasonable entries thereafter to effectuate any disposition of seized property.

Dated: April 24, 1989

(Signed) H. Dale Cook

UNITED STATES DISTRICT COURT JUDGE

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

By Jack C. Silver, Clerk
Deputy

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

FILED

MAY 24 1989

John C. ... Clerk
U.S. DISTRICT COURT

WESTINGHOUSE ELECTRIC SUPPLY)
COMPANY, a division of Westing-)
house Electric Corporation, a)
Pennsylvania corporation,)

Plaintiff,)

vs.)

Case No. 87-C-224-E

WISE LIGHTING COMPANY, an)
Oklahoma corporation,)

Defendant,)

and)

MIKE WISE,)

Garnishee.)

JUDGMENT

This action came on for trial before the Court on May 1, 1989. The issues having been duly heard and a decision having been duly rendered, as set forth more fully in the Findings Of Facts And Conclusions Of Law, which are incorporated herein,

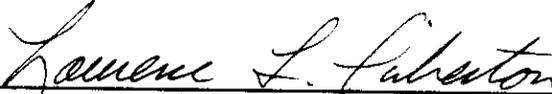
IT IS ORDERED AND ADJUDGED

That Plaintiff Westinghouse Electric Supply Company recover of Garnishee Mike Wise the sum of \$24,311.00, and attorney fees and costs in the amount of \$15,000.00, with interest on the total amount of \$39,311.00 at the rate of ^{9.15}~~9.51~~% from May 1, 1989.

DATED at Tulsa, Oklahoma, this 23 day of May, 1989.

~~W JAMES O. ELLISON~~

UNITED STATES DISTRICT JUDGE
JAMES O. ELLISON



Laurence L. Pinkerton (OBA #7168)
CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiff WESTING-
HOUSE ELECTRIC SUPPLY COMPANY



Donald E. Pool (OBA #7210)
1515 South Denver
Tulsa, Oklahoma 74119-3238
(918) 599-8118

Attorney for Garnishee
MIKE WISE

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

TOMMY H. FARGUSON, SR.,)
)
 Plaintiff,)
)
 v.)
)
 UNITED STATES COMMISSIONER)
 OF INTERNAL REVENUE SERVICE)
 and 50 UNKNOWN AGENTS,)
)
 Defendants.)

89-C-45-C

FILED

MAY 21 1989

Jack C. Silver, Clerk
DISTRICT COURT

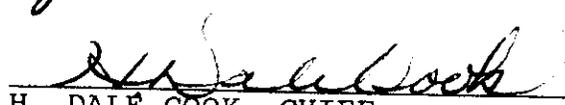
ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed April 26, 1989, in which the Magistrate recommended that this case be dismissed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that this case is dismissed without prejudice pursuant to Rules 16(f) and 37 (b)(2)(c) of the Federal Rules of Civil Procedure for failure of the plaintiff to appear on April 20, 1989, as directed in the March 28, 1989 Notice setting an initial status and scheduling conference.

Dated this 27th day of May, 1989.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 21 1989

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

MONARCH INVESTMENTS, INC.)
)
 Plaintiff,)
)
 vs.)
)
 BRIAN J. O'SHAUGHNESSY,)
 an individual, and)
 CONISTON HALL LTD.,)
 a corporation,)
)
 Defendants.)

Case No. '89-C-311 C

ORDER OF DISMISSAL

THIS MATTER having come on to be heard this 24 day
of May, 1989, upon Stipulation for Dismissal, the
Court finds that the case should be dismissed.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that
the above-styled matter is dismissed with prejudice.

DATED this 24 day of May, 1989.

(Signed) H. Dale Cook

United States District Judge

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

Handwritten notes and stamps:
JUL 23 1987
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

I.T. FINANCIAL CORP. and)
INTERNATIONAL TOURS, INC.,)
an Oklahoma corporation,)
)
Plaintiffs,)

vs.)

No. 87-C-642-B
(Consolidated)

BUDDY EARL PROFFITT and)
ANNETTE PROFFITT, dba)
INTERNATIONAL TOURS - ONE)
MEMORIAL PLACE,)
)
Defendants,)

and)

MARTIN McMILLAN d/b/a)
INTERNATIONAL TOURS OF)
BROOKSIDE,)
)
Defendant,)

and)

HARRIS & GISH, INC., d/b/a)
INTERNATIONAL TOURS OF)
SAND SPRINGS,)
)
Defendant.)

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties to this action, pursuant to Rule 41(a)(1), of
the Federal Rules of Civil Procedure, hereby enter into this

stipulation that the Plaintiff's action against Defendant Harris & Gish, Inc. should be dismissed with prejudice for the reason that the parties have entered into a settlement agreement.

CHAPEL, RIGGS, ABNEY, NEAL & TURPEN

BY: Stephanie L. Jones for
BENJAMIN P. ABNEY, OBA# 115
502 West Sixth Street
Tulsa, Oklahoma 74119-1010
(918) 587-3161

ATTORNEYS FOR PLAINTIFFS, I.T.
FINANCIAL CORP. and INTERNATIONAL
TOURS, INC.

LARRY L. OLIVER & ASSOCIATES

BY: Larry L. Oliver
LARRY L. OLIVER
2211 East Skelly Drive
Tulsa, Oklahoma 74105

ATTORNEYS FOR DEFENDANT,
HARRIS & GISH, INC.

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

JAMES P. CORCORAN,)
)
 Plaintiff,)
)
 vs.)
)
 MID-STATES GENERAL AGENCY,)
 INC., et al.,)
)
 Defendants.)

No. 89-C-87-E

FILED

MAY 24 1989

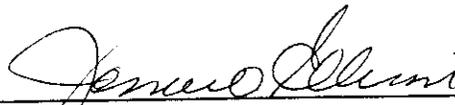
Jack C. Silver, Clerk
U.S. DISTRICT COURT

DEFAULT JUDGMENT

It appears that Mid-States General Agency, Inc., Fred A. England and Linda Ann England, the Defendants herein have been served with the Summons and Complaint in this action, and having failed to answer or otherwise appear within the legal time, are in default and that the Clerk has previously searched the records and entered the default of the Defendants. It further appears from the affidavit of counsel of record for the Plaintiff that the Defendants are indebted to the Plaintiff in the sum of \$857,222.00 together with interest at the rate of 9.15 % per annum, that default has been entered against the Defendants for failure to appear, and that the Defendants are not infants or incompetent persons and are not in the military service of the United States.

IT IS THEREFORE ORDERED that the Plaintiff recover from the Defendants, Mid-States General Agency, Inc., Fred A. England and Linda Ann England, the sum of \$857,222.00, together with interest at the judgment rate of 9.15 % per annum for all of which let execution issue.

ORDERED this 23rd day of May, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

MAY 24 1989 *dt*

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

L.E. SMITH,

Plaintiff,

v.

F. SMITH, et al

Defendants.

89-C-137-E ✓

ORDER OF DISMISSAL

The Court has for consideration the Report and Recommendation of the United States Magistrate filed March 8, 1989 in which the Magistrate recommended that the Complaint be dismissed pursuant to 28 U.S.C. §1915(d).

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

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

It is, therefore, Ordered that the Complaint is dismissed pursuant to 28 U.S.C. §1915(d).

Dated this 23rd day of May, 1989.

James O. Ellison
JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 23 1989

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

LEWIS AARON COOK,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF TULSA POLICE DEPT.,)
 CITY OF TULSA,)
)
 Defendants.)

89-C-52-C

ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed April 26, 1989, in which the Magistrate recommended that this case be dismissed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that this case is dismissed without prejudice pursuant to Rules 16(f) and 37 (b)(2)(c) of the Federal Rules of Civil Procedure for failure of the plaintiff to appear on April 20, 1989, as directed in the March 28, 1989 Notice setting an initial status and scheduling conference.

Dated this 23rd day of may, 1989.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

F I L E D

MAY 23 1989

KEITH L. BELKNAP, and)
CHAMPIONS ORGANIZATION, INC.,)
)
Plaintiffs,)
)
vs.)
)
AMWAY CORPORATION, a Michigan)
corporation,)
)
Defendant.)

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

No. 87-C-795-B

O R D E R

This matter comes before the Court on Plaintiff Keith L. Belknap's Motion to Reconsider an Order filed July 27, 1988 dismissing several claims. This Court overruled a like Motion to Reconsider on November 18, 1988. Plaintiff again urges this Court to review the dismissal of Plaintiff's Third Cause of Action for tortious interference with contractual relations in light of new evidence. Both parties have also filed Motions for Summary Judgment on Plaintiff's First Cause of Action for failure to pay bonuses and on Plaintiff's Second Cause of Action for failure to renew his distributorship.

The relevant facts supported by the record are as follows: Plaintiff, Keith Belknap, became an Amway distributor in 1977. (Plaintiff's Complaint, ¶12). Plaintiff continually renewed his one year contract every year through 1984. (Plaintiff's Depo. p. 65). Plaintiff, as an Amway distributor, bound himself contractually to certain Amway rules of conduct. Among these rules Plaintiff agreed that any sale of his distributorship would have to be approved by Amway. Plaintiff also agreed that "upline

134

sponsors," starting with his immediate sponsor, Don Brannon, had a right of first refusal to purchase his distributorship when and under the terms he decided to sell to anyone. All parties, Belknap, Setzer, Brannon and Amway acknowledge these rules are undisputed.

Rule 6 of the rules of conduct of Amway Distributors states:

"Rule 6. Make no sale or transfer of a distributorship out of the line of sponsorship except in accordance with the following limitations. However, it should be clearly understood that no change in one's line of sponsorship will become effective until written approval by Amway Corporation or Amway of Canada, Ltd. (or both, if the line of sponsorship is located partially in each country) is received by the distributor(s) involved." (Appendix C to Defendant's Brief in Support of its Motion for Summary Judgment filed April 7, 1989).

On January 17, 1985, Plaintiff contracted in writing to sell his distributorship to Rick Setzer, who is not an "upline sponsor."

Plaintiff was to receive and did receive \$150,000.00 when the contract was signed. In addition to that, Plaintiff was to receive from purchaser Setzer \$120,000.00 paid out over four years. The sales contract stated that if payments were not made, the distributorship reverts back to Plaintiff. Specifically, the contract stated *inter alia*:

"Passage of Title. Full right, title, and interest in and to said Amway Distributorship shall pass to Buyers upon payment of the sum of One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars as provided in Paragraph (3) below and upon execution of this Agreement. In the event that Buyers fail to meet the requirements and obligations herein set forth, or fail to pay any of the payments required

herein, and do not correct such omissions to perform within ninety (90) days after the required date of performance or payment, then this Contract shall terminate, and the distributorship covered by this Contract shall revert back to the ownership of Sellers, whereupon Amway shall thereafter pay all bonuses and similar payments directly to Sellers." (Appendix B to Defendant's Brief in Support of Its Motion for Summary Judgment, paragraph 2, filed April 7, 1989).

In February 1985 Setzer, in an effort to circumvent the first right of refusal, attempted to form a partnership with Don Brannon. Amway refused to approve this partnership.

During spring 1985, it is clear from the documents presented to the Court, Setzer and Plaintiff had a dispute relative to some agreed-to terms of the transfer of the distributorship. Setzer did not make the installment payments to Plaintiff but made them to his attorney who gave "notice of tender."

On March 21, 1985 Amway notified Plaintiff that Amway had not yet approved the transfer of the distributorship "to anyone." (Plaintiff's Exhibit P-7). In April 1985 Amway contacted Brannon and offered him the distributorship pursuant to his right of first refusal on the basis as set out in the terms of the original Setzer-Belknap contract. (Brannon Depo. p. 23). Plaintiff was unaware that the distributorship was transferred to Brannon. Amway approved the sale of the distributorship to Brannon to be effective January 17, 1985, in keeping with the Setzer-Belknap contract. (Appendix B to Defendant's Brief in Support of Its Motion for Summary Judgment filed April 7, 1989).

In October 1985 Plaintiff attempted to renew his

distributorship agreement which was refused by Amway.

Plaintiff requests this Court to reconsider the order dismissing his Third Cause of Action. Plaintiff basically states that he attempted to sell his distributorship to a third party, Mr. Rick Setzer. Plaintiff admits that his original agreement with Defendant Amway Corporation ("Amway") gave Amway the right to disapprove any future sale of Plaintiff's distributorship and that Plaintiff was to give a right of first refusal to Plaintiff's original sponsor, Mr. Don Brannon. Plaintiff contends that when Plaintiff did not offer his distributorship to Don Brannon pursuant to Brannon's right of first refusal, Defendant Amway did. Plaintiff asserts his distributorship was offered by Amway to Mr. Brannon without Plaintiff's knowledge or consent.¹ Plaintiff contends that when the sale to Setzer was not approved by Amway or the sale otherwise failed, the distributorship should have reverted back to Plaintiff. Plaintiff claims to own the distributorship over Brannon. Plaintiff argues that the fact Brannon was sold the distributorship was "fraudulently concealed" from him.

Plaintiff's own affidavit states he "knew for sure" of this alleged fraudulent concealment in March or April 1987. (P-2 to Plaintiff's Motion to Reconsider filed April 7, 1989). Plaintiff's

¹Plaintiff states he may not have consented if he had been advised of this sale because his deal with Mr. Setzer was in part made on Mr. Setzer's credit worthiness. Plaintiff makes no showing of Brannon's lack of credit worthiness. To the contrary, Plaintiff states Brannon tried to tender payment to him.

original *pro se* Complaint was filed September 1987 without any mention of this fraudulent concealment. The Court was still not apprised of this argument in July 1988 after Plaintiff retained counsel and the Motion to Dismiss was thoroughly briefed on the statute of limitations issue. The fraudulent concealment theory was again not addressed by counsel's argument for reconsideration in November 1988, although thoroughly briefed.

The Court overrules Plaintiff's second motion to reconsider the Court's Order of July 27, 1988 dismissing Count Three of the Complaint. Plaintiff was previously given adequate time to prepare, brief, and argue his offense against the statute of limitations defense asserted by Defendant, and failed to do so. The Court's Order of July 27, 1988 stands. Further, the Court considers disingenuous Plaintiff's argument that Defendant was guilty of intentional interference with contractual relations and bad faith breach when the subject Amway distributorship agreement specifically provides for a first right of refusal in one other than to whom Plaintiff sold his Amway distributorship, and that Defendant had the right to approve any such sale. (The right of first refusal and the right to approve any sale is a provision of the Amway-Belknap distributorship agreement, Appendix C to Brief of Amway Corporation in Support of Motion for Summary Judgment, April 7, 1986 - Rule 6, and is also acknowledged in the Belknap-Setzer sales contract for Amway distributorship, Appendix B to Brief of Amway Corporation in Support of Motion for Summary

Judgment, paragraphs 9 and 10, respectively). Relative to enforcing the right of first refusal, and the right to approve any sale, the Amway-Belknap distributorship agreement gave Amway the right to so interfere. The Motion to Reconsider is OVERRULED.

Also before the Court are both parties' Motions for Summary Judgment. Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Widon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"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."

To survive a motion for summary judgment, the nonmovant "must establish that there is a genuine issue of material facts..." The nonmovant "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).

Both parties move for summary judgment on Plaintiff's second cause of action. Plaintiff's *pro se* complaint, Count II, alleged

that Defendant wrongfully refused to renew Plaintiff's distributorship contract in October 1985. Plaintiff stated "said actions on the part of the Defendant Amway were arbitrary, capricious, and without justifiable cause by reason of which the Plaintiff has been damaged...." On July 27, 1988, this Court held that under a liberal construction of the *pro se* complaint, Plaintiff had pled a cause of action under Hall v. Farmers, 713 P.2d 1027 (Okla. 1985). In Hall, the Oklahoma Supreme Court held:

"Certainly if Farmers acted with an intent to wrongfully deprive Hall of the fruits of his contract when it terminated his agency, they would stand in breach of the implied covenant of good faith. Whether such an intent existed is an issue of fact to be decided by the jury. Upon our review of the extensive record in this action, we find ample, competent evidence to support the jury's finding that Farmers did terminate Hall's agency with the clear intent to deprive Hall of the greater part of his future income from renewal premiums and to parcel that income among its other, less obstreperous agents, and so acted in bad faith.

* * *

"In summary, we hold that Farmers wrongfully invoked its right to terminate Hall's agency and did so for the unconscionable purpose of depriving Hall of the future payments of renewal premiums as a penalty for his having voiced his objections to controversial company actions. By its act of wrongful termination, Farmers breached the implied covenant of good faith which exists in all contracts, and is therefore liable to respond in damages. The measure of Hall's damages for Farmers' breach of contract is the predictable, quantifiable amount of future income which he was entitled to receive as renewal premiums on insurance policies he had sold as a Farmers agent, both before and after he received notice of the wrongful termination."

Both parties have submitted depositions and affidavits concerning their respective theories on Count II. Defendant contends that since Plaintiff sold his distributorship January 1985, there was no distributorship agreement to renew in October 1985. Plaintiff maintains that when the agreement to sell to Mr. Setzer fell through, the distributorship reverted back to Plaintiff.² Plaintiff contends that Amway's actions fell within Hall v. Farmers by refusing to renew his distributorship contract. The Court finds this argument unsubstantiated. Plaintiff acknowledges Brannon's right of first refusal. Plaintiff also acknowledges Amway's right to approve all sales contracts. Plaintiff completely ignores these points, however, in his argument. Under Oklahoma law, a right of first refusal requires an owner when he decides to sell, to offer the property first to the person entitled to the preemption on terms identical to those the owner agrees to be bound to by another party. Ollie v. Rainbolt, 669 P.2d 275 (Okla. 1983). If the property is conveyed in violation of the first right of refusal, the purchaser can be ordered to reconvey the property. Ollie v. Rainbolt, supra.

This case is significantly different from Hall v. Farmers, 713 P.2d 1027 (Okla. 1985). In the Hall case, Hall sued Farmers for bad faith termination without cause and for future income from

² Plaintiff's theory that the distributorship reverted back to him upon Setzer's default is immaterial because in spite of Setzer's default Brannon had the right to exercise his right of first refusal.

renewal premiums of his ten year term agency agreement. In the present case Amway did not terminate its relationship with Plaintiff, Plaintiff sold the distributorship to Setzer. Further, Amway's actions did not constitute bad faith as Amway was invited by contractual terms to approve or disapprove the sale.

Defendant's Motion for Summary Judgment is SUSTAINED as to Count II in favor of Defendant. Plaintiff's Motion for Summary Judgment on Count II is OVERRULED.

Plaintiff's first cause of action is for failure to pay bonuses for years ending August 1983 through 1987. Plaintiff's sales contract with Setzer conveyed to the purchaser all annual bonuses earned after August 31, 1984 and all monthly bonuses earned after December 31, 1984. (Exhibit B, Appendix to Defendant's Brief in Support of its Motion for Summary Judgment). Plaintiff again argues since the distributorship reverted to Plaintiff he is entitled to the bonuses. The Court, as stated previously, rejects this argument; these bonuses rightfully pass to Brannon. Plaintiff admits from January 1985 to September 1988 he has not been involved in any way with Amway. (Belknap Depo. p. 126). Summary judgment is GRANTED in favor of Defendant concerning bonuses conveyed under the sales contract.

The other bonuses sued for herein are all bonuses earned for years ending August 1983 and August 1984 and for monthly bonuses earned before January 1, 1985. Defendant's brief in support of Defendant's Motion for Summary Judgment states all bonuses have been paid. In Defendant's response to Plaintiff's Motion for

Summary Judgment Defendant explains,

"Bonuses due to Belknap were paid to Belknap by being placed in the joint account of Keith and Jimmie Lee Belknap at Amway Mutual Fund, Inc., a separate entity. Such funds have at all times been owned by the Belknaps and available to the Belknaps for withdrawal upon their joint request."

Although the pleadings do not reflect the exact amount involved, the parties indicated at oral argument that the amount for 1983 and 1984 bonuses was not in dispute. It was revealed at the oral argument hearing on Plaintiff's motion to reconsider and the parties' motions for summary judgment on May 11, 1989, that the Belknaps are in the process of getting a divorce and disputing entitlement to this asset. Mrs. Jimmie Lee Belknap is not a party herein. It is unclear whether a separate legal entity has possession and control over the subject funds, i.e., Amway Mutual Fund, Inc., or does the Defendant Amway Corporation in reality control the funds? Until these questions of specific amount and proper parties are resolved, summary judgment on the first cause of action for unpaid bonuses for the years 1983 and 1984 is premature and therefore OVERRULED.

It is also clear to the Court Champions Organization, Inc., has no rightful claim herein as it has no contractual relationship with Amway. (Belknap Depo. p. 59).

Trial is scheduled for June 19, 1989 at 9:30 A.M.

DATED this 23rd day of May, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Appendix A

FILED

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

MAY 23 1989

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

TERESA ARTHUR,)
)
 Plaintiff,)
)
 vs.)
)
 FERGUSON ENTERPRISES, INC.,)
 a Virginia Corporation,)
)
 Defendant.)

Civil Action No. 88-C-1307-B

ORDER AND STIPULATION OF DISMISSAL WITH PREJUDICE

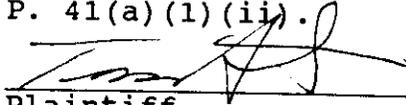
Upon agreement and stipulation of the parties pursuant to Fed. R. Civ. P. 41(a)(1)(ii), and deeming it proper so to do, it is **ADJUDGED** and **ORDERED** that this action be, and the same is hereby dismissed with prejudice, with each party to bear its own costs and counsel's fees. Let the Clerk send a copy of this Order to all counsel of record.

SO ORDERED.

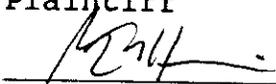
S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Dated:

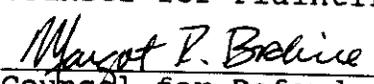
We hereby agree to entry of this Order and stipulate to the dismissal of this action with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(ii).



Plaintiff



Counsel for Plaintiff



Counsel for Defendant

FILED

MAY 23 1989
Jack C. Silver, Clerk
U.S. DISTRICT COURT

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

STEVEN TRENT HARRIS,)
)
 Plaintiff,)
)
 vs.)
)
 ATLAS POWDER COMPANY, INC.,)
 a Delaware corporation,)
 EXPLO-MIDWEST, INC., a Delaware)
 corporation, RANCHERS COAL, INC.,)
 an Oklahoma corporation, KEN)
 ERSTAD, TY PORTER and BOB)
 POGUE, Agents, Servants and)
 Employees of Ranchers Coal, Inc.,)
)
 Defendants.)

No. 89-C-0013-B

ORDER

This matter comes before the Court on Defendants Ranchers Coal Company, Inc., Ken Erstad, and Ty Porter's motions to dismiss under Fed.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction.

On June 16, 1988 Plaintiff Steven Trent Harris was employed as a heavy equipment operator for Ranchers Coal Company, Inc. and was severely injured when a charge of dynamite was improperly detonated.

Defendants contend diversity of citizenship does not exist in this case and no federal question is involved. Defendants also contend Plaintiff's exclusive remedy is workers' compensation.'

Plaintiff concedes that no diversity of citizenship is present

'The Court abstains from deciding the exclusivity of the workers' compensation issue because the Court finds that it otherwise lacks subject matter jurisdiction.

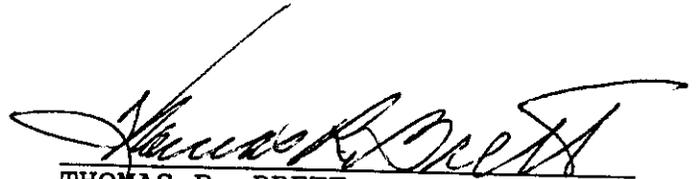
herein. Plaintiff asserts the Court has subject matter jurisdiction under 28 U.S.C. §1331 because a federal question is involved under the Federal Blasting Procedures Act. Plaintiff's Complaint alleges that Defendants are liable per se for Plaintiff's injuries for failure to comply with the Federal Blasting Procedures Act, 30 U.S.C. §801 *et seq.*

Defendants contend the Federal Blasting Procedures Act does not provide a private cause of action for violations. The Court agrees. The United States Supreme Court set out factors to determine whether a private remedy is implicit in a statute not expressly providing one in Cort v. Ash, 422 U.S. 66 (1975). First, is Plaintiff one of the class for whose especial benefit the statute was enacted? Second, is there any indication of legislative intent to create a remedy? Third, was it in the legislative scheme to employ such a remedy? Fourth, is the cause of action one traditionally regulated to state law? Cort v. Ash, supra. Plaintiff does not claim nor cite to any legislative intent which even hints of giving such a remedy. Moreover, such causes of action are traditionally relegated to state law.

The Court finds the claims neither arise under federal law nor is the validity or constitutionality of a federal statute in question. Mescalero Apache Tribe v. Martinez, 519 F.2d 479 (10th Cir. 1975).

Therefore, Plaintiff's Complaint is hereby dismissed for lack of subject matter jurisdiction.

DATED this 23rd day of May, 1989.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

F I L E D

MAY 23 1989

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

LANGLEY & MONALDO, Chartered
Attorneys at Law
335 North Washington, Suite 130
P. O. Box 728
Hutchinson, Kansas 67504-0728
(316) 669-9338

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

Richard H. Hughes, Trustee for the
Hinderliter Pension Plan and Trust;
and **Richard H. Hughes**, an individual,

Plaintiffs,

vs.

Case No. 89 C 048 B

**Consolidated Communications Network
Inc.**, a Utah corporation; **Ronald L.
Shaffer**, an individual; **John E. Shaffer**,
an individual; **Timothy H. Shaffer**, an
individual; **Frederick I. Shaffer, III**, an
individual; **Frederick I. Shaffer, Jr.**, an
individual; **Kenneth L. Mick**, an indi-
vidual; and **Gary L. Dinges**, an individual,

Defendants.

JOURNAL ENTRY

ON THIS 23rd day of May, 1989, comes the oral motion of the Plaintiffs and Defendants to dismiss with prejudice the claims and Plaintiffs and Defendants against each other. Plaintiffs appear by their legal counsel, Howard and Widdows, P.C., of Tulsa, Oklahoma. Defendants, Consolidated Communications Network, Inc. (CCN), Ronald L. Shaffer, John E. Shaffer, Timothy H. Shaffer, Frederick I. Shaffer, III and Frederick I. Shaffer, Jr. (*Shaffers*), appear by their legal counsel, Tino M. Monaldo of Hutchinson, Kansas. After reviewing the Court file, this Court makes the following findings of fact:

1. This Court has proper jurisdiction and venue over the parties and subject matter to this action.

2. The parties stipulate that they had reached a settlement in this action, and that all said parties requested a mutual dismissal with prejudice of all Plaintiffs' claims against *CCN* and the *Shaffers* and all *CCN*'s and the *Shaffers*' claims against Plaintiffs, and that each party herein shall be responsible for its own attorney's fees and court costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the findings of fact described above, are hereby made the order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the claims and causes of action of Plaintiffs herein are dismissed with prejudice against each and all *CCN* and the *Shaffers*; and that the counterclaims of *CCN* and the *Shaffers* herein are dismissed with prejudice against each and all Plaintiffs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the named Defendants remaining in this action shall be only Kenneth L. Mick and Gary L. Dinges; and that Plaintiffs have specifically reserved their right to pursue their remaining claims against Mr. Mick and Mr. Dinges.

S/ THOMAS R. BRETT

Judge of the District Court

By:

Tino M. Monaldo
Tino M. Monaldo
Langley & Monaldo, Chartered
335 North Washington, Suite 130
Hutchinson, Kansas 67504-0728
(316) 669-9338
Attorney for Defendants, Consolidated
Communications Network, Inc.; Ronald L.
Shaffer; John E. Shaffer; Timothy H.
Shaffer; Frederick I. Shaffer, III; and
Frederick I. Shaffer, Jr.

By: 
Gene C. Howard, O.B.A. #4398
Howard & Widdows, P.C.
2021 South Lewis, Suite 570
Tulsa, Oklahoma 74104

*Entered as
to A Wilson
only*

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

F I L E D

RALPH JOHN FEUERBORN, SR., et al,)
)
Plaintiffs,)
)
v.)
)
STOOPS EXPRESS, INC., et al,)
)
Defendants.)

MAY 22 1989

87-C-159-C Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER GRANTING DEFAULT JUDGMENT

The Court has for consideration the Report and Recommendation of the United States Magistrate filed March 8, 1989 in which the Magistrate recommended that default judgment be entered against Darrell Wilson, one of several Defendants in the instant action; and, that an evidentiary hearing be scheduled before the District Court to determine the amount of said Defendant's liability to Plaintiff's, if any.

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

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

It is, therefore, Ordered that default judgment is entered against Defendant Darrell Wilson, and that an evidentiary hearing be scheduled before the District Court to determine the amount of said Defendant's liability to Plaintiff's, if any.

Dated this 22 day of May, 1989.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

THOMAS N. HALL, individually and d/b/a
MARKET EXCHANGE INDEX LTD.,

THD, INCORPORATED,
an Oklahoma corporation,

NOEL L. WELSH, individually and d/b/a
WELSH ENTERPRISES,

and

MARKET EXCHANGE INDEX, a partnership,
Defendants.

: Civil Action No.
: 88C 318B ✓

:
: DEFAULT JUDGMENT
: AND ORDER OF
: PERMANENT INJUNCTION
: AND OTHER EQUITABLE
: RELIEF AGAINST
: DEFENDANTS MEI AND THD

FILED
MAY 22 1989

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

The plaintiff, COMMODITY FUTURES TRADING COMMISSION ("Commission"), has filed a complaint and an amended complaint for injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended, ("Act") 7 U.S.C. §1, et seq. The defendants Market Exchange Index Ltd. ("MEI") and THD Incorporated ("THD") having failed to appear or otherwise defend, are found to be in default. The Court, being fully advised in the premises, finds that there is good cause for the entry of the following Order of Permanent Injunction and other equitable relief against MEI and THD.

IT IS THEREFORE ORDERED THAT:

1. MEI and any of its officers, directors, subsidiaries, affiliates, agents, servants, employees, successors, assigns, and

45

persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise, are hereby permanently enjoined from directly or indirectly:

- (A) Cheating or defrauding or attempting to cheat or defraud other persons, in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, on or subject to the rules of a contract market, for or on behalf of other persons where such contracts for future delivery were or could have been used for (a) hedging any transaction in interstate commerce in such commodities or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodities, or (c) delivering any such commodities sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(A) of the Act, 7 U.S.C. §6b(A);
- (B) Using the mails or any means or instrumentalities of interstate commerce, directly or indirectly, to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant in a commodity pool; or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or

- participant or prospective client or participant in a commodity pool, in violation of Section 4o(1) of the Act, 7 U.S.C. §6o(1);
- (C) Engaging in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and in connection therewith, soliciting, accepting, or receiving from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodities for future delivery on or subject to the rules of a contract market, and making use of the mails or any means or instrumentalities of interstate commerce in connection with the business of a commodity pool operator ("CPO"), without being registered with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. §6m(1);
- (D) Acting as a CPO and failing to keep the books and records required to be kept by CPOs as set forth in Regulation 4.23, 17 C.F.R. §4.23, in an accurate, current and orderly manner at the CPO's main business office, in violation of Regulation 4.23, 17 C.F.R. §4.23;
- (E) Directly or indirectly soliciting, accepting or receiving funds, securities or other property from

prospective participants in a commodity pool that they operate or intend to operate, without delivering or causing to be delivered to the prospective participants, on or before the date that they engage in that activity, a Disclosure Document for the pool, containing all of the information required by Regulation 4.21, 17 C.F.R. §4.21, in violation of Regulation 4.21, 17 C.F.R. §4.21;

- (F) Failing to distribute, for the reporting period specified in Regulation 4.22(b), 17 C.F.R. §4.22(b), to each participant in each commodity pool that they operate, an Account Statement, presented in the form of a Statement of Income (Loss) and a Statement of Changes in Net Asset Value, containing the information specified in Regulation 4.22(a), 17 C.F.R. §4.22(a), in violation of Regulation 4.22(a), 17 C.F.R. §4.22(a);
- (G) Failing to distribute an Annual Report to each participant in each commodity pool that they operate, containing the information specified in Regulation 4.22(c), (d), and (e), 17 C.F.R. §4.22(c), (d), and (e), in violation of Regulation 4.22(c), (d), and (e), 17 C.F.R. §4.22(c), (d), and (e); and

2. THD and any of its officers, directors, subsidiaries, affiliates, agents, servants, employees,

successors, assigns, and persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise, are hereby permanently enjoined from directly or indirectly:

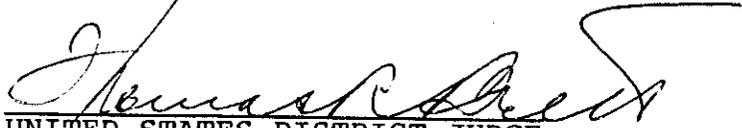
- (A) Operating as an introducing broker ("IB") and accepting money, securities or property (or extending credit in lieu thereof) to margin, guarantee or secure trades or contracts of customers, or money, securities or property accruing as a result of such trades or contracts, in violation of Regulation 1.57(c), 17 C.F.R. §1.57(c).

3. MEI and THD and any of their officers, directors, subsidiaries, affiliates, agents, servants, employees, successors, assigns, and persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, shall be prohibited from, directly or indirectly:

- (A) Dissipating, withdrawing, transferring, removing, concealing or disposing of funds, assets or other property of MEI or THD, whether held in the names of MEI or THD, or otherwise, or within the possession, custody or control of MEI or THD;
- (B) Destroying, mutilating, concealing, altering or disposing of, in any manner, any of the books, records, documents, correspondence, brochures,

manuals, electronically stored data, tape recordings or other property of MEI or THD, until further order of the Court.

Date: MAY 22nd 1989
Time:


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JACKIE RAY MARTIN; KAREN L.
MARTIN; COUNTY TREASURER,
Rogers County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Rogers County, Oklahoma,

Defendants.

FILED

MAY 22 1989

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

CIVIL ACTION NO. 88-C-519-C

DEFICIENCY JUDGMENT

Now on this 22 day of May, 1989, there came on for hearing the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment herein, said Motion being filed on the 21st day of March, 1989, and a copy of said Motion being mailed to Jackie Ray Martin and Karen L. Martin, P.O. Box 17, Talala, Oklahoma 74080, and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Peter Bernhardt, Assistant United States Attorney, and the Defendants, Jackie Ray Martin and Karen L. Martin, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on August 10, 1988, in favor of the Plaintiff United States of America, and against the Defendants, Jackie Ray Martin and Karen L. Martin, with interest and costs to date of sale is \$51,690.04.

The Court further finds that the appraised value of the real property at the time of sale was \$32,800.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered August 10, 1988, for the sum of \$29,001.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 15th day of May, 1989.

The Court further finds that the Plaintiff, United States of America on behalf of the Administrator of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Jackie Ray Martin and Karen L. Martin, as follows:

Principal Balance as of 08/10/88	\$41,762.38
Interest	7,563.80
Late Charges to Date of Judgment	184.80
Appraisal by Agency	585.00
Management Broker Fees to Date of Sale	160.00
Abstracting	198.50
Publication Fees of Notice of Sale	146.88
Legal Fees	<u>1,088.68</u>
TOTAL	\$51,690.04
Less Credit of Appraised Value	- <u>32,800.00</u>
DEFICIENCY	\$18,890.04

plus interest on said deficiency judgment at the legal rate of 9.15 percent per annum from date of deficiency judgment until

paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Administrator of Veterans Affairs have and recover from Defendants, Jackie Ray Martin and Karen L. Martin, a deficiency judgment in the amount of \$18,890.04, plus interest at the legal rate of 9 15 percent per annum on said deficiency judgment from date of judgment until paid.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

PB/css

FILED

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

MAY 22 1989 K

LEWIS AARON COOK,
Plaintiff,

v.

LYNN A. SIMMONS and TULSA
COUNTY, OKLAHOMA,
Defendants.

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

88-C-1468-E ✓

ORDER of Dismissal

The court has for consideration the Report and Recommendation of the Magistrate filed February 24, 1989, in which the Magistrate recommended that defendants' Motion to Dismiss be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

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

Dated this 22^d day of March, 1989.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

MAY 22 1989

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

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

IN RE:)	
)	
JOHN H. WILLIAMS, JR., and)	
CAROL S. WILLIAMS,)	Case No. 86-00475-W
)	(Chapter 11)
Debtors.)	
)	
ROBERT A. STOCKER,)	
TRUSTEE,)	
)	
Plaintiff,)	
)	
vs.)	Adversary No. 870069-W
)	
KENSINGTON COMPANY LIMITED,)	
PARTNERSHIP, formerly, The)	
Kensington Company Ltd., an)	
Oklahoma limited partnership;)	
and JOHN H. WILLIAMS, SR.,)	Appeal No. 88-C-1364-E ✓
)	
Defendants.)	

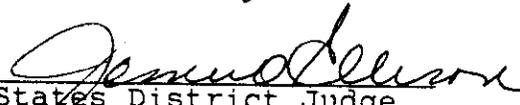
ORDER OF DISMISSAL

Upon the Stipulation of Dismissal, filed herein pursuant to Bankruptcy Rule 8001(c)(2) by Robert A. Stocker, the Appellee, and The Kensington Company Limited Partnership and John H. Williams, Sr. the Appellants, and the Court having found that the parties hereto have reached a settlement which resolves the issues in this consolidated appeal and have agreed that the appeal may be dismissed with prejudice, each party to bear its own costs.

IT IS THEREFORE ORDERED that the above-styled consolidated appeal be, and it is hereby, dismissed with prejudice, and that each party shall bear its own costs

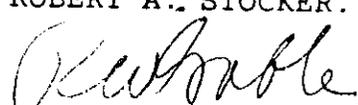
incurred herein.

IT IS SO ORDERED this 22nd day of May, 1989.


United States District Judge

APPROVED AS TO FORM
AND CONTENT:


Thomas E. English
Douglas S. Tripp
ENGLISH, JONES & FAULKNER
1700 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-1564
ATTORNEYS FOR APPELLEE,
ROBERT A. STOCKER. TRUSTEE


Richard W. Gable
GABLE & GOTWALS
2000 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119
(918) 582-9201
ATTORNEYS FOR APPELLANT,
KENSINGTON COMPANY LIMITED PARTNERSHIP

FILED

MAY 22 1989

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

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

CLIFTON DEACON,)

Plaintiff,)

v.)

VETERANS OF FOREIGN WARS OF)
THE UNITED STATES, INC., a)
Foreign Corporation, d/b/a)
VFW POST 2592,)

Defendants.)

Case No.: 88-C-1608 B

ORDER

NOW on this 22nd day of May, 1989, this matter comes before the undersigned Judge of the United States District Court pursuant to the Motion to Allow Dismissal Without Prejudice filed herein by the plaintiff. With no objection to the dismissal of this cause and for other good cause shown, this Court finds that said motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT THE ABOVE STYLED CAUSE IS HEREBY DISMISSED WITHOUT PREJUDICE.

S/ THOMAS R. BRETT

Judge of The
United States District Court

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

E D
MAY 22 1989

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs-)
)
 MARVIN L. SANDERS,)
 446567881)
)
 Defendant,)

U.S. District Court
U.S. DISTRICT COURT

CIVIL NUMBER 88-C-1599 E ✓

DEFAULT JUDGMENT

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

JUDGMENT is rendered in favor of the Plaintiff, United States of America, and against the Defendant, MARVIN L. SANDERS, in the principal sum of \$644.33, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$17.60. Future costs and interest at the legal rate of 9.15%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 22nd day of May, 1989.

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

By: W. JAMES L. [Signature]

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

FILED

MAY 22 1989

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

MARC L. ABEL, D.O., an
individual,

Plaintiff,

vs.

COOPERVISION, INC., a
Delaware corporation,

Defendant.

§
§
§
§
§
§
§
§
§
§

Case No. 88-C-1183-E

STIPULATION OF DISMISSAL

COME NOW MARC L. ABEL, D.O., an individual ("Abel"), and Defendant, COOPERVISION, INC., also known as Cooper Companies ("Cooper"), pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, and enter this Stipulation of Dismissal. In support, both parties state as follows:

1. On September 8, 1988, Abel initiated an action to rescind a purchase agreement and the recovery of damages for breach of contract and breach of warranties in the principal amount of \$15,711.00 (the "action"). The action sought a judgment for rescission of the purchase agreement and the recovery of the purchase monies paid.

2. Defendant Cooper answered Abel's Amended Complaint, denying that Abel was entitled to recover under any theory; that the goods were not defective; that Abel had altered, misused or had not used the Phaco Emulsifier according to instructions contained in the operator's manual; that Abel failed to state a cause of action upon which relief can be granted; that Abel is not entitled to

recover under the Implied Warranties of Merchantability and Fitness for a Particular Purpose; that Abel had waived any defense to the limitation of remedy by actual and beneficial use of the equipment; that any defects in the Phaco Emulsifier, if in fact there were any, were remedied; and that the warranty had expired on the handpieces. Further, Cooper counterclaimed that Abel owed Cooper \$77,081.84 on an open account.

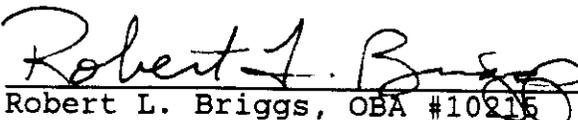
3. On April 28, 1989, Abel filed his Application for a Settlement Conference and the Appointment of a Settlement Judge or Magistrate.

4. Since that date, both parties have entered into settlement negotiations. Both parties have reached a Compromise Settlement Agreement, the terms of which require dismissal with prejudice of all claims filed in the instant action by both parties.

5. As a result, both Marc L. Abel, D.O., Plaintiff, and Coopervision, Inc., a Delaware corporation, now known as Cooper Companies, Defendant, hereby dismiss their Complaints, Amended Complaint and Counterclaim, respectively, all with prejudice.

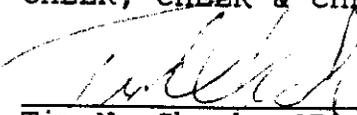
Respectfully submitted,

HOUSTON AND KLEIN, INC.


Robert L. Briggs, OBA #10215
320 South Boston, Suite 700
Tulsa, OK 74103
(918) 583-2131

ATTORNEYS FOR PLAINTIFF

CHEEK, CHEEK & CHEEK



Tim N. Cheek, OBA #11257
311 North Harvey Avenue
Oklahoma City, OK 73102
(405) 272-0621

ATTORNEYS FOR DEFENDANT

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAY 22 1989

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

COLORADO GAS COMPRESSION, INC.,)
a Colorado corporation,)
)
Plaintiff,)
)
vs.)
)
BOB BAKER d/b/a Gasco Products)
Company,)
)
Defendant.)

Case No. 89-C-252-B

JUDGMENT

NOW on this 22nd day of May, 1989, upon Defendant's failure to answer the Complaint of Plaintiff, Application of the Plaintiff, and for good cause shown,

IT IS ORDERED, ADJUDGED AND DECREED that Judgment in favor of the Plaintiff, Colorado Gas Compression, Inc., be granted in the amount of \$79,037.58, plus interest at 10% per annum from January 1, 1989 until paid in full. Upon proper application in conformance with local Court Rule 6 requiring itemized hours and the billable rate for said hours, costs and attorney fees may be awarded.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

MAY 22 1989

g

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

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

MICHAEL SHACKLE,)
)
 Plaintiff,)
)
 vs.)
)
 RYDER TRUCK RENTAL, INC.,)
 a subsidiary of RYDER SYSTEM)
 INC., a Florida Corporation,)
 KEN MIDDLETON, JIM McCARTHY)
 and DICK DICKERSON,)
)
 Defendants.)

Case No. 88-C-795-E

✓

ORDER

The Court having reviewed Plaintiff's Dismissal with Prejudice, Defendants having no objection to the Dismissal and the Dismissal being for defamation and all its included causes of action against the above-named Defendants.

IT IS HEREBY ORDERED that Plaintiff's cause of action for defamation and all its included causes be dismissed with prejudice.

James DeLoach

FILED

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

MAY 22 1989

U.S. District Court
Clerk

AUTOMATION TECHNIQUES, INC.,)
)
Plaintiff,)
)
vs.)
)
NOW PRECISION CO., LTD., and)
HYOSUNG CORPORATION,)
)
Defendants.)

Case No. 86-C-893-E

ORDER OF DISMISSAL

NOW, on this 22 day of May, 1989, the Court being advised that a compromise settlement having been reached between the plaintiff and the named defendant, and those parties stipulating to a dismissal with prejudice, the Court orders that the captioned case be dismissed with prejudice as to Hyosung Corporation. All other defendants will remain unaffected by this Order of Dismissal with prejudice.

JAMES O. ELISON

UNITED STATES DISTRICT JUDGE

FILED

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

MAY 22 1989

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

ROBERT E. COTNER,)	
)	
Plaintiff,)	
)	
vs.)	No. 89-C-186-B
)	
CLIFFORD HOPPER, DAVID MOSS,)	
TULSA COUNTY SHERIFF,)	
)	
Defendants.)	

NOTICE OF DISMISSAL

To: Clifford E. Hopper, District Judge, David Moss,
District Attorney, Stanley Glanz, Sheriff of
Tulsa County, Defendants and Gordon W. Edwards,
their attorney.

Notice is hereby given that Robert E. Cotner, the above
named Plaintiff, hereby dismisses the above-entitled action
without prejudice, pursuant to Rule 41(a)(1)(i) of the Federal
Rules of Civil Procedure, and hereby files this notice of
dismissal with the Clerk of the Court before service by
defendants of either an answer or motion for summary
judgement.

Dated this 22nd day of May, 1989.

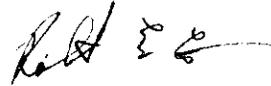


Robert E. Cotner
17226 S. 90th East Ave.
Bixby, Oklahoma 74008
(918) 366-3073

CERTIFICATE OF DELIVERY

I, Robert E. Cotner, hereby certify that on the 22^d
day of May, 1989, I delivered a true and correct copy of the
above and foregoing Notice of Dismissal to:

Mr. Gordon W. Edwards
Attorney for Defendants
406 County Courthouse
Tulsa, Oklahoma 74103



Robert E. Cotner
Plaintiff

FILED

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

MAY 22 1989

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

TULSA DYNASSPAN, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 STANLEY STRUCTURES, INC.,)
)
 Defendant.)

Case No. 87-C-598-B

ORDER

This Court has before it the parties' Joint Motion for Dismissal with Prejudice of all claims by and between Tulsa Dynaspan, Inc. and Stanley Structures, Inc. in the above-captioned action; and finding that good cause exists for the granting of such Motion;

IT IS THEREFORE ORDERED that all claims by and between the Plaintiff and Defendant in the above-captioned action are hereby dismissed with prejudice to the refiling of the same and all parties will bear their own costs and attorneys' fees.

IT IS SO ORDERED this 22nd day of May, 1989.

S/ THOMAS R. BRETT
THE HONORABLE THOMAS R. BRETT

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

FILED

MAY 22 1989

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

ALLIED BEARINGS SUPPLY CO., INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
v.) No. 87-C-913-B
)
FRANK M. SCHAD; SOUTHWEST ROTARY)
PARTS; and ROCKY MOUNTAIN)
ROTABLES, INC., a corporation,)
and RONALD E. WATKINS,)
)
Defendants.)

**ORDER PERMITTING DISMISSAL WITHOUT PREJUDICE
OF CLAIMS BY ALLIED AND SOUTHWEST AGAINST EACH OTHER**

The "Application of Allied and Southwest for Permission to Dismiss Without Prejudice Their Claims Against Each Other" is hereby granted, and:

1. The claims asserted herein by Allied Bearings Supply Co., Inc. ("Allied") against Southwest Rotary Parts ("Southwest") are hereby dismissed without prejudice and with reservation of all rights and continued prosecution of all claims against the other defendants herein, including Frank M. Schad, Rocky Mountain Rotables, Inc., and Ronald E. Watkins; and

2. The claims asserted by Southwest herein against Allied are hereby dismissed without prejudice and with reservation of all claims of rights on behalf of Southwest against Frank M. Schad, Rocky Mountain Rotables, Inc., and Ronald E. Watkins.

RWG/05-89364/5/8/89/jas

Allied and Southwest are to bear their own costs, including attorney fees.

DATED this 22nd day of May, 1989.

S/ THOMAS R. BRETT

Thomas R. Brett
United States District Judge

APPROVED:



Richard W. Gable, OBA #3191
Gable & Gotwals
2000 Fourth National Bank Building
15 West Sixth Street
Tulsa, Oklahoma 74119
(918) 582-9201
Attorneys for Allied Bearings
Supply Co., Inc.



James R. Bellingham
McClellan, Collins, Bailey,
Bailey & Bellingham
11th Floor, Colcord Building
Oklahoma City, Oklahoma 73102
(405) 235-9371
Attorneys for Defendant
Southwest Rotary Parts and
Jerry O. Winter

FILED

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

MAY 22 1989

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

ROBERT E. COTNER,)
)
 Plaintiff,)
)
 vs.)
)
 CLIFFORD HOPPER, and DAVID)
 MOSS, Tulsa County Sheriff,)
)
 Defendants.)

No. 89-C-186-B

O R D E R

This matter comes before the Court upon Plaintiff's Objection to the Magistrate's Report and Recommendation that Plaintiff's In Forma Pauperis suit be dismissed as frivolous and without merit.

Plaintiff asserts the Magistrate prematurely issued its Report and Recommendation without waiting for Defendants to deny the allegations contained in his Complaint.

"[The Tenth Circuit Court of Appeals] has made clear in numerous cases that a trial court need not require service of the complaint and filing of an answer in cases of this type where on the face of the complaint it clearly appears that the action is frivolous or malicious."

Henriksen v. Bentley, 644 F.2d 852, 854 (10th Cir. 1981). The Magistrate concluded the Plaintiff could not make a rational argument on the law or the facts to support his claim. Plaintiff's Objection fails to present additional arguments to overcome the Magistrate's determination that Plaintiff's claim is frivolous and without merit. Therefore, the Court adopts the Magistrate's Report and Recommendation and the case is DISMISSED.

12

IT IS SO ORDERED, this ^{27nd}~~19th~~ day of May, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 HOWARD LEE HENDERSON a/k/a)
 HOWARD HENDERSON; BRENDA)
 FRAZIER a/k/a BRENDA A. FRAZIER)
 a/k/a BRENDA ANN FRAZIER;)
 WILLIE DON FRAZIER; AMERICAN)
 STATE BANK OF TULSA, OKLAHOMA;)
 STATE OF OKLAHOMA ex rel.)
 OKLAHOMA TAX COMMISSION; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

MAY 19 1989

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

CIVIL ACTION NO. 88-C-1457-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19 day
of May, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Carl Robinson, Assistant District Attorney,
Tulsa County, Oklahoma; and the Defendants, Howard Lee Henderson
a/k/a Howard Henderson, Brenda Frazier a/k/a Brenda A. Frazier
a/k/a Brenda Ann Frazier, Willie Don Frazier, American State Bank
of Tulsa, Oklahoma, and State of Oklahoma ex rel. Oklahoma Tax
Commission, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Howard Lee Henderson a/k/a Howard Henderson, was served with Summons and Complaint on December 9, 1988; that Defendants, Brenda Frazier a/k/a Brenda A. Frazier a/k/a Brenda Ann Frazier and Willie Don Frazier, were served with Summons and Complaint on April 6, 1989; that the Defendant, American State Bank of Tulsa, Oklahoma, acknowledged receipt of Summons and Complaint on October 24, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on October 24, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 25, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 25, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on November 14, 1988; and that the Defendants, Howard Lee Henderson a/k/a Howard Henderson, Brenda Frazier a/k/a Brenda A. Frazier a/k/a Brenda Ann Frazier, Willie Don Frazier, American State Bank of Tulsa, Oklahoma, and State of Oklahoma ex rel. Oklahoma Tax Commission, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real

property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirty-eight (38), Block Forty-five (45), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on May 26, 1977, Howard Lee Henderson executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$11,000.00, payable in monthly installments, with interest thereon at the rate of 8.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Howard Lee Henderson executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated May 26, 1977, covering the above-described property. Said mortgage was recorded on June 2, 1977, in Book 4267, Page 370, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Howard Lee Henderson a/k/a Howard Henderson, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Howard Lee Henderson a/k/a Howard Henderson, is indebted to the Plaintiff in the principal sum of \$11,836.99, plus interest at the rate of 8.5 percent per annum from January 1, 1986 until judgment, plus

interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

The Court further finds that the Defendants, Brenda Frazier a/k/a Brenda A. Frazier a/k/a Brenda Ann Frazier, Willie Don Frazier, American State Bank of Tulsa, Oklahoma, and State of Oklahoma ex rel. Oklahoma Tax Commission, Treasurer, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendant, Howard Lee Henderson a/k/a Howard Henderson, in the principal sum of \$11,836.99, plus interest at the rate of 8.5 percent per annum from January 1, 1986 until judgment, plus interest thereafter at the current legal rate of 9.15 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Brenda Frazier a/k/a Brenda A. Frazier a/k/a Brenda Ann Frazier, Willie Don Frazier, American State Bank of Tulsa, Oklahoma; State of Oklahoma ex rel. Oklahoma Tax Commission, and

County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Howard Lee Henderson a/k/a Howard Henderson, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

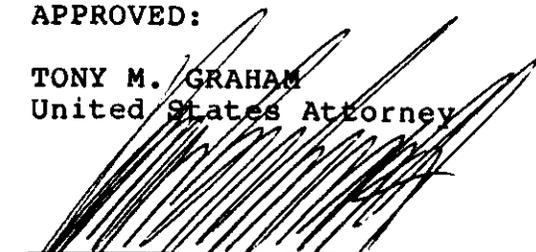
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney



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

Judgment of Foreclosure
Civil Action No. 88-C-1457-E

FILED

MAY 19 1989

Jack C. Silver
U. S. DISTRICT COURT

IN 1
FOR THE

DISTRICT COURT
DISTRICT OF OKLAHOMA

*Closed
as to
B. Proffitt
& A. Proffitt*

I.T. FINANCIAL CORP. a
INTERNATIONAL TOURS, IN
an Oklahoma corporation,

Plaintiffs,

vs.

✓
No. 87-C-642-B
(Consolidated)

BUDDY EARL PROFFITT and
ANNETTE PROFFITT, dba
INTERNATIONAL TOURS - ONE
MEMORIAL PLACE,

Defendants,

and

MARTIN McMILLAN d/b/a
INTERNATIONAL TOURS OF
BROOKSIDE,

Defendant,

and

HARRIS & GISH, INC., d/b/a
INTERNATIONAL TOURS OF
SAND SPRINGS,

Defendant.

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties to this action, pursuant to Rule 41(a)(1), of the Federal Rules of Civil Procedure, hereby enter into this stipulation that the Plaintiff's action against Defendants Buddy

Earl Proffitt and Annette Proffitt should be dismissed with prejudice for the reason that the parties have entered into a settlement agreement.

CHAPEL, RIGGS, ABNEY, NEAL & TURPEN

BY: Benj Abney
BENJAMIN P. ABNEY, OBA# 115
502 West Sixth Street
Tulsa, Oklahoma 74119-1010
(918) 587-3161

ATTORNEYS FOR PLAINTIFFS, I.T.
FINANCIAL CORP. and INTERNATIONAL
TOURS, INC.

LARRY L. OLIVER & ASSOCIATES

BY: Larry L. Oliver
LARRY L. OLIVER
2211 East Skelly Drive
Tulsa, Oklahoma 74105

ATTORNEYS FOR DEFENDANTS, BUDDY
EARL PROFFITT AND ANNETTE PROFFITT

FILED

MAY 19 1989

Jack C. Silve
U. S. DISTRICT COURT

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

I.T. FINANCIAL CORP. and
INTERNATIONAL TOURS, INC.,
an Oklahoma corporation,

Plaintiffs,

vs.

BUDDY EARL PROFFITT and
ANNETTE PROFFITT, dba
INTERNATIONAL TOURS - ONE
MEMORIAL PLACE,

Defendants,

and

MARTIN McMILLAN d/b/a
INTERNATIONAL TOURS OF
BROOKSIDE,

Defendant,

and

HARRIS & GISH, INC., d/b/a
INTERNATIONAL TOURS OF
SAND SPRINGS,

Defendant.

✓
No. 87-C-642-B
(Consolidated)

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties to this action, pursuant to Rule 41(a)(1), of the Federal Rules of Civil Procedure, hereby enter into this stipulation that the Plaintiff's action against Defendants Buddy

Earl Proffitt and Annette Proffitt should be dismissed with prejudice for the reason that the parties have entered into a settlement agreement.

CHAPEL, RIGGS, ABNEY, NEAL & TURPEN

BY: Benj Abney
BENJAMIN P. ABNEY, OBA# 415
502 West Sixth Street
Tulsa, Oklahoma 74119-1010
(918) 587-3161

ATTORNEYS FOR PLAINTIFFS, I.T.
FINANCIAL CORP. and INTERNATIONAL
TOURS, INC.

LARRY L. OLIVER & ASSOCIATES

BY: Larry L. Oliver
LARRY L. OLIVER
2211 East Skelly Drive
Tulsa, Oklahoma 74105

ATTORNEYS FOR DEFENDANTS, BUDDY
EARL PROFFITT AND ANNETTE PROFFITT

FILED

MAY 19 1989

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

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

I.T. FINANCIAL CORP. and
INTERNATIONAL TOURS, INC.,
an Oklahoma corporation,

Plaintiffs,

vs.

BUDDY EARL PROFFITT and
ANNETTE PROFFITT, dba
INTERNATIONAL TOURS - ONE
MEMORIAL PLACE,

Defendants,

and

MARTIN McMILLAN d/b/a
INTERNATIONAL TOURS OF
BROOKSIDE,

Defendant,

and

HARRIS & GISH, INC., d/b/a
INTERNATIONAL TOURS OF
SAND SPRINGS,

Defendant.

No. 87-C-642-B
(Consolidated)

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties to this action, pursuant to Rule 41(a)(1), of the Federal Rules of Civil Procedure, hereby enter into this stipulation that the Plaintiff's action against Defendant Martin

McMillan should be dismissed with prejudice for the reason that the parties have entered into a settlement agreement.

CHAPEL, RIGGS, ABNEY, NEAL & TURPEN

BY: *Benjamin P. Abney*
BENJAMIN P. ABNEY, OBA# 115
502 West Sixth Street
Tulsa, Oklahoma 74119-1010
(918) 587-3161

ATTORNEYS FOR PLAINTIFFS, I.T.
FINANCIAL CORP. and INTERNATIONAL
TOURS, INC.

LARRY L. OLIVER & ASSOCIATES

BY: *Larry L. Oliver*
LARRY L. OLIVER
2211 East Skelly Drive
Tulsa, Oklahoma 74105

ATTORNEYS FOR DEFENDANTS, BUDDY
EARL PROFFITT AND ANNETTE PROFFITT

FILED

MAY 19 1989

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

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

I.T. FINANCIAL CORP. and
INTERNATIONAL TOURS, INC.,
an Oklahoma corporation,

Plaintiffs,

vs.

BUDDY EARL PROFFITT and
ANNETTE PROFFITT, dba
INTERNATIONAL TOURS - ONE
MEMORIAL PLACE,

Defendants,

and

MARTIN McMILLAN d/b/a
INTERNATIONAL TOURS OF
BROOKSIDE,

Defendant,

and

HARRIS & GISH, INC., d/b/a
INTERNATIONAL TOURS OF
SAND SPRINGS,

Defendant.

No. 87-C-642-B
(Consolidated)

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties to this action, pursuant to Rule 41(a)(1), of
the Federal Rules of Civil Procedure, hereby enter into this
stipulation that the Plaintiff's action against Defendant Martin

McMillan should be dismissed with prejudice for the reason that the parties have entered into a settlement agreement.

CHAPEL, RIGGS, ABNEY, NEAL & TURPEN

BY: *Benjamin P. Abney* for
BENJAMIN P. ABNEY, OBA# 115
502 West Sixth Street
Tulsa, Oklahoma 74119-1010
(918) 587-3161

ATTORNEYS FOR PLAINTIFFS, I.T.
FINANCIAL CORP. and INTERNATIONAL
TOURS, INC.

LARRY L. OLIVER & ASSOCIATES

BY: *Larry L. Oliver*
LARRY L. OLIVER
2211 East Skelly Drive
Tulsa, Oklahoma 74105

ATTORNEYS FOR DEFENDANTS, BUDDY
EARL PROFFITT AND ANNETTE PROFFITT

FILED

MAY 18 1989

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

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

HILDA RICH,)
)
 Plaintiff,)
)
 vs.)
)
 THE ORIGINAL CHILI BOWL, INC.,)
 an Oklahoma Corporation,)
)
 Defendant.)

✓
No. 89-C-160-B

O R D E R

This matter comes before the Court upon Defendant's Motion for Change of Venue pursuant to 28 U.S.C. § 1404 (a). This section allows a district court to transfer a case to another district in which the action might have been brought, provided the transfer is for the convenience of the parties and in the interest of justice.

A party moving for a change of venue has the burden of showing that the existing forum is inconvenient, and the considerable weight given to Plaintiff's choice of forum is to be overcome. Texas Eastern Transmission Corp. v. Marine Office-Appleton & Cox Corp., 579 F.2d 561, 567 (10th Cir. 1978), *citing*, Texas Gulf Sulphur Co. v. Ritter, 371 F.2d 145, 147 (10th Cir. 1967). In this suit, Plaintiff is from Ft. Smith, Arkansas and the cause of action arose in Ft. Smith, Arkansas, although the product was manufactured in Tulsa, Oklahoma. Defendant seeks to transfer this case to the Western District of Arkansas because all of Plaintiff's witnesses to the injury are from Arkansas. Plaintiff points out, however, the product was manufactured in Oklahoma and all of the witnesses for the manufacturing process are likely to be in Tulsa, Oklahoma.

is no more inconvenient for the Plaintiff to bring its witnesses to Tulsa, Oklahoma than for the Defendant to take its witnesses regarding the manufacture of the product to Ft. Smith, Arkansas. Regardless of which Court maintains jurisdiction, there will be some inconvenience to both parties. Unless the balance of convenience is strongly in favor of the Defendant, Plaintiff's choice of forum should not be disturbed. Wm. A. Smith Contracting Co. v. Travelers Indemnity Co., 467 F.2d 662, 664 (10th Cir. 1972).

Defendant has not established the balance of convenience to be strongly in its favor if the suit were transferred to the Western District of Arkansas. Therefore, the Motion to Change Venue is OVERRULED.

IT IS SO ORDERED, this 18th day of May, 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

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

FILED

MAY 18 1989

REBECCA GORDON and LARRY BLINCOE,)
individually and as surviving)
parents and next of kin of Shannon)
Marie Blincoe, deceased,)

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

PLAINTIFFS,)

NO. 87-C-157-C

v.)

OSTEOPATHIC HOSPITAL FOUNDERS)
ASSOCIATION, d/b/a OKLAHOMA)
OSTEOPATHIC HOSPITAL, TULSA)
OSTEOPATHIC EMERGENCY PHYSICIANS,)
INC., and JEFFERSON C. LOYD, D.O.,)
an individual,)

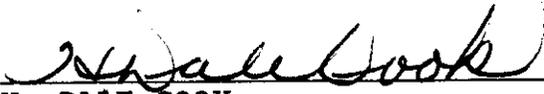
DEFENDANTS.)

ORDER OF DISMISSAL

Upon Application of Plaintiff, Rebecca Gordon, for a Dismissal With Prejudice, and following a hearing by this Court, the above-styled case should be dismissed with prejudice.

Upon Application of Plaintiff, Larry Blincoe, for a Dismissal Without Prejudice, and following a hearing by this Court, the Court finds that the above-styled case filed by Plaintiff, Larry Blincoe, should be dismissed with prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the above action is hereby dismissed with prejudice.



H. DALE COOK
UNITED STATES DISTRICT JUDGE

86

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

FILED
JUL 19 1988
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

GARY SCHOOLEY, AND)
GAYLE SCHOOLEY, individuals,)
and SCHOOLEY AND COMPANY, INC.,)
an Oklahoma corporation,)
Plaintiffs,)

v.)

Case No. 88-C-400 C

FITZGERALD, DeARMAN & ROBERTS,)
INC., a Delaware corporation,)
GOLDCOR, INC., a Delaware)
corporation, ROBERT BELL)
AND ROBERT BELL d/b/a)
FINANCIAL MANAGEMENT)
CONCEPTS, INC., CHARLES CULP,)
RUDI FICKERT, JAMES CHISHOLM,)
JOHN THOMAS, ROGER MINNIEAR,)
and RICHARD D. BROWN,)
individuals,)
Defendants.)

MICHAEL L. JONES,)
an individual,)
Plaintiff,)

v.)

Case No. 88-C-403 B

FITZGERALD, DeARMAN & ROBERTS,)
INC., a Delaware corporation,)
ROBERT BELL AND ROBERT BELL)
d/b/a FINANCIAL MANAGEMENT)
CONCEPTS, INC., CHARLES CULP,)
RUDI FICKERT, JAMES CHISHOLM,)
JOHN THOMAS, and)
ROGER MINNIEAR, individuals,)
Defendants.)

JAMES W. CONCANNON)
 and SHIRLEY J. CONCANNON,)
 individuals,)
)
 Plaintiffs,)
)
 v.)
)
 FITZGERALD, DeARMAN & ROBERTS,)
 INC., a Delaware corporation,)
 GOLDCOR, INC., a Delaware)
 corporation, ROBERT BELL)
 AND ROBERT BELL d/b/a)
 FINANCIAL MANAGEMENT)
 CONCEPTS, INC., CHARLES CULP,)
 RUDI FICKERT, JAMES CHISHOLM,)
 JOHN THOMAS, ROGER MINNIEAR,)
 and RICHARD D. BROWN,)
 individuals,)
)
 Defendants.)

Case No. 88-C-524 E

STIPULATION OF DISMISSAL

COME NOW the parties in the above actions, Gary and Gayle Schooley, Schooley and Company, Inc., Michael L. Jones, and James W. and Shirley J. Concannon (collectively "Plaintiffs"), and Robert D. Bell d/b/a Financial Management Concepts, Inc., pursuant to Fed. R. Civ. P. 41(a) for their stipulation of dismissal and state as follows:

1. Each of these actions were filed separately between May and June, 1988 against the Defendant 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, individually, 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. All Plaintiffs and the remaining Defendants have previously filed Stipulations of Dismissal.

4. Plaintiffs and Defendant Robert D. Bell d/b/a Financial Management Concepts, Inc. 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 above consolidated actions at the above docket be dismissed without prejudice, each party to bear his own costs.

Respectfully submitted,

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

By *Mary Rounds* *May 17, 1989*
John T. Schmidt, OBA #11,028 Date
R. Mark Solano, OBA #11,170
Mary J. Rounds, OBA #7,779
C. Kevin Morrison, OBA #11,937
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, AND JAMES W. AND SHIRLEY J.
CONCANNON

By Robert D. Bell 4-24-89
Robert D. Bell Date
d/b/a Financial Management
Concepts, Inc.
10506 S. Sandusky
Tulsa, OK 74137

PRO SE

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of May, 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

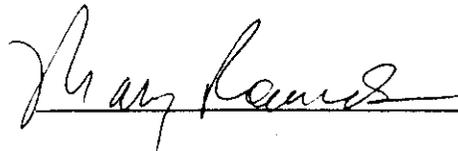
Richard D. Brown
108 Merganser Circle
Daytona Beach, Florida 32019

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



FILED

MAY 18 1989

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

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

DEUTZ-ALLIS CREDIT CORPORATION,)
)
Plaintiff,)
)
v.)
)
FRANK STIDHAM d/b/a WAGONER)
TRACTOR CO., FRANK STIDHAM,)
Guarantor, JEAN STIDHAM, Guarantor,)
and DONALD L. HANSEN, Guarantor,)
)
Defendants.)

Case No. 89-C-280-C

DISMISSAL WITHOUT PREJUDICE

COMES NOW the plaintiff, Deutz-Allis Credit Corporation, and
dismisses this action without prejudice as to Donald L. Hansen.

Grey W. Satterfield
Grey W. Satterfield OBA #7912
301 N. W. 63rd, Suite 600
Oklahoma City, Oklahoma 73116
(405) 840-2731
of KORNFIELD & FRANKLIN
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the, above
and foregoing instrument was mailed and/or delivered this 17 day of
May, 1989, by depositing the same in the United States
Mail, postage prepaid and addressed as follows:

Juley M. Roffers
Barry K. Beasley
HUFFMAN, ARRINGTON, KIHLE,
GABERINO & DUNN
1000 ONEOK Plaza
Tulsa, OK 74103

Grey W. Satterfield
Grey W. Satterfield

FILED

IN THE UNITED STATES DISTRICT COURT MAY 18 1989
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

CLIFTON DEACON,
Plaintiff,

vs.

VETERANS OF FOREIGN WARS OF
THE UNITED STATE, INC., a
foreign corporation, d/b/a
VFW POST 2592

Defendant.

No. 88-C-1608-B

O R D E R

This matter comes before the Court upon Plaintiff's unopposed Motion to Dismiss. For good cause shown, Plaintiff's Motion to Dismiss is SUSTAINED and the case dismissed.

IT IS SO ORDERED, this 18th day of May, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

6

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

May 18, 1989

JACK C. SILVER
CLERK

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

TO: Counsel/Parties of Record

RE: Case # Charles Ray Littlejohn vs. Governors Inn of Tulsa
89-C-45-C

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

Plaintiff's motion for default judgment is DENIED.

On the face of the complaint, the Court finds it is without subject matter jurisdiction under 28 U.S.C. §1332(c).

Plaintiff's complaint is hereby dismissed without prejudice, sua sponte.

Very truly yours,

JACK C. SILVER, CLERK

By: 
Deputy Clerk

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

FILED

MAY 17 1989

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

MARSHA LEE KENNEDY and)
STEPHEN MICHAEL KENNEDY,)
)
Plaintiffs,)
)
vs.)
)
ROBERT G. FREEMAN, M.D., and)
ROBERT G. FREEMAN, M.D., P.A.)
)
Defendants.)

No. 88-C-1466-B

ORDER

This matter comes before the Court on Plaintiff Marsha Lee Kennedy's Motion for New Trial and request to take additional discovery to develop evidence on Defendants' minimum contacts.

The Court has reviewed the motion and briefs in their entirety. Plaintiffs offer no new facts or law that the Court did not fully consider previously. The motion is therefore OVERRULED.

DATED this 17 day of May, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
TWO PARCELS OF REAL PROPERTY)
WITH BUILDINGS, APPURTENANCES,)
AND IMPROVEMENTS KNOWN AS)
802 OVERLOOK DRIVE,)
SAND SPRINGS, OKLAHOMA, et al.,)
)
Defendants.)

F I L E L

MAY 17 1989

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

CIVIL ACTION NO.88-C-655-C

JUDGMENT OF FORFEITURE

The cause having come before this Court upon Plaintiff's Application and being otherwise fully apprised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that judgment be entered against the Defendant properties: Two Parcels of Real Property with Buildings, Appurtenances and Improvements known as 802 Overlook Drive, Sand Springs, Oklahoma and One Parcel of Real Property with Buildings, Appurtenances and Improvements, known as 413 North Roosevelt, Sand Springs, Oklahoma, and against all persons interested in such property, except Indian Oaks, Inc., and that the said property be and the same is hereby forfeited to the United States of America for disposition by the United States Marshal according to law, and that Indian Oaks, Inc. be paid the outstanding balance of its mortgage, including interest, from the proceeds of the sale of 802 Overlook Drive, Sand Springs, Oklahoma.

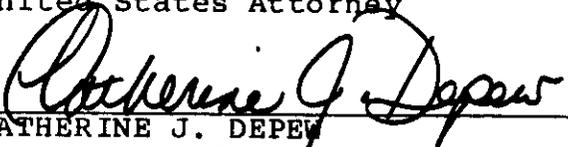
(Signed) H. Dale Cook

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney



CATHERINE J. DEPEU
Assistant United States Attorney

F I L E D

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

MAY 17 1989

TRANSWESTERN MINING COMPANY,
a Nevada corporation,

Plaintiff,

vs.

WAYMON W. BEAN, and SHARON A.
BEAN, husband and wife, et al,

Defendants.

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

Case Number 88-C-1220-B

ORDER OF DISMISSAL AS TO
DEFENDANT PREMIER PETROLEUM COMPANY ONLY

This matter comes on before the Court upon the joint motion of Plaintiff and Defendant Premier Petroleum Company for dismissal with prejudice of Plaintiff's claims against Defendant Premier Petroleum Company only. The Court further finds that Defendant Premier Petroleum Company has disclaimed any and all right, title, and interest in and to the property which is the subject of this foreclosure action. The Court finds that there is good cause shown for granting such motion and is, therefore,

ORDERED that the Plaintiff's claims against Defendant Premier Petroleum Company shall be and are hereby dismissed with prejudice, with Plaintiff and Defendant Premier Petroleum Company to bear their own costs and attorney's fees herein with respect to the Plaintiff's claims against Defendant Premier Petroleum Company.

IT IS FURTHER ORDERED that Defendant Premier Petroleum Company has no right, title or interest in and to the property which is the subject of this action.

IT IS FURTHER ORDERED that this Order of Dismissal is only effective as to Defendant Premier Petroleum Company and that this Order of Dismissal shall not affect, release, or dismiss the Plaintiff's claims against any of the other Defendants herein.

Dated this 17th day of ~~March~~^{May}, 1989.

S/ THOMAS R. BRETT

HON. THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By: Richard H. Foster
Kevin C. Coutant (OBA #1953)
Richard H. Foster (OBA #3055)
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Plaintiff
Transwestern Mining Company

BAKER & BAKER

By: Jay C. Baker
Jay C. Baker
1850 South Boulder
Tulsa, Oklahoma 74119
(918) 587-1168

Attorneys for Waymon W. Bean
and Sharon A. Bean

RICHARDS, PAUL, RICHARDS & SIEGEL

By: Phil R. Richards
Phil R. Richards
Nine East Fourth Street
Suite 400
Tulsa, Oklahoma 74103
(918) 584-2583

Attorney for Defendant Premier
Petroleum Company

FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MAY 17 1993

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

T. O. HUEY and LILLIAN HUEY,)
husband and wife, d/b/a)
HUEY'S PAWN SHOP,)
)
Plaintiffs,)

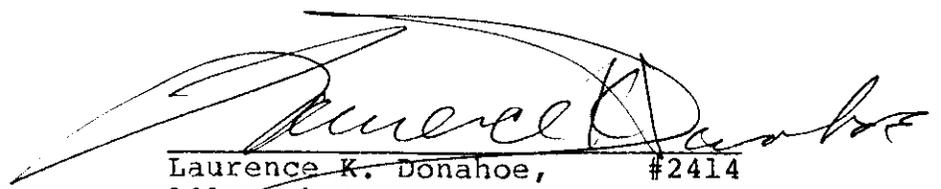
vs.)

Case No.: 88 C 727 B

CITY OF BROKEN ARROW, GLEN)
LANGLEY, individually and as)
Police Officer for the City)
of Broken Arrow, J. R.)
(SMOKEY) STOVER, individually)
and as Police Chief for the)
City of Broken Arrow,)

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiffs, T. O. Huey and Lillian Huey, husband and wife, d/b/a Huey's Pawn Shop, by their undersigned attorney, and dismisses the above entitled cause with prejudice to any future refiling hereof.



Laurence K. Donahoe, #2414
101 Park Avenue
Suite 250
Oklahoma City, OK 73102
(405) 236-4025

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

F I L E D

MAY 17 1989 *alt*

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

MASSACHUSETTS GENERAL LIFE)
INSURANCE COMPANY,)

Plaintiff,)

vs.)

No. 88-C-1381-E ✓

JAMES C. LEAKE, SR., et al.,)

Defendants.)

O R D E R

The Court, having raised the question of subject matter jurisdiction over the Cross-Claims of R. Thomas Seymour, Trustee, filed on January 25, 1989, having received the Brief and Reply Brief of the Trustees of the Jean Leake Irrevocable Life Insurance Trust, and having received the Responses of R. Thomas Seymour, Trustee and the Co-Trustees of the Marjory Elizabeth Leake Trust No. 1, The James Chowning Leake, III Trust No. 1, and John Daniel Leake Trust No. 1 in which they concede lack of subject matter jurisdiction, it is the order of this Court that the Cross-Claims of R. Thomas Seymour, Trustee, and the Co-Trustees of the Marjory Elizabeth Leake Trust No. 1, The James Chowning Leake, III Trust No. 1, and John Daniel Leake Trust No. 1, filed January 25, 1989, are hereby dismissed for lack of subject jurisdiction. The Court continues to hold in abeyance the issue of any sanctions arising from the filing of such cross-claims. Such issue will be ruled upon following resolution of the remaining issues in this case.

ORDERED this 17th day of May, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 17 1989

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

VERNON O. HOLLAND,)
)
 Plaintiff,)
)
 vs.)
)
 CITY OF BROKEN ARROW; DANNY CLYMER;)
 CHUCK DAY; M. MARTIN; L ROBERT)
 PERUGINO; NICK HOOD, JR.; CHARLES)
 WILLIAMS d/b/a WILLIAMS WRECKER)
 SERVICE,)
)
 Defendants.)

No. 89-C-145-B

ORDER

This matter comes before the Court upon Plaintiff, Vernon O. Holland's Motion to Alter or Amend Judgment pursuant to Fed.R. Civ.P. 59 (e) and Motion for Relief From Judgment pursuant to Fed.R.Civ.P. 60 (b).

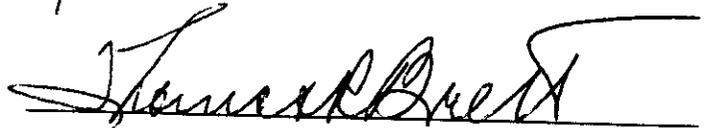
On April 18, 1989, this Court dismissed Plaintiff's Complaint for lack of subject matter jurisdiction because Plaintiff had failed to exhaust his state administrative remedies. Title 47, Section 903A of the Oklahoma Statutes establishes the procedure by which the registered or legal owner of the vehicle, or their agent, may contest the validity of the vehicle's removal or storage.

"The owner of a stored vehicle may, either in lieu of such hearing or after such hearing, file a petition in the district court of the county wherein the vehicle is stored. The district court is vested with original jurisdiction to conduct a de novo hearing and determine the validity of removal and storage."

47 O.S. §903A (C). Plaintiff has yet to exhaust the administrative requirements of §903A. Plaintiff cannot complain of a denial of due process when he has failed to take advantage of the process available. Therefore, Plaintiff's constitutional claims are premature.

Because Plaintiff has failed to exhaust the state administrative remedies and has failed to come forward with evidence not previously considered by this Court in its Order of April 18, 1989, Plaintiff's Motion to Alter or Amend Judgment is DENIED.

IT IS SO ORDERED, this 17th day of May, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ELOISE MIDGETTE, now known as)
 ELOISE J. CAMPBELL; JAMES SHAW;)
 RUTH MAE SHAW; FIDELITY)
 FINANCIAL SERVICES, INC.;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

F I L E D

MAY 16 1989

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

CIVIL ACTION NO. 87-C-1017-B

DEFICIENCY JUDGMENT

Now on this 16th day of May, 1989, there came on for hearing the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment herein, said Motion being filed on the 17th day of February, 1989, and a copy of said Motion being mailed to Eloise Midgette n/k/a Eloise J. Campbell, 6232 West North Lane, Glendale, Arizona 85302 and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Phil Pinnell, Assistant United States Attorney, and the Defendant, Eloise Midgette, now known as Eloise J. Campbell, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on August 5, 1988, in

favor of the Plaintiff United States of America, and against the Defendant, Eloise Midgette, now known as Eloise J. Campbell, with interest and costs to date of sale is \$11,796.16.

The Court further finds that the appraised value of the real property at the time of sale was \$10,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered August 5, 1988, for the sum of \$6,667.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 3rd day of May, 1989.

The Court further finds that the Plaintiff, United States of America on behalf of the Administrator of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Eloise Midgette, now known as Eloise J. Campbell, as follows:

Principal Balance as of 12/19/88	\$ 8,525.75
Interest	2,017.73
Late Charges to Date of Judgment	62.08
Appraisal by Agency	175.00
Management Broker Fees to Date of Sale	420.00
Abstracting	320.00
Publication Fees of Notice of Sale	170.60
Appraisers' Fees	<u>105.00</u>
TOTAL	\$11,796.16
Less Credit of Appraised Value	- <u>10,000.00</u>
DEFICIENCY	\$ 1,796.16

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Administrator of Veterans Affairs have and recover from Defendant, Eloise Midgette, now known as Eloise J. Campbell, a deficiency judgment in the amount of \$1,796.16, plus interest at the legal rate of _____ percent per annum on said deficiency judgment from date of judgment until paid.

UNITED STATES DISTRICT JUDGE

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

F I L E D

MAY 16 1989

LESLIE T. COATS,)
)
 Plaintiff,)
)
 vs.)
)
 GIT-N-GO, INC.,)
)
 Defendant.)

No. 88-C-411-~~B~~^V Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

This matter comes before the Court on a Motion for Summary Judgment by Defendant, Git-N-Go, Inc.

Plaintiff Leslie T. Coats worked for Defendant Git-N-Go, Inc. from March 1985 through October 1987 as a clerk. Plaintiff was fired for the way he responded to a customer leaving without paying for gasoline. Plaintiff's Amended Complaint alleges a cause of action for failure to pay overtime compensation in violation of the Fair Labor Standards Act (FLSA), 29 U.S.C. §201 *et seq.* Plaintiff also sues contending "Defendant breached said contract [a contract of employment] by improperly terminating Plaintiff's employment."

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Widon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"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."

To survive a motion for summary judgment, Plaintiff "must establish that there is a genuine issue of material facts..." Plaintiff "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

Defendant moves for summary judgment on Plaintiff's cause of action for failure to pay overtime compensation. Defendant shows that Plaintiff was paid for all overtime that Plaintiff reported to the company. Defendant's policy is to compensate only for hours actually worked and claimed by reporting. Defendant states if there was any failure to pay overtime, it was Plaintiff "who prevented Git-N-Go from complying with the FLSA."

Plaintiff responds and states he knew the policy was to pay only for hours reported. However, Plaintiff testified that it was made clear to him if he reported overtime he would be fired. Plaintiff testified that the amount of responsibilities he was given could not possibly be performed within his scheduled shift. Plaintiff was told that if he did not complete the responsibilities without reporting overtime he would be fired. (Coats Depo. pp. 72-76). Plaintiff contends management knew the assigned tasks could not be performed within the shift. (Coats Depo. pp. 72-76).

Plaintiff further contends Defendant knew of the unreported overtime worked as evidenced in the records concerning the alarm system being turned off and on. (Coats Depo. p. 140; Trout Depo. p. 65). Plaintiff also testified supervisors knew he was working overtime. (Coats Depo. pp. 140-141).

The Court finds Plaintiff has established there is a question of fact for trial concerning whether Defendant required Plaintiff to work overtime without compensation.

Defendant also seeks summary judgment on Plaintiff's allegation that Defendant breached Plaintiff's employment contract. Defendant submits an excerpt from Plaintiff's deposition in which Plaintiff concedes he was not hired for a definite time period. (Coats Depo. p. 17). Further, the policy statement itself states that "employment can be terminated at the discretion of the Company with or without cause or without notice at any time at the option of either the Company or the employee." (Policy Statement, p. 12). Plaintiff contends his employment was not at-will but he could be terminated only for cause. Plaintiff states he was orally assured he would be terminated only for cause and that he is sure he saw a written policy on it. The policy statement signed by Plaintiff states:

"The employee further acknowledges that no representative of the Company other than its Division Manager has any authority to enter into any agreement for employment for any specified period of time or to make any agreement contrary to the rules and regulations contained in this policy statement."

Plaintiff has not attached any such written policy nor established contrary oral assurances were made by the authorized representatives of Defendant. The record reveals Plaintiff's employment agreement was clearly employment at will'.

Defendant correctly cites Burk v. K-Mart, 60 O.B.J. 306 (1989) for the proposition that Oklahoma does not recognize a cause of action for breach of an implied covenant of good faith and fair dealing. Plaintiff recognizes the Burk case, however, disagrees with the holding. On this pendent state claim, this Court must follow the state Supreme Court holding.

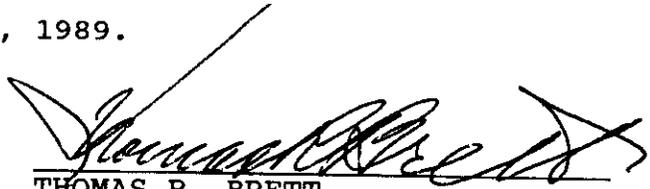
Alternatively, Plaintiff contends under Burk Plaintiff's firing was in violation of public policy. However, Plaintiff has not sued for termination in violation of public policy. This allegation appears for the first time in Plaintiff's brief in response to the motion for summary judgment. Plaintiff's cause of action is for breach of contract. Further, even if this had been properly pled, Plaintiff's allegations of violation of public policy fall far short of "a clear mandate of public policy as articulated by constitutional, statutory or decisional law." Burk v. K-Mart, 60 O.B.J. 305 (1989).

Therefore, the Court grants Defendant's Motion for Summary Judgment on Plaintiff's pendent state court claim for breach of contract.

¹See, Hinson v. Cameron, 742 P.2d 549, 555 (Okla. 1986).

This case will proceed on Plaintiff's cause of action for failure to pay overtime. Pretrial conference is set for July 12, 1989, at 10 A.M.

DATED this 16th day of May, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

MAY 16 1989

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

PHILLIP WAYNE BAILEY,)
)
 Petitioner,)
)
 v.)
)
 JACK COWLEY and The Attorney)
 General of the State of)
 Oklahoma,)
)
 Respondents.)

88-C-1028-B

ORDER

Now before the court are petitioner Philip Wayne Bailey's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and respondents' Response thereto.

Petitioner is presently serving sentences on several 1984 Tulsa County convictions for drug offenses (Tulsa County Case Nos. CRF-84-3256, 3257, 3259, and 3733). Petitioner was formerly convicted on 12/12/73 on two charges of second degree burglary ("1973 conviction") in the Tulsa County District Court when, pursuant to a plea bargain, petitioner agreed to plead guilty in exchange for the removal of another former conviction, CRF-71-490 ("1971 conviction"), from the records.

Petitioner now argues that this guilty plea was involuntary and unknowing because of ineffective assistance of counsel and that state post-conviction relief procedures were inadequate. These arguments are based in large part upon the invalidation of petitioner's former 1971 conviction on 10/9/86 under Lamb v. Brown, 456 F.2d 18 (10th Cir. 1972). The 1971 conviction was vacated because petitioner was a juvenile at the time of the 1971

11

conviction and the trial court had not properly certified him to stand trial as an adult.

Because petitioner faced the 1973 charges as a recidivist, the state threatened to impeach his credibility and encourage enhanced punishment if he did not plead guilty and the case went to trial. Apparently, neither the petitioner's attorney nor the state inquired as to whether petitioner's 1971 conviction was valid. Under the belief that the 1971 conviction was valid and available for impeachment, petitioner agreed to plead guilty upon his attorney's advice to do so.

On 3/18/88 petitioner filed an application for post-conviction relief in Tulsa County Case Nos. CRF-73-1778 and 1812. After petitioner's application was denied, petitioner appealed to the Oklahoma court of Criminal Appeals on 5/17/88, which denied his appeal on 6/30/88 in case No. PC-88-470.

In the Response filed 10/24/88, respondents argue that petitioner's habeas corpus petition should be dismissed because: (1) respondents have been prejudiced by petitioner's delay in filing his habeas corpus petition; (2) petitioner has failed to meet his burden of proving that his attorney did not afford him effective assistance of counsel; (3) petitioner's pleas were voluntary; and (4) petitioner's allegations relating to his post-conviction proceedings do not provide a basis for habeas corpus relief.

PETITIONER IS "IN CUSTODY" FOR PURPOSES OF THIS PETITION.

Petitioner's basis for habeas corpus relief is that his

attorney in 1973 gave him ineffective legal assistance. Petitioner has since served time for his 1973 conviction (See Docket #10,¹ page 15, where petitioner points out that he "served this seven (7) year sentence to completion by discharging same on 1/24/77"). Petitioner's present incarceration at Joseph Harp Correctional Center in Lexington, Oklahoma for a 1984 drug offense was enhanced by the 1973 conviction.

The Tenth Circuit Court of Appeals in Ward v. State of Oklahoma, 376 F.2d 847, 847 (10th Cir. 1967) (citing Parker v. Ellis, 362 U.S. 574 (1960)), stated that "[h]abeas corpus is available only to a prisoner who is in custody pursuant to the court judgment which is challenged by the proceedings." Id.

The courts have found that habeas corpus is appropriate, even though the petitioner is not in custody pursuant to the judgment challenged, if there is a "positive demonstrable relationship between the prior conviction served and the sentence currently being served. Escobedo v. Estelle, 665 F.2d 613 (5th Cir. 1981); Thigpen v. Alford, 526 F.Supp. 689 (W.D.Okla. 1981). Therefore, the court finds that petitioner is "in custody" for purposes of 28 U.S.C. § 2254, as his present incarceration was enhanced by the 1973 conviction.

¹ "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.

PETITIONER'S DELAY IN FILING

Respondents allege prejudice in their ability to respond to the petition because of delay in filing. Rule 9(a) of the Rules Governing Section 2254 Habeas Corpus Cases in the United States District Courts limits the right to assert state claims under 28 U.S.C. § 2254. Subdivision (a) provides that a petition attacking the judgment of a state court may be dismissed on the grounds of delay. Subdivision (a) states in pertinent part: "A petition may be dismissed if it appears that the state of which the respondent is an officer has been prejudiced in its ability to respond to the petition by delay in its filing...."

Under Hannon v. Maschner, 845 F.2d 1553, 1555 (10th Cir. 1988), the court held that a state must make a particularized showing of prejudice in its ability to respond in order to establish adequate grounds for dismissal under Rule 9(a).

Delay is irrelevant unless it is inexcusable and the state can 'prove that the delay has prejudiced it in its ability to answer the petition.' Once the state has proven prejudice, the petitioner must be accorded an opportunity to respond either by disputing the existence of prejudice or by proving 'that for some period of the time between his conviction and seeking the writ he could not have had knowledge of the grounds his petition asserts.' If the petitioner successfully demonstrates the latter, the state bears the burden of proving that 'it has suffered some prejudice after that period.'" (Citations omitted.)

In the present case respondents claim prejudice based upon the following: (1) it has been fifteen years since petitioner's 1973 conviction; (2) there is no available transcript of the 1973 proceedings; (3) the court reporter present at the 1973 hearing

is deceased; (4) respondent could not locate the attorney who represented petitioner; and (5) the prosecutor cannot recall the reasons for petitioner's guilty pleas.

The court finds that the Appearance Docket in Case No. CRF-73-1812 shows clearly that petitioner withdrew his plea of not guilty and pled guilty in the case to the amended charge of Burglary II after the second page of the information was stricken. It is thus unnecessary to obtain a transcript of the proceedings to show that petitioner pled guilty to avoid trial as a recidivist.

Moreover, the legislative history of Rule 9(a) indicates that:

Those facts which make it difficult for the state to respond to an old claim (such as the death of the prosecutor) can readily be discovered by the State. It is not easy, perhaps in some instances not possible, for a prisoner to discover those facts that he would have to show in order to rebut the presumption of prejudice.

1976 U.S. Code Cong. & Admin. News, 2482, n.8.

Despite difficulties faced by prisoners seeking to discover facts for rebutting the presumption of prejudice under Rule 9(a), petitioner has managed to locate the attorney who defended him in 1973 and has provided information as to where he can be contacted (See Reply to State's Response, page 15). Petitioner was not aware that his 1971 conviction could be found unconstitutionally invalid until 1986, when a proceeding was conducted which invalidated the 1971 conviction. Thus, the court finds that the petitioner has met his burden of proving that for thirteen years

he did not have knowledge of the grounds his petition asserts and that the state has shown only slight prejudice since 1986. Respondents' request for dismissal under Rule 9(a) should therefore be denied.

PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM

The burden of proof is on petitioner to show ineffective assistance of counsel. Tollett v. Henderson, 411 U.S. 258, 266 (1973); McMann v. Richardson, 397 U.S. 759, 771 (1970). In Tollett and McMann, the Supreme Court set a standard requiring a habeas corpus petitioner, who pleads guilty upon advice of counsel and asserts ineffective assistance of counsel, to show that his attorney rendered advice not within the range of competence demanded of attorneys in criminal cases. See also, United States v. Golub, 638 F.2d 185, 187 (10th Cir. 1980). Under the subsequent case of Strickland v. Washington, 466 U.S. 668, 687 (1983), the Court found that habeas corpus petitioners must prove that their counsel's performance was deficient and also that the deficient performance prejudiced their defense. Finally, the Court in Hill v. Lockhart, 474 U.S. 52, 59 (1985), stated that a habeas corpus petitioner who pled guilty must contend that, had his attorney not given erroneous advice, he would have pled not guilty and would have insisted on proceeding to trial.

In the case at bar, respondents argue that petitioner has not satisfied the Strickland test, because he has not shown that his attorney's performance was deficient, and he did not inform

his attorney that he was a juvenile at the time of his 1971 conviction.

Petitioner asserts that, because he has a "low intelligence quotient", he did not know that information concerning his 1971 conviction was significant to the case brought against him in 1973. Although petitioner concedes that he did not inform his attorney that he was a juvenile at the time of his 1971 conviction, petitioner points out that his counsel was aware of his 1971 conviction (See page 2 of "Information for Burglary, Second Degree", Case No. CRF-73-1778, filed on 10/16/73, and page 3 of "Appearance Docket", Case No. CRF-73-1778), and as such had a duty to conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the degree of guilt or penalty.

Petitioner cites in support of his claims the language of Canary v. Bland, 583 F.2d 887 (6th Cir. 1978), where the court found that an attorney should have reviewed a prior conviction for constitutional errors in recidivist proceedings and noted that deficiencies "were manifest from the face" of the court order. He also cites Tinlin v. Parratt, 680 F.2d 48 (8th Cir. 1982), where the court found that the specific nature of a Nebraska Habitual Criminal statute required a competent defense attorney to investigate the validity of underlying felonies, to assure that all elements of the statute were met, before a defendant pled guilty to being a habitual criminal. The court

noted that this was the standard of competence for defense attorneys "in this situation".

Petitioner also cites Tolliver v. United States, 563 F.2d 1117 (4th Cir. 1977), where petitioner was found to have been denied effective assistance of counsel by attorneys who ignored information given to them that his prior sentences were voidable under a recent court decision, and Kennedy v. Maggio, 725 F.2d 269 (5th Cir. 1984), where ineffective assistance of counsel was found when his attorney made "significant misleading statements" that the death penalty was available for the crime with which he was charged when in fact it was not.

The petitioner has failed to cite any Tenth Circuit authority or any case law from other circuits which is factually similar to this case to support his proposition that he did not receive effective assistance of counsel. The Tenth Circuit has ruled that it is the duty of an attorney to conduct a prompt investigation of the circumstances of a case and to explore all avenues leading to facts relevant to guilt. United States v. Golub, supra. However, the investigation required relates to the case being defended, not all prior cases in which the defendant has been convicted. Given the limited time for investigation under legislation providing for speedy criminal trials, it would be unreasonable to require defense counsel to review transcripts, records, and legal arguments from all former proceedings involving the defendant to determine if they are void or voidable.

In this case petitioner concedes that he did not inform his attorney that he was a juvenile at the time of his 1971 conviction. Petitioner does not claim that there were obvious deficiencies in the 1971 judgment. The Lamb v. Brown decision, supra, decided in 1972, stated that it was not to be applied retroactively, and it was not until 1974 that Lamb was found to apply retroactively by the court in Radcliff v. Anderson, 509 F.2d 1093 (10th Cir. 1974). At the time of petitioner's trial, his 1971 sentence was not void or voidable and petitioner's counsel therefore did not make misleading statements when discussing possible sentences with him. The court therefore finds that petitioner has failed to meet his burden of proving ineffective assistance of counsel as required by Strickland.

PETITIONER'S CLAIM THAT HIS PLEA WAS INVOLUNTARY

Respondents contend that petitioner's plea was voluntary. Respondents argue that petitioner agreed to plead guilty in order to avoid the possibility of more severe punishment. Due to petitioner's 1971 conviction, petitioner was considered a recidivist. Had petitioner gone to trial and been convicted, he could have been sentenced to a maximum of two consecutive sentences ranging from ten years to life. It was proper for the state to "encourage a guilty plea by offering substantial benefits in return for the plea". Corbitt v. New Jersey, 439 U.S. 212, 219 (1978); Flores v. Estelle, 578 F.2d 80, 85 (5th Cir. 1978) (guilty plea not invalid because motivated by fear of greater punishment).

However, a plea of guilty must be knowing and intelligent to pass constitutional muster. Boykin v. Alabama, 395 U.S. 238, 242 (1969). Furthermore:

[i]t is elementary that a plea entered in reliance on the defendant's attorney's patently erroneous statement of the law in relation to the facts does not meet this standard.... A plea of guilty that is based on the fear of a non-existent penalty can be neither knowing nor intelligent, and this flaw colors the fundamental fairness of the entire proceeding.

The court finds that petitioner's plea was entered in reliance on the fact that he had a former conviction which would increase his sentence and that there was no statement of law containing error made to him. He did not plead guilty fearing a non-existent penalty, but rather one which existed as long as his former sentence was not voided. He therefore has not met his burden of proving his plea was not knowing and intelligent.

PETITIONER'S ALLEGATIONS OF
IMPROPER POST-CONVICTION PROCEEDINGS

Finally, respondents contend that petitioner's allegations relating to his post-conviction proceedings do not provide a basis for habeas corpus relief. Respondents cite Preiser v. Rodriguez, 411 U.S. 475, 494 (1973), for the premise that the traditional purpose of habeas corpus is to enable a prisoner to attack the fact or length of his confinement for the purpose of obtaining immediate release from confinement.

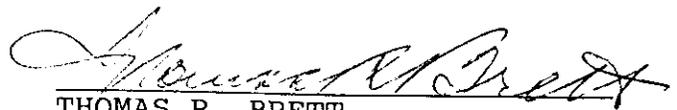
Petitioner claims that there were questions of fact presented to the district court warranting an evidentiary hearing on his application for post-conviction relief. Errors occurring

in state post-conviction proceedings are not sufficient to raise a federally cognizable issue as to the underlying state criminal conviction. Such claims represent an attack on a proceeding that is collateral to the detention of the prisoner and not on the detention itself. Bradshaw v. State of Oklahoma, 398 F.Supp. 838, 843 (E.D.Okla. 1975); Williams v. State of Missouri, 640 F.2d 140, 144 (8th Cir. 1981). Thus, petitioner is entitled to no relief regardless of whether or not he was granted an evidentiary hearing in his state post-conviction proceeding.

CONCLUSION

The court finds that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 should be and hereby is denied.

Dated this 16th day of May, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES LEE BELL; GENA KELLENE)
 BELL; JOHN DOE, Tenant; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

MAY 16 1989

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

CIVIL ACTION NO. 88-C-505-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 16th day
of May, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Carl Robinson, Assistant District Attorney,
Tulsa County, Oklahoma; the Defendant, John Doe, Tenant, appears
not, and should be dismissed from this action; and the
Defendants, James Lee Bell and Gena Kellene Bell, appear not, but
make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, James Lee Bell, was served
with Summons and Complaint on September 1, 1988; that Defendant,
County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on June 7, 1988; and that Defendant, Board

of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 3, 1988.

The Court further finds that Defendant, John Doe, Tenant, has not been served herein as such person does not exist, and should therefore be dismissed as a Defendant herein.

The Court further finds that Defendant, Gena Kellene Bell, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning January 30, 1989, and continuing to March 6, 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, Gena Kellene Bell, 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, Gena Kellene Bell. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of

Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the 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, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on June 23, 1988; and that the Defendants, James Lee Bell and Gena Kellene Bell, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Six (6), Block Five (5), MAPLEWOOD SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on April 21, 1980, the Defendants, James Lee Bell and Gena Kellene Bell, executed and delivered to Western Pacific Financial Corporation, their

mortgage note in the amount of \$28,500.00, payable in monthly installments, with interest thereon at the rate of fourteen percent (14%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, James Lee Bell and Gena Kellene Bell, executed and delivered to Western Pacific Financial Corporation, a mortgage dated April 21, 1980, covering the above-described property. Said mortgage was recorded on April 25, 1980, in Book 4471, Page 1962, in the records of Tulsa County, Oklahoma.

The Court further finds that by an Assignment of Mortgage the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, is now the present owner of the above-referenced mortgage.

The Court further finds that the Defendants, James Lee Bell and Gena Kellene Bell, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, James Lee Bell and Gena Kellene Bell, are indebted to the Plaintiff in the principal sum of \$34,953.51, plus interest at the rate of 14 percent per annum from August 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, James Lee Bell in personam and Gena Kellene Bell in rem, in the principal sum of \$34,953.51, plus interest at the rate of 14 percent per annum from August 1, 1986 until judgment, plus interest thereafter at the current legal rate of 9.15 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

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

First:

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

Second:

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

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

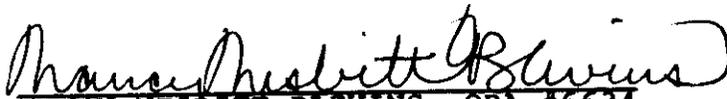
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney


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

NNB/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 SUSAN CARTWRIGHT; TONY HUBANKS;)
 JIM AUSTIN and BILL LASATER)
 d/b/a TOTAL PLUMBING, HEATING,)
 AND ELECTRICAL COMPANY; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

MAY 16 1989

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

CIVIL ACTION NO. 88-C-380-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 16th day
of May, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
Carl Robinson, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, Susan Cartwright, Tony Hubanks, and
Jim Austin and Bill Lasater d/b/a Total Plumbing, Heating, and
Electrical Company, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Tony Hubanks, was served
with Summons and Complaint on June 13, 1988; that Defendant,
County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on April 29, 1988; and that Defendant,

Board of County Commissioners, Tulsa County, Oklahoma,
acknowledged receipt of Summons and Complaint on April 29, 1988.

The Court further finds that the Defendants, Susan Cartwright and Jim Austin and Bill Lasater d/b/a Total Plumbing, Heating, and Electrical Company, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 2, 1989, and continuing to April 6, 1989, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Susan Cartwright and Jim Austin and Bill Lasater d/b/a Total Plumbing, Heating, and Electrical Company, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Susan Cartwright and Jim Austin and Bill Lasater d/b/a Total Plumbing, Heating, and Electrical Company. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary

evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on May 17, 1988; and that the Defendants, Susan Cartwright, Tony Hubanks, and Jim Austin and Bill Lasater d/b/a Total Plumbing, Heating, and Electrical Company, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Eight (8), Block Three (3), of Blocks 1, 2, 3, 4, 5, 6, 7, 8, & 9, LOUISVILLE HEIGHTS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on August 5, 1986, the Defendant, Susan Cartwright, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, her mortgage note in the amount of \$22,500.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Susan Cartwright, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 5, 1986, covering the above-described property. Said mortgage was recorded on August 28, 1986, in Book 4966, Page 923, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Susan Cartwright, 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, Susan Cartwright, is indebted to the Plaintiff in the principal sum of \$22,509.00, plus interest at the rate of 10 percent per annum from June 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

The Court further finds that the Defendants, Tony Hubanks and Jim Austin and Bill Lasater d/b/a Total Plumbing, Heating, and Electrical Company, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Susan Cartwright, in the principal sum of \$22,509.00, plus interest at the rate of 10 percent per annum from June 1, 1987 until judgment, plus interest thereafter at the current legal rate of _____ percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Tony Hubanks, Jim Austin and Bill Lasater d/b/a Total Plumbing, Heating, and Electrical Company, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

In payment of the costs of this action accrued and accruing incurred by the

Plaintiff, including the costs of sale of
said real property;

Second:

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

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

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

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



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

PP/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DAMON R. HALL; JAMES NEAL)
 BANKS; ALFREDA DARLENE BANKS;)
 PAUL CREAMER; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

FILED

MAY 16 1989

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

CIVIL ACTION NO. 88-C-490-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 16 day
of May, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
Carl Robinson, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, Damon R. Hall, James Neal Banks,
Alfreda Darlene Banks, and Paul Creamer, appear not, but make
default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Damon R. Hall, acknowledged
receipt of Summons and Complaint on or about June 24, 1988; that
the Defendant, Paul Creamer, was served with Summons and
Complaint on January 3, 1989; that Defendant, County Treasurer,
Tulsa County, Oklahoma, acknowledged receipt of Summons and

Complaint on June 3, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 2, 1988.

The Court further finds that the Defendant, James Neal Banks and Alfreda Darlene Banks, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning February 6, 1989, and continuing to March 13, 1989, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, James Neal Banks and Alfreda Darlene Banks, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, James Neal Banks and Alfreda Darlene Banks. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United

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

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on June 21, 1988; and that the Defendants, Damon R. Hall, James Neal Banks, Alfreda Darlene Banks, and Paul Creamer, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Two (2), Block One (1), SUMMERFIELD, an Addition in the City and County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on May 10, 1985, the Defendant, Damon R. Hall, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$68,500.00, payable in monthly

installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Damon R. Hall, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated May 10, 1985, covering the above-described property. Said mortgage was recorded on May 13, 1985, in Book 4862, Page 451, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Damon R. Hall, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Damon R. Hall, is indebted to the Plaintiff in the principal sum of \$67,728.07, plus interest at the rate of 12.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

The Court further finds that the Defendants, James Neal Banks, Alfreda Darlene Banks, and Paul Creamer, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Damon R. Hall, in the principal sum of \$67,728.07, plus interest at the rate of 12.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the current legal rate of _____ percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Damon R. Hall, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

Phil Pinnell

PHIL PINNELL, OBA #7169
Assistant United States Attorney

Carl Robinson

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

PP/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 16 1989

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
GEORGE S. PITNER; LARAYNE D.)
PITNER; COUNTY TREASURER, Creek)
County, Oklahoma; and BOARD OF)
COUNTY COMMISSIONERS, Creek)
County, Oklahoma,)
)
Defendants.)

CIVIL ACTION NO. 88-C-1501-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 16th day
of May, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Creek County,
Oklahoma, and Board of County Commissioners, Creek County,
Oklahoma, appear by Wesley R. Thompson, Assistant District
Attorney, Creek County, Oklahoma; and the Defendants, George S.
Pitner and LaRayne D. Pitner, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, George S. Pitner and
LaRayne D. Pitner, were served with Summons and Complaint on
March 10, 1989; that Defendant, County Treasurer, Creek County,
Oklahoma, acknowledged receipt of Summons and Complaint on
November 3, 1988; and that Defendant, Board of County
Commissioners, Creek County, Oklahoma, acknowledged receipt of
Summons and Complaint on November 3, 1988.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer herein on November 18, 1988; and that the Defendants, George S. Pitner and LaRayne D. Pitner, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Two (2), Block Seven (7), LAZY H ADDITION to the City of Sapulpa, Creek County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on April 24, 1986, the Defendants, George S. Pitner and LaRayne D. Pitner, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$31,000.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, George S. Pitner and LaRayne D. Pitner, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated April 24, 1986, covering the above-described property. Said mortgage was recorded on April 25, 1986, in Book 203, Page 2129, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, George S. Pitner and LaRayne D. Pitner, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, George S. Pitner and LaRayne D. Pitner, are indebted to the Plaintiff in the principal sum of \$31,430.87, plus interest at the rate of 10 percent per annum from May 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$362.88, plus penalties and interest, for the year 1987. Said lien is superior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, George S. Pitner and LaRayne D. Pitner, in the principal sum of \$31,430.87, plus interest at the rate of 10 percent per annum from May 1, 1988 until judgment, plus interest thereafter at the current legal rate of _____ percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have and recover judgment in the amount of \$362.88, plus penalties and interest, for ad valorem taxes for the year 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, George S. Pitner and LaRayne D. Pitner, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

In payment of Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, in the amount of \$362.88, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

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

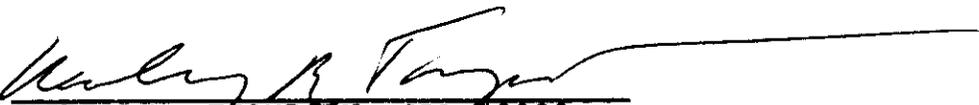
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

s/H. DALE COOK
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney


WESLEY R. THOMPSON, OBA #8993
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Creek County, Oklahoma

NNB/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 NEENAH D. DOBBS; JOHNNY D.)
 JUSTUS; COUNTY TREASURER,)
 Creek County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Creek County, Oklahoma,)
)
 Defendants.)

FILED

MAY 16 1989

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

CIVIL ACTION NO. 89-C-053-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 16th day
of May, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Creek County,
Oklahoma, and Board of County Commissioners, Creek County,
Oklahoma, appear by Wesley R. Thompson, Assistant District
Attorney, Creek County, Oklahoma; and the Defendants, Neenah D.
Dobbs and Johnny D. Justus, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, County Treasurer, Creek
County, Oklahoma, acknowledged receipt of Summons and Complaint
on January 25, 1989; and that Defendant, Board of County
Commissioners, Creek County, Oklahoma, acknowledged receipt of
Summons and Complaint on January 24, 1989.

The Court further finds that the Defendants, Neenah D. Dobbs and Johnny D. Justus, were served by publishing notice of this action in the Sapulpa Legal News, a newspaper of general circulation in Creek County, Oklahoma, once a week for six (6) consecutive weeks beginning March 2, 1989, and continuing to April 6, 1989, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Neenah D. Dobbs and Johnny D. Justus, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Neenah D. Dobbs and Johnny D. Justus. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served

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

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer herein on February 24, 1989; and that the Defendants, Neenah D. Dobbs and Johnny D. Justus, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

The North 60 feet of Lot Two (2), Block One Hundred Two (102), in the ORIGINAL TOWN, NOW CITY OF SAPULPA, in Creek County, State of Oklahoma, according to the original Survey and Plat thereof.

The Court further finds that on February 9, 1987, the Defendants, Neenah D. Dobbs and Johnny D. Justus, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$41,000.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Neenah D. Dobbs and Johnny D. Justus, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated February 9, 1987, covering the above-described property. Said mortgage was recorded on February 10, 1987, in Book 216, Page 1181, in the records of Creek County, Oklahoma.

The Court further finds that Defendant, Johnny D. Justus, conveyed the subject property to Defendant, Neenah D. Dobbs, by Quit-Claim Deed dated July 7, 1987, and recorded on July 13, 1987, in Book 223, Page 784 in the records of Creek County, Oklahoma. Defendant, Neenah D. Dobbs, is in default and therefore has no right, title, or interest in the subject real property by virtue of said Quit-Claim Deed.

The Court further finds that the Defendants, Neenah D. Dobbs and Johnny D. Justus, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Neenah D. Dobbs and Johnny D. Justus, are indebted to the Plaintiff in the principal sum of \$40,806.00, plus interest at the rate of 9 percent per annum from December 1, 1987, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of

\$218.70, plus penalties and interest, for the year 1988. Said lien is superior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Neenah D. Dobbs and Johnny D. Justus, in the principal sum of \$40,806.00, plus interest at the rate of 9 percent per annum from December 1, 1987, until judgment, plus interest thereafter at the current legal rate of 9.15 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have and recover judgment in the amount of \$218.70, plus penalties and interest, for ad valorem taxes for the year 1988, plus the costs of this action.

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

First:

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

Second:

In payment of Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, in the amount of \$218.70, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

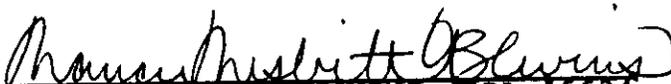
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

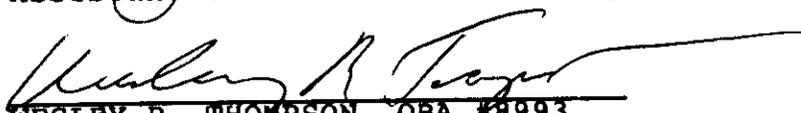
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney


WESLEY R. THOMPSON, OBA #8993
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Creek County, Oklahoma

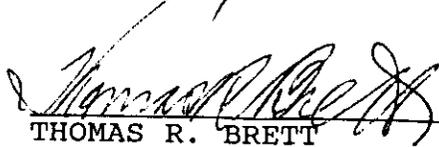
As shown by the Special Report, Plaintiff has received medical attention numerous times. Six (6) days prior to Plaintiff's request to proceed in forma pauperis, orthopedic surgeon Denny E. Krout D.O. submitted a report wherein he concluded, "This is a chronic condition and I see no reason that this should be a condition of deterioration in the near future. I feel the patient's surgery can be delayed and I have told him once dismissed from jail that I would participate in the management of this problem". Special Report, filed March 21, 1989.

In addition, Affidavits were submitted from Charles Gillian, Don Little, and James Dunn, stating they watched Plaintiff on more than one occasion playing basketball and volleyball at the detention center. Id. Both are sports requiring a great deal of shoulder movement which, presumably, would be unendurable by one needing immediate surgery to relieve shoulder pain.

As Plaintiff has proceeded in forma pauperis under 28 U.S.C. §1915(d), Plaintiff's claim may now be summarily dismissed as frivolous under §1915(d). Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986).

Therefore, Defendant's Motion to Dismiss is hereby granted and Plaintiff's Complaint will be dismissed.

SO ORDERED this 16th day of May, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 16 1989 dt

LONNIE LONNIEL EDMUNDSON and
MALA LADONNA GILYARD,

Plaintiffs,

vs.

THE CITY OF TULSA, STATE OF OKLAHOMA,
and SEVEN UNKNOWN POLICE OFFICERS,

Defendants.

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

No. 88-C-1429E ✓

STIPULATION OF DISMISSAL

Come now the Plaintiffs, Lonnie Lonniel Edmundson and Mala LaDonna Gilyard, and the Defendant, City of Tulsa, and hereby stipulate that the above entitled cause be dismissed, with prejudice, with each of the parties to bear their own attorneys' fees and costs in this matter.

Lonnie L. Edmundson
Lonnie Lonniel Edmundson, Plaintiff

Mala LaDonna Gilyard
Mala LaDonna Gilyard, Plaintiff

William T. Harbison
William T. Harbison,
Attorney for Plaintiffs

Martha Rupp-Carter
Martha Rupp-Carter, Attorney for
Defendant, City of Tulsa

TIME STUDY CASE

FILED

MAY 16 1989

Record Time Spent by IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA Jack C. Silver, Clerk
U.S. DISTRICT COURT

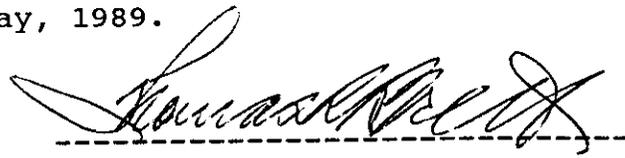
LUC J. VAN RAMPENBERG,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
 U. S. POSTAL SERVICE,)
)
 Defendant.)

No. 89-C-357-B

ORDER

This matter comes before the Court on Plaintiff's motion to transfer this case to another judge. This case was dismissed as frivolous on May 12, 1989 and therefore the motion is overruled as moot.

DATED this 16th day of May, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE