

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

FILED

DEC 15 1989

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

TWIN CITY SAVINGS, a federal)
savings association,)
successor in interest to)
TWIN CITY SAVINGS BANK, a)
federal savings bank,)
)
Plaintiff,)
)
vs.)
)
S. MIKE BROWN and SANDRA)
L. BROWN, husband and)
wife,)
)
Defendants.)

No. 88-C-1605-B

**JOURNAL ENTRY OF DEFAULT JUDGMENT
AND DECREE OF FORECLOSURE**

NOW, on this 12th day of Dec, 1989, this matter comes on for consideration of the Motion of Plaintiff, Federal Savings and Loan Insurance Corporation as Receiver for Twin City Savings, fsa ("FSLIC"). FSLIC appears by and through its attorney of record, William A. Caldwell of Eller and Detrich, a professional corporation; Defendants, S. Mike Brown and Sandra L. Brown, individuals ("Defendants"), appear not, being in default. The Court having examined the pleadings, process and file in this case, and being fully advised in the premises, finds:

1. That it has jurisdiction of the parties and subject matter herein.
2. That Defendants were both personally served with Petition and Summons on December 29, 1988, as evidenced by the Returns of Service on file herein.

3. That the time for filing an answer or pleading herein has expired and that Defendants have filed none. Therefore, Defendants are in default and the allegations and averments of FSLIC's Petition should be taken as true and Defendants should be cut off from claiming any right, title or interest in the property hereinafter described.

4. That Defendants are residents of Rogers County, State of Oklahoma, and the real estate which is the subject of this action is located in Rogers County, Oklahoma.

5. That on or about December 26, 1985, Defendants, for good and valuable consideration, made, executed and delivered to Pioneer Savings and Trust Company ("Pioneer") a certain Promissory Note ("Note") wherein Defendants promised to pay to the order of Pioneer the sum of \$60,210.00, payable in annual installments of varying amounts with the balance due on January 1, 1989.

6. That payment of the Note and the indebtedness represented thereby was secured by a certain Mortgage ("Mortgage") in favor of Pioneer, made, executed and delivered to Pioneer by the Defendants, whereby they mortgaged and conveyed unto Pioneer the following described real estate situated in Rogers County, Oklahoma, to-wit:

Lot Three (3), Block Three (3), BATTENFIELD ACRES III ADDITION, a subdivision in Section 34, Township 21 North, Range 15 East of the Indian Base and Meridian, according to the recorded Plat thereof, Rogers County, State of Oklahoma (the "Property").

The Mortgage in favor of Pioneer was dated December 26, 1985, and was recorded on December 27, 1985, in Book 720 at Page 844 in the Office of the Rogers County Clerk.

7. That on or about May 21, 1986, Pioneer assigned, transferred and conveyed to Twin City Savings Bank, predecessor in interest to Twin City, all of Pioneer's rights and interest in and to the Note and Mortgage. The Assignment of the Mortgage was filed in the Office of the Rogers County Clerk on May 17, 1988, in Book 784 at Page 561 and refiled on August 8, 1988, in Book 790 at Page 8.

8. That on August 20, 1987, the Federal Home Loan Bank Board, acting pursuant to 12 U.S.C. § 1464(d)(6)(A), issued Resolution No. 87-908P, finding Twin City Savings Bank, fsb to be insolvent and appointing the FSLIC as Receiver for Twin City Savings Bank, fsb Pursuant to said Resolution, FSLIC, as Receiver transferred the assets and liabilities of Twin City Savings Bank, fsb to Twin City Savings, fsa.

9. On November 9, 1988, FSLIC was appointed Receiver of Twin City Savings, fsa, by the Federal Home Loan Bank Board pursuant to Resolution No. 88-1195.

10. That FSLIC, as Receiver for Twin City Savings, fsa, has succeeded to the interests of Twin City Savings, fsa, and Twin City Savings Bank, fsb in the Note and Mortgage.

11. That the Defendants have made default in the performance of the terms and conditions of the Note and Mortgage and FSLIC is entitled to foreclose its Mortgage upon the Property against the Defendants in and to this cause.

12. That Defendants are in default on the Note and Mortgage and that there is now due, owing and unpaid to FSLIC the principal sum of \$60,210.00, plus interest in the sum of \$14,063.54 as of October 18, 1988, with interest thereafter at the rate of

\$16.50 per day until the date of judgment, and thereafter at the rate provided by law, together with a reasonable attorneys' fee ~~in~~ the amount of 15% of the unpaid balance after default, abstract expenses, advances, assessments, taxes and the court costs and costs of this action, accrued and accruing, for which items and amounts said Mortgage is a first, prior and superior lien on the Property.

13. FSLIC has a good and valid first mortgage lien upon the real estate and premises described as follows:

Lot Three (3), Block Three (3), BATTENFIELD ACRES III ADDITION, a subdivision in Section 34, Township 21 North, Range 15 East of the Indian Base and Meridian, according to the recorded Plat thereof, Rogers County, State of Oklahoma,

by virtue of the Mortgage from Defendants in favor of Pioneer, recorded in Book 720 at Page 844 in the Office of the Rogers County Clerk on December 27, 1985. The Mortgage secures payment of all the indebtedness, including interest, a reasonable attorneys' fees and costs due under and evidenced by the Note. Said mortgage lien is prior and superior to any claims of Defendants and is subject only to unpaid ad valorem taxes, if any.

14. That Defendants have defaulted under said Note and Mortgage as alleged in FSLIC's Petition, and FSLIC as owner and holder of the Note and Mortgage is entitled to judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that all of the allegations and statements contained in FSLIC's Petition are true and correct as therein set forth and that FSLIC have and recover judgment as hereinafter set forth.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that all of the above findings are incorporated and made a part of the order of this Court as set forth at length herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that FSLIC have judgment against the Defendants, jointly and severally, under the Note and Mortgage in the sum of \$60,210.00, with accrued interest thereon through October 18, 1988, of \$14,063.54, with per diem interest of \$16.50 from October 18, 1988, until the date of judgment, post-judgment interest from the date of judgment at the rate of 7.66%,

together with a reasonable attorneys' fee in the amount of \$9,031.50, as provided in the Note, abstract expenses, taxes, advances, assessments and the court costs and costs of this action, accrued and accruing, for which items and amounts the Mortgage is a first, prior and superior lien upon the Property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that any and all right, title or interest which Defendants have or claim to have in or to said real estate or premises is subsequent, junior and inferior to the mortgage lien of the FSLIC herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Mortgage be and the same is hereby foreclosed and the Property is hereby ordered to be sold to satisfy the judgment herein. That execution and order of sale and foreclosure shall issue ordering the United States Marshall to levy upon the Property, and after having the same appraised as provided by law of the State of Oklahoma, proceed to advertise and sell the same, as provided by law and apply the proceeds arising from said sale as follows:

FIRST: To the payment of costs of sale and court costs herein, accrued and accruing.

SECOND: To the payment of the judgment and lien of the Plaintiff for the items and amounts set forth herein.

THIRD: The remainder, if any, to be held until further order of the court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that upon confirmation of the sale and delivery of the Marshall's Deed, under and by virtue of this judgment and decree, that the Property shall be free and clear of the claims of all Defendants, and that all persons claiming under said Defendants since the filing of the Petition herein shall have no right, title, interest, claim, lien or demand in or to the Property.


UNITED STATES DISTRICT JUDGE
FOR THE NORTHERN DISTRICT OF
OKLAHOMA

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 15 1989

U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 FOUR THOUSAND AND FOUR)
 HUNDRED DOLLARS (\$4,400.00))
 IN UNITED STATES CURRENCY,)
)
 Defendant.)

CIVIL ACTION NO. 89-C-173-B

AGREED JUDGMENT OF FORFEITURE

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled. Such settlement more fully appears by the written Stipulation For Compromise entered into by and between Claimant Bobby Eugene Heath and the United States of America on the 27th day of November, 1989, and filed herein, to which Stipulation for Compromise reference is hereby made and is incorporated herein.

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

Now, therefore, on motion of Catherine J. Depew, Assistant United State Attorney, and with the consent of Bobby Eugene Heath, it is

ORDERED that the claim of Bobby Eugene Heath be, and the same hereby is, dismissed with prejudice, and it is

FURTHER ORDERED AND DECREED that \$ 2,400.00 in United States Currency be, and hereby is, condemned as forfeited to the United States of America and shall remain in the custody of the United States Marshal for disposition according to law, and that \$2,000.00 and the bond posted in the administrative action, in the amount of \$440.00, shall be returned to the Claimant, Bobby Eugene Heath, by the United States Marshal.

DATED this 15th day of Dec., 1989.

S/ THOMAS R. BRETT

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

CJD/ch
00386

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

FILED

DEC 15 1989

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

EMPIRE FIRE AND MARINE }
INSURANCE COMPANY, }
 }
Plaintiff, }
 }
vs. }
 }
GUARANTY NATIONAL INSURANCE }
COMPANY, }
 }
Defendant. }

No. 85-C-713-C

ORDER

This case is before the Court on remand from the Tenth Circuit Court of Appeals.¹ In its motion Guaranty² contended that its policy did not provide coverage and therefore the policy of Empire³ could be the only policy which provided primary coverage.⁴ Guaranty argued that the ICC⁵ endorsement attached to its policy was not relevant to the factual circumstances of this case because Bellany⁶ had not reached his place of employment at the time the accident

¹Empire Fire and Marine Ins. Co. v. Guaranty Nat'l Ins. Co., 868 F.2d 357 (10th Cir. 1989).

²Guaranty National Insurance Company

³Empire Fire and Marine Insurance Company

⁴Guaranty argued that the truck involved in the accident was not a covered vehicle under its policy, that the driver of the truck was not under the control of its insured (Jennings Trucking Company) and that a collateral agreement between Jennings and Empire's insured (Kris Knaus) required Knaus to provide the necessary insurance coverage.

⁵Interstate Commerce Commission

⁶The driver of the truck involved in the subject accident.

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occurred and thus the accident did not occur within the course of Bellany's employment.

In its cross motion, Empire represented to the Court that the only issue in dispute was as to which policy provided primary coverage.⁷ Empire argued that Guaranty's policy was primary as a matter of law because of the ICC endorsement attached to Guaranty's policy.⁸

The Court held in its Order dated December 19, 1986 that as between the two policies, Guaranty provided primary coverage for the accident in question.

The Tenth Circuit remanded the case for the Court to determine how the risks should be allocated between the two policies when all the provisions of both policies were considered.⁹

Under Guaranty's policy, the allocation of liability is as follows:

PART VII - CONDITIONS

B. OTHER INSURANCE - PRIMARY AND EXCESS INSURANCE PROVISIONS.

This policy's liability coverage is primary for any covered auto while hired or borrowed by you and used exclusively in your business and pursuant to operating rights granted to you by a public authority

....

3. Except as provided in Paragraphs 1 and 2 above, this policy provides primary insurance for any covered auto you own and excess insurance for any covered auto you don't own.

⁷At no time before this Court did the parties contend that both policies provided primary coverage, nor did either party request the Court to allocate liability between the policies.

⁸Succinctly stated Empire alleged that as between the two liability policies, the policy that contained an ICC endorsement would provide primary coverage as a matter of law over a policy that did not contain such an endorsement, notwithstanding any other provision in the insurance policy.

⁹868 F.2d at 368.

4. When two or more policies cover on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the limit of our policy bears to the total of the limits of all the policies covering on the same basis.

Because Jennings was an interstate carrier operating pursuant to an ICC certificate and authority, the ICC certificate negated the excess coverage language.

The allocation of liability in Empire's policy is contained in Part VI, within the Truckers Coverage Endorsement attached to the policy,¹⁰ which provides:

PART VI - CONDITIONS

B. OTHER INSURANCE - PRIMARY AND EXCESS INSURANCE PROVISIONS.

1. . . . This policy's liability coverage is excess over any other collectible insurance for any covered auto while hired or borrowed from you by another trucker
2. Except as provided in Paragraph 1 above, this policy provides primary insurance for any covered auto you own and excess insurance for any covered auto you don't own.
3. When two or more policies cover on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the limit of our policy bears to the total of the limits of all the policies covering on the same basis.

The Truckers Coverage Endorsement modified the language contained with the "Conditions" section of the main text of the policy and by its terms rendered the policy excess coverage for purpose of this litigation.

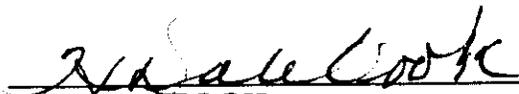
Although directed by the Tenth Circuit to make these factual findings, this Court is of the opinion that such findings were

¹⁰The Truckers Coverage Endorsement, by its express terms "changes and adds to the policy" provisions within the main text of that policy.

unnecessary to the issue as had been framed by the parties in their cross motions for summary judgment.

Additionally, as noted by the Tenth Circuit in its opinion," this analysis leads to the same conclusion reached by the Court in its Order of December 19, 1986, therefore the Court hereby reinstates its Order granting summary judgment in favor of Empire as against Guaranty in the principal sum of \$158,565.71 plus prejudgment and postjudgment interest as of the date of judgment, December 19, 1986.

IT IS SO ORDERED this 13th day of December, 1989.



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

¹¹868 F.2d at 359.

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

FILED
DEC 15 1988

REZA TORABY-PAYHAN, an individual)
d/b/a GasTech Systems, Inc.,)
GasTech Systems, Inc.,)
CRAIG NEON, INC., and SHAHNAZ)
TORABY-PAYHAN)

Plaintiffs,)

v.)

PARVIZ KHOSROWYAR, an individual)
and GASTECH ENGINEERING CORP., an)
Oklahoma Corporation)

Defendants.)

Case No. 89-C-551-E

STIPULATION OF DISMISSAL

Come now the Plaintiffs, Reza Toraby-Payhan, an individual and d/b/a GasTech Systems, Inc., GasTech Systems, Inc., Craig Neon, Inc., and Shahnaz Toraby-Payhan and the Defendants, Parviz Khosrowyer, and GasTech Engineering Corp. and each hereby stipulate and agree that each parties causes of action are hereby dismissed with prejudice pursuant to a settlement agreement among the parties, with each party to bear his or its own attorney fees and costs.

CRAIG NEON, INC.

By: Reza Toraby Payh

Reza Toraby Payh
REZA TORABY-PAYHAN

Shahnaz Toraby Payh
SHAHNAZ TORABY-PAYHAN

Parviz Khosrowyar
PARVIZ KHOSROWYAR

GASTECH SYSTEMS, INC.

By: Parviz Khosrowyar

GASTECH ENGINEERING CORP.

By: Parviz Khosrowyar

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

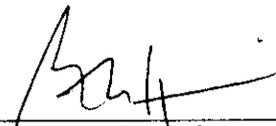
ALBERT T. CHERNISKY,)
)
 Plaintiff,)
)
 vs.) Case No. 88-C-1245E
)
 THE WARNER & SWASEY COMPANY,)
 a Michigan corporation,)
)
 Defendant.)

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

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

Respectfully submitted,

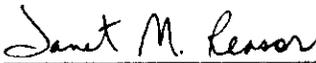
FRASIER & FRASIER

By 

Steven R. Hickman
1700 Southwest Boulevard
Suite 100
P.O. Box 799
Tulsa, Oklahoma 74101

ATTORNEYS FOR PLAINTIFF

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

By 

J. Patrick Cremin
R. Mark Solano
Janet M. Reasor
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR DEFENDANT

FILED

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

DEC 15 1989

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

UNDERWRITERS SALVAGE COMPANY,)
an Illinois Corporation,)
)
Plaintiff,)
)
vs.)
)
DAVID HICKS d/b/a M & M Automart,)
and RALPH FULP,)
)
Defendants.)

No. 89-C-169-B ✓

**ORDER GRANTING ATTORNEYS' FEES
AND PRE-JUDGMENT INTEREST**

Plaintiff's Motion for Attorneys' Fees and Pre-Judgment Interest is before the Court for decision. The Court's Order entered October 11, 1989, provides that Plaintiff is the prevailing party and such Order is incorporated herein.

The Defendant has stipulated to the reasonableness of Defendant's attorneys' fee request as set out in counsel's affidavit of November 13, 1989. By authority of 12 O.S. § 1580 Plaintiff is entitled to an attorneys' fee award against the Defendant, Ralph Fulp, in the amount of \$16,889.50. Further, by authority of Warren v. Griffing, 200 Okl. 108, 190 P.2d 1014 (1948), Edge v. Smith, Okl., 284 P.2d 711, 715 (1955), Okl. Const. art. XIV, § 2, and 23 O.S. § 6, Plaintiff is entitled to pre-judgment interest damages from August 26, 1988, at the rate of 6% per annum to November 13, 1988, in the amount of \$1,903.48, and each day thereafter at the rate of \$4.29 per day.

Accordingly, judgment is hereby entered in favor of the Plaintiff and against the Defendant, Ralph Fulps, in said amounts

for attorneys' fees and pre-judgment interest.'

DATED this 15th day of December, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

'Defendant Fulps would be entitled to judgment for said sums against the Defendant David Hicks, if sought, as the Defendant Hicks is the more culpable wrongdoer.

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

FILED

DEC 15 1989

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

W. J. MORSE,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,

Defendant.

No. 89-C-352-C

ORDER

Before the Court is the objection by defendant American Airlines, Inc., to the Report and Recommendation of the Magistrate which was filed on August 18, 1989. The Magistrate recommended that plaintiff's motion to remand be granted.

On February 26, 1986, Morse filed his petition in the District Court of Tulsa County, State of Oklahoma, alleging one cause of action under state law for wrongful discharge in violation of his employment contract with American Airlines. Morse requested specific performance of his employment contract, including the right to a hearing prior to discharge. Alternatively, Morse requested damages through reinstatement of his employment with full back pay.

A default judgment was entered against American Airlines for its failure to respond to the petition. The default was vacated by the state court on July 31, 1986.

On April 17, 1989, Morse filed his first amended petition containing two causes of action. The first cause of action repeated the allegations contained in the original petition. The second cause of action attempted to set forth a cause of action for wrongful discharge in violation of public policy. Plaintiff defined the "public policy" as "represented by federal statutory authority prohibiting sexual discrimination and harassment in the work place." Plaintiff characterized this wrongful discharge as constituting a tortious breach of contract by the defendant. Plaintiff sought reinstatement, with back pay, seniority status, fringe benefits, and punitive damages.

On April 27, 1989, American Airlines filed a petition for removal pursuant to 28 U.S.C. §1441(b). The removal petition reflected that the parties were diverse.¹ American Airlines premised removal under the provisions of 28 U.S.C. §1331 (federal question), asserting that the first amended petition was the initial pleading in which defendant "ascertained that the case is one which is or has become removable in compliance with 28 U.S.C. §1446(b)."

¹*Defendant American Airlines is a corporation incorporated by the State of Delaware with its principal place of business in the State of Pennsylvania and is not a citizen of the State of Oklahoma.*

Plaintiff W. J. Morse is a citizen of the State of Oklahoma.

On May 9, 1989 plaintiff filed its motion to remand alleging that the case was improperly removed in that a federal question was not asserted within the first amended petition.

The Court has independently reviewed the record and concludes that plaintiff's motion to remand should be granted.

From the face of plaintiff's first amended petition it is clear to this Court that plaintiff did not set forth a federal question claim. Plaintiff attempted to plead a state law claim for tortious breach of contract. Plaintiff's imprudent use of the phrase "represented by federal statutory authority prohibiting sexual discrimination and harassment in the work place" does not give rise to a federal cause of action.² Plaintiff's subsequent attempt to redefine his claim under 25 O.S. §1302 A1 and 16 O.S. §1601 is of no avail in this Court. On the face of the pleading no legally cognizable claim is set forth under federal law which would invoke this Court's subject matter jurisdiction upon removal.³

Accordingly, the Court finds the first amended petition does not state a federal claim, and there being no other bases for

²Further, plaintiff's second cause of action fails to state a claim under state law and would be subject to dismissal or amendment before the state court. The public policy exception to termination of an "at will" employee as established in *Burk v. K-Mart*, 770 P.2d 24 (Okla. 1979), does not encompass discharge for alleged intervention on behalf of a fellow employee who had complained to management of sexual harassment.

³The Court parenthetically notes that plaintiff's inartful use of the phrase "federal statutory authority" understandably could mislead defendant to assume plaintiff had attempted to plead a federal cause of action. This Court finds otherwise, as a matter of law.

removal,⁴ the Court directs remand of this case to the District Court of Tulsa County, State of Oklahoma, for further proceedings.

It is therefore the Order of the Court that plaintiff's motion to remand is hereby GRANTED.

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


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

⁴Removal under diversity of citizenship is untimely under 28 U.S.C. §1446(b).

ln

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

DEC 15 1980

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

LEROY TUCK, Administrator)
 of the Estate of Johnny L.)
 Tuck, Deceased; LEROY TUCK,)
 an individual, and DOROTHY)
 TUCK, an individual,)
)
 Plaintiffs,)
)
 v.)
)
 UNITED SERVICES AUTOMOBILE)
 ASSOCIATION,)
)
 Defendant.)

Case No. 83-C-175C

ORDER

THIS MATTER comes on for hearing this 31st day of August, 1989, upon the Plaintiffs' Motion to Amend and the Defendant's Motion to Dismiss.

Plaintiffs were represented by their attorney, Patrick E. Carr. Defendant United Services Automobile Association was represented by its attorney, Linda G. Alexander.

After reviewing the pleadings, briefs and other material in the file, and after having heard the argument of counsel, the Court finds as follows:

1.

United Services Automobile Association is a reciprocal interinsurance exchange, the same being an unincorporated association organized under the laws of State of Texas, wherein individuals and other persons and entities agree to exchange

///

contracts of indemnification among themselves, thereby becoming known as "subscribers" or "members".

2.

To accomplish the exchange of contracts of insurance or indemnification between themselves, the subscribers appoint an attorney-in-fact.

3.

This attorney-in-fact is granted by each subscriber with the full power to do or perform every act the subscriber could do in relation to any such contracts of indemnity, including the appearance for the subscriber in actions, suits and proceedings, and the defense, compromise or adjustment of the same. The attorney-in-fact is granted the right to accept service of process in behalf of each subscriber and the service of process upon such attorney-in-fact is valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney.

4.

Plaintiffs served the Summons and Complaint upon each subscriber by serving the attorney-in-fact through his designated service agent in Oklahoma, the State Insurance Commissioner.

5.

Since United Services Automobile Association is an unincorporated association consisting of its subscribers and by virtue of the authority granted by the subscribers to the attorney-in-fact, the pleadings and other matters filed by United Services

Automobile Association's attorneys were filed in behalf of United Services Automobile Association's subscribers.

6.

The subscribers of United Services Automobile Association have been since the service of process upon their attorney-in-fact, parties to this action.

7.

Some of these subscribers are citizens of the State of Oklahoma and some are not citizens of the State of Oklahoma.

8.

The subscribers of United Services Automobile Association who are citizens of the State of Oklahoma or which are corporations that have their principle place of business in the State of Oklahoma are not proper parties to this action since subject matter jurisdiction is sought to be based upon a complete diversity of citizenship between the parties.

9.

In order to perfect subject matter jurisdiction based upon a complete diversity of citizenship, the entity known as United Services Automobile Association and the subscribers of United Services Automobile Association who are citizens of the State of Oklahoma, or which have their principle place of business in the State of Oklahoma, should be dismissed from this action pursuant to Federal Rule Civil Procedure 21.

10.

The subscribers of United Services Automobile Association who

are diverse from Plaintiffs and Robert F. McDermott, the individual designated by the Plaintiffs as the representative of these diverse subscribers, and who is also diverse from Plaintiffs, have sufficient contacts with the State of Oklahoma to permit the Court to acquire personal jurisdiction over them.

11.

In this action, Robert F. McDermott will fairly and adequately protect the interests of United Services Automobile Association and the subscribers of United Services Automobile Association who are diverse from Plaintiffs.

12.

The employees of United Services Automobile Association who committed the tortious wrongs against Plaintiffs were acting in the scope of their employment.

13.

The entity known as United Services Automobile Association and its subscribers who are citizens of the State of Oklahoma or which are corporations that have their principle place business in the State of Oklahoma are not indispensable parties to this action.

14.

Plaintiffs' Motion to Amend filed February 6, 1989, should be granted and the complaint, answer, pleadings and judgment should be amended to reflect the Defendant as Robert F. McDermott as the class representative of the Diverse Subscribers of United Services Automobile Association.

15.

The judgment in this action should be amended to grant Plaintiffs judgment against the attorney-in-fact as representative of the subscribers of United Services Automobile Association who are diverse as to the Plaintiffs.

16.

The amendments to the complaint, pleadings and judgment relate back to the filing of the Complaint.

17.

Interest should be calculated on this judgment from July 27, 1984, the date of the judgment theretofore entered in this action.

18.

All motions contrary to this Order are denied.

19.

The determination of the imposition of sanctions upon Defendant United Services Automobile Association should be reserved until a time to be set by the Court and jurisdiction upon Defendant United Services Automobile Association for the purpose of imposing sanctions against it is reserved.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the entity known as United Services Automobile Association and its subscribers who are citizens of the State of Oklahoma or which are corporations that have their principle place of business in the State of Oklahoma are dismissed from the Plaintiffs' action for actual and punitive damages for tortious breach of the implied covenant of good faith and fair dealing and for the intentional infliction of

emotional distress.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this action shall be maintained as a class action pursuant to Federal Rule of Civil Procedure 23.2 wherein the Defendants shall consist of those subscribers who are of diverse citizenship from that of the Plaintiffs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Robert F. McDermott is hereby designated the representative of the Defendant Class of Diverse Subscribers.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion to Amend is granted and the complaint, answer, pleadings and judgment are hereby amended to reflect that the Defendant is Robert F. McDermott as the Class Representative of the Diverse Subscribers of United Services Automobile Association.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the judgment in this action is hereby amended to grant judgment in favor of Plaintiffs and against the Diverse Subscribers of United Services Automobile Association through their Class Representative, Robert F. McDermott.

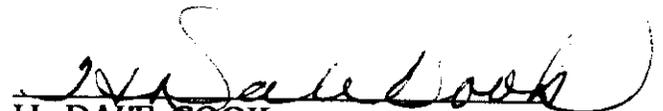
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that post-judgment interest on the Judgment, as amended by this Order, shall be calculated from July 27, 1984.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss filed by United Services Automobile Association is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that jurisdiction of this Court over United Services Automobile Association for the purpose of determining the imposition of sanctions upon it is reserved.

The attorney for the plaintiffs is directed to file a proposed amended judgment in accordance with the terms of this Order within fifteen (15) days.

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


H. DALE COOK
United States District Judge

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

F I L E D

DEC 14 1989 *AS*

CHRYSLER CAPITAL CORPORATION,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
JAMES D. WHEELER,)
)
Defendant.)

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

No. 89-C-548-B ✓

ORDER STAYING PROCEEDINGS AND APPROVING SETTLEMENT

This matter comes before the Court on this 14th day of Dec., 1989.
The Plaintiff, Chrysler Capital Corporation, and the Defendant, James D. Wheeler, have entered into a Settlement Agreement, a copy of which is attached to the parties' Joint Application for Stay of Proceedings and Approval of Settlement as Exhibit "A", one of the terms of which is for Wheeler to make monthly installment payments for a period of five (5) years. The parties have requested the Court to stay these proceedings until Wheeler fully complies with his obligations under the Settlement Agreement, or defaults under the Settlement Agreement, whichever occurs first. The Court finds that good cause has been shown for granting the parties' Application.

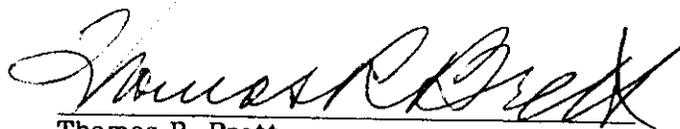
THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court that this action shall be stayed until such time as Wheeler fully complies with the terms of the Settlement Agreement, or defaults under the Settlement Agreement, whichever occurs first. Upon Wheeler's full compliance with the Settlement Agreement, the parties shall file a Stipulation of Dismissal With Prejudice.

If Wheeler should default under the terms of the Settlement Agreement, Chrysler is authorized by the Court to present the Agreed Judgment, which has been approved by Wheeler and counsel for the parties, to the Court and which the Court shall execute, enter and cause to be filed of record. In the event Wheeler defaults and the Judgment is

RDK/11-89437C/skb

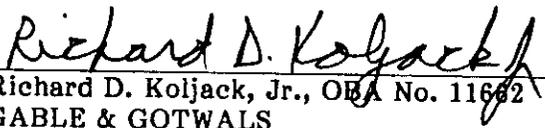
13

entered, Chrysler is ordered to give Wheeler credit against the Judgment for every dollar paid by him under the terms of the Settlement Agreement between the parties.



Thomas R. Brett
UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM AND CONTENT:



Richard D. Koljack, Jr., OBA No. 11662
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119-5447
(918) 582-9201

ATTORNEYS FOR PLAINTIFF,
CHRYSLER CAPITAL CORPORATION



Robert J. Getchell, OBA No. 11317
BARBER & BARTZ
One Ten Occidental Place
110 West 7th, Suite 200
Tulsa, Oklahoma 74119
(918) 599-7755

ATTORNEYS FOR DEFENDANT,
JAMES D. WHEELER

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.)
)
GEORGE A. DOOLEY; JOYCE L.)
DOOLEY; SAMMIE C. HOPKINS a/k/a)
SAMMIE HOPKINS; IDA HOPKINS)
a/k/a IDA L. HOPKINS; THE FIRST)
NATIONAL BANK & TRUST CO.)
OF BROKEN ARROW, OKLAHOMA;)
AMERICAN STATES INSURANCE, a)
Kansas corporation; GMAC)
MORTGAGE CORPORATION OF IOWA;)
WELLS FARGO CREDIT CORP.;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

F I L E D

DEC 14 1989

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

CIVIL ACTION NO. 89-C-051-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14th day
of Dec., 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
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; the Defendant, American States Insurance, a Kansas
corporation, appears by its attorney Ronald C. Bennett; the
Defendant, GMAC Mortgage Corporation of Iowa, appears not, having
previously filed its Disclaimer; and the Defendants, George A.
Dooley, Joyce L. Dooley, Sammie C. Hopkins a/k/a Sammie Hopkins,
Ida Hopkins a/k/a Ida L. Hopkins, The First National Bank & Trust
Co. of Broken Arrow, Oklahoma, and Wells Fargo Credit Corp.,
appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Ida Hopkins a/k/a Ida L. Hopkins, was served with Summons and Complaint on May 15, 1989; the Defendant, The First National Bank & Trust Co. of Broken Arrow, Oklahoma, acknowledged receipt of Summons and Complaint on January 24, 1989; the Defendant, American States Insurance, a Kansas corporation, acknowledged receipt of Summons and Complaint on January 25, 1989; the Defendant, GMAC Mortgage Corporation of Iowa, acknowledged receipt of Summons and Complaint on January 25, 1989; the Defendant, Wells Fargo Credit Corp., acknowledged receipt of Summons and Complaint on January 25, 1989; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 25, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 25, 1989.

The Court further finds that the Defendants, George A. Dooley, Joyce L. Dooley, and Sammie C. Hopkins a/k/a Sammie Hopkins, 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 September 18, 1989, and continuing to October 23, 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 Defendants, George A. Dooley, Joyce L. Dooley, and Sammie C. Hopkins a/k/a Sammie Hopkins, 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, George A. Dooley, Joyce L. Dooley, and Sammie C. Hopkins a/k/a Sammie Hopkins. 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 February 13, 1989; that

the Defendant, American States Insurance, a Kansas corporation, filed its Answer and Cross-Complaint on February 3, 1989; that the Defendant, GMAC Mortgage Corporation of Iowa, filed its Disclaimer on September 19, 1989; and that Defendants, George A. Dooley, Joyce L. Dooley, Sammie C. Hopkins a/k/a Sammie Hopkins, Ida Hopkins a/k/a Ida L. Hopkins, The First National Bank & Trust Co. of Broken Arrow, Oklahoma, and Wells Fargo Credit Corp., 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), FAIRHILL ADDITION to Tulsa, Tulsa County, Oklahoma, according to the Amended Recorded Plat thereof.

The Court further finds that on December 18, 1976, George A. Dooley by Joyce L. Dooley, his attorney in fact, and Joyce L. Dooley, 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 \$9,800.00, 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, George A. Dooley by Joyce L. Dooley, his attorney in fact, and Joyce L. Dooley, 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 December 18, 1976, covering the above-described property. Said mortgage was recorded on December 27, 1976, in Book 4244, Page 1349, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, George A. Dooley and Joyce L. Dooley, 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 A. Dooley and Joyce L. Dooley, are indebted to the Plaintiff in the principal sum of \$9,052.09, plus interest at the rate of 8.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$29.00 which became a lien on the property as of 1988. 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, American States Insurance, a Kansas corporation, has a lien on the property which is the subject matter of this action by virtue of

a judgment obtained in the District Court of Tulsa County, State of Oklahoma, Case No. CS 88-01251, on the 10th day of May, 1988, for \$5,459.00 with prejudgment interest allowable by law, plus interest thereon at the rate of 9.95 percent per annum from the first date of judgment, plus a reasonable attorney's fee of \$1,625.00 and all costs, a certified copy of said judgment being filed of record in the office of the Tulsa County Clerk on the 17th day of May, 1988, in Book 5100 at Page 391.

The Court further finds that the Defendant, GMAC Mortgage Corporation of Iowa, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendants, Sammie C. Hopkins a/k/a Sammie Hopkins, Ida Hopkins a/k/a Ida L. Hopkins, The First National Bank & Trust Co. of Broken Arrow, Oklahoma, and Wells Fargo Credit Corp., are in default and have no right, title or interest in the subject property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, George A. Dooley and Joyce L. Dooley, in the principal sum of \$9,052.09, plus interest at the rate of 8.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the current legal rate of 7.69 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 \$29.00 for personal property taxes for the year 1988, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, American States Insurance, a Kansas corporation, have and recover judgment in the amount of \$5,459.00 with prejudgment interest allowable by law, plus interest thereon at the rate of 9.95 percent per annum from the first date of judgment, plus a reasonable attorney's fee of \$1,625.00 and all costs by virtue of a judgment obtained in the District Court of Tulsa County, State of Oklahoma, Case No. CS 88-01251, on the 10th day of May, 1988, and filed of record in the office of the Tulsa County Clerk on the 17th day of May, 1988, in Book 5100 at Page 391.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Sammie C. Hopkins a/k/a Sammie Hopkins, Ida Hopkins a/k/a Ida L. Hopkins, The First National Bank & Trust Co. of Broken Arrow, Oklahoma, GMAC Mortgage Corporation of Iowa, Wells Fargo Credit Corp., 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;

Third:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$29.00, personal property taxes which are currently due and owing.

Fourth:

In payment of the Defendant, American States Insurance, a Kansas corporation, in the amount of \$5,459.00 with prejudgment interest allowable by law, plus interest thereon at the rate of 9.95 percent per annum from the first date of judgment, plus a reasonable attorney's fee of \$1,625.00 and all costs;

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

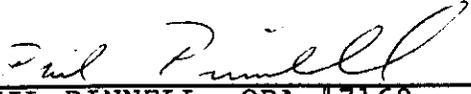
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



RONALD C. BENNETT, OBA #711
Attorney for Defendant,
American States Insurance, a Kansas corporation



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 89-C-051-B

jiw

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

OBA # 5026
FILED

DEC 14 1989

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

SHERRI ALANE LUQUE, an individual,)

Plaintiff,)

vs.)

EDWARD NICKS, an individual, and)
FIRST BAPTIST CHURCH OF LINDALE,)
TEXAS,)

Defendants,)

vs.)

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY, a foreign)
corporation, and DOES 2 THROUGH)
5,)

Third Party Defendants.)

Case No. 89-C-270-C

JOURNAL ENTRY OF JUDGMENT

On this 10th day of October, 1989, the Motion for Summary Judgment of State Farm Mutual Automobile Insurance Company came before the court for hearing along with the Motion for Summary Judgment of the defendants, Edward Nicks, an individual and First Baptist Church of Lindale, Texas. The Court after hearing the argument of counsel and reviewing the Brief finds that the Motions are granted as to the fraud cause of action, the abuse of process cause of action and the malicious prosecution cause of action. State Farm Mutual Automobile Insurance Company's motion is sustained and State Farm is dismissed. The balance of the motion of defendants Edward Nicks and First Baptist Church of Lindale, Texas, is overruled without prejudice to refileing in the event that

additional evidence is discovered in regard to the release on the back of the draft. Plaintiff's oral motion to amend complaint is granted for the limited purpose of amending the complaint for a cause of action setting aside the release.

S/JOHN LEO WAGNER

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

APPROVED AS TO FORM:

Joseph F. Bufogle
JOSEPH F. BUFOGLE
Attorney for Plaintiff

Walter D. Haskins
WALTER D. HASKINS
Attorney for Defendants

Dennis King
DENNIS KING
Attorney for State Farm

FILED

DEC 13 1989

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

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

MICHELE L. ALLEN and LARRY D. ALLEN,)
)
 Plaintiffs,)
)
 vs.)
)
 REUBEN DeROIN, MARGARET HARTNESS,)
 ROBERT MAKER, FRANCIS G. MILLER,)
 and HAROLD E. KASTEL,)
)
 Defendants.)

No. 89-C-515-B ✓

ORDER

This matter comes on for consideration upon Defendants' Motion to Dismiss upon multiple grounds summarized as follows:

- (1) Defendants are Indians residing within Indian Country and the cause of action arose within Indian Country, the result of which is this court lacks subject matter jurisdiction.
- (2) Plaintiffs have failed to properly allege diversity¹ jurisdiction, thereby defeating party jurisdiction.
- (3) Plaintiffs have failed to allege the existence of a federal question, thereby defeating subject matter jurisdiction.
- (4) Sovereign immunity bars this suit which is in actuality a suit against the Osage Tribe of Indians.²
- (5) Plaintiffs have failed to state a claim upon which relief can be granted.
- (6) Plaintiffs have failed to exhaust tribal court remedies.

¹Plaintiffs allege they are "not residents of the State of Oklahoma." Plaintiffs do not allege the citizenship of Defendants, stating only that "Defendants are Osage Indians, residing within Indian Country."

²Defendants allege but offer no supporting proof by affidavit or otherwise that they are members of the Hominy Indian Village Committee, the governing body of the Osage Tribe of Indians, a sovereign Oklahoma Indian Tribe.

6

In their Complaint Plaintiffs, Michele L. Allen and Larry D. Allen (Allens), allege the Defendants, Reuben DeRoin, Margaret Hartness, Robert Maker, Francis G. Miller and Harold E. Kastel, wrongfully converted to their own use certain personal property,³ of a stated value of \$18,000.00, belonging to Plaintiffs. Plaintiffs seek damages for this value and punitive damages in an unstated amount, all totaling in excess of \$50,000.00, the diversity jurisdictional amount.

The Court is of the opinion Defendants' grounds 1, 3, 5 and 6 share a commonality and will be so discussed. Ground 2, improper diversity allegation, is unnecessary to address at this time, particularly in view of Iowa Mutual Insurance Co. v. LaPlante, et al., 480 U. S. 9 (1987), which holds, inter alia, the diversity statute⁴ does not override Indian tribal court primacy, if the latter is appropriate. Ground 4 fails because its resolution is also unnecessary at this juncture, and further because Defendants have offered no proof that they are Hominy Indian Village Committee persons, or that the committee is the governing body of the Hominy Indian Village or that the Hominy Indian Village is an entity of

³Apparently the furnishings and equipment located at the Hominy Indian Village.

⁴28 U.S.C. § 1332.

the Osage Tribe of Indians.⁵

Plaintiffs allege and therefore admit Defendants are Osage Indians residing in Indian Country and that the cause of action arose within the Osage Reservation and on trust property. Plaintiffs primarily complain they shouldn't be required to resort to Indian tribal court to resolve their differences with Defendants. Plaintiffs offer no authority that they are not required to first⁶ proceed in tribal court.

Defendants cite National Farmers Union Ins. Co. v. Crow Tribe, 471 U.S. 845, 85 L.Ed.2d 1818 (1985). In National Farmers, a Crow Indian minor was injured by a motorcycle on a school parking lot located within the Crow reservation but on land owned by the state of Montana. The minor's guardian sued for damages in tribal court and default judgment was entered against the school district and its insurer (National Farmers Union Insurance Company).⁷ Nine days

⁵As will be seen, *infra*, the issue of sovereign immunity, if properly raised and supported, will be a matter to be addressed by the Tribal Court.

⁶Plaintiffs only cited authority, two cases, relate to: (1) accreted lands to an original Indian allotment upon which the allottee's heir sought, successfully, to quiet title against the United States of America and the Omaha Tribe of Indians, and (2) a suit for money due for electrical work against the Blackfeet Tribe of Indians whose charter provides it could be sued in a court of competent jurisdiction but such waiver did not confer jurisdiction to federal courts' otherwise limited jurisdictional base. Neither case is appropriate authority herein.

⁷Apparently Wesley Falls Down, chairman of the school board, failed to notify anyone after being served process.

after the default judgment was entered the school board and National sought injunctive relief in the federal district court of the District of Montana. Under the Crow tribal court rules, the school board and National had 30 days within which to move to set aside the default judgment.⁸ The Supreme Court ruled in National Farmers on several issues apropos the case at bar. (1) Federal courts have jurisdiction⁹ to determine if Indian tribal courts have jurisdiction and/or have exceeded their jurisdiction; (2) Exhaustion of tribal court remedies is required before claims are entertained in federal district court; (3) until exhaustion, any federal district court relief is premature; and (4) the federal district court should address the issue of whether to dismiss or hold in abeyance the premature federal action.

As applied to the instant case, National Farmers, *supra*, and Iowa Mutual, *supra*, address Defendants' grounds 1, 3 and 6. An Indian tribal court has jurisdiction to determine its own jurisdiction. Iowa Mutual, *supra*, citing National Farmers. It is a federal question whether tribal courts have the jurisdiction to determine civil claims arising within Indian Country, Iowa Mutual, and a federal district court has subject matter jurisdiction to

⁸When they filed suit in the federal court, 21 days remained within which a tribal court motion to set aside could have been filed.

⁹i.e., it is a federal question under 28 U.S.C. § 1331.

make such federal question determination. This Court concludes tribal courts have such jurisdiction. National Farmers, supra, citing and distinguishing Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978). This Court concludes Plaintiffs must exhaust their tribal court remedies prior to proceeding in federal district court. National Farmers, supra, and Iowa Mutual, supra. The Court further concludes it should dismiss the instant action rather than hold it in abeyance. National Farmers. To the Court's knowledge there has been to date, no tribal court action filed in this matter.¹⁰

This leaves remaining ground 5, failure to state a claim upon which relief can be granted. Disposition of the combined grounds 1, 3 and 6 obviate any consideration of this ground.

The Court concludes that Plaintiffs' Complaint should be and the same is hereby DISMISSED, without prejudice, for the reasons stated.

IT IS SO ORDERED this 13th day of December, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹⁰A replevin action was filed in Osage County District Court but dismissed by the court for lack of personal or subject matter jurisdiction.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

KELLY S. HUMPHREYS,

*

Plaintiff

*

CIVIL ACTION

vs.

*

NO. 89-C-139E

TUBOSCOPE, INC.,

*

Defendant

*

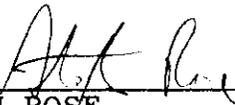
FILED

DEC 1 1989

STIPULATION OF DISMISSAL
PURSUANT TO RULE 41(a)(ii)

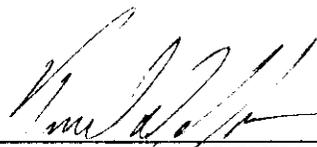
Jack C. Smith, CLERK
U. S. DISTRICT COURT

NOW COME Plaintiff KELLY S. HUMPHREYS and Defendant TUBOSCOPE, INC., through undersigned counsel, pursuant to Rule 41(a)(ii), FRCP, and hereby stipulate and agree that the above action, and all claims contained therein, be dismissed with prejudice, each party to bear its own costs.


STEPHEN ROSE

Kullman, Inman, Bee & Downing
A Professional Corporation
1100 Poydras Street, Suite 1600
P. O. Box 60118
New Orleans, Louisiana 70160
Telephone: (504)524-4162

COUNSEL FOR DEFENDANT
TUBOSCOPE INC.


TERREL B. DOREMUS

100 Center Plaza, Suite D
Tulsa, Oklahoma 74119
Telephone: (918)585-1993

COUNSEL FOR PLAINTIFF
KELLY S. HUMPHREYS

12/11/89

Date

December 7, 1989

Date

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

FILED

DEC 13 1989

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

FEDERAL DEPOSIT INSURANCE)
CORPORATION,)
)
Plaintiff,)
)
v.) NO. 87-C-575-B
)
D. B. WILKERSON, JR. and)
1801 INVESTMENT CORPORATION,)
an Oklahoma corporation,)
)
Defendants.)

JOURNAL ENTRY OF JUDGMENT

NOW on this 13th day of Dec., 1989, the above captioned case comes on before me the undersigned Judge of the United States District Court for the Northern District of Oklahoma upon Plaintiff's, Federal Deposit Insurance Corporation as Receiver for Citizens National Bank and Trust Company, Oklahoma City, Oklahoma ("FDIC"), Motion for Summary Judgment and upon stipulation and agreement of the parties hereto. Plaintiff appearing by and through its attorneys of record, Bush and Underwood through R. Pope Van Cleef, Jr.; and Defendants, D. B. Wilkerson, Jr. and 1801 Investment Corporation, appearing by and through their attorneys of record, Gary M. McDonald and John J. Carwile.

The Court thereupon being fully advised of the premises and after reviewing the Plaintiff's Motion for Summary Judgment and Brief in Support filed herein on November 21, 1989, finds

that no response has been made by Defendants and Plaintiff's Motion is deemed confessed. Specifically, the Court finds:

1. On or about August 13, 1986, Citizens National Bank and Trust Company of Oklahoma City, Oklahoma ("Bank"), was declared insolvent and Federal Deposit Insurance Corporation was appointed Receiver of the failed Bank pursuant to applicable United States Statutes; further, FDIC as Receiver for Citizens National Bank and Trust Company is the owner and holder of Promissory Note and Mortgage sued upon herein.

2. Property which is the subject of this action is located in Tulsa County, Oklahoma.

3. Regular service of Summons with a copy of Plaintiff's Complaint attached has been made upon Defendants, D. B. Wilkerson, Jr. and 1801 Investment Corporation, and each of them, as provided by law. Said Summons and said service thereof is legal and regular in all respects. All of said parties heretofore have filed their Answer to the Complaint of Plaintiff on file herein.

4. On or about December 26, 1984, the Defendant, D. B. Wilkerson, Jr., made, executed and delivered to the Bank his certain Promissory Note in the principal amount of \$250,000.00. The Note on its face provides same will bear interest at the rate of Citizens National Bank Prime plus 2% per annum.

5. The extension of credit made to D. B. Wilkerson, Jr. pursuant to the above described Promissory Note was made to enable the Defendant to pay an obligation owed to Bank of Oklahoma, Oklahoma City, N.A. formerly Fidelity Bank, N.A. In

this regard, Citizens National Bank and Trust Company obtained an Assignment of Real Estate Mortgage dated March 18, 1985, which Assignment relates to a certain Mortgage executed by 1801 Investment Corporation to Bank of Oklahoma, N.A. formerly Fidelity Bank, N.A. dated June 18, 1984, and recorded in Book 4812 at Pages 1654 through 1657 in the Office of the County Clerk of Tulsa County, Oklahoma.

6. As part and parcel to the execution of the Note described in Paragraph 4 above, on or about the 11th day of March, 1985, the Defendant, 1801 Investment Corporation, made, executed and delivered to the Bank a Mortgage of Real Estate as to the following described real property, to-wit:

Lots Five (5) and Six (6), Block One (1), EASTON HEIGHTS SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

This mortgage was duly recorded on March 21, 1985, in Book 4851 at Page 313 in the office of the County Clerk of Tulsa County, Oklahoma, and all applicable mortgage tax was duly paid thereon.

7. Said amounts described in Paragraph 4 above are secured by said Mortgage and constitutes a first, prior and superior lien upon the real estate and premises hereinabove described subject only to the interest of the Tulsa County Treasurer for unpaid ad valorem taxes, if any; further, any and all right, title or interest which the other Defendants herein, or any of them, except to the interest of the Tulsa County Treasurer as and for ad valorem taxes, have or claim to have in

or to said Real Estate and premises is subsequent, junior and inferior to the mortgage and lien of FDIC.

8. No agreements to extend, renew or compromise the indebtedness have been made between FDIC and D. B. Wilkerson, Jr. or any other party to this action and there presently exists a default in the repayment of the indebtedness evidenced by the above referenced Promissory Note.

9. There is now due and owing from D. B. Wilkerson, Jr. to FDIC on the Note described in Paragraph 4 above the principal sum of \$250,000.00. Interest has accrued on the outstanding principal obligation through the 20th day of November, 1989, in the amount of \$200,792.82 and interest is accruing at the per diem rate of \$136.99 until the date of this judgment, and interest thereafter accruing at the applicable T-Bill Rate set forth in 28 U.S.C. §1961.

10. The Mortgage owned, held and sued upon by FDIC provides that in the event of default the holder is entitled to foreclose, with or without appraisalment, the election of which may be exercised by the holder thereof, and to have said premises sold and proceeds applied to the outstanding principal balance and accrued interest then due and owing, together with all legal and necessary expenses and costs. FDIC elects to have said property sold with appraisalment.

11. On the 11th day of September, 1987, Defendants filed their Answer and Affirmative Defenses herein. The Court finds the Answer and Affirmative Defenses as a matter of law do

not defeat FDIC's claim for relief and finds FDIC is entitled to judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that FDIC's Motion for Summary Judgment is deemed confessed and is therefore granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Federal Deposit Insurance Corporation as Receiver for Citizens National Bank and Trust Company, Oklahoma City, Oklahoma, have and recover judgment in personam and in rem against Defendant, D. B. Wilkerson, Jr., and judgment in rem against Defendant, 1801 Investment Corporation, in the sum of \$250,000.00 plus accrued interest through November 20, 1989, in the amount of \$200,792.82 plus interest accruing thereafter at the per diem rate of \$136.99, until the date of this judgment, and interest thereafter accruing at the applicable T-Bill Rate set forth in 28 U.S.C. §1961, until paid, together with any attorney's fees and costs of this action that may be awarded by the Court upon application of FDIC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that said above described amounts are secured by said Mortgage and constitutes a first, prior and superior lien upon the real estate and premises located in Tulsa County, State of Oklahoma, and described as follows:

Lots Five (5) and Six (6), Block One (1), EASTON HEIGHTS SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof,

and that any and all right, title and interest which any other persons have or claim to have, in or to said real estate and premises is subsequent, junior and inferior to the mortgage and lien of FDIC except as to the Tulsa County Treasurer for any unpaid ad valorem real estate taxes, if any.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the mortgages and liens of FDIC in the amounts hereinabove found and adjudged should be foreclosed and Special Execution and Order of Sale issue out of the Office of the District Court Clerk in this cause, directed to the Clerk of this Court or such other duly authorized officer of this or any other Court as may be provided by law, to levy upon, advertise and sell, after due and legal appraisalment, the real estate and premises hereinabove described, subject to unpaid ad valorem taxes, if any, advancements by Plaintiff for taxes, insurance premiums, or expenses necessary for the preservation of the subject property, if any, and pay the proceeds of said sale to the Clerk of the Court, as provided by law, for application as follows:

- FIRST: To the payment of the costs herein accrued and accruing.
- SECOND: To the payment of the judgment and lien of the Plaintiff, Federal Deposit Insurance Corporation as Receiver for Citizens National Bank and Trust Company, Oklahoma City, Oklahoma, together with interest in the amounts hereinabove set out, and attorney's fees and costs hereinafter to be awarded by the Court.
- THIRD: The balance to be paid into the Court pending further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that upon confirmation of the said sale, the Defendants, D. B. Wilkerson, Jr. and 1801 Investment Corporation, and all persons claiming by, through or under them since the commencement of this action, be forever barred, foreclosed and enjoined from asserting or claiming any right, title, interest, estate or equity of a redemption in or to said real estate and premises or any part thereof.

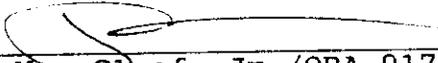
For all of which let execution issue.

S/ THOMAS R. BRETT

HONORABLE THOMAS R. BRETT

SEPARATE SIGNATURE PAGES ATTACHED HERETO.

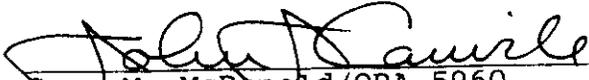
APPROVED:



R. Pope Van Creef, Jr./OBA 9176
Attorneys for Federal Deposit
Insurance Corporation

BUSH AND UNDERWOOD
Jamestown Office Park, Suite 200-W
3037 N.W. 63rd Street
Oklahoma City, Oklahoma 73116
Telephone: (405) 848-2600

APPROVED:



~~Gary M. McDonald/OBA 5960~~
John J. Carwile/OBA 10757
Attorneys for D. B. Wilkerson, Jr.
and 1801 Investment Corporation

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
Telephone: (918) 582-1211

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

DEC 13 1989

JOSEPH JABBOUR, JR. and
JUDITH JABBOUR,
Plaintiffs,

vs.

STANDARD FIRE INSURANCE COMPANY
Defendant,

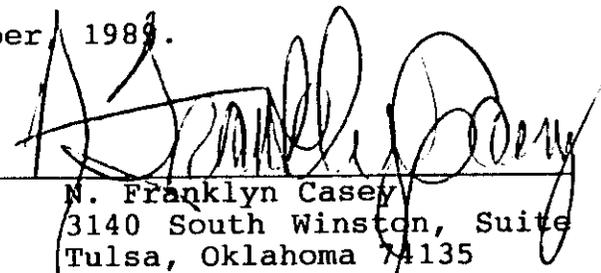
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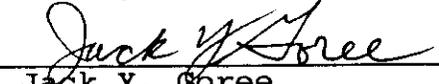
No. 89-C-107-E

STIPULATION OF DISMISSAL

COME NOW the Plaintiffs, and stipulate that the Plaintiffs' claims in this matter are withdrawn and are hereby dismissed with prejudice, each party to bear their or its own costs and attorney fees.

Dated this 17th day of December 1989.


N. Franklyn Casey
3140 South Winston, Suite
Tulsa, Oklahoma 74135
Attorney for Plaintiff

GOREE, KING & RUCKER
BY: 
Jack Y. Goree
7335 South Lewis, Suite 306
Southern Oaks Office Bldg.
Tulsa, Oklahoma 74136
Attorneys for Defendant

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

UNDERWRITER'S SALVAGE COMPANY,)
an Illinois corporation,)
)
Plaintiff,)
)
v.)
)
DAVID HICKS, RALPH FULP, DAVE)
HICKS AUTO PARTS, INC., an)
Oklahoma corporation, and PART)
MART, INC., d/b/a M & M AUTOMART,)
a Missouri corporation,)
)
Defendants.)

Case No. 89-C-169-B

FILED

DEC 13 1989

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

ORDER

Now on this 13th day of December, 1989, upon application of defendant, Ralph Fulp, the Court finds that said defendant's Cross-Claim against the defendant, David Hicks, should be and is hereby ordered dismissed.

Thomas R. Brett
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

[Faint handwritten text]

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID C. CALDWELL; DEBORAH K.)
 CALDWELL; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

CIVIL ACTION NO. 88-C-1441-B

DEFICIENCY JUDGMENT

This matter comes on before the Court this 13th of Dec., 1989, on the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment which Motion was filed on the 19th day of October, 1989, and a copy of the Motion was mailed to David C. Caldwell and Deborah K. Caldwell, 12117 East 30th Place South, Tulsa, Oklahoma 74129, and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Secretary 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 Defendants, David C. Caldwell and Deborah K. Caldwell, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on January 10, 1989, in favor of the Plaintiff United States of America, and against the Defendants, David C. Caldwell and Deborah K. Caldwell, with interest and costs to date of sale is \$70,865.79.

The Court further finds that the appraised value of the real property at the time of sale was \$50,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered January 10, 1989, for the sum of \$44,685.00 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 7th day of December, 1989.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, David C. Caldwell and Deborah K. Caldwell, as follows:

Principal Balance as of 1/10/89	\$57,794.32
Interest	11,805.24
Late Charges to Date of Judgment	424.20
Appraisal by Agency	50.00
Management Broker Fees to Date of Sale	240.00
Abstracting	308.00
Publication Fees of Notice of Sale	139.03
Appraisers' Statements	<u>105.00</u>
TOTAL	\$70,865.79
Less Credit of Appraised Value	- <u>50,000.00</u>
DEFICIENCY	\$20,865.79

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 Secretary of Veterans Affairs have and recover from Defendants, David C. Caldwell and Deborah K. Caldwell, a deficiency judgment in the amount of \$20,865.79, plus interest at the legal rate of 7.69 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

PP/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLES PHILLIP CHILDRESS;)
 PATRICIA ANN CHILDRESS;)
 FEDERAL NATIONAL MORTGAGE)
 ASSOCIATION; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

F I L E D

DEC 13 1989

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

CIVIL ACTION NO. 88-C-0003-B ✓

DEFICIENCY JUDGMENT

This matter comes on before the Court this 12 of ^{tlb}
Dec, 1989, on the Motion of the Plaintiff United States
of America for leave to enter a Deficiency Judgment which Motion
was filed on the 31st day of August, 1989, and a copy of
the Motion was mailed to Charles Phillip Childress and Patricia
Ann Childress, 5750 East 25th Street, Tulsa, Oklahoma 74114, and
all counsel of record. The Plaintiff, United States of America,
acting on behalf of the Secretary of Veterans Affairs, appeared
by Tony M. Graham, United States Attorney for the Northern
District of Oklahoma through Nancy Nesbitt Blevins, Assistant
United States Attorney, and the Defendants, Charles Phillip
Childress and Patricia Ann Childress, appeared neither in person
nor by counsel.

The Court upon consideration of said Motion finds that
the amount of the Judgment rendered herein on March 17, 1988, in
favor of the Plaintiff United States of America, and against the

Defendants, Charles Phillip Childress and Patricia Ann Childress, with interest and costs to date of sale is \$58,647.46.

The Court further finds that the appraised value of the real property at the time of sale was \$21,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered March 17, 1988, for the sum of \$17,874.00 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 7th day of December, 1989.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Charles Phillip Childress and Patricia Ann Childress, as follows:

Principal Balance as of 3/17/88	\$45,034.78
Interest	10,922.96
Late Charges to Date of Judgment	357.12
Appraisal by Agency	425.00
Management Broker Fees to Date of Sale	849.70
Abstracting	83.00
Publication Fees of Notice of Sale	148.90
Appraisers' Fees	105.00
Taxes	<u>721.00</u>
TOTAL	\$58,647.46
Less Credit of Appraised Value	- <u>21,000.00</u>
DEFICIENCY	\$37,647.46

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 Secretary of Veterans Affairs have and recover from Defendants, Charles Phillip Childress and Patricia Ann Childress, a deficiency judgment in the amount of \$37,647.46, plus interest at the legal rate of 7.69 percent per annum on said deficiency judgment from date of judgment until paid.


UNITED STATES DISTRICT JUDGE

NNB/css

Entered
FILED

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

DEC 12 1989

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

RENE' MARIE TAHMASEBI, a minor,)
deceased, by her natural parents,)
personal representatives, and next)
of kin, ABRAHAM TAHMASEBI and)
LORRAIN TAHMASEBI, husband and wife,)
and ABRAHAM TAHMASEBI, individually,)
and LORRAIN TAHMASEBI, individually,)

Plaintiffs,)

vs.)

No. 88-C-1447-C

JANE PHILLIPS EPISCOPAL HOSPITAL,)
INC., d/b/a JANE PHILLIPS)
EPISCOPAL-MEMORIAL MEDICAL CENTER,)
Bartlesville, Oklahoma, and its)
agents, servants, employees, whether)
specifically named or not, and not)
limited to but including DR. LARRY)
SUMNER, DR. TERRY E. BURGE,)
DR. DAVID S. CAUGHELL, DR. MCFARLAND,)
DR. T. L. JOHANNESEN, DR. L. JONES,)
et al.,)

Defendants,)

and)

BARTLESVILLE WOMEN'S CLINIC, INC.,)
an Oklahoma corporation, and)
DR. RUTH THOMPSON,)

Additional Party)
Defendants,)

JANE PHILLIPS EPISCOPAL HOSPITAL,)
INC., d/b/a JANE PHILLIPS EPISCOPAL-)
MEMORIAL MEDICAL CENTER,)
Bartlesville, Oklahoma, et al.,)

Third-Party Plaintiff,)

vs.)

COROMETRICS MEDICAL SYSTEMS, INC.,)

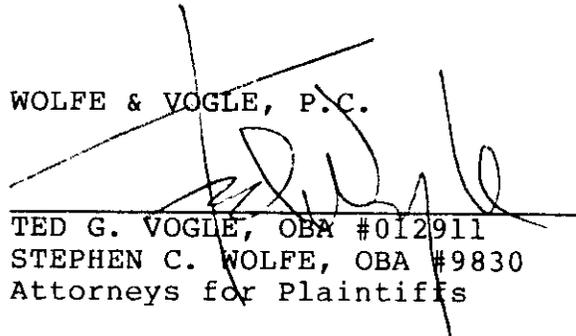
Third-Party Defendant.)

DISMISSAL WITHOUT PREJUDICE

COME NOW the plaintiffs and dismiss without prejudice the defendant, Dr. Ruth Thompson, ONLY.

Plaintiffs would state that counsel for Dr. Ruth Thompson has been apprised and approves of this dismissal.

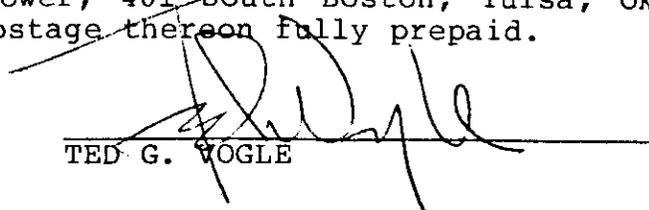
WOLFE & VOGLE, P.C.


TED G. VOGLE, OBA #012911
STEPHEN C. WOLFE, OBA #9830
Attorneys for Plaintiffs

1325 South Main
Tulsa, Oklahoma 74119
(918) 583-8574

CERTIFICATE OF MAILING

I, TED G. VOGLE, hereby certify that on the 12th day of December, 1989, I mailed a true and correct copy of the above and foregoing instrument to: Mr. James K. Secrest, II, 7134 South Yale, Suite 900, Tulsa, Oklahoma 74136, Mr. Andrew Morsman, 700 Kennedy Building, 321 South Boston, Tulsa, Oklahoma 74103, Mr. Joseph F. Glass, 525 South Main, Suite 1500, Tulsa, Oklahoma 74103, and to Mr. Mike Barkley, 2700 Mid-Continent Tower, 401 South Boston, Tulsa, Oklahoma 74103, with proper postage thereon fully prepaid.


TED G. VOGLE

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

DYCO PETROLEUM CORPORATION,
a corporation,

Plaintiff,

vs.

Case No. 89-C-624 E

MESA OPERATING LIMITED
PARTNERSHIP, a Delaware
limited partnership,

Defendant.

ADMINISTRATIVE CLOSING ORDER

Upon the joint application of the parties hereto, the Court administratively closes this case for a period of forty-five (45) days for the purpose of allowing the parties to complete settlement documents and file a joint stipulation of dismissal in this action.

By _____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.)
)
DANIEL D. RASMUSSEN)
)
Defendant.) CIVIL ACTION NO: 89-C-896-E

ORDER OF DISMISSAL

Now on this 8 day of December 1989, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Daniel D. Rasmussen have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Daniel D. Rasmussen be and is dismissed without prejudice.

S/ JAMES G. ...

UNITED STATES DISTRICT JUDGE

mlc

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

DIXIE ANN KIMBERLIN,)

Defendant.)

DEC 11 1989

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

CIVIL ACTION NO. 89-C-805-C

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Agreed Judgment and Order of Payment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.

2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.

3. The defendant hereby agrees to the entry of Judgment in the sum of \$500.00 (\$ 0 principal, and \$ 0 in interest, and \$ 0 in administrative costs and penalties accrued to the date of execution of this Agreed Judgment and Order of Payment), plus costs and postjudgment interest at the legal rate from the date of execution of this Consent Judgment until paid in full.

4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that she is unable to presently pay the amount of indebtedness in full and the further representation of the defendant that she will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 30th day of December 1989, the defendant shall tender to the United States a check or money order payable to the U.S. DEPARTMENT OF JUSTICE, in the amount of \$ 50.00 and a like sum on or before the 30th day of each following month until the entire amount of the Judgment, together with costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Debt Collection Unit, 3600 U.S. Courthouse, 333 West 4th Street, Tulsa, Oklahoma 74103.

(c) Each said payment made by defendant shall be applied in accordance with the U.S. Rules, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. § 1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

(d.) The defendant shall keep the United States currently informed in writing of any material change in her financial situation or ability to pay, and of any change in her employment, place of residence or telephone number. Defendant shall provide such information to the United States Attorney at the address set forth in (b) above.

(e) The defendant shall provide the United States with current, accurate evidence of her assets, income and expenditures (including but not limited to, her Federal income tax returns) within fifteen (15) days of the date of a request for such evidence by the United States Attorney.

5. This Agreed Judgment and Order of Payment shall be recorded among the records of the Circuit Court in the county of residence of the defendant, and all other jurisdictions where it is determined by the United States that the defendant owns real or personal property.

6. Default under the terms of this Agreed Judgment and Order of Payment will entitle the United States to execute on this Judgment without notice to the defendant.

7. The defendant has the right of prepayment of this debt without penalty.

8. The parties further agree that any Agreed Judgment and Order of Payment which may be entered by the Court pursuant hereto may thereafter be modified and amended upon stipulation

of the parties; or, should the parties fail to agree upon the terms of a new stipulated Order of Payment, the Court may, after examination of the defendant, enter a supplemental Order of Payment.

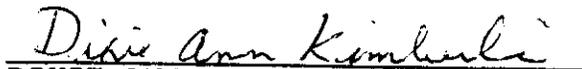

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

TONY M. GRAHAM
United States Attorney


CATHERINE J. DEPEW
Assistant U.S. Attorney




DIXIE ANN KIMBERLIN

CJD/mp

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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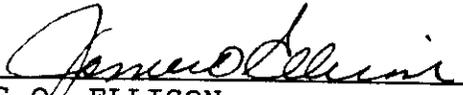
RUTH BALDISCHWILER,)
)
 Plaintiff,)
)
 vs.)
)
 PUBLIC SERVICE COMPANY OF)
 OKLAHOMA,)
)
 Defendant.)

Case No. 88-C-1430-E ✓

JUDGMENT ON JURY VERDICT

This action came on for trial before the Court and jury, the Honorable Judge James O. Ellison presiding, and the issues being duly tried, the jury having rendered its verdict, it is ORDERED AND ADJUDGED:

That the Plaintiff take nothing, that the action be dismissed on the merits, and judgment be entered in favor of Defendant Public Service Company of Oklahoma, and that Defendant Public Service of Oklahoma recover its costs of action from Plaintiff, Ruth Baldischwiler.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

James A. Conrady
P. O. Box 996
Okmulgee, Oklahoma 74447

Attorney for Plaintiff



Lynn Paul Mattson
Charles S. Plumb
Doerner, Stuart, Saunders,
Daniel & Anderson
1000 Atlas Life Bldg.
Tulsa, Oklahoma 74103

Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BILL H. ARNALL,

Defendant.

FILED

DEC 11 1989

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

Civil Action No. 89-C-804-C

DEFAULT JUDGMENT

This matter comes on for consideration this 8 day of December, 1989, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and the Defendant, Bill H. Arnall, appearing not.

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

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Bill H. Arnall, for the principal amount of \$600.00, plus accrued interest of \$156.91 as of June 7, 1989, plus interest thereafter at the rate

of 3 percent per annum until judgment, plus interest thereafter at the current legal rate of 7.69 percent per annum until paid, plus costs of this action.

[Faint signature]

United States District Judge

mp

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

BOHEMOND IMAGES, INC., a
Connecticut corporation,

Plaintiff,

v.

ARKLA, INC., formerly
known as Arkansas Louisiana
Gas Company, a Delaware
corporation,

Defendant.

Case No. 89-C-465-C

FILED
DEC 11 1989

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

ADMINISTRATIVE CLOSING ORDER

IT APPEARING that these proceedings should be held in abeyance pursuant to the settlement and compromise affected by the parties, it is 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 45 days hereof, the parties have not reopened for the purpose of obtaining such a final determination, this action will be deemed to be dismissed with prejudice.

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


UNITED STATES DISTRICT JUDGE

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

MARSHALL GAMMILL and
MICHELLE GAMMILL,

Plaintiffs,

vs.

MATTHEW SCOTT PERRY,

Defendant.

Case No. 89-C-234-C

FILED

DEC 11 1989

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

ORDER OF DISMISSAL WITH PREJUDICE

UPON the Joint Application of the parties hereto, the Court being advised that the parties have entered into and concluded a settlement agreement between them concerning all the claims of the Plaintiffs against the Defendant, the Court finds and it is ordered that the causes of action by the Plaintiffs against the Defendant should be dismissed with prejudice to future filing herein.

IT IS SO ORDERED.

(Signed) M. Dale Cook

JUDGE OF THE DISTRICT COURT

JAG:lh
10-13-89
5126.89

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ALPHONZO J. JONES; DIANA M.)
 JONES; BETTIE T. LEWIS; JOETTA)
 MORGAN, Tenant; FORD CONSUMER)
 CREDIT COMPANY; SERVICE)
 COLLECTION ASSOCIATION, INC.;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.) CIVIL ACTION NO. 89-C-303-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 8 day
of December, 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 J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, Service
Collection Association, Inc., appears not, having previously
filed its Disclaimer; and the Defendants, Alphonzo J. Jones,
Diana M. Jones, Bettie T. Lewis, Joetta Morgan, Tenant, and Ford
Consumer Credit Company, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Alphonzo J. Jones, was

served with Summons and Complaint on June 8, 1989; that the Defendant, Bettie T. Lewis, acknowledged receipt of Summons and Complaint on or about May 19, 1989; that the Defendant, Joetta Morgan, Tenant, was served with Summons and Complaint on May 30, 1989; that the Defendant, Ford Consumer Credit Company, acknowledged receipt of Summons and Complaint on April 17, 1989; that the Defendant, Service Collection Association, Inc., acknowledged receipt of Summons and Complaint on April 25, 1989; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 18, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 17, 1989.

The Court further finds that Defendant, Diana M. Jones, 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 September 13, 1989, and continuing to October 18, 1989, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Diana M. Jones, 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, Diana M. Jones. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, 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 May 8, 1989; that the Defendant, Service Collection Association, Inc., filed its Disclaimer on May 1, 1989; and that the Defendants, Alphonzo J. Jones, Diana M. Jones, Bettie T. Lewis, Joetta Morgan, Tenant, and Ford Consumer Credit Company, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, Joanna Morgan, Tenant, is known as Joetta Morgan, Tenant.

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 Thirteen (13) Suburban Hills Addition, an Addition to the city of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on November 27, 1972, the Defendants, Alphonzo J. Jones and Diana M. Jones, 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 \$12,000.00, payable in monthly installments, with interest thereon at the rate of 7.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Alphonzo J. Jones and Diana M. Jones, 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 November 27, 1972, covering the above-described property. Said mortgage was recorded on December 1, 1972, in Book 4046, Page 891, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Alphonzo J. Jones and Diana M. Jones, 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, Alphonzo J. Jones and Diana M. Jones, are indebted to the Plaintiff in the principal sum of \$9,275.95, plus interest at the rate of 7.5 percent per annum from April 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, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

The Court further finds that the Defendant, Service Collection Association, Inc., disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendants, Bettie T. Lewis, Joetta Morgan, Tenant, and Ford Consumer Credit 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 against the Defendants, Alphonzo J. Jones in personam and Diana M. Jones in rem, in the principal sum of \$9,275.95, plus interest at the rate of 7.5 percent per annum from April 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.69 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, Bettie T. Lewis, Joetta Morgan, Tenant, Ford Consumer Credit Company, Service Collection Association, Inc., 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.

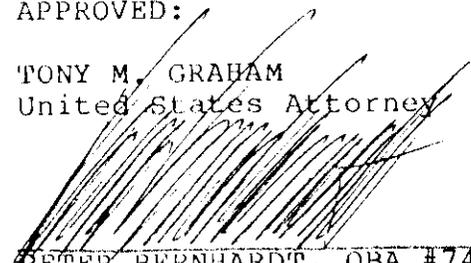
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

JAMES O. BURTON

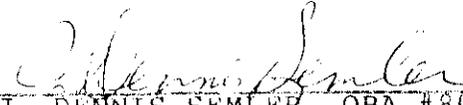
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 89-C-303-E

FILED

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

11 1989

W. C. Silver, Jr.
District Court

In Re:)	
)	
NEVADA NATURAL, INC., and)	Case No. 87-01322-C, Chapter 11
McDANIEL, DONALD LESLIE and)	Case No. 87-01323-C, Chapter 11
HELEN CATHERINE, Debtors.)	[Consol. under No. 87-01322-C]
)	
Kenneth L. Stainer, Trustee,)	
)	
Appellee,)	
)	
v.)	Adversary No. 88-0165-C
)	
Lila L. McCall, et al,)	District Court No. 88-C-1613-E
)	
Appellants.)	

ORDER DENYING DEFENDANTS' MOTION TO DISMISS

Now before the Court is the Appeal of Lila L. McCall and Daniel Dane from the interlocutory order denying Defendants' Motion to Dismiss of the Bankruptcy Court for the Northern District of Oklahoma entered in this adversary proceeding on the 31st day of October, 1988.

On January 31, 1984, Lila L. McCall, Daniel Dane, and T.G. Anderson filed an eleven-count complaint against the debtors, two related corporations, and one related limited partnership, in the United States District Court, District of Arizona, Case No. CIV-84-147-PHX-WPC. On January 9, 1987 the district court entered a default judgment against the defendant awarding to Lila McCall treble damages in the sum of \$1,413,235.50 and similarly awarding to Daniel Dane treble damages in the sum of \$615,446.28.

Subsequent to the entry of default judgment, the debtors filed their petition in bankruptcy and the defendants herein filed proofs

of claim in the respective amounts of their judgments.

On July 1, 1988, the trustee of the debtor estates filed an adversary proceeding to determine the nature, extent and validity of the claims asserted by defendants McCall and Dane. In response to the trustee's complaint, the defendants filed a motion to dismiss, asserting that the default judgment rendered by the United States District Court of Arizona was res judicata as to the trustee's complaint and the trustee should, therefore, be barred from litigating the defendants' claims based on said judgments. The court found that the defendants' motion should be denied because equitable considerations and a lack of identity of parties precluded the application of res judicata to the case.

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

Appellant claims that the Bankruptcy Court erred when it denied the Motion to dismiss, in that it found: 1) that the Trustee had filed pursuant to Bankruptcy Rule 7001, when no such authority was pled; 2) that the Trustee had objected to Appellants' claims

because they were improper under 11 U.S.C. §704(5), when no such allegation was made; 3) that equitable considerations, including prognostications of fraud and a projection that Appellants would receive 80% of the assets of the estate, precluded the application of res judicata to the case; 4) that a lack of identity of parties precluded the application of res judicata to the case; 5) that only resolved or actually litigated issues are given preclusive effect under res judicata doctrine; and 6) that In re Hall, 31 B.R. 148 (W.D. Okla. 1983) did not apply because the debtor argued against the preclusive effect of the prior judgment, not the Trustee. Appellee states that the decision was proper.

Section 704(5) of the Bankruptcy Code provides that the bankruptcy trustee shall, if a purpose would be served, examine proofs of claims filed by creditors and parties in interest against the debtor estate and, where appropriate, object to the allowance of any claim that the trustee considers improper. Under section 101(4) judgments are included in the definition of claims and therefore a trustee can object to a claim based on a judgment.

Bankruptcy courts are courts of equity. In re A.H. Robins, Inc., 880 F.2d 694, 701 (4th Cir. 1989). Under 11 U.S.C. §105(a) the bankruptcy court has power to issue "any order, process or judgment that is necessary or appropriate to carry out the provisions of [Title 11]".

However, the courts have found that the doctrines of res judicata and collateral estoppel apply in the bankruptcy context unless equitable considerations prevent their application. Katchen

v. Landy, 382 U.S. 323, 334 (1966); Heiser v. Woodruff, 327 U.S. 726 (1946). Res judicata prevents relitigation of claims and defenses available to parties in a prior suit, while collateral estoppel precludes parties from relitigating those issues actually litigated in a prior proceeding.

In Pepper v. Litton, 308 U.S. 295, 305-306 (1939), the Supreme Court found that a bankruptcy court:

has full power to inquire into the validity of any claim asserted against the estate and to disallow it if it is ascertained to be without lawful existence. And the mere fact that a claim has been reduced to judgment does not prevent such an inquiry. As the merger of a claim into a judgment does not change its nature so far as provability is concerned, so the court may look behind the judgment to determine the essential nature of the liability for purposes of proof and allowance.

In Heiser v. Woodruff, supra at 732, the Court emphasized that the bankruptcy court is a court of equity and "may exercise equity powers in bankruptcy proceedings to set aside fraudulent claims, including a fraudulent judgment where the issue of fraud has not been previously litigated". But the court went on to say "we are aware of no principle of law or equity which sanctions the rejection by a federal court of the salutary principle of res judicata, which is founded upon the generally recognized public policy that there must be some end to litigation ..."

In Brown v. Felsen, 442 U.S. 127, 132 (1979), the Court refused to adhere automatically to the principle of res judicata: "Because res judicata may govern grounds and defenses not previously litigated, ... it blockades unexplored paths that may lead to truth. For the sake of repose, res judicata shields the

fraud and the cheat as well as the honest person. It therefore is to be invoked only after careful inquiry." (Emphasis added.) The Court determined that bankruptcy courts are better suited to decide issues of dischargeability of debts than the state courts. Id. at 1139.

While it is clear that no allegations of fraud, collusion, or lack of jurisdiction have been made regarding the lower court judgment, the court finds that principles of equity require the Bankruptcy Court to determine the dischargeability of debt in this case and to refuse to invoke the principle of res judicata. There are equitable considerations, such as the projection that appellants would receive 80% of the assets of the estate, which require the Bankruptcy Court to examine the claims of the parties which were never actually litigated in state court. It is therefore unnecessary for this court to determine if the Bankruptcy Court properly found that no identity of parties existed when the default judgment was taken.

Appellants' claims that the bankruptcy court erred in finding that the Trustee had filed pursuant to Bankruptcy Rule 7001 when no such authority was pled and that the Trustee had objected to claims under 11 U.S.C. §704(5) when no such allegation was made constitute harmless error. This court finds, as the court did in Brown v. Felsen, supra at 132, that "neither the interests served by res judicata, the process of orderly adjudication in state courts, nor the policies of the Bankruptcy Act would be well served by foreclosing Petitioner from submitting additional evidence to

prove his case".

IT IS ORDERED that the Bankruptcy Court's decision of October 31, 1988 be and hereby is affirmed.

ORDERED this 8th day of December, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

EXECUTIVE OFFICE NETWORK,)
)
 Plaintiff,)
)
 v.)
)
 GREGORY LORSON,)
)
 Defendant.)

87-C-966-C

FILED

DEC 11 1989

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

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed November 14, 1989 in which the Magistrate recommended that Applied Technical Support, Garnishee's Motion to Vacate be granted and that the Judgment entered against Applied Technical Support be vacated and held for naught. Further, for the waste of time, in making a frivolous objection to the Motion to Vacate, thus requiring a hearing before the court, the Magistrate recommended that Executive Office Network pay to Applied Technical Support the sum of \$100.00, said amount being the reasonable fee for Applied Technical Support's attorney, for one hour of attorney's time, spent in appearing in court to respond to Plaintiff's objection.

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 adopted and affirmed. Garnishee's Motion to Vacate is granted; and, Plaintiff,

26

Executive Office Network is to pay the reasonable attorney's fee of \$100.00 within ten (10) days of this Order.

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

Dated this 8 day of December, 1989.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Entered

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

LYLE ALAN PEEK,)
)
 Plaintiff,)
)
 v.)
)
 GARL WILLIS, TIM EWTON, et al,)
)
 Defendants.)

89-C-608-C **FILED**
DEC 11 1989

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

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed November 14, 1989 in which the Magistrate recommended that Plaintiff's §1983 claim against the City of Sand Springs 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 United States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, Ordered that Plaintiff's §1983 claim against the City of Sand Springs is dismissed.

Dated this 8 day of December, 1989.

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

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

F I L E D

DEC 8 1989

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

SHERYL K. WILLCOX, an individual,)
JULIE A. STEWART, an individual,)
JOHN R. McFALL, an individual,)
LAVONNA PATTERSON, an individual,)
DANNY R. DUNN, an individual, and)
JAMES K. DUNN, an individual,)

Plaintiffs,)

vs.)

Case No. 88-C-1445-B

THE CITY OF HOMINY and CHARLES)
CRAWFORD, former Police Chief of)
the City of Hominy, and CHARLES)
CRAWFORD, an individual,)

Defendants.)

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the Joint Stipulation of Dismissal filed by the plaintiffs, Sheryl K. Willcox, Julie A. Stewart, John R. McFall, and James K. Dunn, the Court dismisses, with prejudice, their Complaint against the defendants, the City of Hominy and Charles Crawford, individually and as former Police Chief of the City of Hominy.

Dated this 8th day of December, 1989.

S/ THOMAS R. BRETT
United States District Judge

FILED

DEC -8 1990

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

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

LEONARD ARABIA, MARVIN BASIL)
CAROL CHISHOLM WEINER, and)
ARTHUR ARAKELIAN, individuals)

Plaintiffs)

and)

Case No. 89-C-091B

PRENTICE THOMAS, an)
individual, NEW WORLD)
RESEARCH, INC., a Florida)
corporation, SANDRA F.)
NICHOLS, an individual, SAGE)
M. JOHNSTON and ZODIE)
JOHNSTON, individuals, DALE)
E. PETERSON, an individual,)
RAYMOND D. FOWLER, an)
individual, HUEY C. WARD, an)
individual, ARMAND J. GAGNE,)
an individual, JAMES E.)
COCHRAN, an individual, and)
WILLIAM B. HARRIS and BERYL)
M. HARRIS, individuals)

Intervenors)

vs.)

GIANT PETROLEUM, INC. an)
Oklahoma corporation, GEORGE)
ELIAS, JR., and CATHY ELIAS,)
individuals; CIMARRON CRUDE)
CO., an Oklahoma corporation,)
and AMERICAN PETROLEUM)
TRADING, INC., an Oklahoma)
corporation, KERR-McGEE)
CORPORATION, a Delaware)
corporation, and AP&W ENERGY,)
INC., an Oklahoma corporation)

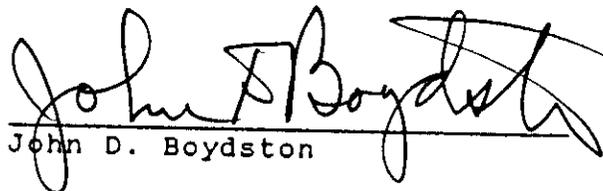
Defendants)

STIPULATION OF DISMISSAL
OF DEFENDANT AP&W ENERGY, INC.

COME NOW the Cross Petitioner, Cimarron Crude, Inc. and the

Mark Van Landingham
Kerr-McGee Center
P.O. Box 205861
Oklahoma City, Oklahoma 73125
Attorney for purchaser defendant
Kerr-McGee Corporation

Mitchel E. Shamas
P.O. Box 896
Okmulgee, Oklahoma 74447
Attorney for defendants
Tom and Judy Elias, Philco
Petroleum, Inc. and Merfco,
Inc.


John D. Boydston

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

THRIFTY RENT-A-CAR SYSTEM, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
RONNIE C. WALL, a/k/a RONNI C.)
WALL, an individual,)
)
Defendant.)

Case No. 89-C-827-B

PLAINTIFF'S NOTICE OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, Thrifty Rent-A-Car System, Inc., ("Thrifty"), pursuant to Rule 41(a)(1)(i), Fed. R. Civ. P., hereby gives notice of voluntary dismissal of the captioned case and does hereby dismiss the same without prejudice.

Respectfully submitted,

COMFORT, LIPE & GREEN, P.C.

By: 
Nancy Glisan Gourley (OBA #10317)
2100 Mid-Continent Tower
401 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 599-9400

- and -

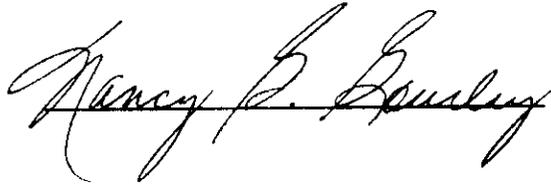
John M. Hickey
Assistant General Counsel
THRIFTY RENT-A-CAR SYSTEM, INC.
P. O. Box 35250
Tulsa, OK 74153-0250

ATTORNEYS FOR PLAINTIFF
THRIFTY RENT-A-CAR SYSTEM, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 1989, a true and correct copy of the within and foregoing document was mailed to the following:

William R. Grimm
J. Patrick Mensching
BARROW, WILKINSON, GADDIS,
GRIFFITH & GRIMM
610 South Main, Suite 300
Tulsa, Oklahoma 74119

A handwritten signature in cursive script, reading "Nancy P. Bousley". The signature is written in black ink and is positioned below the recipient's address.

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

LOCAL AMERICA BANK OF TULSA,)
a federal savings bank, f/k/a)
COMMUNITY FEDERAL SAVINGS AND)
LOAN ASSOCIATION,)
)
Plaintiff,)
)
vs.)
)
MANHATTAN LEASING, INC., et al.,)
)
Defendants.)

Case No. 88-C-1333-E

JOURNAL ENTRY OF JUDGMENT AND ORDER OF SALE

NOW on this 8th day of Dec., 1989, this cause comes on before this Court pursuant to the findings and orders in that certain Order entered herein on the 13th day of July, 1989, and executed by this Court on the 31st day of July, 1989, and pursuant to the findings and orders in that certain Agreed Order for Foreclosure and Partial Dismissal entered and executed by this Court on the 7 day of Dec, 1989, this Court renders Judgment and **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** as follows, to-wit:

1. Federal Savings and Loan Insurance Corporation, as Receiver for First Oklahoma Savings Bank, F.A., now known as Federal Deposit Insurance Corporation, as Manager for Federal Savings and Loan Insurance Corporation, as Receiver for First Oklahoma Savings Bank, F.A., shall have and recover judgment against the Defendant, Linda S. Freeman ("Freeman") upon the counterclaims asserted herein by Freeman against First Oklahoma Savings Bank, F.A., and judgment in its favor against Freeman dismissing said counter-claims.
4374032048-44

2. Plaintiff, Local America Bank of Tulsa, a Federal Savings Bank, f/k/a Community Federal Savings and Loan Association ("Local America"), shall have and recover judgment in personam against the Defendant, Manhattan Leasing, Inc., an Oklahoma corporation ("Manhattan"), for the principal sum of \$299,576.47, together with interest thereon through June 2, 1989, in the sum of \$84,256.52, together with interest thereafter at the rate of 15% per annum which may be adjusted pursuant to the subject Promissory Note, until paid, together with attorney's fees and costs, and together with preservation expenses incurred by Local America, if any, including but not limited to expenses for abstracting, preserving, maintaining and insuring the real property described hereinbelow and any and all taxes incurred upon said real property described hereinbelow.

3. Local America shall have and recover judgment in rem against the Defendant, Robert A. Read ("Read") for all indebtedness due and owing to Local America, including but not limited to any and all principal, interest, attorney's fees and costs and any and all preservation expenses incurred by Local America, including but not limited to expenses accrued and accruing for abstracting, preserving, maintaining and insuring the real property described hereinbelow and any and all taxes accrued and accruing incurred upon said real property described hereinbelow paid by Local America.

4. Local America shall have and recover judgment in personam against the Defendant, Michael Martino ("Martino"), for 10% of all indebtedness due and owing to Local America, including

but not limited to any and all principal, interest, attorney's fees and costs and any and all preservation expenses incurred by Local America, including but not limited to expenses accrued and accruing for abstracting, preserving, maintaining and insuring the real property described hereinbelow and any and all taxes accrued and accruing incurred upon said real property described hereinbelow paid by Local America.

5. The judgment set forth above in favor of Local America constitutes a lien upon the personal property of Manhattan, and upon the following described real property, superior to any right, title, interest, lien, claim, encumbrance, estate, assessment or equity of all of the Defendants, Manhattan, Read, Freeman, Martino, Guaranty National Bank, a national banking association, State of Oklahoma ex rel. Oklahoma Tax Commission, Longview Lake Association, Inc., and A.B. Doe and C.D. Doe (collectively referred to herein as the "Defendants") herein:

Lot One (1), Block Two (2), TIMBERLANE HEIGHTS ADDITION, in the County of Tulsa, State of Oklahoma, according to the recorded plat thereof, a/k/a 6798 Timberlane Drive, Tulsa, Oklahoma.

6. That the judgment of Local America be foreclosed as provided by law and an order of sale issue in this cause commanding the United States Marshal or other specially appointed person and/or officer to sell the above-described real property, with appraisalment; and thereupon the proceeds of the sale be applied in the following order of priority, to-wit:

- (a) the costs of this action and the sale;
- (b) the judgment of Local America as set forth above;

and

(c) the remainder, if any, be paid to the Clerk of this Court, subject to further order of this Court.

7. Of and from and after the time of the sale of the above described real property, the Defendants, and all persons claiming by, through or under them, be and they are hereby forever barred and foreclosed of any and all right, title, interest, lien, claim, encumbrance, estate, assessment or equity in and to the above-described real property, with the exception of such interest as may be acquired as purchaser at any Sheriff's sale or any such other sale.

8. That any and all claims and/or defenses asserted herein by Local America and Freeman against each other shall be and the same are hereby dismissed.

EXECUTED this 8th day of December, 1989.

FOR ALL OF WHICH LET EXECUTION ISSUE.

OF YEARS O. ELLISON

UNITED STATES DISTRICT COURT JUDGE

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

FILED

MARCUS E. MOODY)
)
 Plaintiff,)
)
 v.)
)
 WILLIAM YEAGER,)
)
 Defendant.)

1989 *dt*

R. C. Star, Clerk
U.S. DISTRICT COURT

89-C-674-E ✓

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed November 14, 1989 in which the Magistrate recommended that the Petition for a Writ of Habeas Corpus be denied.

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

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

It is, therefore, Ordered that the Petition for a Writ of Habeas Corpus is denied.

Dated this 8th day of December, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA **DEC 8 1989**

DEMONTE LAMONZ OUSLEY,)
)
 Plaintiff,)
)
 vs.)
)
 LT. W. REAVES and L. RAMSEY and)
 THE TULSA COUNTY SHERIFF'S)
 DEPARTMENT,)
)
 Defendants.)

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

No. 89-C-457-B

J U D G M E N T

In accord with the Order filed December 8, 1989, sustaining the Defendants' Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendants, Lt. W. Reaves, L. Ramsey and the Tulsa County Sheriff's Department, and against the Plaintiff, Demonte Lamonz Ousley. Plaintiff shall take nothing on his claim. Costs are assessed against the Plaintiff and each party is to pay its respective attorney's fees.

DATED this 5th day of December, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

DEC 8 1989

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ELIZABETH DOLE, Secretary of)	
Labor, United States Department)	
of Labor,)	
)	Civil Action
Plaintiff,)	
)	File No. 89-C0006 B
v.)	
)	
ROYAL CLEANERS, INC., a)	
Corporation, and FRANK LUCENTA,)	
Individually,)	
)	
Defendants.)	

CONSENT JUDGMENT

Plaintiff has filed her complaint and defendants, without admitting they have violated any provision of the Fair Labor Standards Act of 1938, have waived their defenses and have agreed to the entry of judgment without contest. It is, therefore, upon motion of the plaintiff and for cause shown,

ORDERED, ADJUDGED and DECREED that defendants, their officers, agents, servants, employees and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from violating the provisions of Sections 6, 7, 11(c), 12(c), 15(a)(2), 15(a)(4), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., hereinafter referred to as the Act, in any of the following manners:

1. Defendants shall not, contrary to Sections 6 and 15(a)(2) of the Act. 29 U.S.C. §§ 206 and 215(a)(2), pay any employee who is engaged in commerce or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce or

in the production of goods for commerce, within the meaning of the Act, wages at a rate less than the minimum hourly rates required by Section 6 of the Act.

2. Defendants shall not, contrary to Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2) employ any employee in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than forty (40) hours, unless the employee receives compensation for his employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he is employed.

3. Defendants shall not, contrary to Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), fail to make, keep and preserve adequate and accurate records of the persons employed by defendants, and the wages, hours and other conditions and practices of employment maintained by them as prescribed by regulations issued by the Administrator of the Employment Standards Administration, United States Department of Labor (29 C.F.R. Part 516).

4. Defendants shall not, contrary to Sections 12(c) and 15(a)(4) of the Act, 29 U.S.C. §§ 212(c) and 215(a)(4), employ any oppressive child labor, as such term is defined in Section 3(1) of the Act, 29 U.S.C. § 203(1), in commerce or in the production of goods for commerce, or in an enterprise engaged in

commerce or in the production of goods for commerce within the meaning of the Act.

It is further ORDERED, ADJUDGED and DECREED that defendants be, and they hereby are, enjoined and restrained from withholding payment of minimum wages and overtime compensation in the total amount of \$10,000.00 for the period January 5, 1986 through January 5, 1989 which the Court finds is due under the Act to defendants' employees named in Exhibit A attached hereto. To comply with this provisions of this judgment, defendants, within 10 days from entry of this judgment, shall deliver to the plaintiff a cashier's or certified check payable to "Employment Standards Administration - Labor" in the total amount of \$10,000.00. From the proceeds of said payment, plaintiff shall make appropriate distribution to the employees named herein or to their estate if necessary, in the respective amounts due said employees, less income tax and social security deductions. Any net sums which within one year after the payment pursuant to this judgment have not been distributed to such employees, or to their estate if necessary, because of plaintiff's inability to locate the proper persons, or because of their refusal to accept such sums, shall be deposited with the Clerk of this Court who shall forthwith deposit such money with the Treasurer of the United States pursuant to 28 U.S.C. § 2041.

It is further ORDERED, that each of the parties shall bear his or her own costs.

Dated this 5th day of December, 1989.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Defendants waive their defenses to plaintiff's complaint and consent to the entry of this judgment:

OLLIE W. GRESHAM
Attorney for Defendants

Plaintiff moves for entry of this judgment:

ROBERT P. DAVIS
Solicitor of Labor

JAMES E. WHITE
Regional Solicitor

BOBBIE J. GANAWAY
Counsel for Employment Standards

By:

V. DENISE DUCKWORTH
Trial Attorney

Attorneys for Plaintiff.

RSOL Case No. 87-00761

EXHIBIT A

Teresa M. Adams
Thelma Ames
Jerry L. Anderson
Nancy L. Apple
Kathleen Balsiger
Carrie Bell
Margie Bettis
Eddie Bishop
Beverly Blake
Kathleen B. Bohnstedt
Nadine Bransaum
Kylia Bussey
Patricia Calloway
Mary Sue Carey
Brigitte Carter
Kathy D. Cartwright
Linda M. Chaisson
Mary Collins
Shelly Clark
Helena Cole
Lynn F. Cross
Cynthia Dicaro
Margie Donahue
Kay Edmondson
David W. Elder
Marlis Faber
Lillian Fisher
Marilyn Foley
Nancy Gamble
Dionne M. Germany
Connie Graff
Glenna D. Green
Sara Gupta
Inez E. Gwaltney
Dorothy Hall
Donna Harms
Shirley Hayes
Verna Hicks
Sherry A. Holbert
Donna Hole
Marilyn J. Houlihan
Anna M. Hudson
Ethel Hunt
Patricia A. Illobre
Sandra Jacobs
Rojelio Juarez
Sandra Keller
Virginia Kelly
Debra Kelton
Phyllis Koehn
Debra L. Krause

EXHIBIT A (cont'd.)

Janet Kunze
Nina L. Lesley
Janie Luke
Beverly Martinez
Denisal McClendon
Norma McManus
Morgan L. Meadows
Rosemary Miano
Bertha Mitchell
Judie Morris
Olive G. Morrow
Jeanne Munier
Evelyn Nelson
Jeanne N. Nelson
Karen Norman
Maxine Owen
Rebecca Page
Lorene J. Palmer
Betty Peal
Tonya R. Phillips
Terri Pouncey
Carole Pritzos
Peggy Redman
Mary Roach
Terri Rodgers
Cecilia L. Rogers
Janice Ruby
Sandra Rudge
Brenda L. Sanders
Deborah L. Sanders
Amy Jean Sebran
Andrea M. Shannon
Diana K. Shelton
Hazel Shrum
Mary G. Simpson
Mary Slayton
Alicia Smith
Brett Smith
Minnie Nash Smith
Marjorie Snyder
Diana Speth
LaDonna K. Starks
Ida Stubblefield
Patricia D. Tatterson
Anna Tedder
Kellee Thompson
Beverly Ulmer
Julie Upton
Delena Vance
Dorothy C. Webb
Lou White
Amber Williams
Mona Woodard
Shawn D. Younger

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

FILED

DEC 8 1989

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

SENECA-CAYUGA TRIBE OF OKLAHOMA,)
an Organized Tribe of Indians, as)
Recognized Under and by the Laws)
of the United States,)

Plaintiff-Appellee,)

v.)

STATE OF OKLAHOMA, ex rel.)
DAVID L. THOMPSON, the Duly)
Elected District Attorney of)
Ottawa County, Oklahoma; BOB SILLS,)
the Duly Elected Sheriff of Ottawa)
County, Oklahoma; JON D. DOUTHITT,)
Associate District Judge for the)
13th Judicial Administrative)
District of Oklahoma,)

Defendants-Appellants.)

No. 85-C-639-B
(Consolidated with
86-C-393-B)

QUAPAW TRIBE OF OKLAHOMA, a)
Federally Recognized Indian Tribe;)
JESSE McKIBBEN, Chairman of Quapaw)
Tribe of Oklahoma,)

Plaintiffs-Appellees,)

v.)

STATE OF OKLAHOMA ex rel.)
DAVID L. THOMPSON, District)
Attorney of Ottawa County;)
MORLAND T. BARTON, Assistant)
District Attorney of Ottawa)
County; BOB SILLS, the Duly)
Elected Sheriff of Ottawa County,)
Oklahoma; JON D. DOUTHITT, Judge)
of the District Court of Ottawa)
County,)

Defendants-Appellants.)

AGREED JUDGMENT

All parties to these consolidated actions: the Seneca-Cayuga Tribe of Oklahoma, represented by Ben Loring, the Quapaw Tribe of Oklahoma, represented by John Charloe, the District Court of Ottawa County, represented by the Attorney General of Oklahoma by and through his Assistant, Sue Wycoff, and the offices of the District Attorney of Ottawa County and the Sheriff of Ottawa County, represented by the District Attorney of Ottawa County, Jon D. Douthitt, hereby agree to entry of judgment in favor of the Plaintiffs.

This Court has jurisdiction of these actions under: 28 U.S.C. Sections 1331, 1343(a)(3), 1362; and 42 U.S.C. Section 1983.

On June 5, 1986, this Court granted the Plaintiffs a temporary injunction enjoining the Ottawa County state district court from proceeding with the suit between the State and the Tribes, and enjoining Ottawa County officials from enforcing Oklahoma bingo laws against the Plaintiff Tribes in Indian Country. The United States Court of Appeals for the Tenth Circuit affirmed the grant of the temporary injunction in a published opinion. 874 F.2d 709 (10th Cir. 1989).

Based upon the Opinion And Findings Of Fact And Conclusions Of Law entered by this Court on June 5, 1986, and based upon the decision of the Tenth Circuit Court of Appeals and the Indian Gaming Regulatory Act, 25 U.S.C Section 2701 et seq., all parties now agree that the Plaintiff Tribes have

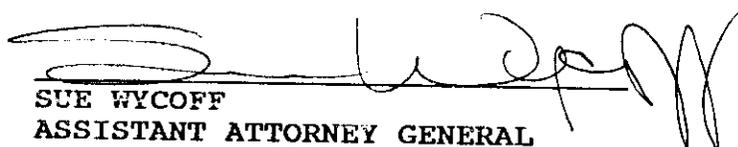
the right to regulate high-stakes bingo games on their Indian Country lands without interference by Oklahoma governmental officials acting under color of state law.

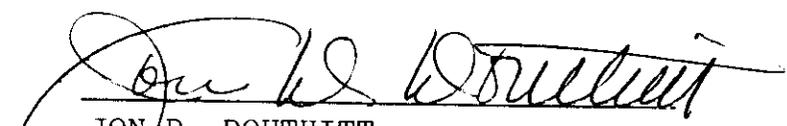
All parties now agree that the Plaintiffs' requested permanent injunction should be issued. It is therefore ordered, adjudged and decreed that a permanent injunction identical with the temporary injunction already entered is hereby issued against said Defendants. All parties further agree and stipulate to entry of judgment that Plaintiffs are the prevailing parties under 42 U.S.C Sections 1983 and 1988.


12/5/89


BEN LORING
Counsel for SENECA-CAYUGA TRIBE


JOHN CHARLOE
Counsel for QUAPAW TRIBE


SUE WYCOFF
ASSISTANT ATTORNEY GENERAL
Counsel for OTTAWA COUNTY DISTRICT COURT


JON D. DOUTHITT
DISTRICT ATTORNEY
Counsel for OTTAWA COUNTY SHERIFF
and DISTRICT ATTORNEY

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

FILED

DEC 8 1989

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

SALLY J. MCDANIEL,)
)
 Plaintiff,)
)
 vs.)
)
 THE CITY OF TULSA, OKLAHOMA,)
 LARRY J. BAYLES, JR.,)
 and RAY LAMAR BEACH,)
)
 Defendants.)

No. 88 C 1582B ✓

ORDER

NOW on this 8 day of Dec, 1989, the
above styled matter comes on before me, the undersigned Judge,
pursuant to the plaintiff's Application to Dismiss Without
Prejudice her cause of action. For good cause shown, said Motion
is hereby granted.

IT IS SO ORDERED.


U.S. DISTRICT JUDGE

C. Rabon Martin
Martin & Asso.
1820 S. Boulder, Ste. 110
Tulsa, OK 74119

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

F I L E D

DEC 8 1989

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

SENECA-CAYUGA TRIBE OF OKLAHOMA,
an Organized Tribe of Indians, as
Recognized Under and by the Laws
of the United States,

Plaintiff-Appellee,

v.

STATE OF OKLAHOMA, ex rel.
DAVID L. THOMPSON, the Duly
Elected District Attorney of
Ottawa County, Oklahoma; BOB SILLS,
the Duly Elected Sheriff of Ottawa
County, Oklahoma; JON D. DOUTHITT,
Associate District Judge for the
13th Judicial Administrative
District of Oklahoma,

Defendants-Appellants.

No. 85-C-639-B
(Consolidated with
86-C-393-B)

QUAPAW TRIBE OF OKLAHOMA, a
Federally Recognized Indian Tribe;
JESSE McKIBBEN, Chairman of Quapaw
Tribe of Oklahoma,

Plaintiffs-Appellees,

v.

STATE OF OKLAHOMA ex rel.
DAVID L. THOMPSON, District
Attorney of Ottawa County;
MORLAND T. BARTON, Assistant
District Attorney of Ottawa
County; BOB SILLS, the Duly
Elected Sheriff of Ottawa County,
Oklahoma; JON D. DOUTHITT, Judge
of the District Court of Ottawa
County,

Defendants-Appellants.

AGREED JUDGMENT

All parties to these consolidated actions: the Seneca-Cayuga Tribe of Oklahoma, represented by Ben Loring, the Quapaw Tribe of Oklahoma, represented by John Charloe, the District Court of Ottawa County, represented by the Attorney General of Oklahoma by and through his Assistant, Sue Wycoff, and the offices of the District Attorney of Ottawa County and the Sheriff of Ottawa County, represented by the District Attorney of Ottawa County, Jon D. Douthitt, hereby agree to entry of judgment in favor of the Plaintiffs.

This Court has jurisdiction of these actions under: 28 U.S.C. Sections 1331, 1343(a)(3), 1362; and 42 U.S.C. Section 1983.

On June 5, 1986, this Court granted the Plaintiffs a temporary injunction enjoining the Ottawa County state district court from proceeding with the suit between the State and the Tribes, and enjoining Ottawa County officials from enforcing Oklahoma bingo laws against the Plaintiff Tribes in Indian Country. The United States Court of Appeals for the Tenth Circuit affirmed the grant of the temporary injunction in a published opinion. 874 F.2d 709 (10th Cir. 1989).

Based upon the Opinion And Findings Of Fact And Conclusions Of Law entered by this Court on June 5, 1986, and based upon the decision of the Tenth Circuit Court of Appeals and the Indian Gaming Regulatory Act, 25 U.S.C Section 2701 et seq., all parties now agree that the Plaintiff Tribes have

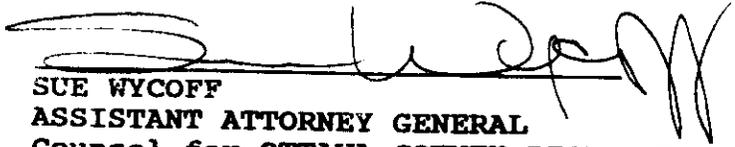
the right to regulate high-stakes bingo games on their Indian Country lands without interference by Oklahoma governmental officials acting under color of state law.

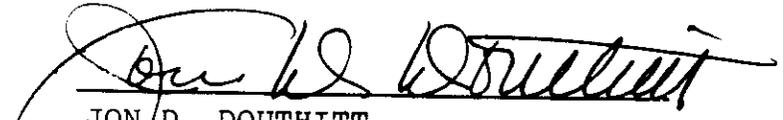
All parties now agree that the Plaintiffs' requested permanent injunction should be issued. It is therefore ordered, adjudged and decreed that a permanent injunction identical with the temporary injunction already entered is hereby issued against said Defendants. All parties further agree and stipulate to entry of judgment that Plaintiffs are the prevailing parties under 42 U.S.C Sections 1983 and 1988.


Thomas R. Duetz
12/8/89


BEN LORING
Counsel for SENECA-CAVUGA TRIBE


JOHN CHARLOE
Counsel for QUAPAW TRIBE


SUE WYCOFF
ASSISTANT ATTORNEY GENERAL
Counsel for OTTAWA COUNTY DISTRICT COURT


JON D. DOUTHITT
DISTRICT ATTORNEY
Counsel for OTTAWA COUNTY SHERIFF
and DISTRICT ATTORNEY

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 KEVIN SWANSON a/k/a KEVIN S.)
 SWANSON; VALERIE L. SWANSON;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

DEC 7 1989

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

CIVIL ACTION NO. 89-C-392-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7th day of December, 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 J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, Kevin Swanson a/k/a Kevin S. Swanson and Valerie L. Swanson, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 15, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 11, 1989.

The Court further finds that the Defendants, Kevin Swanson a/k/a Kevin S. Swanson and Valerie L. Swanson, 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 September 18, 1989, and continuing to October 23, 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, Kevin Swanson a/k/a Kevin S. Swanson and Valerie L. Swanson, 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, Kevin Swanson a/k/a Kevin S. Swanson and Valerie L. Swanson. 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 30, 1989; and that the Defendants, Kevin Swanson a/k/a Kevin S. Swanson and Valerie L. Swanson, 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 Fourteen (14), Block Four (4), ELECTA HEIGHTS an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on May 26, 1986, the Defendants, Kevin Swanson a/k/a Kevin S. Swanson and Valerie L. Swanson, 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 \$45,000.00, 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, Kevin Swanson a/k/a Kevin S. Swanson and Valerie L. Swanson, 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, 1986, covering the above-described property. Said mortgage was recorded on June 3, 1986, in Book 4946, Page 1193, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Kevin Swanson a/k/a Kevin S. Swanson and Valerie L. Swanson, 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, Kevin Swanson a/k/a Kevin S. Swanson and Valerie L. Swanson, are indebted to the Plaintiff in the principal sum of \$45,095.72, plus interest at the rate of 10 percent per annum from March 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, 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, Kevin Swanson a/k/a Kevin S. Swanson and Valerie L. Swanson, in

the principal sum of \$45,095.72, plus interest at the rate of 10 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.69 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that 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.

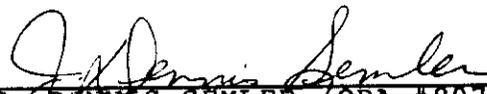
S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

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

FILED

DEC 7 1989

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

GRAYLING LEE CHURN,)
)
 Plaintiff,)
)
 v.)
)
 RUSSELL H. HARRIS, et al,)
)
 Defendant.)

89-C-941-B ✓

ORDER

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

The Plaintiff's Petition alleges that his appointed public defender violated his civil rights by ineffectively representing him in a state criminal prosecution.

The Petition is first to be tested under the standard set forth in 28 U.S.C. §1915(d). If the Petition is found to be obviously without merit, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether the Plaintiff can make a rational argument on the law or the facts to support his claim. Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986). Applying the test to the Plaintiff's claims, the Court finds that the instant action should be dismissed as obviously without merit for the following reasons.

While public defenders are not granted the same immunity as prosecutors and judges, Ferri v. Ackerman, 444 U.S. 193, 205, 100

S.Ct. 402, 410, 62 L.Ed.2d 355 (1979), in order to state a claim under 42 U.S.C. §1983, a plaintiff must show that the alleged violation of a right was committed by a person acting under the "color of state law". Parratt v. Taylor, 451 U.S. 527, 535, 101 S.Ct. 1908, 1913, 68 L.Ed.2d 420 (1981). A public defender does not act under color of state law when performing a lawyer's traditional function as counsel to a defendant in a criminal proceeding. Polk City v. Dodson, 454 U.S. 312, 325, 102 S.Ct. 445, 453, 70 L.Ed.2d 509 (1981). The Supreme Court in Polk City explained that a public defender representing an indigent defendant in a state criminal proceeding is not working on behalf of the state. Instead, he is an adversary of the state. Id. at 323 n. 13. 102 S.Ct. at 452. In some circumstances, however, a state public defender may be considered as acting under the color of state law when he engages in intentional misconduct by virtue of alleged conspiratorial acts with state officials that operate to deprive clients of federal rights. Tower v. Glover, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984).

In the instant case, however, the public defender is performing a traditional lawyer's function, preparing for representing his client at trial. Plaintiff makes no allegation of a conspiracy between the public defender and a state actor. Therefore, the Court finds that the public defender was not acting under color of state law and cannot be held liable under 42 U.S.C. §1983.

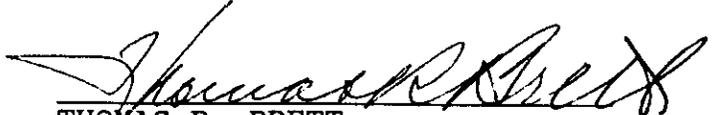
Accordingly, the civil rights action against Plaintiff's appointed attorney is, hereby, dismissed as frivolous pursuant to 28 U.S.C. §1915(d).

Alternatively, construing Churn's filing as a petition for federal habeas corpus relief rather than a §1983 action, the Petition must still be dismissed. As a habeas claim, Churn seeks dismissal of the state criminal action in Creek County, Oklahoma (Case No. CRF-89-185) because of a Sixth Amendment violation. In other words, Churn would seek federal habeas relief because his counsel is ineffectively representing him while preparing for Churn's state trial, thus violating his right to the effective assistance of counsel.

Federal courts, however, will not "peer over counsel's shoulder" as he prepares a defense in order to guarantee effective assistance of counsel is received throughout each step of the trial proceedings. There is much precedent as well as a statutory directive to allow the state courts, in the first instance, to determine if the Sixth Amendment is violated by counsel's performance. See generally, Duckworth v. Serrano, 454 U.S. 1, 3 (1981); Nichols v. Sullivan, 867 F.2d 1250 (10th Cir. 1989); 28 U.S.C. §2254(b). Until the Oklahoma courts have a fair opportunity to rule on an ineffective counsel claim (in light of the federal standard laid down in Strickland v. Washington, 466 U.S. 668 (1984)) the habeas corpus petition is premature because Churn has failed to exhaust his state remedies.

Therefore, considered as either a petition for habeas corpus relief, or as a civil rights complaint, the action is frivolous, and must be dismissed.

IT IS SO ORDERED 7th day of Dec., 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DEC 11 1989

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

BILLY GRIMES, individually and)
as Father and Next Friend of)
Mico Grimes, A Minor,)
)
Plaintiff,)
)
vs.) CASE NO. 88-C-531-E
)
THE UNITED STATES OF AMERICA,)
)
Defendant.)

O R D E R

This matter comes on before the Court upon the Stipulation of all parties and the Court being fully advised in the premises ORDERS, ADJUDGES AND DECREES that all claims asserted herein by Plaintiff, Billy Grimes, individually and as father and next friend of Mico Grimes, a minor, against the United States of America are hereby dismissed with prejudice, the parties to bear their own costs and attorneys' fees.

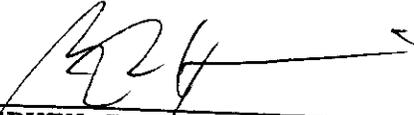
DATED THIS 7 day of June, 1989.

of THOMAS O. ELISON

UNITED STATES DISTRICT JUDGE

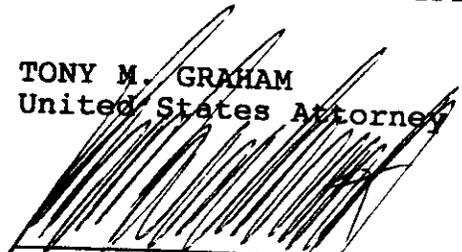
GRIMES V. USA
CIVIL ACTION NO. 88-C-531-E

APPROVED AS TO FORM AND CONTENT:



STEPHEN R. HICKMAN, OBA # 4172
JANE B. MARTON, OBA #
Frasier and Frasier
P.O. Box 799
Tulsa, Oklahoma 74101
(918) 584-4724

ATTORNEYS FOR PLAINTIFF

TONY M. GRAHAM
United States Attorney


PETER BERNHARDT, OBA # 741
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

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

FILED

DEC -7 1989

dt

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

LOCAL AMERICA BANK OF TULSA,)
a Federal Savings Bank,)
)
Plaintiff,)
)
vs.)
)
CURTIS MATHES REALTY CORP.,)
a Delaware corporation,)
)
Defendant.)

Case No. 89-C-431-E ✓

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41, Fed. R. Civ. P., plaintiff and defendant, by and through their respective counsel of record, hereby stipulate and agree as follows:

1. This stipulation is being presented to the Court pursuant to a settlement agreement between plaintiff and defendant.

2. This Court may enter an Order, without further notice to the parties, dismissing the plaintiff's Complaint against defendant in Case Number 89-C-431-E without prejudice.

3. Each party shall bear its own costs and attorneys' fees.

Gregory K. Frizzell
Gregory K. Frizzell, OBA #11089
Attorney for Plaintiffs
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

Dan Moore
Dan Moore
Attorney for ~~Plaintiffs~~ DEFENDANTS
518 East Tyler
Athens, Texas 75751
(214) 675-7898

13

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA **DEC 7 1989**

L. E. SMITH,

Plaintiff,

vs.

MARCIA HAYNES and
JACK COWLEY,

Defendants.

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

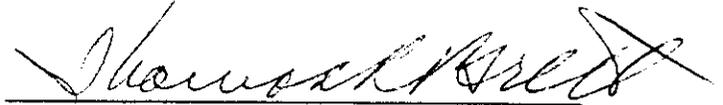
No. 88-C-1672-B

O R D E R

By its Order entered November 22, 1989, this Court stated the instant action, as to the remaining Defendant, Jack Cowley, will be dismissed without prejudice if good cause is not shown within ten days from the order date why service upon Cowley was not made. No showing has been made.

This matter is therefore, as to Defendant, Jack Cowley, DISMISSED WITHOUT PREJUDICE.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ajg

OBA #8879

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

F I L E D

DEC 7 1989

FRANCIS LEBLANC and MURIEL)
LEBLANC,)

Plaintiffs,)

vs.)

ATLAS VAN LINES; DEARBORN)
MOVING AND STORAGE, INC.,)
and ACE MOVING COMPANY,)

Defendants.)

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

Case No: 88-C-844-B

ORDER OF DISMISSAL

ON this 24th day of Dec., 1989, upon the written application of the parties for a Dismissal With Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

S/ THOMAS P. BRETT

UNITED STATES DISTRICT JUDGE

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

SHERRI ALANE LUQUE, an individual,)
)
 Plaintiff,)
)
 v.)
)
 EDWARD NICKS, an individual, and FIRST)
 BAPTIST CHURCH OF LINDALE, TEXAS)
)
 Defendants,)
)
 and)
)
 STATE FARM MUTUAL AUTOMOBILE INSURANCE)
 COMPANY, a foreign corporation; and DOES)
 2 THROUGH 5,)
)
 Third-Party Defendants.)

No. 89-C-270-C

FILED
DEC 7 - 1989
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 6 day of Dec, 1989, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/John L. Wagner *fw*
United States District Judge
Magistrate

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

FILED
1989

LOCAL AMERICA BANK OF TULSA, a)
federal savings bank, f/k/a)
COMMUNITY FEDERAL SAVINGS AND)
LOAN ASSOCIATION,)
)
Plaintiff,)
)
vs.) No. 88-C-1333-E
)
MANHATTAN LEASING, INC., et al.,)
)
Defendants.)

AGREED ORDER FOR FORECLOSURE
AND PARTIAL DISMISSAL

NOW on this 7 day of Dec, 1989, this Agreed Order for Foreclosure and Partial Dismissal comes on for hearing before this Court. Plaintiff, Local America Bank of Tulsa, a federal savings bank ("Local America"), appears by and through its attorneys of record, Jones, Givens, Gotcher, Bogan & Hilborne, P.C., by Robert S. Erickson and Michael J. Gibbens; Federal Savings and Loan Insurance Corporation, as Receiver for First Oklahoma Savings Bank, F.A. now known as Federal Deposit Insurance Corporation as Manager for Federal Savings and Loan Insurance Corporation, as Receiver for First Oklahoma Savings Bank, F.A. ("FDIC Receiver") appears by and through its counsel of record, Fellers, Snider, Blankenship, Bailey & Tippens, by John D. Heatly, and Huffman, Arrington, Kihle, Gaberino & Dunn, by Barry Beasley; Defendant, Manhattan Leasing, Inc., an Oklahoma

corporation appears by and through its attorneys of record, Leblang & Hess, by Cynthia Hess; Defendant, Linda Freeman, appears by and through her attorneys of record, Doyle & Harris, by Michael Davis; the Defendant, Robert A. Read ("Read") appears pro se; the Defendant, Michael Martino appears by and through his attorney of record, J. Scott McWilliams, and Guaranty National Bank appears by and through its attorneys of record, Boone, Smith, Davis & Hurst by J. Schadd Titus. Upon review of the pleadings herein, the Court for good cause shown finds as follows, to-wit:

1. On July 5, 1989, Read filed his Voluntary Petition in Bankruptcy with the United States Bankruptcy Court Clerk for the Northern District of Oklahoma, together with his schedules which covered his real and personal property and included the real property which is the subject matter of this action, more particularly described as follows:

Lot One (1), Block Two (2), TIMBERLANE HEIGHTS ADDITION, in the County of Tulsa, State of Oklahoma, according to the recorded plat thereof, a/k/a 6798 Timberlane Drive, Tulsa, Oklahoma (the "Timberlane Property").

2. On August 17, 1989, the United States Bankruptcy Court for the Northern District of Oklahoma entered its orders directing the Trustee to abandon the Timberlane Property and granting relief from the automatic stay. Said orders were filed with the United States Bankruptcy Court Clerk for the Northern District of Oklahoma on August 25, 1989. (True and correct

copies of said orders are attached hereto as Exhibits "A" and "B" and incorporated herein.)

3. Read has failed to set forth a proper defense and Local America is entitled to judgment in rem against Read in the amounts prayed for in Local America's Petition, Amendment to Complaint and Motions for Summary Judgment, foreclosing all of his right, title and interest in and to the Timberlane Property.

4. Local America and the Defendant, Linda S. Freeman, entered into that certain Agreement of Compromise, Settlement, and Release and have filed their Joint Stipulation of Dismissal herein on the 18th day of October, 1989, such that an Order for Dismissal should be entered herein.

5. That on the 13th day of July, 1989, this Court entered its Order which was executed on July 31, 1989, by this Court and filed with the United States District Court Clerk for the Northern District of Oklahoma on August 2, 1989 (referred to herein as the "Previous Order"). The Previous Order is adopted and incorporated herein by reference as if more specifically set forth herein such that all findings, orders, judgments and decrees are adopted and incorporated herein as if more specifically set forth herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that Local America have and recover judgment in rem against Read for 45% of all indebtedness due and owing to Local America, including but not limited to any and all principal, interest,

attorney's fees and costs and any and all preservation expenses incurred by Local America, including but not limited to expenses accrued and accruing for abstracting, preserving, maintaining and insuring the Timberlane Property and any and all taxes accrued and accruing incurred upon said Timberlane Property paid by Local America.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that any and all claims and/or defenses asserted herein by Local America and Linda Freeman against each other shall be and the same are hereby dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the judgment set forth above in favor of Local America constitutes a lien upon the Timberlane Property, superior to any right, right, title, interest, lien, claim, encumbrance, estate, assessment or equity of the Defendant, Robert A. Read, herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the judgment of Local America be foreclosed as provided by law and an order of sale issue in this cause commanding the United States Marshal or other specially appointed person and/or officer to sell the Timberlane Property, with appraisement; and thereupon the proceeds of the sale be applied in the following order of priority, to-wit:

- (a) the costs of this action and the sale;
- (b) the judgment of Local America as set forth above and as set forth in the Previous Order; and

(c) the remainder, if any, be paid to the Clerk of this Court, subject to further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that of and from and after the time of the sale of the Timberlane Property, the Defendant, Robert A. Read and all persons claiming by, through or under him be forever barred and foreclosed of any right, title, interest, lien, claim, encumbrance, estate, assessment or equity in and to the Timberlane Property, with the exception of such interest as may be acquired as purchaser at any Sheriff's Sale or any such other sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that of and from and after the time of said sale of the Timberlane Property under this judgment and the Previous Order, the Defendants, and all persons claiming by, through or under them be, and they are forever barred and foreclosed of any right, title, interest, lien, claim, encumbrance, estate, assessment or equity in and to the Timberlane Property, with the exception of such interest as may be acquired as purchaser at the Sheriff's Sale or any such other sale.

EXECUTED this 7 day of Dec, 1989.

FOR ALL OF WHICH LET EXECUTION ISSUE

 JAMES C. ELLISON

UNITED STATES DISTRICT COURT JUDGE

JONES, GIVENS, GOTCHER, BOGAN & HILBORNE

By: Robert S. Erickson
Robert S. Erickson
3800 First National Tower
Tulsa, OK 74103-4309
(918) 581-8200

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Barry K. Beasley
Caroline B. Benediktson
HUFFMAN, ARRINGTON, KIHLE, GABERINO & DUNN
1000 Oneok Plaza
Tulsa, OK 74103

By: Barry K. Beasley

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DOYLE & HARRIS

By: Michael D. Davis
Michael D. Davis
2431 E. 61st, Suite 260
Tulsa, OK 74136

ATTORNEYS FOR LINDA S. FREEMAN

J. Scott McWilliams
J. Scott McWilliams
P.O. Box 516
Tulsa, OK 74101-0516

ATTORNEYS FOR MICHAEL MARTINO

JONES, GIVENS, GOTCHER, BOGAN & HILBORNE

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ATTORNEYS FOR MICHAEL MARTINO

LEBLANG & HESS

By:

Cynthia D. Hess
Cynthia Hess
7666 E. 61st St., Suite 251
Tulsa, OK 74133

ATTORNEYS FOR MANHATTAN LEASING, INC.

BOONE, SMITH, DAVIS & HURST

By:

J. Schaad Titus
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500 Oneok Plaza
Tulsa, OK 74103

ATTORNEYS FOR GUARANTY NATIONAL BANK

ROBERT A. READ
ROBERT A. READ
6416 S. Louisville
Tulsa, OK 74136

LEBLANG & HESS

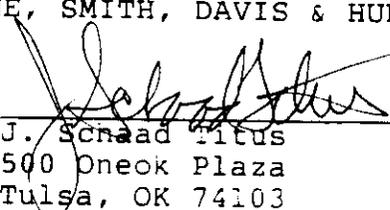
By:

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BOONE, SMITH, DAVIS & HURST

By:

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ATTORNEYS FOR GUARANTY NATIONAL BANK



ROBERT A. READ
6416 S. Louisville
Tulsa, OK 74136

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 MARK A. PESTEL a/k/a MARK ALLEN)
 PESTEL a/k/a MARK PESTEL;)
 DEBORAH E. PESTEL a/k/a DEBORAH)
 PESTEL a/k/a DEBORAH E. SWARER;)
 COUNTY TREASURER, Osage County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Osage County,)
 Oklahoma,)
)
 Defendants.)

FILED

DEC 7 1989

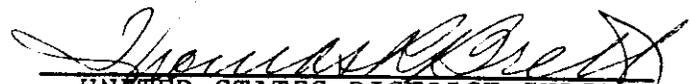
Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-056-B ✓

ORDER

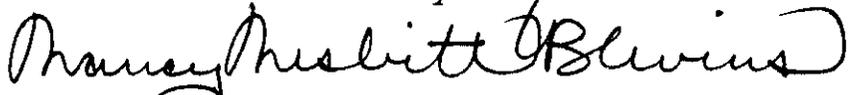
Upon the Motion of the United States of America acting on behalf of the Secretary of Veterans Affairs by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, it is hereby ORDERED that the Entry of Default by Clerk filed on June 14, 1989, the Judgment of Foreclosure filed on July 10, 1989, and the Bill of Costs filed on July 11, 1989, are vacated.

Dated this 7th day of Dec, 1989.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney



NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

FILED

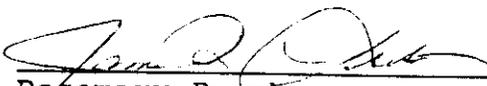
IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PROGRESSIVE ACCEPTANCE CORPORATION,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
WESTERN SURETY COMPANY,)
a foreign corporation,)
)
Defendant.)

Case No. 88-C-1247-B

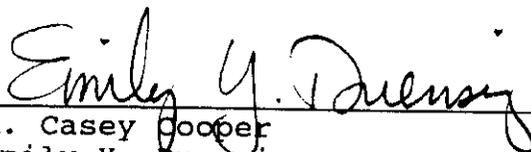
STIPULATION OF DISMISSAL

The Plaintiff, Progressive Acceptance Corporation, and Defendant, Western Surety Company, stipulate and agree that Plaintiff should and hereby does dismiss this action with prejudice to its further refiling of same against Western Surety Company but with full reservation of Western Surety Company's rights to prosecute an action against and recover any losses from The Auto Villa, Ltd., and any other entities or persons against whom Western Surety Company may be entitled to make such claim, all pursuant to a settlement between Plaintiff and Defendant herein.



Rosemary Burgher
James Lieber
P.O. Box 2888
Tulsa, OK 74101

ATTORNEYS FOR PLAINTIFF
PROGRESSIVE ACCEPTANCE CORPORATION



R. Casey Cooper
Emily Y. Duensing
R. Kevin Layton
Of BOESCHE, McDERMOTT & ESKRIDGE

800 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
(918) 583-1777

ATTORNEYS FOR DEFENDANT
WESTERN SURETY COMPANY

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

FILED

DEC -5 1989

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

ADEMOLA MICHAEL OGUNLEYE, }
 }
 Petitioner, }
 vs. }
 }
 ATTORNEY GENERAL, et al., }
 }
 Defendants. }

No. 87-C-560-C

ORDER

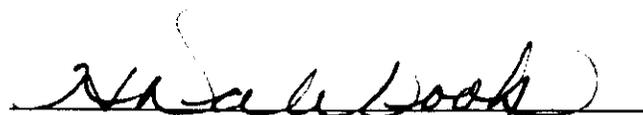
Before the Court is a motion by petitioner "for judgment".
The Court has reviewed the record and finds as follows:

The defendants have satisfied the requirements of this Court's
Order dated March 9, 1989, by assisting the state court in granting
to petitioner the relief he had requested.

This Court is advised that the petitioner is no longer being
held in state custody on the underlying charges which resulted in
this habeas corpus action.

All issues before this Court have been satisfied and rendered
moot. This action is therefore dismissed, with instructions for the
Clerk of the Court to close the file.

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


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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JERRY DARNELL BARNES; EMILY D.)
 BARNES; RICHARD C. BRYANT, JR.;)
 ERIC M. BRYANT; COUNTY TREASURER,)
 Osage County, Oklahoma;)
 BOARD OF COUNTY COMMISSIONERS,)
 Osage County, Oklahoma; and)
 JOHN DOE, Tenant,)
)
 Defendants.)

FILED

DEC 4 - 1989

Jack C. Silver, Clerk
S. DISTRICT COURT

CIVIL ACTION NO. 89-C-196-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 4th day
of December, 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, Osage County, Oklahoma, and
Board of County Commissioners, Osage County, Oklahoma, appear by
Larry D. Stuart, District Attorney, Osage County, Oklahoma; the
Defendant, John Doe, Tenant, who is now known as Otis B. Brown,
Tenant, appears not, having previously filed his Disclaimer; and
the Defendants, Jerry Darnell Barnes, Emily D. Barnes, Richard C.
Bryant, Jr., and Eric M. Bryant, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Jerry Darnell Barnes,
acknowledged receipt of Summons and Complaint on March 31, 1989;

that the Defendant, Richard C. Bryant, Jr., was served with Summons and Complaint on May 16, 1989; that the Defendant, Otis B. Brown, Tenant, was served with Summons and Amended Complaint on October 17, 1989; that Defendant, County Treasurer, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on March 20, 1989; and that Defendant, Board of County Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on March 14, 1989.

The Court further finds that the Defendants, Emily D. Barnes and Eric M. Bryant, were served by publishing notice of this action in the Pawhuska Journal-Capital a newspaper of general circulation in Osage County, Oklahoma, once a week for six (6) consecutive weeks beginning July 8, 1989, and continuing to August 12, 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, Emily D. Barnes and Eric M. Bryant, 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, Emily D. Barnes and Eric M. Bryant. 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, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer on March 21, 1989; that the Defendant, Otis B. Brown, Tenant, filed his Disclaimer on November 17, 1989; and that the Defendants, Jerry Darnell Barnes, Emily D. Barnes, Richard C. Bryant, Jr., and Eric M. Bryant, 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 Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirteen (13), Block Three (3), COUNTRY CLUB HEIGHTS, an Addition to the City of Tulsa, a subdivision of a tract of land lying in the Northwest Quarter of the Northeast Quarter of the Northeast Quarter (NW/4 NE/4 NE/4) of Section 34, Township 20 North, Range 12 East of the Indian Base and Meridian, according to the official plat thereof, of record in the office of the County Clerk of Osage County, Oklahoma.

The Court further finds that on May 14, 1981, the Defendants, Jerry Darnell Barnes and Emily D. Barnes, 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 \$33,250.00, 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, Jerry Darnell Barnes and Emily D. Barnes, 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 14, 1981, covering the above-described property. Said mortgage was recorded on May 15, 1981, in Book 598, Page 648, in the records of Osage County, Oklahoma.

The Court further finds that the Defendants, Jerry Darnell Barnes and Emily D. Barnes, 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, Jerry Darnell Barnes and Emily D. Barnes, are indebted to the Plaintiff in the principal sum of \$33,789.57, plus interest at the rate of

14 percent per annum from July 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, Richard C. Bryant, Jr. and Eric M. Bryant, 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, Osage County, Oklahoma, claim no right, title, or interest in the subject real property.

The Court further finds that the Defendant, John Doe, Tenant, is Otis B. Brown, Tenant, and further finds that Otis B. Brown, Tenant, disclaims any 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, Jerry Darnell Barnes in personam and Emily D. Barnes in rem, in the principal sum of \$33,789.57, plus interest at the rate of 14 percent per annum from July 1, 1986 until judgment, plus interest thereafter at the current legal rate of 7 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, Richard C. Bryant, Jr., Eric M. Bryant, Otis B.

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

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

First:

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

Second:

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

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

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

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney


LARRY D. STUART, OBA #8710
District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Osage County, Oklahoma

Judgment of Foreclosure
Civil Action No. 89-C-196-C

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 JACINTA QUINNETTE HOLMES,)
)
 Defendant.)

DEC 4- 1989

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

Civil Action No. 87-C-1091-C

DEFAULT JUDGMENT

This matter comes on for consideration this 1st day of December, 1989, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and the Defendant, JACINTA QUINNETTE HOLMES, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, JACINTA QUINNETTE HOLMES, was served with Summons and Complaint on October 13, 1989. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Jacinta Quinnette Holmes, for the principal amount of \$853.48, plus accrued interest of \$211.25 as of December 4, 1987, plus interest

thereafter at the rate of 3 percent per annum until judgment, plus interest thereafter at the current legal rate of 11.69 percent per annum until paid, plus costs of this action.

(Signed: H. Dale Cook

United States District Judge

mp

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

DYCO PETROLEUM CORPORATION,)
a corporation; and JAYE F. DYER,)
an individual,)
)
Plaintiffs,)

vs.)

Case No. 87-C-318-C

TEXAS OIL AND GAS CORPORATION,)
a corporation; and DELHI)
GAS PIPELINE CORPORATION,)
a corporation,)
)
Defendants.)

F I L E D

DEC 4 - 1989

Joak C. Silver, Clerk
S. DISTRICT COURT

ORDER

Pursuant to the stipulation of the parties, the Court does hereby dismiss with prejudice any and all claims alleged herein by either party, each party to bear its own costs and fees.

DONE this 4 day of Dec, 1989.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHESTER B. JACKSON; MAXINE M.)
 JACKSON; W. C. FRIMAN;)
 W. P. SAWYER; GILCREASE HILLS)
 HOMEOWNERS ASSOCIATION;)
 COUNTY TREASURER, Osage County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Osage County,)
 Oklahoma,)
)
 Defendants.)

FILED

DEC 4- 1989

Jack C. Silver, Clerk
S. DISTRICT COURT

CIVIL ACTION NO. 89-C-241-C

AMENDED JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 4 day
of Dec, 1989. The Plaintiff appears by Tony M. r
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Osage County, Oklahoma, and
Board of County Commissioners, Osage County, Oklahoma, appear by
John S. Boggs, Jr., Assistant District Attorney, Osage County,
Oklahoma; and the Defendants, Chester B. Jackson, Maxine M.
Jackson, W. C. Friman, W. P. Sawyer, Gilcrease Hills Homeowners
Association, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Chester B. Jackson and
Maxine M. Jackson, acknowledged receipt of Summons and Complaint
on April 19, 1989; that Defendant, W. C. Friman, acknowledged
receipt of Summons and Complaint on April 3, 1989; that

Defendant, W. P. Sawyer, acknowledged receipt of Summons and Complaint on April 3, 1989; that Defendant, Gilcrease Hills Homeowners Association, was served with Summons and Complaint on May 5, 1989; that Defendant, County Treasurer, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on April 5, 1989; and that Defendant, Board of County Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on or about April 6, 1989.

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer on April 18, 1989; and that the Defendants, Chester B. Jackson, Maxine M. Jackson, W. C. Friman, W. P. Sawyer, and Gilcrease Hills Homeowners Association, 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 Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Ten (10), Block Nine (9), GILCREASE HILLS, VILLAGE I, BLOCKS 7 THRU 14, a Subdivision in Osage County, Oklahoma.

The Court further finds that on April 15, 1985, the Defendants, Chester B. Jackson and Maxine M. Jackson, 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

\$62,600.00, payable in monthly installments, with interest thereon at the rate of 12.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Chester B. Jackson and Maxine M. Jackson, 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 15, 1985, covering the above-described property. Said mortgage was recorded on April 16, 1985, in Book 0674, Page 038, in the records of Osage County, Oklahoma.

The Court further finds that the Defendants, Chester B. Jackson and Maxine M. Jackson, 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, Chester B. Jackson and Maxine M. Jackson, are indebted to the Plaintiff in the principal sum of \$61,950.55, plus interest at the rate of 12.5 percent per annum from April 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, W. C. Friman, W. P. Sawyer, and Gilcrease Hills Homeowners Association, 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, Osage 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, Chester B. Jackson and Maxine M. Jackson, in the principal sum of \$61,950.55, plus interest at the rate of 12.5 percent per annum from April 1, 1988 until judgment, plus interest thereafter at the current legal rate of 8.85 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, W. C. Friman, W. P. Sawyer, Gilcrease Hills Homeowners Association, and County Treasurer and Board of County Commissioners, Osage 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, Chester B. Jackson and Maxine M. Jackson, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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

(Signed) H. Dale Cook

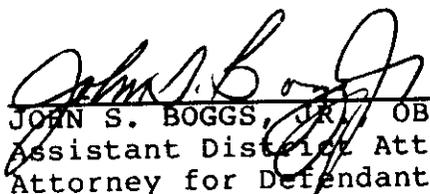
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



JOHN S. BOGGS, JR., OBA #
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Osage County, Oklahoma

PP/css

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

GLENEAGLES APARTMENTS LIMITED
PARTNERSHIP,

Plaintiff,

vs.

BRUNEL CONSTRUCTION CO., INC.,
a Texas corporation; THE
MISCHER CORPORATION, a Delaware
corporation; and MCGREGOR
CONSTRUCTION CO., INC., a Texas
corporation,

Defendants
and
Third-Party Plaintiffs,

vs.

MCCLEARY ASSOCIATES, INC., d/b/a
MCCLEARY GERMAN ASSOCIATES, INC.;
SISEMORE, SACK, SISEMORE &
ASSOCIATES, INC.; M. HOURANI &
ASSOCIATES; BURROW REAL ESTATE
DEVELOPMENT CO.; HARRY BURROW,
individually; LARRY BURROW,
individually and GLENEAGLES
APARTMENT CORPORATION,

Third-Party Defendants,
and

CONTINENTAL INSURANCE COMPANY,

Intervenor.

NO. 87-C-425-E

ORDER

IT IS HEREBY ORDERED that the Intervenor, Continental Insurance Company's, Complaint in Intervention shall and is hereby dismissed with prejudice to Intervenor's right to reassert any subrogation claim against Plaintiff which Intervenor could have asserted against Plaintiff in said Complaint in Intervention.

ORDERED this 1st day of December, 1989.

BY JAMES O. ELLISON

James O. Ellison
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PHILLIPS PETROLEUM CO.,)
)
 Plaintiff,)
)
 vs.)
)
 MANUEL LUJAN, Secretary of)
 the Department of Interior,)
)
 Defendant.) CASE NO. 88-C-1487-E

JUDGMENT

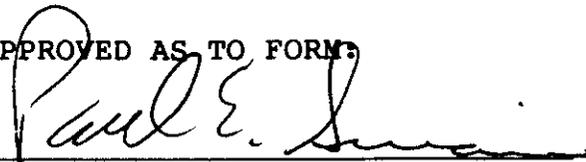
In accordance with the Order of the Court entered herein on October 18, 1989 sustaining the motion for summary judgment and denying the request for injunctive relief of the Plaintiff Phillips Petroleum Company, and overruling the motion for summary judgment of the Defendant Manuel Lujan, Secretary of the Department of Interior, judgment is hereby entered in favor of the Plaintiff and against the Defendant with regard to Plaintiff's action for a declaratory judgment, and in favor of the Defendant and against the Plaintiff with regard to Plaintiff's action for an injunction, upon the terms and for the reasons set forth in such Order.

ORDERED this 15th day of November, 1989.

S/ JAMES O. ELLISON
JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

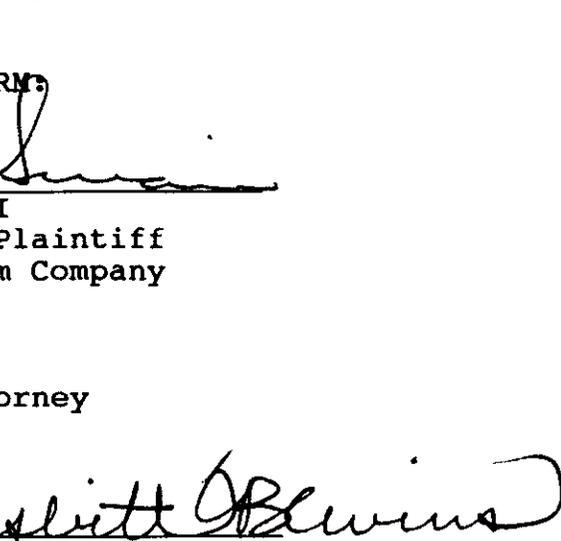
PHILLIPS PETROLEUM CO.
v. SECRETARY OF THE DEPT. OF INTERIOR
CASE NO. 88-C-1487-E

APPROVED AS TO FORM:



PAUL E. SWAIN, III
Attorney for the Plaintiff
Phillips Petroleum Company

TONY M. GRAHAM
United States Attorney



NANCY NESBITT BLEVINS
Assistant United States Attorney
Attorneys for Manuel Lujan,
Secretary of the
Department of Interior

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
Plaintiff,)

vs.)

RICHARD G. NEES, JR.)
a/k/a RICHARD NEES, JR.)

Defendant.)

CIVIL ACTION NO: 89-211-E

AGREED JUDGMENT

This matter comes on for consideration this 15th
of December, 1989, the plaintiff appearing by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Catherine J. Depew, Assistant United States
Attorney, and the Defendant, Richard G. Nees, Jr., appearing pro
se.

The Court, being fully advised and having examined the
court file finds that the Defendant, Richard G. Nees, Jr.,
acknowledged receipt of Summons and Complaint on October 30,
1989. The Defendant has not filed an Answer but in lieu thereof
has agreed that he is indebted to the plaintiff in the amount
alleged in the Complaint and that judgment may accordingly be
entered against him in the principal amount of \$25,032.78, plus
accrued interest of \$1,824.42 as of February 28, 1988, plus
interest thereafter at the rate of 4.00 percent per annum until
judgment, plus interest thereafter at the legal rate until paid,
plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the plaintiff have and recover judgment against the Defendant, Richard G. Nees, Jr., in the principal amount of \$25,032.78, plus accrued interest of \$1,824.42 as of February 28, 1989, plus interest thereafter at the rate of 4.00 percent per annum until judgment, plus interest thereafter at the current legal rate of 7.69 percent per annum until paid, plus the costs of this action.

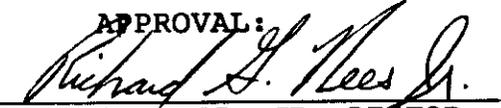
BY JAMES O. ELSON

UNITED STATES DISTRICT JUDGE

TONY M. GRAHAM
United States Attorney


CATHERINE J. DEPEW
Assistant U.S. Attorney

CD:mlc

APPROVAL:

RICHARD G. NEES, JR. DEBTOR

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

FILED

DEC 1 1989

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

FINEX CAPITAL CORPORATION LTD.,
a corporation,

Plaintiff,

vs.

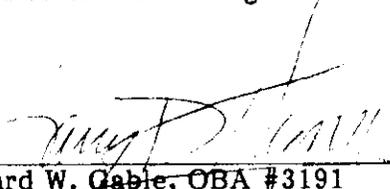
COLWYN USA, INC., an Oklahoma
corporation;

Defendant.

Case No. 89-C-598-E

DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Finex Capital Corporation Ltd., a corporation, by and through its attorneys of record, Gable & Gotwals, Inc., by Larry D. Thomas, and hereby dismisses the above-referenced action without prejudice to the refiling thereof.


Richard W. Gable, OBA #3191
Larry D. Thomas, OBA #8945
GABLE & GOTWALS, INC.
2000 Fourth National Bank Building
15 West Sixth Street
Tulsa, Oklahoma 74119-1217
(918) 582-9201

ATTORNEYS FOR FINEX CAPITAL
CORPORATION LTD.

F I L E D

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

DEC 1 1989

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

UNDERWRITERS SALVAGE COMPANY)
 an Illinois Corporation,)
)
 Plaintiff,)
)
 vs.)
)
DAVID HICKS, RALPH FULP,)
DAVE HICKS AUTO PARTS, INC., an Oklahoma)
 corporation, and **Part Mart, Inc.,** d/b/a)
M & M Automart, a Missouri corporation,)
)
 Defendants.)

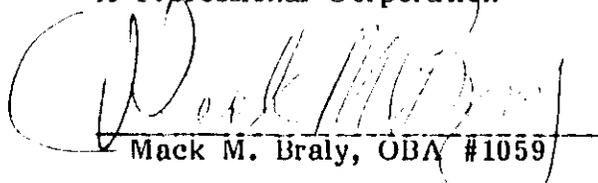
No. 89-C-169-B

STIPULATION OF DISMISSAL

The parties hereto, by their undersigned attorneys, pursuant to Rule 41(a)(1), Fed. R. Civ. P., do hereby stipulate to the dismissal by Plaintiff Underwriters' Salvage Company, of its claims against David Hicks, Dave Hicks Auto Parts, Inc., and Part Mart, Inc. in the above entitled action; this stipulation expressly excludes any dismissal of Plaintiff's claims against Defendant Fulp for damages pursuant to 12 O.S. 1981, §1580, and for attorneys fees pursuant to the same section, now under consideration by the Court.

Dated: November , 1989
Tulsa, Oklahoma

BRALY & HINDS
A Professional Corporation



Mack M. Braly, OBA #1059

1701 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-2806
Attorneys for Plaintiff

Coy D. Morrow

Coy D. Morrow, OBA #6443

P. O. Box 1168
Miami, Oklahoma 74355
(918) 582-5501
Attorneys for Defendant Fulp

James W. Keeley

James W. Keeley, OBA #4907

1400 S. Boston Bldg., Suite 680
Tulsa, Oklahoma 74119
Attorneys for Defendant Hicks

CERTIFICATE OF SERVICE

Mack Muratet Braly, being one of the attorneys for the Plaintiff, Underwriters Salvage Company, does hereby certify that on this 22nd day of November, 1989, I did serve a true and correct copy of the above and foregoing STIPULATION OF DISMISSAL upon the Defendant, David Hicks, by causing a copy thereof to be mailed to his attorney, James W. Keeley, Esq., Messrs. Gill and Keeley, 1400 South Boston Building, Suite 680, Tulsa, Oklahoma 74119 and on Defendant Ralph Fulp, by serving his attorneys, Messrs. Wallace, Owens, Langers, Gee, Morrow, Wilson, Watson, James & Coiner, P. O. Box 1168, Miami, OK, 74355; in the United States mails with proper postage thereon fully prepaid.

Mack M. Braly

Mack M. Braly