

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

DEC 20 1989

AMERICAN BANK AND TRUST COMPANY,)
an Oklahoma banking corporation,)
)
Plaintiff,)
)
vs.)
)
VIDEO RENTCO, INC., an Alabama)
corporation; MERLIN C.)
STICKELBER, an individual,)
)
Defendants.)

NO. 89-C-776-B

DEFAULT JUDGMENT

NOW, on this 29th day of December, 1989, upon the application of the Plaintiff in the above-entitled cause, and pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure; further, upon the finding of the failure of the Defendants, Video Rentco, Inc. and Merlin C. Stickelber, to file an answer to the complaint of the Plaintiff, and a default having been entered herein, it is hereby:

ORDERED, ADJUDGED AND DECREED that Plaintiff have and recover judgment against the Defendants, Video Rentco, Inc. and Merlin C. Stickelber, in the sum of Ninety-Four Thousand Two Hundred Sixty-One and 80/100 Dollars (\$94,261.80), together with interest from May 1, 1989, at the rate of Eighteen and Twenty-Five Hundredths Percent (18.25%) per annum until paid, together with costs, and such other relief as the Court may deem just and equitable.

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

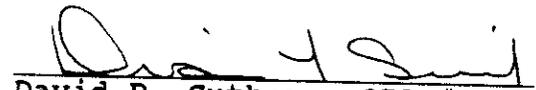
and the same are hereby dismissed with prejudice to any further action.

S/ JAMES O. ELLISON

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

APPROVALS BY:


H. I. Aston
C. Bryan Alred
3242 E. 30th Place
Tulsa, Oklahoma 74114
Attorneys for Plaintiff


David R. Guthery, OBA #3668
Dianne L. Smith, OBA #8330
GUTHERY & SMITH
2021 South Lewis, Suite 725
Tulsa, Oklahoma 74104
(918) 743-5151
Attorneys for Defendant

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

TOWN OF FAIRFAX, OSAGE COUNTY,)
OKLAHOMA, a Municipal Corporation,)
)
Plaintiff,)
vs.) Case No. 88-C-1562-B
)
THE SECRETARY OF THE INTERIOR OF)
THE UNITED STATES OF AMERICA,)
et al.,)
)
Defendants.)

ORDER OF DISMISSAL

NOW on this 29 day of Dec, 1989, this matter comes on before the Court upon the motion of the plaintiff herein for an order of the Court dismissing plaintiff's cause herein without prejudice; and the Court finds that the relief prayed for should be granted as per the Motion and Stipulation of Dismissal of the parties.

BE IT SO ORDERED.

S/ THOMAS R. BRETT

JUDGE

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

FILED
DEC 21 1989
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
MUSKOGEE

ALLIED BEARINGS SUPPLY COMPANY,)
INC., an Oklahoma corporation,)
)
Plaintiff,)
)
v.)
)
FRANK M. SCHAD; SOUTHWEST ROTARY)
PARTS; ROCKY MOUNTAIN ROTABLES,)
INC.; and RONALD E. WATKINS,)
)
Defendants.)
)
and)
)
TRANSCONTINENTAL INSURANCE)
COMPANY, a New York corporation,)
)
Intervenor.)

No. 87-C-913-B

DISMISSAL WITH PREJUDICE
AGAINST DEFENDANT RONALD E. WATKINS

Based on the Application of Allied Bearings Supply Company, Inc. and Ronald E. Watkins, the Court hereby dismisses with prejudice all claims asserted herein by Allied Bearings Supply Company, Inc., with prejudice to refileing the same, with each party to bear his or its costs.

The Court recognizes that Allied is preserving and reserving all of its claims against Defendant, Frank M. Schad.

DATED this 29th day of December, 1989.

S/ THOMAS R. BRETT

Thomas R. Brett
UNITED STATES DISTRICT JUDGE

FILED

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

DEC 29 1933 *OH*

Jock C. Sisson, Clerk
U.S. DISTRICT COURT

ALLIED BEARINGS SUPPLY CO., INC.)
)
 Plaintiff,)
)
 vs.)
)
 FRANK M. SCHAD; SOUTHWEST ROTARY)
 PARTS; and ROCKY MOUNTAIN ROTABLES,)
 INC., and RONALD E. WATKINS,)
)
 Defendants,)
)
 and)
)
 TRANSCONTINENTAL INSURANCE COMPANY,)
)
 Intervenor.)

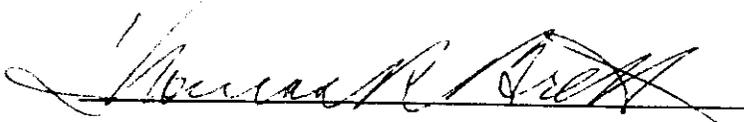
No. 87-C-913-B ✓

**DISMISSAL WITH PREJUDICE OF CLAIMS
 OF ALLIED BEARINGS SUPPLY COMPANY, INC. AGAINST
 ROCKY MOUNTAIN ROTABLES, INC. AND
 CLAIMS OF ROCKY MOUNTAIN ROTABLES, INC.
AGAINST ALLIED BEARINGS SUPPLY COMPANY, INC.**

Based upon the Application of Allied Bearings Supply Company, Inc. and Rocky Mountain Rotables, Inc., the Court hereby dismisses with prejudice all claims asserted herein by Allied Bearings Supply Company, Inc. ("Allied"), against Rocky Mountain Rotables, Inc. ("Rocky Mountain"), and Rocky Mountain dismisses with prejudice all claims asserted by Rocky Mountain against Allied, with prejudice to refiling the same, with each party to bear its costs.

The Court recognizes that Allied and Commercial Bank are preserving all of their claims against Defendant Frank M. Schad.

DATED, this 29 day of December, 1989.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
 vs.)
)
) JOHN I. BLANDAMER; MILDRED A.)
) BLANDAMER; THE UNKNOWN HEIRS,)
) EXECUTORS, ADMINISTRATORS,)
) DEVISEES, TRUSTEES, SUCCESSORS)
) AND ASSIGNS OF EDNA M. HUITT,)
) Deceased; KAY G. ROBINSON;)
) MARILYN G. MOOMAU; COUNTY)
) TREASURER, Ottawa County,)
) Oklahoma; and BOARD OF COUNTY)
) COMMISSIONERS, Ottawa County,)
) Oklahoma,)
)
) Defendants.)

FILED
DEC 27 1989
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-560-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22 day
of Dec, 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, Ottawa County,
Oklahoma, and Board of County Commissioners, Ottawa County,
Oklahoma, appear by Morland T. Barton, Assistant District
Attorney, Ottawa County, Oklahoma; the Defendants, John I.
Blandamer and Mildred A. Blandamer, appear by their attorney
Jeffrey A. Chubb; the Defendants, Kay G. Robinson and Marilyn G.
Moomau, appear not, having previously filed their Disclaimers;
and the Defendants, The Unknown Heirs, Executors, Administrators,
Devisees, Trustees, Successors and Assigns of Edna M. Huitt,
Deceased, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, John I. Blandamer and Mildred A. Blandamer, were served by publication as is evidenced by the Proof of Publication filed on October 26, 1989, but subsequently acknowledged receipt of Summons and Complaint on November 10, 1989; that the Defendant, Kay G. Robinson, acknowledged receipt of Summons and Complaint on July 13, 1989; that the Defendant, Marilyn G. Moomau, acknowledged receipt of Summons and Complaint on July 25, 1989; that Defendant, County Treasurer, Ottawa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 11, 1989.

The Court further finds that Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Edna M. Huitt, Deceased, were served by publishing notice of this action in the Miami News-Record, a newspaper of general circulation in Ottawa County, Oklahoma, once a week for six (6) consecutive weeks beginning September 14, 1989, and continuing to October 19, 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, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Edna M. Huitt, Deceased, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the

Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Edna M. Huitt, Deceased. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary 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 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, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, filed their Answer on July 19, 1989; that the Defendants, John I. Blandamer and Mildred A. Blandamer, filed their Answer on November 15, 1989; that the Defendant, Kay G. Robinson, filed her Disclaimer on August 2, 1989; that the

Defendant, Marilyn G. Moomau, filed her Disclaimer on August 2, 1989; and that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Edna M. Huitt, Deceased, 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 Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Three (3) and the South Five (5) feet of Lot Two (2) in the REPLAT OF LOT 24, of the BUDY ADDITION to the City of Miami, Ottawa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of Edna M. Huitt, and of judicially terminating the joint tenancy of Edna M. Huitt, Kay G. Robinson, and Marilyn G. Moomau.

The Court further finds that on May 28, 1982, the Defendants, John I. Blandamer and Mildred A. Blandamer, 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 \$44,500.00, payable in monthly installments, with interest thereon at the rate of 15.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, John I. Blandamer and Mildred A. Blandamer, 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 28, 1982, covering the above-described property. Said mortgage was recorded on June 2, 1982, in Book 414, Page 637, in the records of Ottawa County, Oklahoma.

The Court further finds that Edna M. Huitt became the record owner of the real property involved in this action by virtue of that certain Warranty Deed dated October 10, 1984, from John I. Blandamer and Mildred A. Blandamer to Edna M. Huitt, which Warranty Deed was recorded on October 10, 1984, in Book 436 at Page 195 in the records of Ottawa County, Oklahoma. Pursuant to a Warranty Deed dated May 1, 1985, and recorded on May 3, 1985, in Book 441 at Page 351 in the records of Ottawa County, Oklahoma, Edna M. Huitt, a single person, conveyed the above-described real property to Edna M. Huitt, Kay G. Robinson, and Marilyn G. Moomau, as joint tenants and not as tenants in common, with full rights of survivorship, the whole estate to vest in the survivor in the event of the death of either.

The Court further finds that Edna M. Huitt died on June 12, 1987, as is evidenced by the Certificate of Death No. 13343 issued by the Oklahoma State Department of Health. Upon the death of Edna M. Huitt the subject property vested in her surviving joint tenants, Kay G. Robinson and Marilyn G. Moomau, by operation of law.

The Court further finds that the Defendants, John I. Blandamer and Mildred A. Blandamer, 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, John I. Blandamer and Mildred A. Blandamer, are indebted to the Plaintiff in the principal sum of \$41,611.56, plus interest at the rate of 15.5 percent per annum from November 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that Plaintiff is entitled to a judicial determination of the death of Edna M. Huitt, and to a judicial termination of the joint tenancy of Edna M. Huitt, Kay G. Robinson, and Marilyn G. Moomau.

The Court further finds that Kay G. Robinson and Marilyn G. Moomau, disclaim any right, title, or interest in the subject real property.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Edna M. Huitt, Deceased, 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, Ottawa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the death of Edna M. Huitt be and the same hereby is judicially determined to have occurred on June 12, 1987, in the City of Miami, Ottawa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the joint tenancy of Edna M. Huitt, Kay G. Robinson, and Marilyn G. Moomau in the above-described real property be and the same hereby is judicially terminated as of the date of death of Edna M. Huitt on June 12, 1987.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, John I. Blandamer and Mildred A. Blandamer, in the principal sum of \$41,611.56, plus interest at the rate of 15.5 percent per annum from November 1, 1987 until judgment, plus interest thereafter at the current legal rate of 7.66 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, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Edna M. Huitt, Deceased; Kay G. Robinson; Marilyn G. Moomau; and County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that to satisfy the judgment in rem 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.

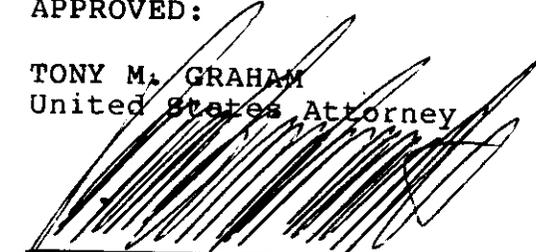
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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.

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney

JEFFREY A. CHUBB, KS S.C.T. #9915
Attorney for Defendants,
John I. Blandamer and Mildred A. Blandamer



MORLAND T. BARTON
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Ottawa County, Oklahoma



Judgment of Foreclosure
Civil Action No. 89-C-560-C

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

FILED

DEC 17 1989

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

FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION, Conservator
of and for Cross Roads Savings
and Loan Association, F.A.,

Plaintiff,

vs.

JOHN D. CASH, III and
MARY JEAN LITTLE,

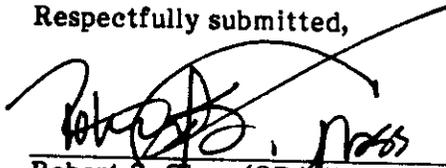
Defendants.

Case No. 89-C-733-E

STIPULATION OF DISMISSAL

Plaintiff, Federal Savings and Loan Insurance Corporation, and Defendants, John D. Cash and Mary Jean Little, by and through undersigned counsel and pursuant to Fed. R. Civ. P. 41(a)(1)(ii) do hereby file their Stipulation of Dismissal upon consideration of the resolution of the claims and defenses asserted in this proceeding. Plaintiff and Defendants by virtue of their agreement respectfully request this Court to dismiss this action at this time with prejudice.

Respectfully submitted,



Robert S. Glass (OBA No. 10824)
GABLE & GOTWALS, INC.
2000 Fourth National Bank Bldg.
Tulsa, OK 74119

COUNSEL FOR PLAINTIFF, FEDERAL
SAVINGS AND LOAN INSURANCE
CORPORATION



Mark D. Warman
LARRY L. OLIVER & ASSOCIATES
2211 E. Skelly Drive
Tulsa, OK 74105-5913

COUNSEL FOR DEFENDANTS, JOHN D.
CASH AND MARY JEAN LITTLE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE ^{DEC 27 1988}

NORTHERN DISTRICT OF OKLAHOMA

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

IN RE:)	
)	
ASBESTOS LITIGATION	)	Case No. M-1417
	)	ASB(I) No. <u>7816</u>
MARY HICKERSON, Individually)	
and as Personal Representative)	
of the Heirs and Estate of	)	Case No. 87-C-160E
JAMES V. HICKERSON, Deceased,)	
PAUL JACK WATKINS and)	
GEORGIA LEE WATKINS	)	Case No. 87-C-379E
HUGH H. INGALLS and)	
LILLIE ALICE INGALLS,	)	Case No. 87-C-381B
ERNEST EUGENE WOODARD and)	
JANIE E. WOODARD,	)	Case No. 87-C-401E
ROY O. BURGESS and)	
ADALAIDE A. BURGESS,	)	Case No. 87-C-404C
EDWARD FRANK CLAYPOOL and)	
GAYOLA JEAN CLAYPOOL,	)	Case No. 87-C-519C
ARTHUR JACKSON and)	
LIHLA EDITH JACKSON,	)	Case No. 87-C-520B
ARTHUR LEON HAMLIN and)	
WANDA LORRAINE HAMLIN,	)	Case No. 87-C-523C
WILLIAM DALE HAVER and)	
BARBARA ANN HAVER,	)	Case No. 88-C-86B
BENNY RICHARD ALLEN and)	
MARSHA LEE ALLEN,	)	Case No. 88-C-87B

STIPULATION AND ORDER
DISMISSING DEFENDANT,
FLINTKOTE COMPANY
(IOLA)

ELIC TARVIN HILL and CAROLYN SUE HILL,	) )	Case No. 88-C-88B
KENNETH MONROE MAKINSON and VELMA JEAN MAKINSON,	) )	Case No. 88-C-89B
SUZAN ROHRBAUGH, BARBARA ANN CLAY and DEBRA MAE AMBLER, Individually and as Personal Representatives of the Estate of DOROTHY MAE PALMER, Deceased,	) ) ) ) ) )	Case No. 88-C-90B
ROBERT EUGENE SMYERS and HELEN M. SMYERS,	) )	Case No. 88-C-91E
STANLEY JOHN O'BANION and LOUISE O'BANION,	) )	Case No. 88-C-92E
TROY CECIL WILLIAMS and CLETA WILLIAMS,	) )	Case No. 88-C-103B
WEYBURN BYRON WILSON and DELLA GRACE WILSON,	) )	Case No. 88-C-104B
CHESTER OSBORN and GLADYS LOUISE OSBORN,	) )	Case No. 88-C-105E
IVAN DEAN RAMSEY and KATHERINE EDITH RAMSEY,	) )	Case No. 88-C-106E
WILLIAM FLOYD ROMINE and NOMA JEAN ROMINE,	) )	Case No. 88-C-107E
DON AUSTIN STOCKTON and GRACIA MAE STOCKTON,	) )	Case No. 88-C-108B
MARION CLINTON CANTRELL and WANDA LOUISE CANTRELL,	) )	Case No. 88-C-109C
WILLIS CLINTON BELL and VIRGINIA FAITH BELL,,	) )	Case No. 88-C-110C
JAMES JEFFERSON BATTLES and LINDA LOU BATTLES,	) )	Case No. 88-C-111C
GUFFREY F. CARLTON and BESSIE M. CARLTON,	) )	Case No. 88-C-112B
JERRY LEEMON LAMBERT and AMBER JO LAMBERT,	) )	Case No. 88-C-131B

VIOLET KELLEY, Individually and as Personal Representative of the Heirs and Estate of FLOYD OSCAR KELLEY, Deceased,	) ) ) )	Case No. 88-C-132C
JANICE M. CHAMBERLAIN, Individually and as Personal Representative of the Heirs and Estate of HOWARD E. CHAMBERLAIN, Deceased,	) ) ) ) )	Case No. 88-C-133E
OLLINE GORHAM, Individually and as Personal Representative of the Heirs and Estate of VIRGIL GORHAM, Deceased,	) ) ) )	Case No. 88-C-134E
DAVID FRANKLIN SMITH and RACHEL ROBERTA SMITH,	) )	Case No. 88-C-135E
JACK PRESSON CRAWFORD and PHYLLIS ANN CRAWFORD,	) )	Case No. 88-C-136E
RAYMOND FLOYD GOURLEY and WILLIE VERNICE GOURLEY,	) )	Case No. 88-C-137E
EARNEY LeROY HEFFLEY and BETTY LANELLE HEFFLEY,	) )	Case No. 88-C-138B
ROWLAND EARL BABCOCK and MIDA BABCOCK,	) )	Case No. 88-C-139B
JIM ALEX ROZELL and LILLIAN G. ROZELL,	) )	Case No. 88-C-140E
HOMER F. SWEPSTON and EDNA SUE SWEPSTON,	) )	Case No. 88-C-204B
RONALD ROBERT WALTON and PATSY SUE WALTON,	) )	Case No. 88-C-205C
SHELBY LEE CLARK,	)	Case No. 88-C-206E
CONNIE CALVIN SIX,	)	Case No. 88-C-207B
JACK LEE WEBB and FRANCES A. WEBB,	) )	Case No. 88-C-208C
LEONARD AUSTIN BALLENGER and NORMA LEE BALLENGER,	) )	Case No. 88-C-209E

LARRY JACK CAUGHMAN and PEGGY ELLEN CAUGHMAN,	) )	Case No. 88-C-210E
TEDDY L. OSBORNE and MARITUS OSBORNE,	) )	Case No. 88-C-211B
LEONARD DEWAIN CULP and BARBARA JEAN CULP,	) )	Case No. 88-C-212E
ALVA RAY SHANKS and CHRISTINE SHANKS,	) )	Case No. 88-C-213B
MARION JOE FLETCHER and JOSEPHINE FLETCHER,	) )	Case No. 88-C-218E
JACK LEEROY RUSSELL and PAULINE M. RUSSELL,	) )	Case No. 88-C-219E
CLIFTON EMERY SILVER and GERALDINE F. SILVER,	) )	Case No. 88-C-220B
EDWIN CHARLES ORPIN,	)	Case No. 88-C-221B
REX HAROLD HOUSTON,	)	Case No. 88-C-222E
EDDIE M. JUNK and SANDRA L. JUNK,	) )	Case No. 88-C-223C
LOUIS EVERT CHALLIS,	)	Case No. 88-C-291C
J. R. BEALL and VIRGINIA BEALL,	)	Case No. 88-C-292C
BOBBY F. BLANKENSHIP and MARGIE D. BLANKENSHIP,	) )	Case No. 88-C-293E
DAVID W. ELLIS and CATHY ELLIS,	)	Case No. 88-C-298E
PERRY W. FRAKES and DONNA R. FRAKES,	) )	Case No. 88-C-299E
MORRIS A. HOPKINS and DOROTHY HOPKINS,	) )	Case No. 88-C-300C
ONA M. JOHNSON and LOVELLA A. JOHNSON,	) )	Case No. 88-C-301E
GARRETT G. JUBY and RACHEL JEAN JUBY,	) )	Case No. 88-C-302B

WILLIAM H. LITTLE and DORA S. LITTLE,	) )	Case No. 88-C-303E
GERALD D. NICKS and A. ALBERTA NICKS,	) )	Case No. 88-C-304B
LINLEY NEIL O'BANION and MOZELLE O'BANION,	) )	Case No. 88-C-385B
CHARLEY JOE PREWITT and JOYCE PREWITT,	) )	Case No. 88-C-386E
WILLIAM FRANK PUGH and MURIEL LEA PUGH,	) )	Case No. 88-C-387C
CECIL E. RICHARDSON and BILLIE A. RICHARDSON,	) )	Case No. 88-C-388B
NEIL N. THOMPSON and BONNIE M. THOMPSON,	) )	Case No. 88-C-389B
CHARLES J. WEST and MARY WEST,	) )	Case No. 88-C-390C
MARVIN R. PAVEY and BEULAH H. PAVEY,	) )	Case No. 88-C-391B
HARLEY GENE ROPER and FAYE ROPER,	) )	Case No. 88-C-491E
JOHN A. GIESEN and BETTY JANE GIESEN,	) )	Case No. 88-C-492B
WILLIAM S. McNATT,	)	Case No. 88-C-493E
DAVID L. McCORD and ELEANOR I. McCORD,	) )	Case No. 88-C-494C
LEONARD L. COLLIER and MAUDIE INEZ COLLIER,	) )	Case No. 88-C-495B
ROBERT L. ELLIS and JUANITA ELLIS,	) )	Case No. 88-C-496C
HENRY BALDRIDGE and PAT BALDRIDGE,	) )	Case No. 88-C-497E
JIM FROST and BARBARA FROST,	)	Case No. 88-C-498B
JIMMY WAYNE McCORKLE,	)	Case No. 88-C-499B

JACK L. LEGAN and VELMA J. LEGAN,	) )	Case No. 88-C-500B
BONNIE JEAN COLE, Individually and as Personal Representative of the Heirs and Estate of WILLARD TRAVIS COLE, Deceased,	) ) ) )	Case No. 88-C-641E
LEAUN C. MANNING and WANDA MANNING,	) )	Case No. 88-C-917E
ANDY A. HASKINS and HAZEL J. HASKINS,	) )	Case No. 88-C-918E
CHARLES RALPH LANCASTER and NORA M. LANCASTER,	) )	Case No. 88-C-919B
ROBERT C. RAY,	)	Case No. 88-C-920E
MARTIN L. RUSH and DANNIE L. RUSH,	) )	Case No. 88-C-921E
THOMAS D. MAYHEW and MAXINE MAYHEW,	) )	Case No. 88-C-922B
DOCKIE O. KOSIER and VICKIE KOSIER,	) )	Case No. 88-C-923C
THOMAS K. HATHCOAT,	)	Case No. 88-C-924C
TEDDY G. HADDEN and DONNA L. HADDEN,	) )	Case No. 88-C-925E
CECIL J. RAY and THELMA RAY,	)	Case No. 88-C-926B
BILL B. HAITHCOAT and BEVERLY J. HAITHCOAT,	) )	Case No. 88-C-995E
HUBERT G. TRACY and JEHN TRACY,	)	Case No. 88-C-1623B
HOMER L. CUNNINGHAM and THELMA CUNNINGHAM,	) )	Case No. 89-C-081E
O. E. CASE, a/k/a OLES EDWARD CASE,	) )	Case No. 89-C-125C
CHARLES O. McCORKLE and JEWEL O. McCORKLE,	) )	Case No. 89-C-126B
L. D. GOSS and NORMA J. GOSS,	)	Case No. 89-C-127E

BOB YOACHUM and HATTIE ETTA YOACHUM,	) )	Case No. 89-C-128E
DALE McDONALD and DIANE McDONALD,	) )	Case No. 89-C-129E
FRED MARBLE and NORMA MARBLE,	)	Case No. 89-C-130B
RAY VERNON YARBROUGH and JESSIE MARIE YARBROUGH,	) )	Case No. 89-C-131E
RUDELL R. BRYCE and JEWEL E. BRYCE,	) )	Case No. 89-C-132C
JESSIE RAY HURST,	)	Case No. 89-C-133E
J. C. STARKS and BONNIE LOIS STARKS,	) )	Case No. 89-C-334E
DONALD LOVETT and SYBIL J. LOVETT,	) )	Case No. 89-C-335C
JAMES WILLIAM DICKERSON and DANA KATHLEEN DICKERSON,	) )	Case No. 89-C-336E
JOHN C. KAYSER and RUTH EMOGENE KAYSER,	) )	Case No. 89-C-337B
LaGRACE BENIGAR, Individually, and as Surviving Spouse and Next of Kin of GARLAND WILLIAM BENIGAR, Deceased,	) ) ) )	Case No. 89-C-438C
WAYNE L. AMBLER and GEORGIA AMBLER,	) )	Case No. 89-C-486E
ERNEST L. PARKER and VIRGINIA PARKER,	) )	Case No. 89-C-487B
BOBBY LEE JONES and KATHRYN G. JONES,	) )	Case No. 89-C-488B
IRVIN E. PRYOR and LORENE PRYOR,	)	Case No. 89-C-489E
HAROLD ANDREW JOHANNESSEN,	)	Case No. 89-C-490C
ROBERT L. MARKHAM and ERLEEN L. MARKHAM,	) )	Case No. 89-C-568E
LEE NORCROSS and HELEN NORCROSS,	) )	Case No. 89-C-567B

GRADY C. PARTAIN and)	
DELORIS I. PARTAIN,	)	Case No. 89-C-844C
GLADYS L. NORMAN, Surviving)	
Spouse and Next of Kin of	)	Case No. 89-C-834E
GEORGE DOYLE NORMAN, Deceased,)	
NICHOLAS J. ANGELO and)	
RAYMA L. ANGELO,	)	Case No. 89-C-910E
)	
Plaintiffs,)	
v.)	
)	
FIBREBOARD CORPORATION, et al.,)	
)	
Defendants.)	

STIPULATION AND ORDER DISMISSING
DEFENDANT, FLINTKOTE COMPANY
(IOLA)

COME NOW Plaintiffs, through their attorney, and individual Defendant Flintkote Company, through its attorney, and do hereby stipulate that the above cases are "settled and dismissed without prejudice as to Defendant, Flintkote Company only, each party to bear its own costs," and said actions are to remain pending against other named Defendants.

IT IS SO ORDERED.

THOMAS R. BRETT
UNITED STATES DISTRICT COURT JUDGE

H. DALE COOK
UNITED STATES DISTRICT COURT JUDGE

JAMES O. ELLISON
UNITED STATES DISTRICT COURT JUDGE

APPROVED:



Attorney for Plaintiffs



Attorney for Defendant Plintkote
Company

on appeal; each here considered in order.

I.
Refusal to Admit Other Evidence

As their first allegation of error, Appellants assert the Bankruptcy Court erred in refusing to admit or consider evidence of payments made or erroneously applied to notes other than Notes 6477 and 8070.

Although Appellant contends the Bankruptcy Court made an erroneous evidentiary ruling, a more accurate reflection of the ruling shows that the Bankruptcy Court denied Burden the right to assert his right to "setoff" against the RFC debt, his payments and collateral proceeds applied to other RFC or RBT debts. While Bankruptcy Code §553 incorporates the common law concept of setoff into the adversary proceeding framework, it is not available in all cases. Brief review is important.

Section 362(a)(7) includes in the actions subject to the automatic stay provisions "the setoff of any debt owing to the debtor". If the Bankruptcy Court grants relief from the stay, then a debtor of the bankrupt may assert the bankrupt's debt as a setoff at 100% of its value. If the Bankruptcy Court denies relief from the stay, the debtor of the bankrupt must assert the debt owed from the Bankrupt to him as an ordinary bankruptcy claim, thus reducing the dollar value of the setoff. See, generally, In re Pieri, 86 B.R. 208 (9th Cir. B.A.P. 1988).

Under the Bankruptcy Code, the right to assert a setoff is not automatic but is, instead, a matter for the discretion of the Bankruptcy Court, applying principles of equity. In re Pieri, 86 B.R. at 210; In re Southern Industrial Banking Corp., 809 F.2d 329, 332 (6th Cir. 1987). The Court thus has the discretion to deny a creditor a right to setoff when one creditor would be unfairly favored over another. United States v. Rinehart, 88 B.R. 1014, 1018 (D.S.D. 1988). Furthermore, setoffs may be disallowed when their effects would be inconsistent with the

Bankruptcy Act. Id. See also, Bohack Corp. v. Borden, Inc., 599 F.2d 1160, 1165 (2nd Cir. 1979), ("Setoff should be allowed unless the court finds after due reflection that it would be inconsistent with the provisions and purposes of the Act as a whole, the converse also being true"); and In re Pieri, 86 B.R. at 210 ("Setoff should not be allowed when it would be inequitable or contrary to public policy to do so").

Under the standard set forth in Pursifull v. Eakin, 814 F.2d 1501, 1504 (10th Cir. 1987), the decision whether to lift a stay is committed to the discretion of the judge presiding over the Bankruptcy proceedings and is reviewed under the 'abuse-of-discretion' standard. Section 362(d) provides that relief from the stay shall be granted "for cause". "Because there is no clear definition of what constitutes "cause", discretionary relief from the stay must be determined on a case by case basis." Pursifull v. Eakin, 814 F.2d at 1506 (quoting, In re Castlerock Properties, 781 F.2d 159, 163 (9th Cir. 1986)).

In the case at bar, the Bankruptcy Court went to great effort to comment upon Appellant's desire to assert its setoffs, but the essence of the rationale underlying the court's ruling was that it would be inequitable in this case to permit Appellant to receive preferential treatment. (R. 25, at pp. 43-44 and 76-77). The exercise of a discretionary denial on this basis is not new in the case law. The Bankruptcy Court may exercise discretionary authority to deny a right to assert setoffs when one creditor would be unfairly favored over others. United States v. Rinehart, 88 B.R. at 1018. Here, the Bankruptcy Court properly exercised its discretion, upon review of the totality of circumstances then before it. Thus, there is no abuse of discretion, and Appellant's first basis for appeal is without merit.

II.

Mortgage of Homestead Property

The second and third issues raised by this appeal converge on a May 5, 1978 mortgage. The mortgage was executed by Appellant, Jack Burden to Appellee, RFC. The Bankruptcy Court found the mortgage to be valid. Burden appeals to this Court, arguing the mortgage should be void under Oklahoma law.

A. The Facts

In contrast to the Bankruptcy Court's findings, Appellant argues that the following is a correct version of facts: In 1968, Jack Burden acquired a Tulsa residence. Four years later, in 1972, he married Jo Sharon Burden. During the fourteen (14) year marriage,¹ the Burdens lived at the residence.² While they were living at the residence, Jack Burden executed a mortgage on May 5, 1978 to RFC to secure a business loan.³ Jo Sharon Burden failed to sign the mortgage. Two years later, in 1980, Jack Burden defaulted on the loan. RFC subsequently moved to foreclose. As described previously, the courtroom battle between Appellant and Appellee began in Tulsa District court nine years ago (Case No. C-80-896). After Appellee, RFC, sought relief under the Bankruptcy Code, the case was removed to federal court.

On January 23, 1989, the Bankruptcy Court heard argument from both parties on the mortgage issue. The question debated before the Bankruptcy Court was whether the May 5, 1978

¹ Testimony indicates that the Burdens were divorced in "either 1986 or 1987". Jack Burden was then awarded all interests in the residence in the divorce settlement. (TR. 40)

² Appellant's brief does not specifically state that the Burdens both lived at the residence. However, it does describe the residence as Jack and Jo Sharon Burden's homestead property. Appellant's brief, p. 9, April 26, 1989.

³ The mortgage was security interest for a business loan of \$157,500. It is commonly referred to as Note No. 6845 in the trial transcript.

mortgage executed by Jack Burden was valid. Appellant contended that Oklahoma law forbids mortgaging a homestead without the consent of his spouse.⁴ Appellant asserted that since he was married and since the property was a homestead, the mortgage should be void because his wife (Jo Sharon Burden) did not sign it.

B. Discussion

The Bankruptcy Court rejected Appellant's argument based on what now appears to be a clearly erroneous finding that the Burdens were not married at the time of the May 5, 1978 mortgage. As a result, the Bankruptcy Court held the mortgage to be valid with only Jack Burden's signature. (TR. 79.)

It is well-settled law in Oklahoma that a married homeowner cannot convey or mortgage a homestead without the consent of his spouse. In Re Carothers' Estate, 167 P.2d 899, 902 (Okla. 1946). Thus, Appellant's argument is convincing if the property mortgaged was entitled to homestead status. On the other hand, if Appellant failed to prove that the residence was a homestead, then the issue of Mrs. Burden's signature on a mortgage is of no legal consequence.

The Bankruptcy Court made the following findings and conclusions in respect to the chronology of events leading up to the 1978 mortgage:

The Court: ... here we know that Mr. Burden owns particular property in toto as of the date of the particular obligations; that thereafter, as I understand the facts, Mr. Burden married, and thereafter the property continued to remain in the legal Title of Mr. Burden. That the legal Title of this property has always remained in Mr. Burden and, of course, this was property acquired before the particular coverture. One cannot effect (sic) the validity or extent of a then existing mortgage by subsequent marriage. Whatever the rights of the new spouse are, and whatever rights the new spouse acquired in the pre-existing rights and interests of

⁴ Article 12, §2 of the Oklahoma Constitution states:

The homestead of the family shall be, and is hereby protected from forced sale for the payment of debts ... Nor shall the owner, if married, sell the homestead without the consent of his or her spouse, given in such manner prescribed by law ... (See also, Title 16 O.S. Section 4, which requires that mortgages affecting homesteads must be in writing and subscribed by both husband and wife; Shannon v. Potter, 200 P. 860, 861 (Okla. 1921)).

other parties claiming an interest in the property. One cannot defeat the rights of a prior existing encumbrance on property by marriage. (TR. 79-80.)

As evidenced by this transcript excerpt, the Bankruptcy Court mistakenly found that the Burdens were married after the mortgage was executed, rather than before.⁵ Yet the evidence in the record is clear and uncontradicted. The residence was purchased in 1968. (TR. 58.) The Burdens were married in 1972, (TR. 57). The mortgage was executed in 1978 (Plaintiff's trial exhibit #6). The Burdens were later divorced in 1986 or 1987 (TR. 40).

Because this Court is left with the "definite and firm conviction that a mistake has been committed", (United States v. United States Gypsum Co., 333 U.S. 364 (1948)), a mistake which drew the Bankruptcy Court's attention away from the homestead inquiry,⁶ a remand is necessary so that this Court may have the benefit of the Bankruptcy Court's ruling on (a) whether the Burdens were married at the time of the 1978 mortgage; (b) whether the mortgaged realty was impressed with homestead character at the time of the 1978 mortgage; and (c) whether the 1978 mortgage was valid or void as a result.

⁵ The Bankruptcy Court was no doubt misled by the faux pas of Burden's own attorney when the Court attempted to clarify the facts during the trial:

THE COURT: Wait a minute now. You're telling me that Mr. Burden owned a home and he mortgaged the same, and thereafter he became married, and that mortgage is impaired by virtue of the fact that he didn't have his wife sign it?

MR. HARRIS: That's correct, Your Honor. (TR, 63-64.)

⁶ The inquiry into whether a parcel of real estate has been selected and impressed with the character of a "homestead" for purposes of 16 O.S. §4 is initially a question of fact. Kerns v. Warden, 213 P.70 (Okla. 1923). See also, In re Shields, 85 B.R. 582 (Bkrcty. N.D. Okla. 1988).

III.

Failure to Move for Deficiency Judgment

Appellants' fourth claim of error is identical to the claim of error raised in Case No. 89-C-609-E (consolidated with this case on October 23, 1989). The orders appealed from, however, are different. The appeal in 89-C-85-B is from the Journal Entry of Judgment and Decree of Foreclosure (dated February 13, 1989) granting (1) an in personam judgment against Jack Burden and Burden Construction Corp., jointly and severally, on Note No. 8070 in the amount of \$146,197.14; and (2) an in personam judgment against Jack Burden on Note No. 6477 in the amount of \$175,933.65 (TR. 18). The appeal in 89-C-609-E is from the Order Entering Deficiency Judgment (dated July 21, 1989) granting a deficiency judgment against Jack Burden and Burden Construction Corp., jointly and severally, in the amount of \$135,045.45 after \$200,000 in proceeds, from a sheriff's sale of realty on May 16, 1989, were applied toward the judgment debt. (R. 31, R. 28.)

The background facts are these. Appellees brought suit against Appellants in 1980 seeking to foreclose several mortgages pledged on various notes. Well before the state court made any finding of liability or default, Appellee, RFC, petitioned for the appointment of a Receiver to take charge of the pledged real estate (including an office building). On July 30, 1980, a Receiver was appointed.⁷

On September 4, 1980, Appellant, Burden Construction Corporation applied to the Court for an order to require the Receiver to sell the property, setting forth as reasons, inter alia:

"1. There exists a ready, willing and able buyer prepared to purchase the subject property for a sum well in excess of what RFC contends to be a fair market value. Said buyer has committed to purchase the property under written contract ...

⁷ *The Receiver appointed is the same individual who later presided as bankruptcy judge over the adversary proceeding now appealed from, the Honorable Mickey Wilson.*

2. The Court has the power to order the sale of the property under 12 O.S. §686...

* * *

6. That the indebtedness against the property is growing larger, at a rate in excess of the property appreciating in value. Further delay in the sale will result in greater damage and prejudice to the Defendant, BCC."⁸

On the same date, the court ordered all parties to show cause why the realty "should not be sold by summary proceedings upon partial summary judgment of this Court, under the authority of 12 O.S. §686 and in the interests of, and under the equity powers of this Court".⁹

Thereafter, on September 22, 1980 the court ordered the Receiver to sell the realty.¹⁰ After the Receiver reported a high bid of \$437,000, the court issued an Order Confirming Sale (filed October 23, 1980) requiring the Receiver to hold the proceeds,¹¹ which he did until November 14, 1980, when the court ordered the Receiver pay over the proceeds to RFC.¹²

Further review of the state court file shows that Appellees did not move for deficiency judgment at any time prior to Appellees' bankruptcy and removal of the case to Bankruptcy Court on November 26, 1986. In fact, the only time Appellees have moved for deficiency judgment was on June 21, 1989 after the sale of an additional piece of realty by Sheriff's Sale on May 16, 1989.¹³

⁸ Defendant Burden Construction Corp.'s Application for Order Directing the Sale of Property Subject to Foreclosure, filed September 4, 1980), Tonks v. Burden, Tulsa county District Court Case No. C-80-896.

⁹ Order to All Parties to Show Cause Why Property, the Subject of this Action, Should Not be Sold by Partial Summary Judgment of the Court, (filed September 4, 1980) Tonks v. Burden, No. C-80-896.

¹⁰ Order (filed September 22, 1980) Tonks v. Burden, No. C-80-896.

¹¹ Order Confirming Sale (filed October 23, 1980), Tonks v. Burden, No. C-80-896.

¹² Order Granting Application for Order Directing Receiver to Disburse Proceeds of Sale, (filed November 14, 1989), Tonks v. Burden, No. C-80-896. The actual proceeds were approximately \$240,000 because part of the sale included an assumption of an existing mortgage.

¹³ Record in appeal 89-C-609-E, at 28.

Appellants contend RFC's failure to timely move for deficiency is of paramount importance. Appellants argue that 12 O.S. §686 mandates a motion for deficiency judgment be timely filed as a prerequisite to the entry of a deficiency judgment. Because RFC did not move for deficiency judgment simultaneously with the motion to confirm sale or within the statutory ninety (90) days following sale in 1980, Appellants thus reason that, the \$240,000 in proceeds must be deemed to satisfy their debt to Appellees.¹⁴

The Bankruptcy Court disagreed. The Bankruptcy Court concluded that "the sale of the office building [the 1980 property] ... was a sale by a Receiver and is not the type of sale subject to the provisions of Okl. Stat. Tit. 12 §686". Order Entering Deficiency Judgment, (filed July 21, 1989), Record in Case No. 89-C-609-E, at 31.¹⁵

Resolution of the question of §686's applicability requires a close review of the statute itself. The important portions of §686 are set out below:

**§686 Judgment in foreclosure suit - Sale of real estate-
Lands in different counties - Application of proceeds
-Attorney's fees and expenses, taxation of-Putting
purchaser in possession - Deficiency judgments**

In actions to enforce a mortgage, deed of trust, or other lien or charge, a personal judgment or judgments shall be rendered for the amount or amounts due as well to the plaintiff as other parties to the action having liens upon the mortgaged premises by mortgage or otherwise, with interest thereon, and for sale of the property charged and

¹⁴ It should be noted that it is not entirely clear which note(s) the property sold in 1980 secured and which note(s) the property sold in 1989 secured, nor is it clear whether the 1989 property sale went to reduce the Bankruptcy Court judgment rendered on Note 6477 or Note 8070.

¹⁵ The Bankruptcy Court explained at the close of trial on January 29, 1989:

I need to speak of the request concerning the time within which this particular Plaintiff has sought a type of deficiency action. In this case we know that additional security secured a part or parcel of these notes, and we know that in the litigation some of that security was sold and the proceeds ended up in the hands of the Plaintiff herein. There has been no judgment in this case. That particular property was sold pursuant to a Receiver's Sale, a statute to which the Defendant refers has to do with a type of requirement that upon a judgment, and thereafter execution upon that judgment in the nature of a sale under foreclosure, and after Sheriff's Sale, and after confirmation of the same, the particular statute is called, I believe, 686 comes into play and specifically requires the particular party to seek a deficiency judgment. As mentioned, and I think it's clear, there was never any judgment in this matter, nor was this a type of scenario wherein 686 would apply. That the sale involved was a sale pursuant to order of the Court, fully litigated, and proceeds to be held pursuant to order of the Court, all of which was done, and, accordingly, under these sets of facts the Court must dismiss as without merit that particular argument and not applicable herein. (Tr. 81-82.)

the application of the proceeds ... No real estate shall be sold for the payment of any money or the performance of any contract or agreement in writing, in security for which it may have been pledged or assigned, except in pursuance of a judgment of a court of competent jurisdiction ordering such sale ... Notwithstanding the above provisions no judgment shall be enforced for any residue of the debt remaining unsatisfied as prescribed by this act after the mortgaged property shall have been sold, except as herein provided. Simultaneously with the making of a motion for an order confirming the sale or in any event within ninety (90) days after the date of the sale, the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment ... If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist ... (Emphasis added.)

While there is much case law holding that §686 does indeed apply to mortgage foreclosure actions such as the one below, the applicability of §686 where the mortgaged property is sold by a Receiver before judgment appears to be a case of first impression.

The Bankruptcy Court found that the order to the Receiver to sell the 1980 property was not the type of judgment order contemplated by §686 wherein it states,

No real estate shall be sold for the payment any money ... in security for which it may have been pledged or assigned, except in pursuance of a judgment of a court of competent jurisdiction ordering such sale. (Emphasis added.)

Assuming for the moment that the September 22, 1980 order directing the Receiver to sell Appellants' office building was not a "judgment" as referred to in the first part of §686¹⁶, the Bankruptcy Court's conclusion that the deficiency provisions of §686 do not apply, wholly disregards the remaining provisions of §686. Coming after the above-quoted portion of §686 is the following clear and encompassing language.

Notwithstanding the above provisions no judgment shall be enforced for any residue of the debt remaining unsatisfied as prescribed by this act after the mortgaged property shall have been sold, except as herein provided. (Emphasis added.)

¹⁶ *The specific language of the show cause order, immediately preceding the order to sell, asking why the building "should not be sold by summary proceedings upon partial summary judgment of this Court under the authority of 12 O.S. §686 ..." suggests the state court intended the order be a partial summary judgment under §686.*

The phrase "notwithstanding the above provisions" makes irrelevant whether the sale of Appellants' realty took place by judgment or other order of the court, when applying the deficiency provisions of §686 (which follow after the phrase). Thus, regardless of whether the realty was sold pursuant to a judgment or otherwise, to enforce a judgment for the residue, the deficiency provisions of §686 must still be complied with.

The §686 deficiency provisions required the Appellees to move for a deficiency judgment either (1) "simultaneously with the making of a motion for an order confirming the sale", or (2) "in any event within ninety (90) days after the date of sale". The requirements are clearly stated and the triggering events ascertainable with some certainty. The motion for an order confirming sale was filed on October 10, 1980. Appellees did not "simultaneously" move for deficiency judgment. Neither have the Appellees, anytime during the nine years following the sale, moved for deficiency judgment. Section 686 goes on to state,

If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any motion or proceeding shall exist.

Because no motion for deficiency judgment was made by Appellees as prescribed (i.e.: (1) with the motion to confirm sale, or (2) within ninety (90) days of sale, "in any event"), this Court concludes, as a matter of law, that the \$240,000 in proceeds from the 1980 sale fully satisfied the debt for which the office building was pledged, by operation of §686's deficiency provisions. Remand is necessary for a factual determination of which debt(s) were satisfied by the 1980 sale, and a determination of whether this ruling affects the application of proceeds from the recent 1989 sale of mortgaged property, previously owned by Appellant.

IV.

Extinguishment of Security Interest Through Filing of Termination Statement

For their fifth assignment of error, Appellants argue that the filing of a UCC termination statement extinguished Appellees' security interest in Burden's Southern Hills stock. On July 19, 1978, Jack Burden borrowed \$18,000 from RFC. He secured the loan by signing a note (Note No. 6953) and by pledging one share of Southern Hills Country Club stock. (Appellant's Brief, p. 8.) A year later, Note No. 6953 was consolidated into Note No. 8070. (Appellee's Brief, p. 3.)

After Burden defaulted, RFC sought foreclosure of the security interest in the Southern Hills stock. RFC subsequently filed a financing statement to perfect its interest. (Trial Transcript, p. 80.) In 1979, RFC then filed a termination statement pursuant to UCC 9-404. A year later, in 1980, the instant action began in Tulsa County District Court (C-80-896).

In 1982, an agreement was apparently struck whereby Southern Hills Country Club sold the stock to a third party. After deducting Burden's unpaid bills, Southern Hills deposited the balance with the State Court Clerk, pending the outcome of the instant suit. In 1984, RFC sought relief under the Bankruptcy Code.

Appellant's argument, before the Bankruptcy Court on January 23, 1989, was that RFC released all claims in the Southern Hills Country Club security interest when it filed the termination statement. (Appellant's Brief, p. 23.) The Bankruptcy Court rejected the argument, and ordered the Clerk to deliver the proceeds from the Southern Hills stock sale to RFC's Bankruptcy Trustee. (Trial Transcript, p. 83.) It is from this decision that appellant also seeks relief.

The issue is whether RFC released all its claims in the Southern Hills Country Club stock security interest by virtue of filing a termination statement. According to the facts in Appellant's

brief, Burden pledged the stock as a security interest to obtain a loan. A security interest, created by contract, including a pledge, falls under Article 9 of the Oklahoma Uniform Commercial Code. (See, Title 12A O.S. §§9-102 and 9-104.)

Under the UCC, a secured party files a financing statement to perfect its security interest (see, 12A O.S. §9-302). The purpose of such an act is to give notice to third persons that there is a "perfected" security interest in the personal property. In re York Chemical Industries, Inc., 30 B.R. 583, 586 (S.C. Bkrcty 1983). A Pennsylvania Bankruptcy Court explained the rationale:

The purpose of the filing requirements of the UCC is to furnish prospective purchasers and creditors with information relating to the encumbered status of ... and liens against a debtor's assets, and not just to create a hodgepodge of technicalities for non-compliance with which existing rights will be lost. Lampf v. General Electric Credit Corp., 20 B.R. 864, 867 (W.D. Pa. Bkrcty 1982).

In the York decision, (cited above) Plaintiff was the holder of a security interest in all machinery, equipment, furniture and fixtures in the York office. In 1980, the Plaintiff filed a financing statement. A year later, one of the Plaintiff's employees mistakenly filed a termination statement. The South Carolina Bankruptcy Court ruled that the Plaintiff no longer had a perfected security interest. However, the security interest still existed.

In a similar Kansas case, farmer Foos received loans in 1966 from Bazine State Bank. J.J. Case Credit Corp. v. Foos, 717 P.2d 1064 (Kan. App. 1986). The Bank, which acquired a security interest in after-acquired farm equipment, subsequently filed a financing statement on the collateral.

In 1980, Foos purchased a tractor from a local dealer. The dealer filed a financial statement on the transaction before later assigning its security interest to Plaintiff, Case Credit. For the next two years, Foos failed to make his required installment payments to Case Credit on the tractor. In 1982, Bazine State Bank loaned Foos the money needed to catch up on the payments. When Foos sent Case the delinquent payments, Case Credit mistakenly stamped Foos'

account PAID. On November 24, 1982, a terminating statement was filed.

Relying on K.S.A. 84-9-404, the court held that Case Credit's security interest, at that moment (November 24, 1982), was no longer perfected. However, it emphasized the following:

Case could, of course, continue to enforce its security interest in the equipment as long as only its debtor (farmer Foos) was involved. Id.

Although the facts were different, an Oklahoma court reached a similar conclusion. Morton Booth v. Tiara Furniture, Inc., 546 P. 2d 210 (Okla. 1977). Creditor, Booth, obtained a security interest in Debtor, Tiara's, collateral. However, the debtor took no steps to perfect its security interest by filing. The court concluded: "While Booth's misplaced faith in the legal effect of its retention of title caused its security interest to be unperfected, the security interest is none the less valid." Id. at 213.

Appellant's argument revolves around his assertion that the filing of the financial statement gave birth to RFC's security interest in the Southern Hills Country Club stock. Accordingly, Appellant asserts that the filing of the termination statement, in effect, eliminated the security interest.

A review of applicable case law leads to the opposite conclusion. The creation of the security interest took place when Burden pledged the stock to RFC as collateral for the \$18,000 loan. RFC, seeking to notify other possible creditors of its security interest in the stock, filed a financing statement as required by the UCC. The financing statement "told the world" that RFC had a "perfected" security interest. In other words, the message sent by reason of the filing was that RFC was first-in-line as a creditor against the Southern Hills Country Club stock. When RFC filed the termination statement, it merely lost its place as a perfected creditor. That does not mean, however, that the security interest vanished. It does mean that the unperfected security interest was subject to any perfected creditors who were waiting in the wings to snatch up the

stock. See, In re Windsor Communications Group, 45 B.R. 770 (W.D. Pa. Bkrcty). However, based on the facts presented, no such creditors existed then or exist now. Therefore, this Court finds that filing of the termination statement did not void RFC's security interest .

The question of whether the Bankruptcy Court should have given the proceeds to RFC's bankruptcy trustee is answered by UCC 9-306. Section 9-306(2) states:

... a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof ... and also continues in any identifiable proceeds including collections received by the debtor.

As mentioned, the stock was sold and the remaining proceeds were placed with the Court Clerk, pending a final judgment in this case. As the secured party, RFC may claim the proceeds (see, note 3, UCC 9-306). Therefore, there was no error in ordering the proceeds paid to the Appellee.

V.

Conclusion

The judgment of the Bankruptcy Court is affirmed in part and reversed in part. Under part II of this opinion it was determined that due to a clearly erroneous finding of fact, remand is necessary, and in this regard, the Bankruptcy Court is instructed to make a determination (a) whether the Burdens were married at the time of the 1978 mortgage; (b) whether the mortgaged realty was impressed with homestead character at the time of the 1978 mortgage; and (c) whether the 1978 mortgage was valid or void as a result. Further, under part III of this opinion, it was concluded that the deficiency provisions of 12 O.S. §686 do operate to extinguish any part of the debt not satisfied by the proceeds of the 1980 office building sale. As a result, remand is necessary, and the Bankruptcy Court is instructed to ascertain which debt(s) were satisfied by the 1980 sale, and the resultant effect, if any, on the debt(s) subject of the 1989 sale, and enter judgment accordingly. The judgment of the Bankruptcy Court is affirmed in all other respects.

SO ORDERED THIS 26th day of Dec, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

DEC 27 1989

R. DOBIE LANGENKAMP,)
)
 Appellee,)
)
 v.)
)
 JACK STERLING BURDEN, et al,)
)
 Appellants.)

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

89-C-85-B

Consolidated with

89-C-609-E

OPINION AND ORDER

Now before the court is an appeal from a Journal Entry of Judgment and Decree of Foreclosure of the Bankruptcy Court entered February 13, 1989 in favor of Appellee, R. Dobie Langenkamp (Trustee for Republic Financial Corporation, Debtor). Consolidated with this appeal is a related appeal in 89-C-609-E from a deficiency judgment entered in the same bankruptcy adversary proceeding (No. 86-0849) on July 25, 1989. The issue raised in 89-C-609-E is considered at part III of this opinion.

The adversary proceeding began in 1980 as an Oklahoma state court action and was later removed to the Bankruptcy Court. Prior to that time the Appellant, Jack Burden and Burden Construction Corporation, had entered into several loan agreements with the twin entities Republic Financial Corporation, earlier known as Guaranty Loan & Investment Co. ("RFC") and Republic Bank & Trust Company ("RBT")

This suit focuses on two loans from RFC: Note 6477 and Note 8070. In its ruling, the Bankruptcy Court held that the Trustee for RFC was entitled to judgment against the Burdens on Note 6477 in the amount of \$175,933.65 and Note 8070 in the amount of \$146,197.14. The Bankruptcy Court further held that both notes were still secured by real property (Lot 1, Block 2, Southridge Estates Second) and ordered the property sold. (R. 18.) Appellants raise five issues

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on appeal; each here considered in order.

I
Refusal to Admit Other Evidence

As their first allegation of error, Appellants assert the Bankruptcy Court erred in refusing to admit or consider evidence of payments made or erroneously applied to notes other than Notes 6477 and 8070.

Although Appellant contends the Bankruptcy Court made an erroneous evidentiary ruling, a more accurate reflection of the ruling shows that the Bankruptcy Court denied Burden the right to assert his right to "setoff" against the RFC debt, his payments and collateral proceeds applied to other RFC or RBT debts. While Bankruptcy Code §553 incorporates the common law concept of setoff into the adversary proceeding framework, it is not available in all cases. Brief review is important.

Section 362(a)(7) includes in the actions subject to the automatic stay provisions "the setoff of any debt owing to the debtor". If the Bankruptcy Court grants relief from the stay, then a debtor of the bankrupt may assert the bankrupt's debt as a setoff at 100% of its value. If the Bankruptcy Court denies relief from the stay, the debtor of the bankrupt must assert the debt owed from the Bankrupt to him as an ordinary bankruptcy claim, thus reducing the dollar value of the setoff. See, generally, In re Pieri, 86 B.R. 208 (9th Cir. B.A.P. 1988).

Under the Bankruptcy Code, the right to assert a setoff is not automatic but is, instead, a matter for the discretion of the Bankruptcy Court, applying principles of equity. In re Pieri, 86 B.R. at 210; In re Southern Industrial Banking Corp., 809 F.2d 329, 332 (6th Cir. 1987). The Court thus has the discretion to deny a creditor a right to setoff when one creditor would be unfairly favored over another. United States v. Rinehart, 88 B.R. 1014, 1018 (D.S.D. 1988). Furthermore, setoffs may be disallowed when their effects would be inconsistent with the

Bankruptcy Act. Id. See also, Bohack Corp. v. Borden, Inc., 599 F.2d 1160, 1165 (2nd Cir. 1979), ("Setoff should be allowed unless the court finds after due reflection that it would be inconsistent with the provisions and purposes of the Act as a whole, the converse also being true"); and In re Pieri, 86 B.R. at 210 ("Setoff should not be allowed when it would be inequitable or contrary to public policy to do so").

Under the standard set forth in Pursifull v. Eakin, 814 F.2d 1501, 1504 (10th Cir. 1987), the decision whether to lift a stay is committed to the discretion of the judge presiding over the Bankruptcy proceedings and is reviewed under the 'abuse-of-discretion' standard. Section 362(d) provides that relief from the stay shall be granted "for cause". "Because there is no clear definition of what constitutes "cause", discretionary relief from the stay must be determined on a case by case basis." Pursifull v. Eakin, 814 F.2d at 1506 (quoting, In re Castlerock Properties, 781 F.2d 159, 163 (9th Cir. 1986)).

In the case at bar, the Bankruptcy Court went to great effort to comment upon Appellant's desire to assert its setoffs, but the essence of the rationale underlying the court's ruling was that it would be inequitable in this case to permit Appellant to receive preferential treatment. (R. 25, at pp. 43-44 and 76-77). The exercise of a discretionary denial on this basis is not new in the case law. The Bankruptcy Court may exercise discretionary authority to deny a right to assert setoffs when one creditor would be unfairly favored over others. United States v. Rinehart, 88 B.R. at 1018. Here, the Bankruptcy Court properly exercised its discretion, upon review of the totality of circumstances then before it. Thus, there is no abuse of discretion, and Appellant's first basis for appeal is without merit.

II.

Mortgage of Homestead Property

The second and third issues raised by this appeal converge on a May 5, 1978 mortgage. The mortgage was executed by Appellant, Jack Burden to Appellee, RFC. The Bankruptcy Court found the mortgage to be valid. Burden appeals to this Court, arguing the mortgage should be void under Oklahoma law.

A. The Facts

In contrast to the Bankruptcy Court's findings, Appellant argues that the following is a correct version of facts: In 1968, Jack Burden acquired a Tulsa residence. Four years later, in 1972, he married Jo Sharon Burden. During the fourteen (14) year marriage,¹ the Burdens lived at the residence.² While they were living at the residence, Jack Burden executed a mortgage on May 5, 1978 to RFC to secure a business loan.³ Jo Sharon Burden failed to sign the mortgage. Two years later, in 1980, Jack Burden defaulted on the loan. RFC subsequently moved to foreclose. As described previously, the courtroom battle between Appellant and Appellee began in Tulsa District court nine years ago (Case No. C-80-896). After Appellee, RFC, sought relief under the Bankruptcy Code, the case was removed to federal court.

On January 23, 1989, the Bankruptcy Court heard argument from both parties on the mortgage issue. The question debated before the Bankruptcy Court was whether the May 5, 1978

¹ Testimony indicates that the Burdens were divorced in "either 1986 or 1987". Jack Burden was then awarded all interests in the residence in the divorce settlement. (TR. 40)

² Appellant's brief does not specifically state that the Burdens both lived at the residence. However, it does describe the residence as Jack and Jo Sharon Burden's homestead property. Appellant's brief, p. 9, April 26, 1989.

³ The mortgage was security interest for a business loan of \$157,500. It is commonly referred to as Note No. 6845 in the trial transcript.

mortgage executed by Jack Burden was valid. Appellant contended that Oklahoma law forbids mortgaging a homestead without the consent of his spouse.⁴ Appellant asserted that since he was married and since the property was a homestead, the mortgage should be void because his wife (Jo Sharon Burden) did not sign it.

B. Discussion

The Bankruptcy Court rejected Appellant's argument based on what now appears to be a clearly erroneous finding that the Burdens were not married at the time of the May 5, 1978 mortgage. As a result, the Bankruptcy Court held the mortgage to be valid with only Jack Burden's signature. (TR. 79.)

It is well-settled law in Oklahoma that a married homeowner cannot convey or mortgage a homestead without the consent of his spouse. In Re Carothers' Estate, 167 P.2d 899, 902 (Okla. 1946). Thus, Appellant's argument is convincing if the property mortgaged was entitled to homestead status. On the other hand, if Appellant failed to prove that the residence was a homestead, then the issue of Mrs. Burden's signature on a mortgage is of no legal consequence.

The Bankruptcy Court made the following findings and conclusions in respect to the chronology of events leading up to the 1978 mortgage:

The Court: ... here we know that Mr. Burden owns particular property in toto as of the date of the particular obligations; that thereafter, as I understand the facts, Mr. Burden married, and thereafter the property continued to remain in the legal Title of Mr. Burden. That the legal Title of this property has always remained in Mr. Burden and, of course, this was property acquired before the particular coverture. One cannot effect (sic) the validity or extent of a then existing mortgage by subsequent marriage. Whatever the rights of the new spouse are, and whatever rights the new spouse acquired in the pre-existing rights and interests of

⁴ Article 12, §2 of the Oklahoma Constitution states:

The homestead of the family shall be, and is hereby protected from forced sale for the payment of debts ... Nor shall the owner, if married, sell the homestead without the consent of his or her spouse, given in such manner prescribed by law ..." (See also, Title 16 O.S. Section 4, which requires that mortgages affecting homesteads must be in writing and subscribed by both husband and wife; Shannon v. Potter, 200 P. 860, 861 (Okla. 1921)).

other parties claiming an interest in the property. One cannot defeat the rights of a prior existing encumbrance on property by marriage. (TR. 79-80.)

As evidenced by this transcript excerpt, the Bankruptcy Court mistakenly found that the Burdens were married after the mortgage was executed, rather than before.⁵ Yet the evidence in the record is clear and uncontradicted. The residence was purchased in 1968. (TR. 58.) The Burdens were married in 1972, (TR. 57). The mortgage was executed in 1978 (Plaintiff's trial exhibit #6). The Burdens were later divorced in 1986 or 1987 (TR. 40).

Because this Court is left with the "definite and firm conviction that a mistake has been committed", (United States v. United States Gypsum Co., 333 U.S. 364 (1948)), a mistake which drew the Bankruptcy Court's attention away from the homestead inquiry,⁶ a remand is necessary so that this Court may have the benefit of the Bankruptcy Court's ruling on (a) whether the Burdens were married at the time of the 1978 mortgage; (b) whether the mortgaged realty was impressed with homestead character at the time of the 1978 mortgage; and (c) whether the 1978 mortgage was valid or void as a result.

⁵ *The Bankruptcy Court was no doubt misled by the faux pas of Burden's own attorney when the Court attempted to clarify the facts during the trial:*

THE COURT: Wait a minute now. You're telling me that Mr. Burden owned a home and he mortgaged the same, and thereafter he became married, and that mortgage is impaired by virtue of the fact that he didn't have his wife sign it?

MR. HARRIS: That's correct, Your Honor. (TR., 63-64.)

⁶ *The inquiry into whether a parcel of real estate has been selected and impressed with the character of a "homestead" for purposes of 16 O.S. §4 is initially a question of fact. Kerns v. Warden, 213 P.70 (Okla. 1923). See also, In re Shields, 85 B.R. 582 (Bkrcty. N.D. Okla. 1988).*

III.

Failure to Move for Deficiency Judgment

Appellants' fourth claim of error is identical to the claim of error raised in Case No. 89-C-609-E (consolidated with this case on October 23, 1989). The orders appealed from, however, are different. The appeal in 89-C-85-B is from the Journal Entry of Judgment and Decree of Foreclosure (dated February 13, 1989) granting (1) an in personam judgment against Jack Burden and Burden Construction Corp., jointly and severally, on Note No. 8070 in the amount of \$146,197.14; and (2) an in personam judgment against Jack Burden on Note No. 6477 in the amount of \$175,933.65 (TR. 18). The appeal in 89-C-609-E is from the Order Entering Deficiency Judgment (dated July 21, 1989) granting a deficiency judgment against Jack Burden and Burden Construction Corp., jointly and severally, in the amount of \$135,045.45 after \$200,000 in proceeds, from a sheriff's sale of realty on May 16, 1989, were applied toward the judgment debt. (R. 31, R. 28.)

The background facts are these. Appellees brought suit against Appellants in 1980 seeking to foreclose several mortgages pledged on various notes. Well before the state court made any finding of liability or default, Appellee, RFC, petitioned for the appointment of a Receiver to take charge of the pledged real estate (including an office building). On July 30, 1980, a Receiver was appointed.⁷

On September 4, 1980, Appellant, Burden Construction Corporation applied to the Court for an order to require the Receiver to sell the property, setting forth as reasons, inter alia:

"1. There exists a ready, willing and able buyer prepared to purchase the subject property for a sum well in excess of what RFC contends to be a fair market value. Said buyer has committed to purchase the property under written contract ...

⁷ The Receiver appointed is the same individual who later presided as bankruptcy judge over the adversary proceeding now appealed from, the Honorable Mickey Wilson.

2. The Court has the power to order the sale of the property under 12 O.S. §686...

* * *

6. That the indebtedness against the property is growing larger, at a rate in excess of the property appreciating in value. Further delay in the sale will result in greater damage and prejudice to the Defendant, BCC."⁸

On the same date, the court ordered all parties to show cause why the realty "should not be sold by summary proceedings upon partial summary judgment of this Court, under the authority of 12 O.S. §686 and in the interests of, and under the equity powers of this Court".⁹

Thereafter, on September 22, 1980 the court ordered the Receiver to sell the realty.¹⁰ After the Receiver reported a high bid of \$437,000, the court issued an Order Confirming Sale (filed October 23, 1980) requiring the Receiver to hold the proceeds,¹¹ which he did until November 14, 1980, when the court ordered the Receiver pay over the proceeds to RFC.¹²

Further review of the state court file shows that Appellees did not move for deficiency judgment at any time prior to Appellees' bankruptcy and removal of the case to Bankruptcy Court on November 26, 1986. In fact, the only time Appellees have moved for deficiency judgment was on June 21, 1989 after the sale of an additional piece of realty by Sheriff's Sale on May 16, 1989.¹³

⁸ Defendant Burden Construction Corp.'s Application for Order Directing the Sale of Property Subject to Foreclosure, filed September 4, 1980), Tonks v. Burden, Tulsa county District Court Case No. C-80-896.

⁹ Order to All Parties to Show Cause Why Property, the Subject of this Action, Should Not be Sold by Partial Summary Judgment of the Court, (filed September 4, 1980) Tonks v. Burden, No. C-80-896.

¹⁰ Order (filed September 22, 1980) Tonks v. Burden, No. C-80-896.

¹¹ Order Confirming Sale (filed October 23, 1980), Tonks v. Burden, No. C-80-896.

¹² Order Granting Application for Order Directing Receiver to Disburse Proceeds of Sale, (filed November 14, 1989), Tonks v. Burden, No. C-80-896. The actual proceeds were approximately \$240,000 because part of the sale included an assumption of an existing mortgage.

¹³ Record in appeal 89-C-609-E, at 28.

Appellants contend RFC's failure to timely move for deficiency is of paramount importance. Appellants argue that 12 O.S. §686 mandates a motion for deficiency judgment be timely filed as a prerequisite to the entry of a deficiency judgment. Because RFC did not move for deficiency judgment simultaneously with the motion to confirm sale or within the statutory ninety (90) days following sale in 1980, Appellants thus reason that, the \$240,000 in proceeds must be deemed to satisfy their debt to Appellees.¹⁴

The Bankruptcy Court disagreed. The Bankruptcy Court concluded that "the sale of the office building [the 1980 property] ... was a sale by a Receiver and is not the type of sale subject to the provisions of Okl. Stat. Tit. 12 §686". Order Entering Deficiency Judgment, (filed July 21, 1989), Record in Case No. 89-C-609-E, at 31.¹⁵

Resolution of the question of §686's applicability requires a close review of the statute itself. The important portions of §686 are set out below:

**§686 Judgment in foreclosure suit - Sale of real estate-
Lands in different counties - Application of proceeds
-Attorney's fees and expenses, taxation of-Putting
purchaser in possession - Deficiency judgments**

In actions to enforce a mortgage, deed of trust, or other lien or charge, a personal judgment or judgments shall be rendered for the amount or amounts due as well to the plaintiff as other parties to the action having liens upon the mortgaged premises by mortgage or otherwise, with interest thereon, and for sale of the property charged and

¹⁴ It should be noted that it is not entirely clear which note(s) the property sold in 1980 secured and which note(s) the property sold in 1989 secured, nor is it clear whether the 1989 property sale went to reduce the Bankruptcy Court judgment rendered on Note 6477 or Note 8070.

¹⁵ The Bankruptcy Court explained at the close of trial on January 29, 1989:

I need to speak of the request concerning the time within which this particular Plaintiff has sought a type of deficiency action. In this case we know that additional security secured a part or parcel of these notes, and we know that in the litigation some of that security was sold and the proceeds ended up in the hands of the Plaintiff herein. There has been no judgment in this case. That particular property was sold pursuant to a Receiver's Sale, a statute to which the Defendant refers has to do with a type of requirement that upon a judgment, and thereafter execution upon that judgment in the nature of a sale under foreclosure, and after Sheriff's Sale, and after confirmation of the same, the particular statute is called, I believe, 686 comes into play and specifically requires the particular party to seek a deficiency judgment. As mentioned, and I think it's clear, there was never any judgment in this matter, nor was this a type of scenario wherein 686 would apply. That the sale involved was a sale pursuant to order of the Court, fully litigated, and proceeds to be held pursuant to order of the Court, all of which was done, and, accordingly, under these sets of facts the Court must dismiss as without merit that particular argument and not applicable herein. (Tr. 81-82.)

the application of the proceeds ... No real estate shall be sold for the payment of any money or the performance of any contract or agreement in writing, in security for which it may have been pledged or assigned, except in pursuance of a judgment of a court of competent jurisdiction ordering such sale ... Notwithstanding the above provisions no judgment shall be enforced for any residue of the debt remaining unsatisfied as prescribed by this act after the mortgaged property shall have been sold, except as herein provided. Simultaneously with the making of a motion for an order confirming the sale or in any event within ninety (90) days after the date of the sale, the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment ... **If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist** (Emphasis added.)

While there is much case law holding that §686 does indeed apply to mortgage foreclosure actions such as the one below, the applicability of §686 where the mortgaged property is sold by a Receiver before judgment appears to be a case of first impression.

The Bankruptcy Court found that the order to the Receiver to sell the 1980 property was not the type of judgment order contemplated by §686 wherein it states,

No real estate shall be sold for the payment any money ... in security for which it may have been pledged or assigned, except in pursuance of a judgment of a court of competent jurisdiction ordering such sale. (Emphasis added.)

Assuming for the moment that the September 22, 1980 order directing the Receiver to sell Appellants' office building was not a "judgment" as referred to in the first part of §686¹⁶, the Bankruptcy Court's conclusion that the deficiency provisions of §686 do not apply, wholly disregards the remaining provisions of §686. Coming after the above-quoted portion of §686 is the following clear and encompassing language.

Notwithstanding the above provisions no judgment shall be enforced for any residue of the debt remaining unsatisfied as prescribed by this act after the mortgaged property shall have been sold, except as herein provided. (Emphasis added.)

¹⁶ *The specific language of the show cause order, immediately preceding the order to sell, asking why the building "should not be sold by summary proceedings upon partial summary judgment of this Court under the authority of 12 O.S. §686 ..." suggests the state court intended the order be a partial summary judgment under §686.*

The phrase "notwithstanding the above provisions" makes irrelevant whether the sale of Appellants' realty took place by judgment or other order of the court, when applying the deficiency provisions of §686 (which follow after the phrase). Thus, regardless of whether the realty was sold pursuant to a judgment or otherwise, to enforce a judgment for the residue, the deficiency provisions of §686 must still be complied with.

The §686 deficiency provisions required the Appellees to move for a deficiency judgment either (1) "simultaneously with the making of a motion for an order confirming the sale", or (2) "in any event within ninety (90) days after the date of sale". The requirements are clearly stated and the triggering events ascertainable with some certainty. The motion for an order confirming sale was filed on October 10, 1980. Appellees did not "simultaneously" move for deficiency judgment. Neither have the Appellees, anytime during the nine years following the sale, moved for deficiency judgment. Section 686 goes on to state,

If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any motion or proceeding shall exist.

Because no motion for deficiency judgment was made by Appellees as prescribed (i.e.: (1) with the motion to confirm sale, or (2) within ninety (90) days of sale, "in any event"), this Court concludes, as a matter of law, that the \$240,000 in proceeds from the 1980 sale fully satisfied the debt for which the office building was pledged, by operation of §686's deficiency provisions. Remand is necessary for a factual determination of which debt(s) were satisfied by the 1980 sale, and a determination of whether this ruling affects the application of proceeds from the recent 1989 sale of mortgaged property, previously owned by Appellant.

IV.

Extinguishment of Security Interest Through Filing of Termination Statement

For their fifth assignment of error, Appellants argue that the filing of a UCC termination statement extinguished Appellees' security interest in Burden's Southern Hills stock. On July 19, 1978, Jack Burden borrowed \$18,000 from RFC. He secured the loan by signing a note (Note No. 6953) and by pledging one share of Southern Hills Country Club stock. (Appellant's Brief, p. 8.) A year later, Note No. 6953 was consolidated into Note No. 8070. (Appellee's Brief, p. 3.)

After Burden defaulted, RFC sought foreclosure of the security interest in the Southern Hills stock. RFC subsequently filed a financing statement to perfect its interest. (Trial Transcript, p. 80.) In 1979, RFC then filed a termination statement pursuant to UCC 9-404. A year later, in 1980, the instant action began in Tulsa County District Court (C-80-896).

In 1982, an agreement was apparently struck whereby Southern Hills Country Club sold the stock to a third party. After deducting Burden's unpaid bills, Southern Hills deposited the balance with the State Court Clerk, pending the outcome of the instant suit. In 1984, RFC sought relief under the Bankruptcy Code.

Appellant's argument, before the Bankruptcy Court on January 23, 1989, was that RFC released all claims in the Southern Hills Country Club security interest when it filed the termination statement. (Appellant's Brief, p. 23.) The Bankruptcy Court rejected the argument, and ordered the Clerk to deliver the proceeds from the Southern Hills stock sale to RFC's Bankruptcy Trustee. (Trial Transcript, p. 83.) It is from this decision that appellant also seeks relief.

The issue is whether RFC released all its claims in the Southern Hills Country Club stock security interest by virtue of filing a termination statement. According to the facts in Appellant's

brief, Burden pledged the stock as a security interest to obtain a loan. A security interest, created by contract, including a pledge, falls under Article 9 of the Oklahoma Uniform Commercial Code. (See, Title 12A O.S. §§9-102 and 9-104.)

Under the UCC, a secured party files a financing statement to perfect its security interest (see, 12A O.S. §9-302). The purpose of such an act is to give notice to third persons that there is a "perfected" security interest in the personal property. In re York Chemical Industries, Inc., 30 B.R. 583, 586 (S.C. Bkrcty 1983). A Pennsylvania Bankruptcy Court explained the rationale:

The purpose of the filing requirements of the UCC is to furnish prospective purchasers and creditors with information relating to the encumbered status of ... and liens against a debtor's assets, and not just to create a hodgepodge of technicalities for non-compliance with which existing rights will be lost. Lampl v. General Electric Credit Corp., 20 B.R. 864, 867 (W.D. Pa. Bkrcty 1982).

In the York decision, (cited above) Plaintiff was the holder of a security interest in all machinery, equipment, furniture and fixtures in the York office. In 1980, the Plaintiff filed a financing statement. A year later, one of the Plaintiff's employees mistakenly filed a termination statement. The South Carolina Bankruptcy Court ruled that the Plaintiff no longer had a perfected security interest. However, the security interest still existed.

In a similar Kansas case, farmer Foos received loans in 1966 from Bazine State Bank. J.J. Case Credit Corp. v. Foos, 717 P.2d 1064 (Kan. App. 1986). The Bank, which acquired a security interest in after-acquired farm equipment, subsequently filed a financing statement on the collateral.

In 1980, Foos purchased a tractor from a local dealer. The dealer filed a financial statement on the transaction before later assigning its security interest to Plaintiff, Case Credit. For the next two years, Foos failed to make his required installment payments to Case Credit on the tractor. In 1982, Bazine State Bank loaned Foos the money needed to catch up on the payments. When Foos sent Case the delinquent payments, Case Credit mistakenly stamped Foos'

account PAID. On November 24, 1982, a terminating statement was filed.

Relying on K.S.A. 84-9-404, the court held that Case Credit's security interest, at that moment (November 24, 1982), was no longer perfected. However, it emphasized the following:

Case could, of course, continue to enforce its security interest in the equipment as long as only its debtor (farmer Foos) was involved. Id.

Although the facts were different, an Oklahoma court reached a similar conclusion. Morton Booth v. Tiara Furniture, Inc., 546 P. 2d 210 (Okla. 1977). Creditor, Booth, obtained a security interest in Debtor, Tiara's, collateral. However, the debtor took no steps to perfect its security interest by filing. The court concluded: **"While Booth's misplaced faith in the legal effect of its retention of title caused its security interest to be unperfected, the security interest is none the less valid."** Id. at 213.

Appellant's argument revolves around his assertion that the filing of the financial statement gave birth to RFC's security interest in the Southern Hills Country Club stock. Accordingly, Appellant asserts that the filing of the termination statement, in effect, eliminated the security interest.

A review of applicable case law leads to the opposite conclusion. The creation of the security interest took place when Burden pledged the stock to RFC as collateral for the \$18,000 loan. RFC, seeking to notify other possible creditors of its security interest in the stock, filed a financing statement as required by the UCC. The financing statement "told the world" that RFC had a "perfected" security interest. In other words, the message sent by reason of the filing was that RFC was first-in-line as a creditor against the Southern Hills Country Club stock. When RFC filed the termination statement, it merely lost its place as a perfected creditor. That does not mean, however, that the security interest vanished. It does mean that the unperfected security interest was subject to any perfected creditors who were waiting in the wings to snatch up the

stock. See, In re Windsor Communications Group, 45 B.R. 770 (W.D. Pa. Bkrcty). However, based on the facts presented, no such creditors existed then or exist now. Therefore, this Court finds that filing of the termination statement did not void RFC's security interest .

The question of whether the Bankruptcy Court should have given the proceeds to RFC's bankruptcy trustee is answered by UCC 9-306. Section 9-306(2) states:

... a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof ... and also continues in any identifiable proceeds including collections received by the debtor.

As mentioned, the stock was sold and the remaining proceeds were placed with the Court Clerk, pending a final judgment in this case. As the secured party, RFC may claim the proceeds (see, note 3, UCC 9-306). Therefore, there was no error in ordering the proceeds paid to the Appellee.

V.

Conclusion

The judgment of the Bankruptcy Court is affirmed in part and reversed in part. Under part II of this opinion it was determined that due to a clearly erroneous finding of fact, remand is necessary, and in this regard, the Bankruptcy Court is instructed to make a determination (a) whether the Burdens were married at the time of the 1978 mortgage; (b) whether the mortgaged realty was impressed with homestead character at the time of the 1978 mortgage; and (c) whether the 1978 mortgage was valid or void as a result. Further, under part III of this opinion, it was concluded that the deficiency provisions of 12 O.S. §686 do operate to extinguish any part of the debt not satisfied by the proceeds of the 1980 office building sale. As a result, remand is necessary, and the Bankruptcy Court is instructed to ascertain which debt(s) were satisfied by the 1980 sale, and the resultant effect, if any, on the debt(s) subject of the 1989 sale, and enter judgment accordingly. The judgment of the Bankruptcy Court is affirmed in all other respects.

SO ORDERED THIS 26th day of Dec, 1989.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett". The signature is written in dark ink and is positioned above the printed name and title.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RICHARD DUVALL FIELDS; SHIRLEY)
 ANN FIELDS; DONALD L. JURICK)
 and WANDA MAE JURICK,)
 Individually and as Co-Trustees)
 of the Donald L. Jurick Trust;)
 GRAND INVESTMENT COMPANY;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

DEC 27 1989 *fw*

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

CIVIL ACTION NO. 89-C-041-C ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22 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, appeared
by J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; the Defendant, Richard Duvall Fields, entered his
appearance pro se; the Defendants, Donald L. Jurick and Wanda Mae
Jurick, Individually and as Co-Trustees of the Donald L. Jurick
Trust, appeared not, having previously filed their Disclaimer;
and the Defendants, Shirley Ann Fields and Grand Investment
Company, appeared not, but made default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Richard Duvall Fields,

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acknowledged receipt of Summons and Complaint on January 28, 1989; that the Defendant, Shirley Ann Fields, acknowledged receipt of Summons and Complaint on February 10, 1989; that the Defendant, Grand Investment Company, acknowledged receipt of Summons and Complaint on April 6, 1989; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 23, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 20, 1989.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on February 8, 1989; that the Defendant, Richard Duvall Fields, filed his Answer on February 27, 1989; that the Defendants, Donald L. Jurick and Wanda Mae Jurick, Individually and as Co-Trustees of the Donald L. Jurick Trust, filed their Answer and Disclaimer on January 30, 1989; and that the Defendants, Shirley Ann Fields and Grand Investment Company, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Two (2), Block One (1), STEVENSON
SUBDIVISION of Block Four (4), OZARK GARDEN
FARMS, Tulsa County, State of Oklahoma,
according to the recorded plat thereof.

The Court further finds that on March 12, 1976, the Defendants, Richard Duvall Fields and Shirley Ann Fields, 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 \$37,500.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Richard Duvall Fields and Shirley Ann Fields, 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 March 12, 1976, covering the above-described property. Said mortgage was recorded on March 18, 1976, in Book 4207, Page 383, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Richard Duvall Fields and Shirley Ann Fields, 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, Richard Duvall Fields and Shirley Ann Fields, are indebted to the Plaintiff in the principal sum of \$32,530.72, plus interest at the rate of 9 percent per annum from January 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 Defendants, Donald L. Jurick and Wanda Mae Jurick, Individually and as Co-Trustees of the Donald L. Jurick Trust, disclaim any right, title, or interest in the subject real property.

The Court further finds that the Defendant, Grand Investment Company, is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Richard Duvall Fields and Shirley Ann Fields, in the principal sum of \$32,530.72, plus interest at the rate of 9 percent per annum from January 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.6% 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, Donald L. Jurick and Wanda Mae Jurick, Individually and as Co-Trustees of the Donald L. Jurick Trust; Grand Investment Company; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Richard Duvall Fields and Shirley Ann Fields, 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 appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

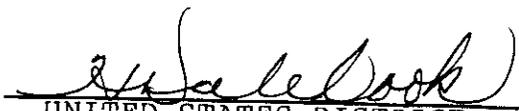
In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

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

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

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


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney

Judgment of Foreclosure
Civil Action No. 89-C-1011-E

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

DEC 26 1989

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

JOHANNA R. MILES, DR. WALLIS P.)
PARKER, JR., GLENDA M. TERRY,)
BRENDA SIBOLE AND DAVID L. POTTS)

Plaintiffs,)

v.)

ROCKWELL INTERNATIONAL CORPORATION)

Defendant.)

Case No. 87-C-1022B ✓

**PLAINTIFF TERRY'S VOLUNTARY
DISMISSAL BY STIPULATION**

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the parties hereto stipulate and agree that all the claims of Plaintiff Terry herein be dismissed with prejudice to the refiling thereof and that Plaintiff Terry and Defendant shall each bear their own costs and expenses herein.

Richard L. Barnes
Richard L. Barnes
2121 South Columbia, Suite 700
Tulsa, Oklahoma 74114
(918) 745-6625

ATTORNEY FOR PLAINTIFF TERRY

Craig W. Hoster
Craig W. Hoster
Baker, Hoster, McSpadden, Clark,
Rasure & Slicker
800 Kennedy Building
Tulsa, Oklahoma 74103

ATTORNEY FOR DEFENDANT

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

FILED

DEC 26 1989

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

JOHANNA R. MILES, DR. WALLIS P.)
PARKER, JR., GLENDA M. TERRY,)
BRENDA SIBOLE AND DAVID L. POTTS)

Plaintiffs,)

v.)

ROCKWELL INTERNATIONAL CORPORATION)

Defendant.)

Case No. 87-C-1022B ✓

**PLAINTIFF PARKER'S VOLUNTARY
DISMISSAL BY STIPULATION**

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the parties hereto stipulate and agree that all the claims of Plaintiff Parker herein be dismissed with prejudice to the refiling thereof and that Plaintiff Parker and Defendant shall each bear their own costs and expenses herein.

Richard L. Barnes

Richard L. Barnes
2121 South Columbia, Suite 700
Tulsa, Oklahoma 74114
(918) 745-6625

ATTORNEY FOR PLAINTIFF PARKER

Craig W. Hoster

Craig W. Hoster
Baker, Hoster, McSpadden, Clark,
Rasure & Slicker
800 Kennedy Building
Tulsa, Oklahoma 74103

ATTORNEY FOR DEFENDANT

FILED

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

DEC 26 1989

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

JOHANNA R. MILES, DR. WALLIS P.)
 PARKER, JR., GLENDA M. TERRY,)
 BRENDA SIBOLE AND DAVID L. POTTS)
)
 Plaintiffs,)
)
 v.)
)
 ROCKWELL INTERNATIONAL CORPORATION)
)
 Defendant.)

Case No. 87-C-1022B ✓

**PLAINTIFF SIBOLE'S VOLUNTARY
DISMISSAL BY STIPULATION**

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the parties hereto stipulate and agree that all the claims of Plaintiff Sibole herein be dismissed with prejudice to the refiling thereof and that Plaintiff Sibole and Defendant shall each bear their own costs and expenses herein.

Richard L. Barnes

 Richard L. Barnes
 2121 South Columbia, Suite 700
 Tulsa, Oklahoma 74114
 (918) 745-6625

ATTORNEY FOR PLAINTIFF SIBOLE

Craig W. Hoster

 Craig W. Hoster
 Baker, Hoster, McSpadden, Clark,
 Rasure & Slicker
 800 Kennedy Building
 Tulsa, Oklahoma 74103

ATTORNEY FOR DEFENDANT

F I L E D

DEC 26 1989

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

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

**CHARLES EDWARD CUNNINGHAM
AND DOLLIE L. CUNNINGHAM**

VS.

**OWENS-CORNING FIBERGLAS
CORP., ET AL**

§
§
§
§
§
§
§

CA NO: 87-C-977-E

AGREED ORDER OF DISMISSAL WITH PREJUDICE

ON THIS DAY came on to be heard the above-styled and numbered cause, and came Plaintiffs and Defendant, The Celotex Corporation, and announced to the court that all claims by Plaintiffs against Defendant The Celotex Corporation have been fully compromised and settled, and that said Plaintiffs have given or will give to The Celotex Corporation a final release of all claims and causes of action herein. It is therefore,

ORDERED, ADJUDGED and DECREED by the court that Plaintiffs recover nothing from Defendant, The Celotex Corporation by this action and that Plaintiffs' claims against The Celotex Corporation in the above-styled and numbered cause be, and the same is hereby, DISMISSED WITH PREJUDICE to the refiling of same in any form. It is further,

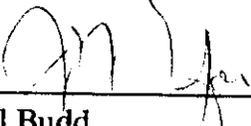
ORDERED, ADJUDGED and DECREED by the court that each party be taxed its own costs of court.

SIGNED this 22nd day of December, 1989.


UNITED STATES DISTRICT JUDGE

AGREED AND APPROVED:

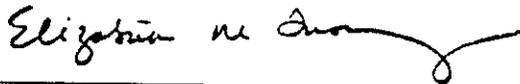
BARON & BUDD

By 

Russell Budd
8333 Douglas Avenue, 10th Floor
Dallas, Texas 75225
(214) 369-3605

Attorney for Plaintiffs,
Charles Edward Cunningham and
Dollie L. Cunningham

BUTLER & BINION

By 

Elizabeth M. Thompson
1500 First Interstate Bank Plaza
Houston, Texas 77002-5008
(713) 237-3296

Attorney for Defendant,
The Celotex Corporation

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F I L E D

DEC 26 1989

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

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

**BILL B. HAITHCOAT
AND BEVERLY J. HAITHCOAT**

VS.

**OWENS-CORNING FIBERGLAS
CORP., ET AL**

§
§
§
§
§
§
§
§
§
§

CA NO: 86-C-995-E

AGREED ORDER OF DISMISSAL WITH PREJUDICE

ON THIS DAY came on to be heard the above-styled and numbered cause, and came Plaintiffs and Defendant, The Celotex Corporation, and announced to the court that all claims by Plaintiffs against Defendant The Celotex Corporation have been fully compromised and settled, and that said Plaintiffs have given or will give to The Celotex Corporation a final release of all claims and causes of action herein. It is therefore,

ORDERED, ADJUDGED and DECREED by the court that Plaintiffs recover nothing from Defendant, The Celotex Corporation by this action and that Plaintiffs' claims against The Celotex Corporation in the above-styled and numbered cause be, and the same is hereby, DISMISSED WITH PREJUDICE to the refiling of same in any form. It is further,

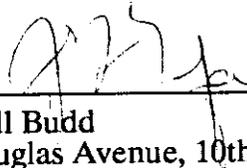
ORDERED, ADJUDGED and DECREED by the court that each party be taxed its own costs of court.

SIGNED this 22nd day of December, 1989.


UNITED STATES DISTRICT JUDGE

AGREED AND APPROVED:

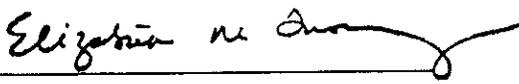
BARON & BUDD

By 

Russell Budd
8333 Douglas Avenue, 10th Floor
Dallas, Texas 75225
(214) 369-3605

Attorney for Plaintiffs,
Bill B. Haithcoat and
Beverly J. Haithcoat

BUTLER & BINION

By 

Elizabeth M. Thompson
1500 First Interstate Bank Plaza
Houston, Texas 77002-5008
(713) 237-3296

Attorney for Defendant,
The Celotex Corporation

et 97-c:\wp\celotex\hathcoat.rls

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 26 1989

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
ROBERT J. COLEE; DANA S. COLEE;)
OWASSO PUBLIC WORKS AUTHORITY)
OF OWASSO, OKLAHOMA, and/or)
THE CITY OF OWASSO, OKLAHOMA;)
ROSEMARY E. GAVIN a/k/a)
ROSEMARY GAVIN a/k/a R. E.)
GAVIN; LEO F. EDISON, JR.;)
GERALDINE F. EDISON; CITIZENS)
SECURITY BANK & TRUST COMPANY,)
BIXBY, OKLAHOMA; SOONER FEDERAL)
SAVINGS AND LOAN ASSOCIATION;)
MARY ELLEN APPEL f/k/a MARY)
ELLEN STORTS; CRC INVESTMENTS,)
an Oklahoma General Partnership;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

CIVIL ACTION NO. 89-C-058-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22^d day
of December, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, Owasso Public
Works Authority of Owasso, Oklahoma, and/or The City of Owasso,
Oklahoma, appears by its attorney Ronald D. Cates; the Defendant,

Rosemary E. Gavin a/k/a Rosemary Gavin a/k/a R. E. Gavin, appears not, having previously filed her Disclaimer; the Defendants, Leo F. Edison, Jr. and Geraldine F. Edison, appear by their attorney Cynthia L. Chang; the Defendant, Citizens Security Bank & Trust Company, Bixby, Oklahoma, appears by its attorney J. Patrick Mensching; the Defendant, Sooner Federal Savings and Loan Association, appears by its attorney Robert S. Erickson; the Defendant, Mary Ellen Appel f/k/a Mary Ellen Storts, appears by her attorney Beverly Joyce Trew; the Defendant, CRC Investments, an Oklahoma General Partnership, appears by its attorney John L. Shafer III; and the Defendants, Robert J. Colee and Dana S. Colee, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Owasso Public Works Authority of Owasso, Oklahoma, and/or The City of Owasso, Oklahoma, acknowledged receipt of Summons and Complaint on February 1, 1989; that the Defendant, Rosemary E. Gavin a/k/a Rosemary Gavin a/k/a R. E. Gavin, acknowledged receipt of Summons and Complaint on January 27, 1989; that the Defendant, Leo F. Edison, Jr., acknowledged receipt of Summons and Complaint on February 6, 1989; that the Defendant, Geraldine F. Edison, acknowledged receipt of Summons and Complaint on February 6, 1989; that the Defendant, Citizens Security Bank & Trust Company, Bixby, Oklahoma, acknowledged receipt of Summons and Complaint on January 26, 1989; that the Defendant, Sooner Federal Savings and Loan Association, acknowledged receipt of Summons and Complaint on January 26, 1989; that the Defendant, Mary Ellen Appel f/k/a Mary Ellen Storts, acknowledged receipt of Summons and Complaint

on February 15, 1989; that the Defendant, CRC Investments, an Oklahoma General Partnership, acknowledged receipt of Summons and Complaint on February 13, 1989; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 30, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 31, 1989.

The Court further finds that the Defendants, Robert J. Colee and Dana S. Colee, 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 May 19, 1989, and continuing to June 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, Robert J. Colee and Dana S. Colee, 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, Robert J. Colee and Dana S. Colee. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and

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

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on February 21, 1989; that the Defendant, Owasso Public Works Authority of Owasso, Oklahoma, and/or The City of Owasso, Oklahoma, filed its Answer on March 1, 1989; that the Defendant, Rosemary E. Gavin a/k/a Rosemary Gavin a/k/a R. E. Gavin, filed her Disclaimer on February 21, 1989; that the Defendants, Leo F. Edison, Jr. and Geraldine F. Edison, filed their Answer on February 9, 1989; that the Defendant, Citizens Security Bank & Trust Company, Bixby, Oklahoma, filed its Answer on February 1, 1989; that the Defendant, Sooner Federal Savings and Loan Association, filed its Answer on February 15, 1989; that the Defendant, Mary Ellen Appel f/k/a Mary Ellen Storts, filed her Answer on February 17, 1989; that

the Defendant, CRC Investments, an Oklahoma General Partnership, filed its Answer on February 15, 1989; and that the Defendants, Robert J. Colee and Dana S. Colee, 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 4, Block 2, STARLANE, an Addition to the Town of Owasso, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 10, 1979, the Defendants, Robert J. Colee and Dana S. Colee, 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 \$33,200.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Robert J. Colee and Dana S. Colee, 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 March 10, 1979, covering the above-described property. Said mortgage was recorded on March 19, 1979, in Book 4387, Page 1782, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, 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, Robert J. Colee and Dana S. Colee, are indebted to the Plaintiff in the principal sum of \$30,727.78, plus interest at the rate of 9.5 percent per annum from October 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$495.00, plus penalties and interest, for the year 1988. Said lien is superior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendant, Owasso Public Works Authority of Owasso, Oklahoma, and/or The City of Owasso, Oklahoma, claims no interest in the property by virtue of the Right-of-Way Easement dated the 17th day of July, 1984, and recorded July 28, 1984, in Book 4804 at Page 3049 in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Rosemary E. Gavin a/k/a Rosemary Gavin a/k/a R. E. Gavin, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendants, Leo F. Edison, Jr. and Geraldine F. Edison, have liens on the subject matter of this action by virtue a Deficiency Judgment against Rosemary Gavin in the amount of \$117,291.81 dated April 17, 1986, and recorded on June 11, 1986 in Book 4948 at Page 45 in the records of Tulsa County, Oklahoma; and by virtue of a Deficiency Judgment against Robert J. Colee, Don Guy and Skelly Properties in the amount of \$366,667.67 dated March 4, 1986 and recorded on June 13, 1986 in Book 4948 at Page 2299 in the records of Tulsa County, Oklahoma. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Citizens Security Bank & Trust Company, Bixby, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of a Journal Entry of Judgment against Rosemary Gavin in the amount of \$47,000.00 and interest accrued through June 21, 1985, in the sum of \$4,305.64, with interest accrued from June 22, 1985, to April 30, 1987, in the sum of \$11,237.80, with interest thereafter at the rate of \$16.10 per diem, dated May 15, 1987, and recorded on May 22, 1987, in Book 5025 at Page 162 in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Sooner Federal Savings and Loan Association, has a lien on the property

which is the subject matter of this action by virtue of a Journal Entry of Judgment and Order For Sale against Rosemary E. Gavin in the principal amount of \$22,263.25, together with interest thereon from and including July 1, 1987, at the rate of 10.50 percent per annum, plus expenses, attorney fees, and costs, dated January 6, 1988, and recorded on January 13, 1988, in Book 5074 at Page 1934 in the records of Tulsa County, Oklahoma; and by virtue of a Deficiency Judgment against Rosemary E. Gavin in the amount of \$14,418.31 plus interest at the rate of 10.50 percent from March 3, 1988, until paid, dated May 10, 1988, and recorded on May 10, 1988, in Book 5098 at Page 1468 in the records of Tulsa County, Oklahoma. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Mary Ellen Appel f/k/a Mary Ellen Storts, has a lien on the property which is the subject matter of this action by virtue of a Journal Entry of Judgment against Southwest Investments, a Limited Partnership, composed of Robert J. Colee, general partner, R. E. Gavin, general partner, and Donald J. Guy, limited partner, et al., in the amount of \$59,589.26 as of October 10, 1983 plus accrued interest at the rate of 11 percent per annum through October 10, 1983 in the amount of \$12,760.74, plus accrued interest thereon at the rate of 11 percent per annum from October 10, 1983 through December 15, 1987 in the amount of \$27,404.53, plus interest accrued and accruing from December 15, 1987 through date of judgment at the rate of \$17.96 per diem, and interest accruing thereafter at the highest judgment rate allowed by law from date

of judgment until paid in full, plus costs and an attorney fee. Said judgment was dated December 17, 1987, and recorded on January 21, 1988, in Book 5075 at Page 2548 in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, CRC Investments, an Oklahoma General Partnership, has a lien on the property which is the subject matter of this action by virtue of a Deficiency Judgment entered in the District Court of Tulsa County, Oklahoma in Case No. CJ-87-05403, dated June 22, 1988, and filed the same date in the amount of \$138,606.77 together with interest thereon against Colee and Associates, a general partnership composed of Robert J. Colee and Rosemary Gavin, Robert J. Colee and Rosemary Gavin, a/k/a R. E. Gavin. A certified copy of said judgment was filed in the Office of the County Clerk of Tulsa County, Oklahoma, on June 22, 1988, and recorded in Book 5109 at Page 438. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Robert J. Colee and Dana S. Colee, in the principal sum of \$30,727.78, plus interest at the rate of 9.5 percent per annum from October 1, 1987 until judgment, plus interest thereafter at the current legal rate of 7.66 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 \$495.00, plus penalties and interest, for ad valorem taxes for the year 1988, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Owasso Public Works Authority of Owasso, Oklahoma, and/or The City of Owasso, Oklahoma, has no right-of-way by virtue of the Right-of-Way Easement dated the 17th day of July, 1984, and recorded July 28, 1984, in Book 4804 at Page 3049 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Leo F. Edison, Jr. and Geraldine F. Edison, have and recover judgment by virtue a Deficiency Judgment against Rosemary Gavin in the amount of \$117,291.81 dated April 17, 1986, and recorded on June 11, 1986 in Book 4948 at Page 45 in the records of Tulsa County, Oklahoma; and by virtue of a Deficiency Judgment against Robert J. Colee, Don Guy and Skelly Properties in the amount of \$366,667.67 dated March 4, 1986 and recorded on June 13, 1986 in Book 4948 at Page 2299 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Citizens Security Bank & Trust Company, Bixby, Oklahoma, have and recover judgment by virtue of a Journal Entry of Judgment against Rosemary Gavin in the amount of \$47,000.00 and interest accrued through June 21, 1985, in the sum of

\$4,305.64, with interest accrued from June 22, 1985, to April 30, 1987, in the sum of \$11,237.80, with interest thereafter at the rate of \$16.10 per diem, dated May 15, 1987, and recorded on May 22, 1987, in Book 5025 at Page 162 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Sooner Federal Savings and Loan Association, have and recover judgment by virtue of a Journal Entry of Judgment and Order For Sale against Rosemary E. Gavin in the principal amount of \$22,263.25, together with interest thereon from and including July 1, 1987, at the rate of 10.50 percent per annum, plus expenses, attorney fees, and costs, dated January 6, 1988, and recorded on January 13, 1988, in Book 5074 at Page 1934 in the records of Tulsa County, Oklahoma; and by virtue of a Deficiency Judgment against Rosemary E. Gavin in the amount of \$14,418.31 plus interest at the rate of 10.50 percent from March 3, 1988, until paid, dated May 10, 1988, and recorded on May 10, 1988, in Book 5098 at Page 1468 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Mary Ellen Appel f/k/a Mary Ellen Storts, have and recover judgment by virtue of a Journal Entry of Judgment against Southwest Investments, a Limited Partnership, composed of Robert J. Colee, general partner, R. E. Gavin, general partner, and Donald J. Guy, limited partner, et al., in the amount of \$59,589.26 as of October 10, 1983 plus accrued interest at the rate of 11 percent per annum through October 10, 1983 in the amount of \$12,760.74, plus accrued interest thereon at the rate

of 11 percent per annum from October 10, 1983 through December 15, 1987 in the amount of of \$27,404.53, plus interest accrued and accruing from December 15, 1987 through date of judgment at the rate of \$17.96 per diem, and interest accruing thereafter at the highest judgment rate allowed by law from date of judgment until paid in full, plus costs and an attorney fee. Said judgment was dated December 17, 1987, and recorded on January 21, 1988, in Book 5075 at Page 2548 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, CRC Investments, an Oklahoma General Partnership, have and recover judgment by virtue of a Deficiency Judgment entered in the District Court of Tulsa County, Oklahoma in Case No. CJ-87-05403, dated June 22, 1988, and filed the same date in the amount of \$138,606.77 together with interest thereon against Colee and Associates, a general partnership composed of Robert J. Colee and Rosemary Gavin, Robert J. Colee and Rosemary Gavin, a/k/a R. E. Gavin. A certified copy of said judgment was filed in the Office of the County Clerk of Tulsa County, Oklahoma, on June 22, 1988, and recorded in Book 5109 at Page 438.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Rosemary E. Gavin a/k/a Rosemary Gavin a/k/a R. E. Gavin 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 Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$495.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of the Defendants, Leo F. Edison, Jr. and Geraldine F. Edison, in the amount of \$117,291.81 and in the amount of \$366,667.67;

Fifth:

In payment of the Defendant, Citizens Security Bank & Trust Company, Bixby, Oklahoma, in the amount of \$47,000.00 and interest accrued through June 21, 1985, in the sum of \$4,305.64, with interest accrued from June 22, 1985, to April 30, 1987, in the sum of \$11,237.80, with interest thereafter at the rate of \$16.10 per diem;

Sixth:

In payment of the Defendant, Sooner Federal Savings and Loan Association, in the principal amount of \$22,263.25, together with interest thereon from and including July 1, 1987, at the rate of 10.50 percent per annum, plus expenses, attorney fees, and costs, and in the amount of \$14,418.31 plus interest at the rate of 10.50 percent from March 3, 1988, until paid;

Seventh:

In payment of the Defendant, Mary Ellen Appel f/k/a Mary Ellen Storts, in the amount of \$59,589.26 as of October 10, 1983 plus accrued interest at the rate of 11 percent per annum through October 10, 1983 in the amount of \$12,760.74, plus accrued interest thereon at the rate of 11 percent per annum from

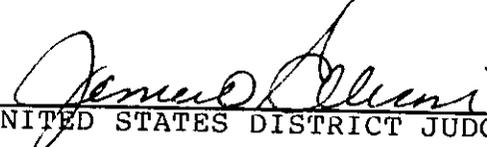
October 10, 1983 through December 15, 1987 in the amount of of \$27,404.53, plus interest accrued and accruing from December 15, 1987 through date of judgment at the rate of \$17.96 per diem, and interest accruing thereafter at the highest judgment rate allowed by law from date of judgment until paid in full, plus costs and an attorney fee;

Eighth:

In payment of the Defendant, CRC Investments, an Oklahoma General Partnership, in the amount of \$138,606.77 together with interest thereon.

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

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


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney

J. Dennis Semler

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

Ronald D. Cates

RONALD D. CATES, OBA #1565
Attorney for Defendant,
Owasso Public Works Authority of Owasso, Oklahoma,
and/or The City of Owasso, Oklahoma

Cynthia L. Chang

for: CYNTHIA L. CHANG, OBA #11069
Attorney for Defendants,
Leo F. Edison, Jr. and Geraldine F. Edison

J. Patrick Mensching

J. PATRICK MENSCHING, OBA #6136
Attorney for Defendant,
Citizens Security Bank & Trust Company, Bixby, Oklahoma

Robert S. Erickson - as to form only

ROBERT S. ERICKSON, OBA #11825
Attorney for Defendant,
Sooner Federal Savings and Loan Association

Beverly Joyce Trew

BEVERLY JOYCE TREW, OBA #9087 *FOR Beverly Joyce Trew*
Attorney for Defendant, *FORMER ASSOCIATE of the firm*
Mary Ellen Appel f/k/a Mary Ellen Storts

John L. Shafer III

JOHN L. SHAFER III, OBA #8107
Attorney for Defendant,
CRC Investments, an Oklahoma General Partnership

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

JOHNNIE L. EVANS,)
Plaintiff,)
vs.)
MCDONALD'S CORPORATION, a Delaware)
Corporation, McDONALD'S OF CLAREMORE,)
a defunct Oklahoma Corporation, and)
DAVID McMAHAN,)
Defendants.)

No. 89-C-049-E ✓

F I L E D

DEC 26 1989 *clt*

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

JOURNAL ENTRY OF JUDGMENT

THIS CAUSE comes on before the Court for entry of judgment pursuant to the Court's December 7, 1989 Order granting the Motions for Summary Judgment of the Defendants McDonald's Corporation and David McMahan. In accordance with the terms of said Order, judgment is hereby entered in this action as follows:

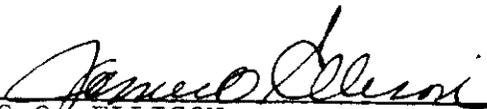
1. The Defendants McDonald's Corporation and David McMahan are awarded judgment with respect to all of the claims of the Plaintiff, Johnnie L. Evans, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and said claims are dismissed with prejudice;

2. Plaintiff's alleged pendent state claims (for intentional and negligent infliction of emotional distress and negligent retention and supervision of employees) are dismissed without prejudice against Defendants McDonald's Corporation and David McMahan;

3. Defendant David McMahan's counterclaim against Plaintiff is dismissed without prejudice;

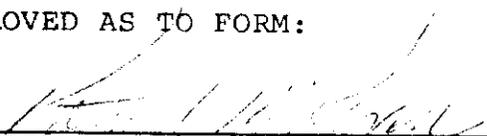
4. Defendants McDonald's Corporation and David McMahan are awarded any recoverable costs and expenses in this action, as provided by law which must be applied for under separate application.

IT IS SO ORDERED, ADJUDGED AND DECREED this 22^d day of December, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



PATRICK M. RYAN (OBA No. 7864)
CHARLES E. GEISTER III (OBA No. 3311)
Of the Firm:
RYAN, CORBYN & GEISTER
119 N. Robinson Avenue - Suite 900
Oklahoma City, OK 73102
Telephone: (405) 239-6041

ATTORNEYS FOR DEFENDANT McDONALD'S CORPORATION



BENJAMIN J. BUTTS
Of the Firm:
SHORT, BARNES, WIGGINS, MARGO & ADLER
101 N. Robinson, Suite 1400
Oklahoma City, OK 73102
Telephone: (405) 232-1211

ATTORNEY FOR DEFENDANT DAVID McMAHAN



LESLIE SHELTON
616 So. Main - Suite 308
Tulsa, OK 74119
Telephone: (918) 584-3099

ATTORNEY FOR PLAINTIFF

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

F I L E D

DEC 26 1989

PITCO PRODUCTION COMPANY,
an Oklahoma general partnership,

Plaintiff,

v.

ARKLA, INC., a/k/a ARKANSAS
LOUISIANA GAS COMPANY, a
Delaware corporation,

Defendant.

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

Case No. 89-C-255-E

ORDER DISMISSING CLAIMS

The Application for Leave to Dismiss Claims with Prejudice of
PITCO Production Company, having come on for hearing, and good
cause having been shown for the granting thereof,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the
Application is granted and the claims of PITCO Production Company
are hereby dismissed with prejudice toward the refiling of same.

/s/ JAMES G. ELSON

UNITED STATES DISTRICT JUDGE

Prepared by:
Dale Joseph Gilsinger
PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR
900 Oneok Plaza
Tulsa, Oklahoma 74103
(918) 584-4136

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

F I L E D

DEC 26 1989 ^{01st}

JAMES R. PLASTER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 STATE FARM MUTUAL AUTOMOBILE)
 INSURANCE,)
)
 Defendant.)

No. 87-C-463-E ✓

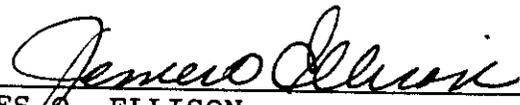
Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

These proceedings were administratively closed on September 16, 1988 to allow the Oklahoma Supreme Court to answer a question certified by this Court. The Oklahoma Supreme Court answered the certified question on October 5, 1989 but the parties have not moved to reopen these proceedings to obtain a final determination. Dismissal is, therefore, appropriate.

IT IS THEREFORE ORDERED that this action is dismissed with prejudice to its refiling. Each party shall bear its own costs.

ORDERED this 21st day of December, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT

DEC 26 1989

FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

ADVANCE-UNITED EXPRESSWAYS,)
INC., Debtor-In-Possession,)
)
Plaintiff,)
)
vs.)
)
SOONER RAG & WIPING, INC.,)
)
Defendant.)

No. 89-C-786 E

ORDER GRANTING DISMISSAL

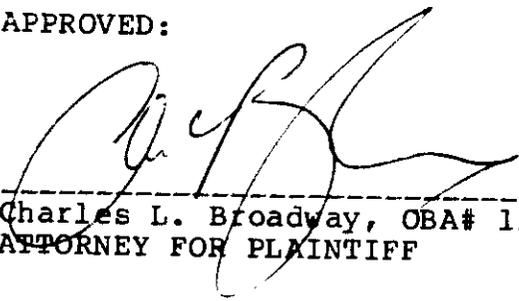
NOW on this 21st day of December, 1989, the Joint Stipulation For Dismissal With Prejudice having been previously filed herein it is the finding of this court that the said cause of action should be Dismissed With Prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled cause of action be and is hereby Dismissed With Prejudice.

W. JAMES E. ELSON

Judge

APPROVED:



Charles L. Broadway, OBA# 11624
ATTORNEY FOR PLAINTIFF

FILED

DEC 26 1989

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

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

ADVANCE-UNITED EXPRESSWAYS,)
INC., Debtor-In-Possession,)
)
Plaintiff,)
)
vs.)
)
ANCHOR PAINT MFG., CO.,)
)
Defendant.)

No. 89-C-780 E

ORDER GRANTING DISMISSAL

NOW on this 21st day of December, 1989, the Joint Stipulation For Dismissal With Prejudice having been previously filed herein it is the finding of this court that the said cause of action should be Dismissed With Prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled cause of action be and is hereby Dismissed With Prejudice.

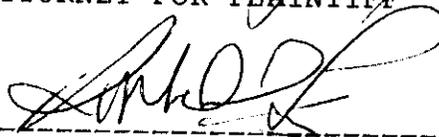
S/ JAMES O. ELISON

Judge

APPROVED:



Charles L. Broadway, OBA# 11624
ATTORNEY FOR PLAINTIFF



R. Michael Lang, OBA# 5219
ATTORNEY FOR DEFENDANT

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

T I L E D

NOV 21 1989

LESA A. PITTS,)
)
 Plaintiff,)
)
 vs.)
)
 TRI-STATE INSURANCE COMPANY,)
)
 Defendant.)

U.S. DISTRICT COURT

No. 89-C-419-B

ORDER OF DISMISSAL

NOW on this 20th day of Dec., 1989, upon the written application of the Plaintiff, Lesa A. Pitts, and the Defendant, Tri-State Insurance Company, for a Dismissal With Prejudice of the Complaint of Pitts v. Tri-State, and all causes of action therein, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of the parties and that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action therein, be and the same hereby are dismissed with prejudice to any future action.

S/ THOMAS R. BRETT

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

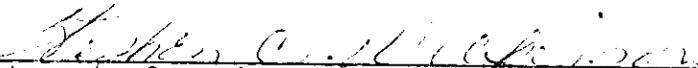
APPROVALS AS TO FORM AND CONTENT:

STEVEN R. HICKMAN



Attorney for the Plaintiff

STEPHEN C. WILKERSON



Attorney for the Defendant

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

ADVANCE-UNITED EXPRESSWAYS,)
INC., Debtor-In-Possession,)
)
Plaintiff,)
)
vs.)
)
EMPIRE FOUNDRY, INC.,)
)
Defendant.)

No. 89-C-782-B

ORDER GRANTING DISMISSAL

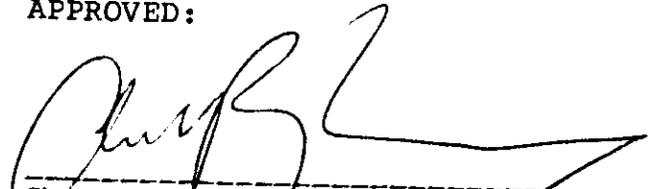
NOW on this 26 day of December, 1989, the Joint Stipulation For Dismissal With Prejudice having been previously filed herein it is the finding of this court that the said cause of action should be Dismissed With Prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled cause of action be and is hereby Dismissed With Prejudice.

S/ THOMAS R. BRETT

Judge

APPROVED:



Charles L. Broadway, OBA# 11624
ATTORNEY FOR PLAINTIFF



D. Kevin Ikenberry, OBA# 10354
ATTORNEY FOR DEFENDANT

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

JOHN F. KEENER and PATSY ANN,
KEENER, husband and wife,

Plaintiffs,

OKLAHOMA FARM BUREAU MUTUAL
INSURANCE COMPANY,

Intervenor,

vs.

ANDREW JAMES DUNCAN and STATE
FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendants.

FILED

DEC 26 1989

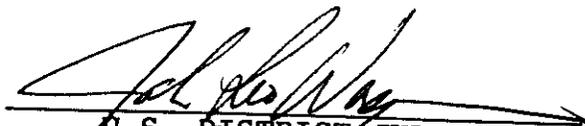
Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 89-C-80-C ✓

ORDER

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

SO ORDERED this 22nd day of December, 1989.


U.S. DISTRICT JUDGE
J.R. White

JAG:pm
11/27/89
5143.89

JMH/lc
12/13/89

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

FILED

DEC 22 1989

IN RE: ASBESTOS LITIGATION

JACK D. SILVER, CLERK
U.S. DISTRICT COURT
Master #1417S
ASB - TW # 1787

=====

BOBBY LEE BAUER, et al.,	)	No. 87-C-66-E
IRA ROY DENMAN, et al.,	)	No. 87-C-66-E
FRED FAULKNER, et al.,	)	No. 87-C-66-E
JOHN FREDRICK TYREE, and V. MAXINE TYREE, Plaintiff's Spouse,	)	No. 88-C-699-E
EVERETT ORVILLE HEMANN, and MARIAN M. HEMANN, Plaintiff's Spouse,	)	No. 88-C-701-E
DENNIS LLOYD EARP, and PEGGY EARP, Plaintiff's Spouse,	)	No. 88-C-704-B
RUFUS HOWARD HOLT, and LETHA L. HOLT, Plaintiff's Spouse,	)	No. 88-C-707-B
BILLY FRANKLIN WILLIAMS,	)	No. 88-C-716-B
JAY WILLIAM BLAIR, and MILDRED L. BLAIR, Plaintiff's Spouse,	)	No. 88-C-720-B
HOWARD RICHARD GREEN, and HELEN M. GREEN, Plaintiff's Spouse,	)	No. 88-C-706-C
JOHNNIE JUNIOR ENGLAND, and KATHRYN JANIE ENGLAND, Plaintiff's Spouse,	)	No. 88-C-709-C
Plaintiffs,)	
vs.)	
ANCHOR PACKING COMPANY, et al.,)	
Defendants.)	

ORDER GRANTING DISMISSAL OF DEFENDANT
OWENS-ILLINOIS, INC., WITH PREJUDICE TO
FILING FUTURE SUIT BY CERTAIN NAMED
PLAINTIFFS IN THE OKLAHOMA TIRE WORKER LITIGATION

ORDER (TIRE WORKERS) GRANTING
DISMISSAL OF DEFENDANT OWENS-ILLINOIS, INC.,
WITH PREJUDICE TO FILING FUTURE SUIT BY CERTAIN
NAMED PLAINTIFFS IN THE OKLAHOMA TIRE WORKER LITIGATION

The Court being in receipt of the Joint Application of Plaintiffs and Defendant Owens-Illinois, Inc., requesting of the Court an approval of the dismissal of Defendant Owens-Illinois, Inc., with prejudice from the following cases:

1. Bauer, et al., v. Anchor Packing Co., et al., No. 87-C-66-E.
2. Faulkner, et al., v. Anchor Packing Co., et al., No. 87-C-66-E.
3. Denman, et al., v. Anchor Packing Co., et al., No. 87-C-66-E.
4. Jonn Fredrick Tyree, and V. Maxine Tyree, Plaintiff's Spouse v. Anchor Packing Co., et al., No. 88-C-699-E.
5. Everett Orville Hemann, and Marian M. Hemann, Plaintiff's Spouse v. Anchor Packing Co., et al., No. 88-C-701-E.
6. Dennis Lloyd Earp, and Peggy Earp, Plaintiff's Spouse, v. Anchor Packing Co., et al., No. 88-C-704-B.
7. Rufus Howard Holt, and Letha L. Holt, Plaintiff's Spouse v. Anchor Packing Co., et al., No. 88-C-707-B.
8. Billy Franklin Williams v. Anchor Packing Co., et al., No. 88-C-716-B.
9. Jay William Blair, and Mildred L. Blair, Plaintiff's Spouse v. Anchor Packing Co., et al., No. 88-C-720-B.
10. Howard Richard Green, and Helen M. Green, Plaintiff's Spouse v. Anchor Packing Co., et al., No. 88-C-706-C.
11. Johnnie Junior England, and Kathryn Janie England, Plaintiff's Spouse v. Anchor Packing Co., et al., No. 88-C-709-C.

And being fully advised in the premises,

IT IS HEREBY ORDERED:

that the joint application of Plaintiffs and Defendant Owens-Illinois, Inc., is granted. The Court finds that Defendant Owens-Illinois, Inc., should be dismissed with prejudice to filing future suit and it is ordered by the Court that Defendant Owens-Illinois, Inc., is hereby dismissed as party Defendant from the cases set forth above with prejudice to refiling suit.

It is further ordered by the Court that each party will be responsible for its own costs, attorney fees, and any other expenses incurred by the parties that pertain to this litigation.

Approved as to Form:

UNITED STATES DISTRICT JUDGE

James M. Hays, III - OBA #4016
Attorney for Plaintiffs

UNITED STATES DISTRICT JUDGE

John F. McCormick
Attorney for Defendant,
Owens-Illinois, Inc.

UNITED STATES DISTRICT JUDGE

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

FILED
DEC 21 1989
Jack C. Silver, Clerk
U.S. DISTRICT COURT

RIVER VALLEY SAVINGS BANK,)
)
Plaintiff,)
)
vs.)
)
MAX A. HEIDENREICH,)
)
Defendant.)

Case No. 89-C-258-B ✓

ADMINISTRATIVE CLOSING ORDER

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

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

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


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

92
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Entered
FILED

DEC 22 1980 *pd -*

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL ACTION NO. 88-C-655-C ✓

TWO PARCELS OF REAL PROPERTY
WITH BUILDINGS, APPURTENANCES,
AND IMPROVEMENTS, KNOWN AS
802 W. OVERLOOK DRIVE,
SAND SPRINGS, OKLAHOMA;

and

ONE PARCEL OF REAL PROPERTY
WITH BUILDINGS, APPURTENANCES,
AND IMPROVEMENTS, KNOWN AS
3403 RAWSON ROAD,
SAND SPRINGS, OKLAHOMA;

and

ONE PARCEL OF REAL PROPERTY
WITH BUILDINGS, APPURTENANCES,
AND IMPROVEMENTS, KNOWN AS
4921 W. EIGHTH STREET,
TULSA, OKLAHOMA;

and

ONE PARCEL OF REAL PROPERTY
WITH BUILDINGS, APPURTENANCES,
AND IMPROVEMENTS, KNOWN AS
413 NORTH ROOSEVELT,
SAND SPRINGS, OKLAHOMA;

and

ONE PARCEL OF REAL PROPERTY
WITH BUILDINGS, APPURTENANCES,
AND IMPROVEMENTS, KNOWN AS
505 GARFIELD,
SAND SPRINGS, OKLAHOMA;

and

ONE PARCEL OF REAL PROPERTY
WITH BUILDINGS, APPURTENANCES,
AND IMPROVEMENTS, KNOWN AS
509 GARFIELD,
SAND SPRINGS, OKLAHOMA;

and

TWO PARCELS OF REAL PROPERTY
WITH BUILDINGS, APPURTENANCES,
AND IMPROVEMENTS, KNOWN AS
402 GRANT,
SAND SPRINGS, OKLAHOMA,

Defendants.

19

AMENDED JUDGMENT OF FORFEITURE

This cause having come before this Court upon plaintiff's Application for Amended Judgment of Forfeiture, and being otherwise fully apprised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that judgment be entered against the following-described defendant properties:

- a) The East 168' of the West 336' of the N/2 of the NE/4 of the NW/4 Section 15, Township 20 North, Range 11 East of the Indian Base and Meridian, Osage County, Oklahoma, containing 2.548 acres, more or less,

and

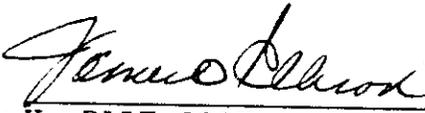
The West 168' of the N/2 of the NE/4 of the NW/4 of Section 15, Township 20 North, Range 11 East of the Indian Base and Meridian, Osage County, Oklahoma, containing 2.548 acres, more or less, all also known as 802 West Overlook Drive, Sand Springs, Osage County, Oklahoma;

and

- b) Lot Fourteen (14) and the South Ten Feet of Lot Fifteen (15), Block Twenty-two (22), Original Town of Sand Springs, Tulsa County, Oklahoma, a/k/a 413 North Roosevelt, Sand Springs, Oklahoma,

and against all persons interested in such properties, except Indian Oaks, Inc., and that the said properties be, and the same

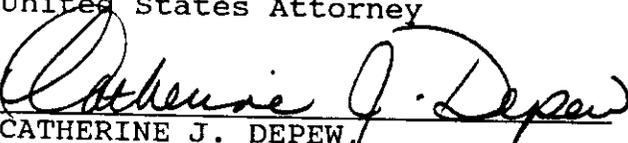
hereby are, forfeited to the United States of America for disposition by the United States Marshal according to law, and that Indian Oaks, Inc. be paid the outstanding balance of its mortgage, including interest, from the proceeds of the sale of 802 Overlook Drive, Sand Springs, Oklahoma.


for: H. DALE COOK,
Chief United States District Judge

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


CATHERINE J. DEPEW,
Assistant United States Attorney

00440

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

Aetna Casualty and Surety Company, a
Connecticut corporation,

Plaintiff,

vs.

James J. Wasson, et al.,

Defendants.

SEP 29 1988

CLERK
DISTRICT COURT

No. 88-C1592-C

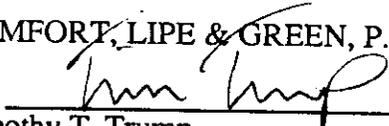
**NOTICE OF DISMISSAL OF JIM BOWLES AND WOOLSEY & COMPANY WITH
PREJUDICE BY STIPULATION OF ALL PARTIES**

In accordance with Rule 41 (a)(1)(ii), all parties who have appeared in this action hereby stipulate to dismissal of Jim Bowles and Woolsey & Company with prejudice.

Aetna Casualty and Surety Company acknowledges that it has received no money or promise of money from Jim Bowles or from Woolsey & Company as a consideration for its stipulation to this dismissal with prejudice.

Approved:

COMFORT, LIPE & GREEN, P.C.

By: 

Timothy T. Trump

Comfort, Lipe & Green, P.C.

2100 Mid-Continent Tower

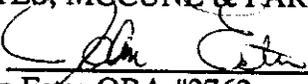
401 South Boston

Tulsa, Oklahoma 74103

(918) 599-9400

Attorneys for Aetna Casualty & Surety
Company

STIPE, GOSSETT, STIPE, HARPER,
ESTES, MCCUNE & PARKS

By: 

John Estes OBA #2762

Stipe, Gossett, Stipe, Harper, Estes,
McCune & Parks

P.O. Box 53567

Oklahoma City, Oklahoma 73152

(405) 524-2268

Attorneys for James J. Wasson

KIMBALL, WILSON, WALKER &
FERGUSON

By: 

Thomas Ferguson OBA #2878

Kimball, Wilson, Walker & Ferguson

301 N.W. 63rd, Suite 400

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Attorneys for Melvin B. Pulliam and the
Oklahoma City Finance Company Employee
Pension Trust



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Attorneys for Jim Bowles and Woolsey &
Company

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

11 22 103
D. S. SILVER, CLERK
DISTRICT COURT

Aetna Casualty and Surety Company, a)
Connecticut corporation,)
)
Plaintiff,)
)
vs.)
)
James J. Wasson, et al.,)
)
Defendants.)

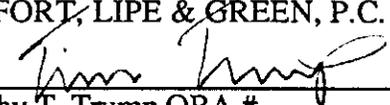
No. 88-C1592-C

**NOTICE OF DISMISSAL OF MELVIN B. PULLIAM AND THE OKLAHOMA CITY
FINANCE COMPANY EMPLOYEE PENSION TRUST WITH PREJUDICE BY
STIPULATION OF ALL PARTIES**

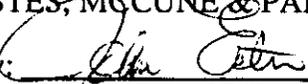
In accordance with Rule 41 (a)(1)(ii), all parties who have appeared in this action hereby stipulate to dismissal of Melvin B. Pulliam and the Oklahoma City Finance Company Employee Pension Trust with prejudice.

Approved:

COMFORT, LIPE & GREEN, P.C.

By: 
Timothy T. Trump OBA #
Comfort, Lipe & Green, P.C.
2100 Mid-Continent Tower
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STIPE, GOSSETT, STIPE, HARPER,
ESTES, MCCUNE & PARKS

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Stipe, Gossett, Stipe, Harper, Estes,
McCune & Parks
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FERGUSON

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Attorneys for Jim Bowles and Woolsey &
Company

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

vs.)

LOCAL 798 OF THE UNITED)
ASSOCIATION OF JOURNEYMEN AND)
APPRENTICES OF THE PLUMBING)
AND PIPE FITTING INDUSTRY)
OF THE U.S. AND CANADA,)
AFL-CIO,)

Defendant.)

CIVIL ACTION NO. 84-C-730-C
H. DALE COOK, CHIEF
UNITED STATES DISTRICT
JUDGE

ORDER DIRECTING PAYMENT OF CLAIMS

This matter is before the Court on the parties' Joint Application for an Order Directing Payment of Claims pursuant to Section III(J)(14) of the Consent Decree between the parties entered by this Court on April 21, 1988. The requested Order is sought in order that a settlement fund established under the Decree be distributed to bona fide claimants under the terms of the Decree.

In accordance with the Consent Decree, and after full consideration of this matter, it is hereby ORDERED that the awards of back pay and interest to all of the bona fide claimants listed in Attachment A to this Order, incorporated herein by reference, who have heretofore signed Release of

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Claim forms, are hereby approved and payment be made of the designated amounts less all appropriate withholdings and any membership initiation fees which may be due to the Union.

SO ORDERED this 22 day of December, 1989.



H. DALE COOK
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

Entered

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

vs.)

LOCAL 798 OF THE UNITED)
ASSOCIATION OF JOURNEYMEN)
AND APPRENTICES OF THE)
PLUMBING AND PIPE FITTING)
INDUSTRY OF THE U.S. AND)
CANADA, AFL-CIO,)

Defendant.)

APR 23 1989

H. Cook

CIVIL ACTION NO. 84-CV-730-C

H. DALE COOK, CHIEF

UNITED STATES DISTRICT JUDGE

ORDER DENYING APPEAL BY JONATHAN ARTIS

This matter is before the Court on the parties' joint motion to determine an appeal by Jonathan Artis pursuant to Section III(J)(10) of the Consent Decree between the parties, entered by this Court on April 21, 1988. The requested Order is sought to finally determine an appeal by Mr. Artis from the determination by the EEOC that his claim for back pay under the Consent Decree is "unmeritorious".

In accordance with the Consent Decree, and after full consideration of this matter, it is hereby ORDERED that Mr. Artis' appeal from EEOC's determination is denied and he is not eligible to receive an award of back pay or any other individual relief under the Decree. Mr. Artis failed to provide the necessary information on his claim form to

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support his assertions that he had been discriminated against by Local 798 in membership or that he had ever attempted to obtain membership in Local 798 as a welder helper or downhill welder as he claims.

Pursuant to the terms of the Decree, the determination of this Court is final and binding and Mr. Artis shall have no right to appeal.

SO ORDERED this 21 day of Dec., 1989.



H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

FILED

DEC 22 1989

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

ADVANCE-UNITED EXPRESSWAYS,)
INC., Debtor-In-Possession,)
)
Plaintiff,)
)
vs.)
)
D-A LUBRICANT COMPANY, INC.,)
)
Defendant.)

No. 89-C-781 B ✓

ORDER GRANTING DISMISSAL

NOW on this 22nd day of December, 1989, the Joint Stipulation For Dismissal With Prejudice having been contemporaneously filed herein, it is the finding of this court that the said cause of action should be Dismissed With Prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled cause of action be and is hereby Dismissed With Prejudice.



Judge

JMH/lc
12/13/89

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

FILED

DEC 22 1989

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

IN RE: ASBESTOS LITIGATION

) Master #1417

) ASB - TW # 1789

=====

BOBBY LEE BAUER, et al.,	)	No. 87-C-66-E
IRA ROY DENMAN, et al.,	)	No. 87-C-66-E
FRED FAULKNER, et al.,	)	No. 87-C-66-E
JOHN FREDRICK TYREE, and V. MAXINE TYREE, Plaintiff's Spouse,	)	No. 88-C-699-E
EVERETT ORVILLE HEMANN, and MARIAN M. HEMANN, Plaintiff's Spouse,	)	No. 88-C-701-E
DENNIS LLOYD EARP, and PEGGY EARP, Plaintiff's Spouse,	)	No. 88-C-704-B
RUFUS HOWARD HOLT, and LETHA L. HOLT, Plaintiff's Spouse,	)	No. 88-C-707-B
BILLY FRANKLIN WILLIAMS,	)	No. 88-C-716-B
JAY WILLIAM BLAIR, and MILDRED L. BLAIR, Plaintiff's Spouse,	)	No. 88-C-720-B
HOWARD RICHARD GREEN, and HELEN M. GREEN, Plaintiff's Spouse,	)	No. 88-C-706-C
JOHNNIE JUNIOR ENGLAND, and KATHRYN JANIE ENGLAND, Plaintiff's Spouse,	)	No. 88-C-709-C
Plaintiffs,)	
vs.)	
ANCHOR PACKING COMPANY, et al.,)	
Defendants.)	

ORDER GRANTING DISMISSAL OF DEFENDANT
OWENS-ILLINOIS, INC., WITH PREJUDICE TO
FILING FUTURE SUIT BY CERTAIN NAMED
PLAINTIFFS IN THE OKLAHOMA TIRE WORKER LITIGATION

1789

ORDER (TIRE WORKERS) GRANTING
DISMISSAL OF DEFENDANT OWENS-ILLINOIS, INC.,
WITH PREJUDICE TO FILING FUTURE SUIT BY CERTAIN
NAMED PLAINTIFFS IN THE OKLAHOMA TIRE WORKER LITIGATION

The Court being in receipt of the Joint Application of Plaintiffs and Defendant Owens-Illinois, Inc., requesting of the Court an approval of the dismissal of Defendant Owens-Illinois, Inc., with prejudice from the following cases:

1. Bauer, et al., v. Anchor Packing Co., et al., No. 87-C-66-E.
2. Faulkner, et al., v. Anchor Packing Co., et al., No. 87-C-66-E.
3. Denman, et al., v. Anchor Packing Co., et al., No. 87-C-66-E.
4. Jonn Fredrick Tyree, and V. Maxine Tyree, Plaintiff's Spouse v. Anchor Packing Co., et al., No. 88-C-699-E.
5. Everett Orville Hemann, and Marian M. Hemann, Plaintiff's Spouse v. Anchor Packing Co., et al., No. 88-C-701-E.
6. Dennis Lloyd Earp, and Peggy Earp, Plaintiff's Spouse, v. Anchor Packing Co., et al., No. 88-C-704-B.
7. Rufus Howard Holt, and Letha L. Holt, Plaintiff's Spouse v. Anchor Packing Co., et al., No. 88-C-707-B.
8. Billy Franklin Williams v. Anchor Packing Co., et al., No. 88-C-716-B.
9. Jay William Blair, and Mildred L. Blair, Plaintiff's Spouse v. Anchor Packing Co., et al., No. 88-C-720-B.
10. Howard Richard Green, and Helen M. Green, Plaintiff's Spouse v. Anchor Packing Co., et al., No. 88-C-706-C.
11. Johnnie Junior England, and Kathryn Janie England, Plaintiff's Spouse v. Anchor Packing Co., et al., No. 88-C-709-C.

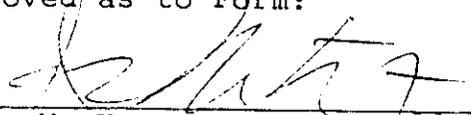
And being fully advised in the premises,

IT IS HEREBY ORDERED:

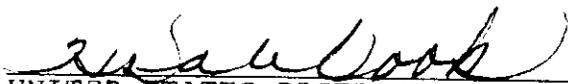
that the joint application of Plaintiffs and Defendant Owens-Illinois, Inc., is granted. The Court finds that Defendant Owens-Illinois, Inc., should be dismissed with prejudice to filing future suit and it is ordered by the Court that Defendant Owens-Illinois, Inc., is hereby dismissed as party Defendant from the cases set forth above with prejudice to refiling suit.

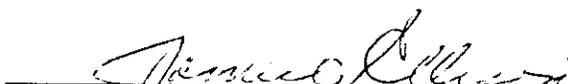
It is further ordered by the Court that each party will be responsible for its own costs, attorney fees, and any other expenses incurred by the parties that pertain to this litigation.

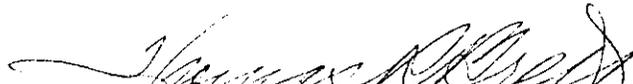
Approved as to Form:


James M. Hays, III - OBA/#4016
Attorney for Plaintiffs


John F. McCormick
Attorney for Defendant,
Owens-Illinois, Inc.


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

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

FILED

DEC 2 1989 dt

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

FEDERAL DEPOSIT INSURANCE CORPORATION,)
acting in its corporate capacity as successor to)
The Citizens Bank, Drumright, Oklahoma; FEDERAL)
FEDERAL DEPOSIT INSURANCE CORPORATION,)
acting in its corporate capacity as successor to)
First State Bank, Oilton, Oklahoma; FEDERAL DEPOSIT)
INSURANCE CORPORATION, acting in its capacity)
as Liquidating Agent of United Services Bank,)
Hartshorne, Oklahoma,)

Plaintiffs,)

vs.)

Case No. 89-C-965-E ✓

FREDDIE K. SALIBA, an individual; CECILIA A.)
SALIBA, an individual; TANYA SALIBA, an individual;)
ANGELA SALIBA, an individual; FREDDIE'S SALES &)
SERVICE, INC., an Oklahoma corporation; DENNI)
ENTERPRISES, Inc., an Oklahoma corporation;)
RON LINK, an individual,)

Defendants.)

JUDGMENT BY DEFAULT

This matter comes on before the Court this 22nd day of December, 1989. Plaintiffs, Federal Deposit Insurance Corporation, acting in its corporate capacity as successor to the Citizens Bank, Drumright, Oklahoma ("FDIC/Citizens"), Federal Deposit Insurance Corporation, acting in its corporate capacity as successor to First State Bank, Oilton, Oklahoma ("FDIC/Oilton") and Federal Deposit Insurance Corporation, acting in its capacity as Liquidating Agent of United Services Bank, Hartshorne, Oklahoma ("FDIC/Hartshorne"), are represented by their counsel, Robert S. Glass of Gable & Gotwals, Inc. The Defendants, Freddie's Sales and Services, Inc. ("Freddie's Sales") and Denni Enterprises, Inc. ("Denni"), have failed to timely appear herein or otherwise plead, and default has been entered against them pursuant to Fed. R. Civ. P. 55 and Local Rule 23 by the Court Clerk. FDIC/Citizens, FDIC/Oilton and FDIC/Hartshorne are entitled to judgment against Freddie's Sales and Denni in the sums hereinbelow stated,

RSG/12-89507

14

plus interest accruing thereon at the rate of 7.66% per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full, together with all costs of this action, including reasonable attorney's fees in the sum of \$2,000.00 and all accruing collection costs. The Court makes the following FINDINGS:

1. This Court has jurisdiction over the subject matter and the parties hereto and Defendants, Freddie's Sales and Denni, are in default in these proceedings.

2. All of the allegations of Plaintiffs' Complaint, Count II, Count III, Count XII and Count XIII, are true and correct and Plaintiffs are entitled to default judgment under their respective Counts against the Defendants, Freddie's Sales and Denni, and each of them, as follows:

A. On its Count II, FDIC/Citizens is entitled to judgment against Freddie's Sales in the aggregate sum of \$140,897.84, calculated as of November 22, 1989, together with all other charges, expenses, attorneys' fees and accrued and accruing interest at the rate of 19.0% per annum to the date of this Judgment, and interest shall accrue on the unpaid indebtedness from the date of this Judgment at the rate of 7.66% per annum until paid in full.

B. On its Count III, FDIC/Citizens is entitled to judgment against Freddie's Sales in the aggregate sum of \$443,670.17, calculated as of November 22, 1989, together with all other charges, expenses, attorneys' fees and accrued and accruing interest at the rate of 17.5% per annum to the date of this Judgment, and interest shall accrue on the unpaid indebtedness at the rate of 7.66% per annum from the date of this Judgment until paid in full.

C. On its Count XII, FDIC/Oilton is entitled to judgment against Denni in the aggregate sum of \$30,957.44, calculated as of November 22, 1989, together with all other charges, expenses, attorneys' fees and accrued and accruing interest at the

rate of 13.0% per annum to the date of this Judgment, and interest shall accrue on the unpaid indebtedness from the date of this Judgment at the rate of 7.66% per annum until paid in full.

D. On its Count XIII, FDIC/Hartshorne is entitled judgment against Denni in the aggregate sum of \$238,382.23, calculated as of November 22, 1989, together with all other charges, expenses, attorneys' fees and accrued and accruing interest at the rate of 17.0% per annum to the date of this Judgment, and interest shall accrue on the unpaid indebtedness from the date of this Judgment at the rate of 7.66% per annum until paid in full; and the FDIC/Hartshorne Note I Mortgage (described in the Complaint, paragraph 94) may be foreclosed by FDIC/Hartshorne and the lien created by the recordation of the FDIC/Hartshorne Note I Mortgage is declared a valid lien encumbering the FDIC/Hartshorne I Collateral (described in the Complaint, paragraph 94) prior and superior to the interests of Denni and all persons and entities claiming under it; that FDIC/Hartshorne is entitled to the issuance of an Order of Special Execution and Sale which shall be issued commanding either the United States Marshal for the Northern District of Oklahoma or the Sheriff of Creek County, Oklahoma, at FDIC/Hartshorne's sole election, to advertise and sell upon execution the FDIC/Hartshorne Note I Collateral; and that the proceeds from the sale shall be applied to the payment of:

- (i) first, all costs, including attorneys' fees incurred by FDIC/Hartshorne in connection with this action;
- (ii) second, the judgment of FDIC/Hartshorne under Count XIII;
- (iii) third, that the balance if any remaining, be paid into this Court;

and that Denni and all persons and entities claiming under it shall be barred, restrained and enjoined from having or asserting any right, title, interest or right of redemption in or against the FDIC/Hartshorne Note I Collateral; and that the

purchaser at sale shall be entitled to the issuance of a Writ of Assistance.

IT IS THEREFORE ORDERED and DECREED by this Court that FDIC/Citizens, FDIC/Oilton and FDIC/Hartshorne shall recover of and from the Defendants, Freddie's Sales and Denni, and each of them, under their respective Counts the amounts set forth above; and that interest shall accrue thereon from the date of this Judgment at the rate of 7.66% per annum, pursuant to 28 U.S.C. §1961, until paid in full, together with all costs of this action, including attorneys' fees in the sum of \$2,000.00 and all accruing collection costs, for all of which general and special execution shall issue.

IT IS SO ORDERED.



Jack Silver, Court Clerk
United States District Court
Northern District of Oklahoma

APPROVED FOR ENTRY:



Robert S. Glass (OBA #10824)
Counsel for Plaintiffs,
Federal Deposit Insurance Corporation,
acting in various capacities

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

DEC 2 1989 *JA*

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

EASTMAN KODAK COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 BARBARA COLLIER d/b/a)
 SPEEDPRINT #13,)
)
 Defendant, Third Party Plaintiff,)
)
 vs.)
)
 SPEEDPRINT SYSTEMS, INC.,)
)
 Third Party Defendant.)

No. 88-C-1614-B ✓

JOURNAL ENTRY OF JUDGMENT (PLAINTIFF'S PROPOSED)

Pursuant to its order of October 4, 1989, granting a summary judgment in favor of the Plaintiff, Eastman Kodak Company, against the Defendant, Barbara Collier d/b/a Speedprint #13, the Court finds as follows:

The Defendant, Speedprint #13, is indebted to the Plaintiff, Eastman Kodak Company, in the amount of \$14,161.31 as a result of default on a sales agreement, and the Defendant, Barbara Collier d/b/a Speedprint #13, owes the Plaintiff \$4,786.06 by reason of default on an Equipment Maintenance Agreement and the Defendant, Barbara Collier d/b/a Speedprint #13, owes the Plaintiff, Eastman Kodak Company, \$8,200.00 as a result of default on a Promissory Note.

Therefore the Court finds the Defendant, Barbara Collier d/b/a Speedprint #13 is indebted to the Plaintiff, Eastman

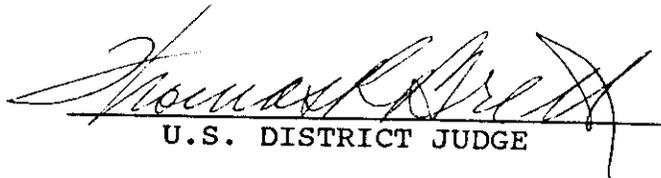
Kodak Company, in the amount of \$28,147.33 upon which the Court finds it should grant judgment in favor of the Plaintiff and against the Defendant.

Further, the Court finds that the contractual rate of interest on the sales agreement is 10.5% and the contractual rate of interest on the maintenance agreement is 10.5% and there is no stated rate of interest on the promissory note.

Therefore the Court finds that the Defendant owes the Plaintiff interest from the time of default to time of judgment of 10.5% on \$18,947.37 for a total interest charge of \$2,486.84 to date of judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, Eastman Kodak Company, have and is hereby granted a money judgment against the Defendant, Barbara Collier d/b/a Speedprint #13 in the amount of \$30,634.21.

DATED this 21st day of Dec, 1989.


U.S. DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8 day of December, 1989, a true and correct copy of the above and foregoing Plaintiff's Proposed Journal Entry of Judgment was placed in the U.S. Mail, postage prepaid, addressed to Kenneth V. Tood, Attorney at Law, 2727 East 21st Street, Suite 101, Tulsa, Oklahoma 74114, attorney for Defendant

Barbara Collier d/b/a Speedprint #13; to Kevin M. Abel of the firm Pray, Walker, Jackman, Williamson & Marlad, 900 Oneok Plaza, Tulsa, Oklahoma 74103, attorneys for Speedprint Systems, Inc.; and to Vicki Winn Martin of the firm Smith, Debnam, Hibbert & Pahl, P. O. Drawer 26268, Raleigh, North Carolina 27611.


Thomas F. Birmingham

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

FILED
11 1 88
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DONNA KAY SEXTON and ROBERT D.)
SEXTON, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
CONTINENTAL CASUALTY COMPANY,)
d/b/a CNA,)
)
Defendant.)

No. 88-C-1472-B

ORDER OF CERTIFICATION

Pursuant to 20 Okla.St. Ann. § 1601 et seq., the Court hereby certifies to the Oklahoma Supreme Court the following question of law:

"Whether an insurer's prior denial of the insured's uninsured motorist coverage claim operates to estop that insurer from later invoking the Porter doctrine's protection against destruction of its subrogation rights."

On two occasions, the Oklahoma Supreme Court has specifically declined to address whether the denial of a claim by the insurer takes the claim out of the operation of the Porter doctrine. Uptegraft v. Home Insurance Co., 662 P.2d 681 (Okla. 1983); Frey v. Independence Fire and Casualty Co., 698 P.2d 17 (Okla. 1985). This case appears to fall within that narrow area of unsettled law.

¹Porter v. MFA Mutual Insurance Co., 643 P.2d 302, 305 (Okla. 1982).

The parties have stipulated to the facts in ¶¶ 1-17 and the Court adopts Plaintiff's additional material facts in ¶¶ 18-19.

1. For the period of December 31, 1984 to December 31, 1985, defendant insurance company issued a Business Auto Policy contract (BUA 001-70-08-30) to Avis Rent-A-Car Systems, Inc. insuring Avis' fleet of rental vehicles for liability personal injury with limits of \$100,000 per person and \$300,000 per accident. This policy was renewed for the period of December 31, 1985 to December 31, 1986.

2. Avis Rent-A-Car Systems, Inc. signed a rejection of uninsured motorist coverage on the initial policy period.

3. On January 5, 1986, Cecil Southern rented a 1985 Chevrolet station wagon from Avis Rent-A-Car System, Inc. at Tulsa, Oklahoma, which vehicle was covered by said insurance policy. The vehicle was to be returned on January 12, 1986.

4. Additional authorized drivers were Barbara Howell, Plaintiff Donna Sexton, and Robert Stech.

5. Avis Rent-A-Car offered in their lease contract "Personal Accident Insurance" (med pay) for an additional charge, which was accepted.

6. Liability insurance in the amounts of \$100,000 per person and \$300,000 per accident for bodily injury was included in the rental agreement for no additional charge above the base rate of the auto rental.

7. Neither the defendant nor any person on behalf of Avis Rent-A-Car offered plaintiffs, Howell, or any other person renting the 1985 Chevrolet station wagon owned by Avis Rent-A-Car System,

Inc., any uninsured/underinsured motorist insurance coverage.

8. On January 6, 1986, at approximately 5:40 p.m., Barbara Howell was driving said station wagon rented from and owned by Avis Rent-A-Car Systems, Inc., on Interstate 40 in the State of New Mexico. An accident occurred at that time in which passenger/Plaintiff Donna Kay Sexton was injured.

9. The negligence of Barbara Howell caused or contributed to the injuries sustained by Donna Sexton.

10. At the time of the collision, said policy of insurance covered said station wagon.

11. The damages sustained by the parties in the accident of January 6, 1986, exceeded the liability coverage afforded by the policy issued by defendant and covering the 1985 Chevrolet station wagon being driven by Barbara Howell at the time of the accident, and all of said liability insurance monies have been exhausted. Defendant paid all injured parties the total of \$300,000.00.

12. Plaintiffs have recovered the sum of \$97,250.00 from defendant's policy of insurance issued to Avis Rent-A-Car System, Inc. and covering the 1985 Chevrolet station wagon driven by Barbara Howell.

13. The release attached as Exhibit "A" to defendant's Answer was prepared by an attorney retained by Avis Rent-A-Car System, Inc.

14. Neither defendant nor Avis Rent-A-Car System, Inc. has paid plaintiffs any sum of money other than their share of the \$300,000 liability bodily injury policy limits.

15. That Barbara Howell owned only one vehicle at the time of the collision on January 6, 1986, that being a 1968 Oldsmobile 98, which was covered on that date by a single liability insurance policy (No. A859463-C01) issued from Farmers & Merchants Insurance Company with liability coverage of \$10,000.00 per person.

16. That plaintiffs received the sum of \$10,000.00 from Farmers & Merchants Insurance Company's liability policy issued to Barbara Howell.

17. Plaintiffs made demand on defendant and cited the Moon v. Guarantee Insurance Co., 764 P.2d 1331 (Okla. 1988), but defendant refused payment prior to the filing of this suit.

18. Defendant CNA denied any UM coverage, and, accordingly, denied plaintiffs' UM claim prior to the date the release was signed.

19. At all times material hereto, Avis Rent-A-Car System was acting on behalf of defendant CNA in distributing the \$300,000.00 liability policy limit.

The Court made the following additional findings:

1. The Release, attached as Exhibit A to Defendant's Answer, signed by Donna Kay Sexton and her attorney, John L. Harlan, but not signed by her husband, Robert D. Sexton, on its face, discharges the driver of the automobile, Barbara Howell, and Avis Rent-A-Car from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation, on account of, or in any way growing out of, any and

all known and unknown personal injuries and property damage resulting or to result from the accident.

2. Barbara Howell's negligence caused or contributed to the accident, but was not necessarily the sole cause of the accident.

3. Avis' attorney did not negotiate the distribution of the insurance proceeds among the claimants, but merely prepared the Release pursuant to an agreement among all of the claimants.

4. Although the total damages from all claimants may have exceeded the policy limits, there is no stipulation that Plaintiffs' damages exceeded \$107,250.²

5. Plaintiff Donna Kay Sexton and her attorney made demand upon Avis Rent-A-Car for Uninsured Motorist liability before the release was signed. At the time Plaintiff Donna Sexton and her attorney executed the release, they knew or should have known of a potential uninsured motorist claim and failed to include any reservation in the release.

6. The Uninsured and Underinsured Motorist Insurance Waiver executed between CNA and Avis specifically recognizes that such a waiver is effective only in those states which allow a rejection of uninsured / underinsured motorist coverage.

7. The car rental agreement executed between Avis and Plaintiff Donna Kay Sexton contains standardized language on the

²While it is clear that Robert D. Sexton did not sign the release, Undisputed Fact 12 indicates "Plaintiffs" received \$97,250. This indicates that Plaintiff Robert D. Sexton received some of the settlement proceeds. Although the amount of the proceeds which Robert D. Sexton received is unknown, it has no effect on the fact that he did not sign the release.

reverse side of the agreement which provides:

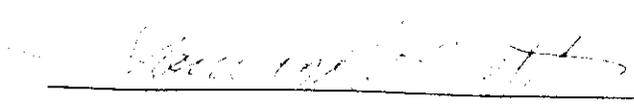
"... I understand that you will not provide supplementary, optional or uninsured motorist coverages and you and I reject such other coverages *to the extent permitted by law. ...*"

Renters are not given the opportunity to accept uninsured / underinsured motorist's coverage.

8. At the time Avis denied Plaintiff Donna Sexton uninsured motorist coverage, the Oklahoma Supreme Court had not decided the case of Moon v. Guarantee Insurance Co., 764 P.2d 1331 (Okla. 1988).

Plaintiff asserts that an insurance company should be estopped from claiming that its subrogation rights have been destroyed when an injured party executes a release after the insurance company has denied liability. Defendants argue this case falls squarely within the rationale of Porter v. MFA Mutual Insurance Co., 643 P.2d 302 (Okla. 1982), and that Donna Kay Sexton's general release of the tortfeasor destroyed any subrogation claims the insurance carrier may have had, and that Plaintiffs are not entitled to any additional proceeds.

DATED, this 21st day of December, 1989.



THOMAS R. BRET
UNITED STATES DISTRICT JUDGE

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

FILED

DEC 2 1989

DONNA KAY SEXTON and ROBERT D.)
SEXTON, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
CONTINENTAL CASUALTY COMPANY,)
d/b/a CNA,)
)
Defendant.)

W. C. [unclear], Clerk
U.S. DISTRICT COURT

No. 88-C-1472-B

ORDER VACATING IN PART
FINDINGS OF FACTS AND CONCLUSIONS OF LAW

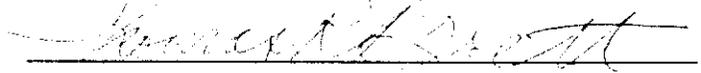
Currently before the Court is Plaintiff Donna Kay Sexton's Application for a Certification Order to the Oklahoma Supreme Court pursuant to 20 Okla. Stat. §1601 et seq.

In its Findings of Fact and Conclusions of Law filed June 30, 1989, the Court specifically relied upon Porter v. MFA Mutual Insurance Co., 643 P.2d 302 (Okla. 1982) to deny Plaintiff's claim for additional insurance proceeds. Upon further consideration, the Court concludes an answer to a certified question would resolve a narrow area of unsettled law and would be dispositive to the issues in this controversy.

Therefore, the Court's Findings of Fact and Conclusions of Law are vacated insofar as they relate to Donna Kay Sexton's claim against Defendant CNA for uninsured / underinsured motorist coverage. The Findings of Fact and Conclusions of Law are not vacated with regard to Plaintiffs' claim for bad faith denial of insurance coverage or Robert D. Sexton's claim for insurance

proceeds.

IT IS SO ORDERED, this 21st day of December, 1989.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

LATRICIA GERHARDT, now Heape,)	
)	
Plaintiff,)	
)	
vs.	)	No. 89-C-069-E
)	
FORD MOTOR CREDIT COMPANY,)	
a corporation,)	
)	
Defendant.)	

JOURNAL ENTRY OF JUDGMENT

THIS MATTER comes on for hearing and review of the Motion for Summary Judgment filed herein by Ford Motor Credit Company on this 29th day of November, 1989; and the Court having examined the Memorandum Brief filed in support of the Motion for Summary Judgment by Ford Motor Credit Company and the Response filed by the Plaintiff against the Motion for Summary Judgment; and being fully advised in all premises finds that the Motion for Summary Judgment of Ford Motor Credit Company be and the same is hereby granted.

IT IS THEREFORE the order and judgment of the Court that Defendant, Ford Motor Credit Company, have judgment against the Plaintiff on all issues and that the Defendant, Ford Motor Credit Company, be discharged herewith, with its costs.

UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:



Earl W. Wolfe
Suite 123, Hartford Bldg.
110 South Hartford
Tulsa, Oklahoma 74120-1834
Attorney for Plaintiff



Thomas G. Marsh
MARSH, SHACKLETT & FEARS, P.C.
525 South Main, Suite 201
Tulsa, Oklahoma 74103
(918) 587-0141
Attorney for Defendant

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

THOMAS H. VIUF, and DEBORAH JON VIUF,)
husband and wife,)
)
Plaintiffs,)
)
vs.) No. 87-C-442-E
)
THE TRAVELERS INDEMNITY COMPANY,)
)
Defendant.)

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to plaintiffs' motion, the Court hereby dismisses with prejudice plaintiffs' complaint and the actions therein alleged, with each party to suffer their own costs, expenses and attorney fees.

Entered: *December*
~~November~~ 20, 1989.

[Signature]

United States District Judge

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

FILED
DEC 21 1989

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

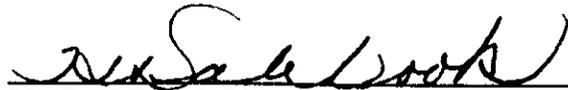
THURMAN L. ROWE,)
)
 Plaintiff,)
)
 vs.) No. 89-C-332-C
)
 PUBLIC SERVICE COMPANY)
 OF OKLAHOMA,)
)
 Defendant.)

J U D G M E N T

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for Public Service Company and against Thurman L. Rowe on plaintiff's claims under Title VII of the 1964 Civil Rights Act, and the state law claim of intentional infliction of emotional distress.

IT IS SO ORDERED this 21 day of December, 1989.


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

35

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

FILED

DEC 21 1989

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

THURMAN L. ROWE,	}	
	}	
Plaintiff,	}	
	}	
vs.	}	No. 89-C-332-C
	}	
PUBLIC SERVICE COMPANY	}	
OF OKLAHOMA,	}	
	}	
Defendant.	}	

ORDER

Before the Court is defendant's motion for summary judgment. Defendant contends that it is entitled to summary judgment as a matter of law based upon the statements and admissions of plaintiff and other affidavit testimony.

Plaintiff Thurman Rowe brings this action alleging racial discrimination in violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000e et seq., and a state law claim for intentional infliction of emotional distress.

1. Classification as Engineer I

On August 24, 1984, plaintiff applied for a position classified as Engineer II with the Central Maintenance Crew (CMC) of defendant Public Service Company. Plaintiff was offered the position but he was classified as an Engineer I rather than II. Plaintiff contends he knows of no reason justifying the lower classification other than his race.

Defendant states that when the position was available the job was initially posted internally within Public Service for existing employees as an Engineer II position, but Public Service was unsuccessful in filling the position. Accordingly, Public Service accepted applications from outside the company, including plaintiff's application. Defendant asserts that plaintiff had some experience which qualified him for the job but that he had little or no maintenance experience and was not familiar with Public Service's power generation facilities, therefore he was hired as an Engineer I rather than II. The differential in classification did not result in any decrease in plaintiff's salary.

2. Selection of Technical Supervisor

Plaintiff had been employed with Public Service for approximately three months when the position of Technical Supervisor was created. Plaintiff applied for the promotion but his application was returned to him. He was informed that he was not eligible for consideration because he had not worked for Public Service long enough. Plaintiff contends he had more technical education than the white male selected for the position. Plaintiff asserts that he knows of no other justification for denying him the promotion other than his race.

Defendant states that the position was filled by Pat Hare who had been a Public Service employee since 1977, and an employee of CMC since 1978. He had been performing some of the duties that were assigned to the newly created position. Moreover, defendant

had a policy of selecting persons internally with more seniority for promotion over individuals who had worked for the Company less than six months.

3. Physical Labor

In 1985 plaintiff had bypass heart surgery. Plaintiff contends that from October 1986 to December 1986 he was assigned to heavy physical labor at the Northeastern Station in Oolagah. Plaintiff contends that he was assigned heavy labor to give Pat Hare the opportunity to do the engineering duties. Plaintiff further contends that his supervisor threatened to give him negative evaluations if he would not lift heavy boxes.

Defendant asserts that it had granted plaintiff a medical leave of absence for heart treatment and surgery. When he returned to work, he had not provided the Company with any information regarding limitations on the work he could perform. Plaintiff was requested to move some boxes. He refused based on his medical condition. Accordingly, his supervisor did not require him to move the boxes, rather, he was assigned the job of opening doors for co-workers who were moving the boxes.

4. Negative Evaluations

Plaintiff contends that Pat Hare, his supervisor, gave him negative evaluations to impede and stop plaintiff's upward mobility. However, plaintiff concedes that he has no knowledge as to whether his evaluations were race related.

5. Transfer of Three Employees

In September 1986 two job positions were vacated in the Department of Engineering and Production, one due to an employee retiring and the other due to an employee resigning. Plaintiff requested a transfer to this Department to fill one of the vacancies. Plaintiff was informed that there were no positions available because the vacancies would not be filled. However in December 1986, three caucasians were transferred into the department in question. Plaintiff contends he knows of no other reason for denying him the transfer other than his race.

In response, defendant contends that in September 1986 Public Service had decided it would temporarily close its Tulsa Power Station as part of economic adjustments. However, as future electric demand increased, it would reopen and reactivate the Tulsa Power Station. Therefore Public Service transferred six supervisors to Tulsa to work at the Power Station in order to have them in Tulsa to be prepared for its reactivation. In December 1986, six supervisors were transferred. They included Tom Hansen, Bud Averil, Laurie McGrouty, Wesley Lewis, and Larry Jones.¹

6. Plaintiff's Lay-off

Plaintiff contends that in January 1987 he was laid off and his supervisor, Pat Hare, was retained. Plaintiff asserts that Pat

¹Tom Hensen had 13 years service with Public Service, Bud Averil had 14 years of service, Laurie McGrouty had 18 years, and although the parties did not specify the length of service of Wesley Lewis or Larry Jones, the record reflects that Mr. Lewis is a black man and both men held the title of supervisor at the time of transfer.

Hare was less qualified therefore he knows of no other reason than his race for the differential treatment.

Defendant responds that in January 1987 Public Service was required to reduce the size of its CMC staff from 11 to 6 employees for economic reasons. Three staff members of CMC retired and were not replaced. Two other positions were eliminated, one included plaintiff's. The other position required laying off a female employee with 17 years of service. The six CMC staff employees retained all had more seniority with Public Service over plaintiff. One of the six employees retained was a black male.

Plaintiff was transferred to the Northeast Station and worked there until the overhaul of the station was completed. After maintenance overhaul was completed, plaintiff was laid off.

In his deposition, plaintiff admits that he does not believe that the supervisory personnel at Public Service are bigots. Neither did he know whether any of the decisions he now challenges were racially motivated. Plaintiff offers one affidavit, a co-worker, Alfred Jones. Mr. Jones attests that he was a Public Service worker for five years. He was transferred to CMC and after one year was laid off. Mr. Jones states that his supervisor "showed obvious prejudice."

The Court has reviewed the pleadings and supporting exhibits. After careful consideration the Court finds and concludes that defendant's motion for summary judgment should be granted.

The defendant did not commit acts of unlawful discrimination against the plaintiff on the basis of his race in connection with its activities at issue in this action.

Plaintiff has brought his Title VII action under the legal theory of "disparate treatment". Disparate treatment type employment discrimination occurs when an employer treats some people less favorably than others because of their membership in one or more of the protected groups. Proof of discriminatory intent is usually critical to a disparate treatment claim, see International Brotherhood of Teamsters v. U.S., 431 U.S. 324, 335 n.15 (1977).

Disparate treatment in race discrimination exists when supervisor's conduct creates artificial barriers for one race not present for others, not members of that race.

The framework established by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) governs the order and burdens of proof in employment discrimination actions, including disparate treatment cases. The plaintiff must establish by a preponderance of the evidence that he was denied an employment benefit because of his race. If the plaintiff meets this burden, the focus of the litigation shifts to the employer's motive for the disputed employment actions. The employer can rebut the plaintiff's prima facie case by coming forward with a legitimate, nondiscriminatory reason for denying the benefit. In order to prevail on the merits, the plaintiff must then prove that the

employer's proffered reason is merely a pretext for unlawful discrimination. See, e.g., Henson v. City of Dundee, 682 F.2d 897, 901 (11th Cir. 1982).

To establish a prima facie case of race discrimination, the plaintiff carries the initial burden of showing actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were "based on a discriminatory criterion illegal under the Act." Furnco Construction Corp. v. Waters, 438 U.S. 567, 576 (1978). The required showing may be made by accumulation of evidence, including patterns, practices, general policies or specific instances of discrimination. The Court finds that plaintiff failed to establish a prima facie case of race discrimination regarding his claims for Classification as Engineer I, Selection of Technical Supervisor, Physical Labor and Negative Evaluations.

As regarding plaintiff's claims for Transfer of Three Employees and Lay-off, the Court finds defendant has offered legitimate business reasons justifying its decision and there is no indication defendant was motivated by discriminatory intent. Further, Public Service offered legitimate business reasons for transferring supervisors to the Tulsa Power Station, and a reasonable business necessity for the lay-offs. Plaintiff did not have seniority over the other employees in question. Further, the overall evidence indicates defendant treated all its employees

involved in transfers and lay-offs equally without regard to race or sex.

Accordingly, after construing the pleadings liberally in favor of the plaintiff and considering all factual inferences tending to show triable issues in a light most favorable to the existence of such issues, the Court concludes that defendant is entitled to summary judgment as a matter of law.

IT IS SO ORDERED this 21st day of December, 1989.



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

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

HEALTHCARE COLLECTIONS, INC.)

Plaintiff,)

vs.)

VAN P. SIMMONS AND TERESA)
SIMMONS,)

Defendants,)

and)

VAN P. SIMMONS AND TERESA)
SIMMONS,)

Third-Party)
Plaintiffs,)

vs.)

SAFECO LIFE INSURANCE COMPANY,)

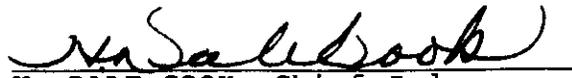
Third-Party)
Defendant.)

Case No. 89-C-693-C

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to stipulation between the parties, this Court hereby dismisses the above-captioned matter with prejudice.

IT IS SO ORDERED this 21st day of December, 1989.



H. DALE COOK, Chief Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 21 1989

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES CAROL LUMEN, et al.,)
)
 Defendants.)

CIVIL ACTION NO. 89-C-277-B

AGREED JOURNAL ENTRY OF JUDGMENT

This matter comes on for consideration this 20th day
of Dec, 1989. The Plaintiff, United States of
America, and the remaining Defendant, Gordon Sjodin, hereby agree
that Defendant Sjodin is the lawful and proper owner of the
microwave ovens described in Plaintiff's Complaint for
Interpleader and Declaratory Relief (Complaint). The Court notes
that a Motion for Summary Judgment and a Motion for Default
Judgment, where appropriate as to the other Defendants, have been
filed and granted finding that the lawful and proper owner of the
microwave ovens described in the Complaint and Defendant Sjodin's
Crossclaim is Gordon Sjodin.

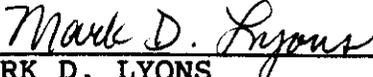
Plaintiff and Defendant Sjodin further agree, with
regard to the additional microwave ovens described in Defendant
Sjodin's Crossclaim, that Plaintiff shall pay Defendant Sjodin
the sum of \$190.00 as compensation for two microwave ovens that
are unaccounted for.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that
Defendant Sjodin shall have all right, title and interest vested

in him free and clear of any outstanding claims that others might have for the microwave ovens that are described in the Complaint and Defendant Sjodin's Crossclaim, and Plaintiff is hereby ordered and directed to turn the microwave ovens described in the Complaint over to Defendant Sjodin immediately. Furthermore, Plaintiff is ordered to pay the sum of \$190.00 to Defendant Sjodin as compensation for two unaccounted for microwave ovens described in Defendant Sjodin's Crossclaim.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is hereby discharged from all liability relative to the microwave ovens described in the Complaint and Defendant Sjodin's Crossclaim. Each party is to bear its own attorney's fees and costs.


NANCY NESBITT BLEVINS
U.S. ATTORNEY'S OFFICE
FOR PLAINTIFF


MARK D. LYONS
LYONS & CLARK
FOR DEFENDANT, GORDON SJODIN

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entered

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

FILED

DEC 20 1989

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

NATIONAL FOOTBALL SCOUTING,)
INC., HARRY W. BUFFINGTON and)
LESLIE MILLER,)

Plaintiffs,)

vs.)

No. 86-C-843-C

CONTINENTAL ASSURANCE COMPANY,)
et al.,)

Defendants.)

(Consolidated)

SUPERIOR HARD SURFACING CO.,)
INC., and HAROLD WEST,)

Plaintiffs,)

vs.)

No. 87-C-588-C

CONTINENTAL ASSURANCE COMPANY,)
et al.,)

Defendants.)

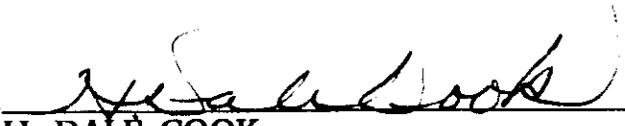
ORDER

Before the Court is the joint motion of plaintiffs to reconsider and vacate the Court's Order and Judgment of October 18, 1989. In that Order, the Court granted summary judgment to defendants in this action, alleging violations of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§1001-1461.

In discussing one aspect of the case, whether the Power of Attorney involved herein constituted an exculpatory instrument violative of 29 U.S.C. §1110(a), the Court stated that it agreed with the ruling on that issue made by Judge Morris Arnold of the United States District Court for the Western District of Arkansas. This Court stated that "[p]laintiffs herein provided this Court with a copy of the transcript" This statement was incorrect, in that defendants supplied the transcript. However, the Court has found no basis for vacating its previous decision.¹ No showing of fraud by defendants on the Court has been made.

It is the Order of the Court that the joint motion of plaintiffs to reconsider and vacate the Order and Judgment of October 18, 1989 is hereby DENIED.

IT IS SO ORDERED this 20th day of December, 1989.


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

¹This Court viewed Judge Arnold's reasoning as persuasive, not as binding through application of collateral estoppel as plaintiffs assert.

FILED

DEC 22 1989

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

Jack C. Sliver, Clerk
US DISTRICT COURT

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 vs.)
)
 FRED W. SHAFFER, JR.,)
 494-60-9772)
)
 Defendant.)

No. 89-C-499-B ✓

DEFAULT JUDGMENT

In accordance with the Entry of Default against Fred W. Shaffer, Jr., entered on August 22, 1989, it is hereby Ordered that Judgment be entered on behalf of the Plaintiff, United States of America, and against the Defendant, Fred W. Shaffer, Jr., in the amount of \$4,833.71, plus interest in the amount of \$228.77 as of February 28, 1989, and continuing to accrue at the rate of 4% per annum until this date, plus interest from this date forward at the rate of 7.66% per annum until paid.

ENTERED, this 20th day of December, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

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

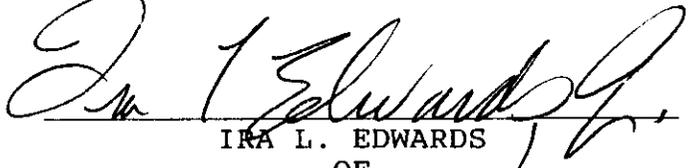
J & H INDUSTRIES, INC., an)
Oklahoma corporation,)
)
Plaintiff,)
-vs-)
)
LITWIN ENGINEERS & CONSTRUCTORS,)
INC., a corporation,)
)
Defendant.)

Case No. 89-C-453-B ✓

DISMISSAL WITHOUT PREJUDICE

The Plaintiff and the Defendant, by their respective under-
signed counsel, would respectfully show the Court that an agreement
with respect to settlement of the above action has been entered
into by the parties, for which reason the parties hereby stipulate,
pursuant to Rule 41, F. R. Civ. P., that this action shall be
dismissed without prejudice. Appropriate documentation for dis-
missal with prejudice will be submitted upon completion of the
settlement documentation.

Dated this 15th day of December, 1989.



IRA L. EDWARDS
OF

HOUSTON AND KLEIN, INC.
320 South Boston, Suite 700
Tulsa, Oklahoma 74103
Telephone: 918/583-2131

Attorneys for Plaintiff,
J & H Industries, Inc.



STEPHEN P. FRIOT

OF

SPRADLING, ALPERN, FRIOT & GUM
101 Park Avenue, Suite 700
Oklahoma City, Oklahoma 73102
Telephone: 405/272-0211

Attorneys for Defendant,
Litwin Engineers &
Constructors, Inc.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41, F.R. Civ. P., and the above and foregoing stipulation,

IT IS ORDERED that this action be, and hereby is, dismissed without prejudice.

Dated this 29 day of December, 1989.



THOMAS R. BRETT

United States District Judge

FILED

DEC 29 1989 *OK*

8099F13
2133/89-232

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

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

LARRY VON CATO, JR.,	}	
	}	
Plaintiff,	}	
	}	
vs.	}	No. 89-C-424-C
	}	
JAY DALTON, MIKE ASHWORTH and	}	
RICHARD O'CARROLL,	}	
	}	
Defendants.	}	

JUN 10 1989

ORDER

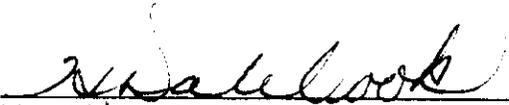
On June 9, 1989, the Magistrate entered his recommendation that plaintiff's civil rights petition under 42 U.S.C. §1983 be dismissed as frivolous pursuant to 28 U.S.C. §1915(d).

Plaintiff's petition alleged that a district judge, an assistant district attorney and a state public defender violated his civil rights by denying him due process under the Fourteenth Amendment to the United States Constitution. Plaintiff, a black man, alleged the defendants committed this violation by allowing him to be tried before an all-white jury.

The Court has independently reviewed the record and finds that the Report and Recommendation should be and hereby is affirmed and adopted as the Findings and Conclusions of the Court.

It is therefore the Order of the Court that plaintiff Larry Von Cato, Jr.'s petition filed pursuant to 42 U.S.C. §1983 is dismissed as frivolous. This Order renders moot all other outstanding motions.

IT IS SO ORDERED this 19 day of December, 1989.



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

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

ERNEST DEAN SANDERS,)
)
 Petitioner,)
)
 v.)
)
 RON CHAMPION, et al,)
)
 Respondent.)

88-C-579-C

FILED

DEC 10 1989

ORDER

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

The Court has for consideration the Report and Recommendation of the United States Magistrate filed November 27, 1989 in which the Magistrate recommended that Plaintiff's 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 Plaintiff's Petition for a Writ of Habeas Corpus be denied.

Dated this 18 day of December, 1989.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

FILED

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

DEC 19 1989

JACK RAY PELTON,)
)
 Plaintiff,)
)
 vs.)
)
 THE PRUDENTIAL INSURANCE COMPANY)
 OF AMERICA,)
)
 Defendant.)

WILLIAM W. HALVER, CLERK
U.S. DISTRICT COURT

No. 88-C-1629-B ✓

J U D G M E N T

In accord with the Order filed simultaneously herewith, sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendant, the Prudential Insurance Company of America, and against the Plaintiff, Jack Ray Pelton. 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 19th day of December, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATED this 19th day of December, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

then-existing statutory age-sex discrimination, whereby boys were criminally prosecuted as adults at age 16, whereas girls were not criminally prosecuted as adults until age 18.

In 1968 petitioner was convicted of Robbery with a Firearm A.F.C. by the Woods County District Court in Case No. 1313 and received a twenty-year sentence of imprisonment.

It is undisputed that petitioner has completed serving the sentence received in Case No. 1313.²

Petitioner has filed for federal habeas corpus relief³ claiming that the sentence imposed in Case No. 1313 was illegal because it was enhanced by use of the previous juvenile convictions which were subsequently declared void. Petitioner concludes that his conviction in Case No. 1313, therefore, violates his right to equal protection and due process of law under the United States Constitution.

The Magistrate recommended that petitioner's writ be denied because the record "clearly reflects that petitioner is not 'in custody' on the conviction which he seeks to attack."

In his objection, petitioner asserts that he has met the "in custody" requirement as defined in the recent case of Maleng v. Cook, 109 S.Ct. 1923 (1989). Petitioner contends that since his sentences on his various convictions run consecutive to each other,

²Petitioner is currently serving a sentence of five years imposed on December 16, 1968 for Second Degree Burglary A.F.C. by the Tulsa County District Court. The next sentence petitioner is to serve was imposed on March 21, 1969 for Robbery with a Firearm A.F.C. by the Tulsa County District Court. The last sentence to be served by petitioner is a term of six years and was imposed on September 18, 1984 for Escape from a Penal Institution by the Cleveland County District Court.

³It is undisputed that petitioner has exhausted his state remedies.

he remains "in custody" for the purpose of attacking the validity of prior convictions for which he has already served.

Petitioner's reliance on Maleng v. Cook, supra is misplaced. In Maleng, the Supreme Court determined that the "in custody" requirement was met by an inmate being held in federal custody filing a habeas petition challenging the legality of a state conviction he was to commence serving at the conclusion of his federal sentence. The Court held "in custody" included persons convicted by a state court but detained by federal authority while awaiting commencement of a future state conviction.

The Magistrate's Recommendation is affirmed and adopted by the Court.

It is therefore the Order of the Court that the petitioner's application for habeas corpus pursuant to 28 U.S.C. §2254 is DENIED.

IT IS SO ORDERED this 19 day of December, 1989.



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

MDC:ms
11/14/89

FILED

DEC 19 1989

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

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

IN RE:)
)
ASBESTOS LITIGATION) M-1417
) ASB(TW) NO. 1752

BOBBY LEE BAUER and HELEN L.) No. 87-C-66-E
BAUER, Plaintiff's spouse; FRED)
FAULKNER and MARGARET N. FAULKNER,)
Plaintiff's spouse; and IRA ROY)
DENMAN and DONNA MAXINE DENMAN,)
Plaintiff's spouse,)

BOBBY LEE BAUER and HELEN L.) No. 88-C-927-C
BAUER, Plaintiff's spouse,)

FRED FAULKNER and MARGARET N.) No. 88-C-928-E
FAULKNER, Plaintiff's spouse,)

IRA ROY DENMAN and DONNA MAXINE) No. 88-C-931-E
DENMAN, Plaintiff's spouse,)

Plaintiffs,)

vs.)

ANCHOR PACKING COMPANY, et al.,)

Defendants.)

STIPULATED JOINT MOTION FOR,
AND ORDER OF, DISMISSAL
WITHOUT PREJUDICE AS TO DEFENDANT
GEORGIA TALC COMPANY

Fed.R.Civ.P. 41(a)(2)

MOTION

Plaintiffs and defendant Georgia Talc Company jointly move this
Court for an Order of Dismissal Without Prejudice of the above-styled
actions.

(TIRE WORKERS)
JOINT MOTION AND
ORDER FOR DISMISSAL

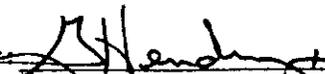
ORDER

Upon the above and foregoing Joint and Stipulated Motion for Order of Dismissal Without Prejudice, the above-styled actions are hereby dismissed without prejudice as to Georgia Talc Company, each party to bear its own costs.

S/JOE *S/HDC*

JAMES O. ELLISON
U. S. DISTRICT JUDGE

LAW OFFICES OF JOHN W. NORMAN, INCORPORATED
ATTORNEYS FOR PLAINTIFFS

By: 

John W. Norman - OBA #6699
Gina L. Hendryx - OBA #10330
Renaissance Centre East
127 N.W. 10th
Oklahoma City, OK 73103-4903
(405) 272-0200

FOLIART, HUFF, OTTAWAY & CALDWELL
ATTORNEYS FOR DEFENDANT GEORGIA TALC COMPANY

By: 

Michael D. Carter - OBA #1525
20th Floor, First National Center
Oklahoma City, OK 73102
(405) 232-4633

FILED
JAN 10 1990
U.S. DISTRICT COURT

Entered

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

J. L. KANE REAL ESTATE)
ASSOCIATES, INC., individually)
and d/b/a J. L. KANE REALTY)
ASSOCIATES, INC.,)
)
Plaintiffs,)
)
vs.)
)
DAVID L. TOLIVER and)
CAROLYN L. TOLIVER,)
)
Defendants.)

No. 89-C-520-C

FILED
DEC 17 1989

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

ORDER

Before the Court is the plaintiff's application for attorney fees.

This action was filed on June 23, 1989 for collection, against defendants as guarantors, of a promissory note. The principal obligor, Oakwold Properties, Inc., became in default under the terms of the installment note, leaving an unpaid balance of \$326,730.08 as of June 30, 1987.

Summons was issued by certified mail, with return of summons on July 31, 1989. Defendants are residents of Belle Grande, Florida.

On August 17, 1989, upon motion of plaintiff, the Clerk of the Court entered a default judgment.

On September 1, 1989, plaintiffs filed an application for attorney fees. In its application, plaintiff's attorney admits to

having expended a total of 12.75 hours of legal service, representing an hourly rate computation of \$1,183.75. Additionally plaintiff requested an amount of \$35,025.00 in attorney fees under the terms of the promissory note.¹

The Court finds that since plaintiff's attorney has admitted that her firm has spent 12.75 hours in obtaining the default judgment in this case, an award of attorney fees in the sum of \$1,183.75 is appropriate under the circumstances. An additional award of \$35,025.00 would be inequitable.

Therefore, it is the Order of the Court that plaintiff J. L. Kane Real Estate Associates, Inc. is awarded attorney fees in the sum of \$1,183.75 over and against the defendants.

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


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

¹The promissory note which constitutes the underlying obligation guaranteed by the defendants expressly provides that "[i]n case of legal proceedings to collect this note or in case this note is handed to an attorney for collection, I, we, or either of us, agree to pay the sum of \$25.00 and ten percent of the total amount herein, additional as attorney's fees" -- or, \$25.00 plus \$35,000.00 (i.e., ten percent of the original principal sum of the Note of \$350,000.00), for a total sum of \$35,025.00.

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

FILED
DEC 18 1989
JACQUELINE SILVER, CLERK
U.S. DISTRICT COURT

HILTI, Inc., a New York corporation,

Plaintiff,

-vs-

HACKETT PRECISION COMPANY, a/k/a Hackett Precision Company, Inc., d/b/a Alliance Systems, a/k/a Alliance Tool Corporation, a Tennessee corporation,

Defendant.

Case No. 89-C-975 B

NOTICE OF DISMISSAL OF CLAIMS
AGAINST GLEASON CORPORATION WITHOUT PREJUDICE

COMES NOW, the Plaintiff, Hilti, Inc., ("Hilti"), and hereby dismisses its claims in the above numbered action against Defendant, Gleason Corporation only, without prejudice to the re-filing of the same. Hilti does not dismiss its claims against Defendant, Hackett Precision Company.

By Robert Alan Rush
Ronald E. Goins, OBA #3430
Robert Alan Rush, OBA #13342
Suite 700, Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103
(918) 584-1471

OF COUNSEL:
HOLLIMAN, LANGHOLZ, RUNNELS & DORWART,
A Professional Corporation
Suite 700 Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103
(918) 584-1471

Attorneys for Plaintiff,
Hilti, Inc.

CERTIFICATE OF MAILING

This is to certify that a true and correct photostatic copy of the above and foregoing NOTICE OF DISMISSAL OF CLAIMS AGAINST GLEASON CORPORATION WITHOUT PREJUDICE was mailed on this 18th day of December, 1989, with the proper postage prepaid thereon, to:

Lin S. Howard
Harwell, Martin & Steagall
P.O. Box 2960
Nashville, Tennessee 37219-0960

Robert Alan Rush

Robert Alan Rush

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

FILED

DEC 18 1989

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

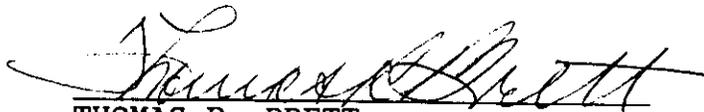
BANK OF OKLAHOMA, NATIONAL ASSOCIATION,)
)
)
 Plaintiff,)
)
 v.)
)
 ASSOCIATES NATIONAL MORTGAGE CORPORATION, a Delaware corporation,)
)
)
 Defendant and)
 Third-Party Plaintiff,)
)
 v.)
)
 POOL MORTGAGE COMPANY, an Oklahoma corporation, and)
 CHEMICAL BANK, N.A., a)
 national banking association,)
)
 Third-Party Defendants.)

No. 87-C-600-B ✓

J U D G M E N T

In keeping with the Order sustaining the Motion for Summary Judgment of Chemical Bank, N.A., a national banking association, in reference to the third-party claim of Associates National Mortgage Corporation, a Delaware corporation, Judgment is hereby entered in favor of Chemical Bank and against Associates National Mortgage Corporation, Associates to take nothing against Chemical on said third-party claim and said claim is hereby dismissed. In reference to the third-party complaint, costs are assessed against Associates if properly applied for in keeping with local court rule 6. The parties are to pay their own respective attorneys fees.

DATED this 18th day of December, 1989.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 ROBERT P. HALLORAN a/k/a ROBERT)
 PAUL HALLORAN; LINDA S. HALLORAN)
 a/k/a LINDA SUE HALLORAN; COUNTY)
 TREASURER, Creek County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Creek County,)
 Oklahoma,)
)
 Defendants.)

FILED
DEC 18 1989
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-630-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 8 day
of Dec, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Creek County,
Oklahoma, and Board of County Commissioners, Creek County,
Oklahoma, appear by Wesley R. Thompson, Assistant District
Attorney, Creek County, Oklahoma; and the Defendants, Robert P.
Halloran a/k/a Robert Paul Halloran and Linda S. Halloran a/k/a
Linda Sue Halloran, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Robert P. Halloran a/k/a
Robert Paul Halloran, was served with Summons and Complaint on
October 30, 1989; that the Defendant, Linda S. Halloran a/k/a
Linda Sue Halloran, acknowledged receipt of Summons and Complaint
on August 7, 1989; that Defendant, County Treasurer, Creek

County, Oklahoma, acknowledged receipt of Summons and Complaint on August 2, 1989; and that Defendant, Board of County Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on August 1, 1989.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer on August 9, 1989; and that the Defendants, Robert P. Halloran a/k/a Robert Paul Halloran and Linda S. Halloran a/k/a Linda Sue Halloran, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Part of Lot Eight (8), Block Three (3), ROUND MOUNTAIN ESTATES FOURTH, an Addition to Creek County, State of Oklahoma, according to the recorded plat thereof; being more particularly described as follows, to-wit: BEGINNING at the Northeast corner of said Lot Eight (8); thence South along the East line of Lot Eight (8) a distance of 434.43 feet to a point; thence North $89^{\circ}59'53''$ West a distance of 268.44 feet to a point on the West line of said Lot Eight (8); thence in a Northerly direction along the West line a distance of 409.5 feet to the Northwest corner of said Lot Eight (8); thence along the North line of Lot Eight (8), a distance of 269.55 feet to the point of beginning, containing 2.60 acres, more or less; a/k/a Route 2, Box 1056, Sand Springs, Oklahoma.

The Court further finds that on September 1, 1983, Robert P. Halloran and Linda S. Halloran 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 11.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Robert P. Halloran and Linda S. Halloran 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 September 1, 1983, covering the above-described property. Said mortgage was recorded on September 6, 1983, in Book 144, Page 669, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Robert P. Halloran a/k/a Robert Paul Halloran and Linda S. Halloran a/k/a Linda Sue Halloran, 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, Robert P. Halloran a/k/a Robert Paul Halloran and Linda S. Halloran a/k/a Linda Sue Halloran, are indebted to the Plaintiff in the principal sum of \$43,916.20, plus interest at the rate of 11.5 percent per annum from June 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek County,

Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$26.48 which became a lien on the property as of 1988. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Robert P. Halloran a/k/a Robert Paul Halloran and Linda S. Halloran a/k/a Linda Sue Halloran, in the principal sum of \$43,916.20, plus interest at the rate of 11.5 percent per annum from June 1, 1988 until judgment, plus interest thereafter at the current legal rate of 12 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, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have and recover judgment in the amount of \$26.48 for personal property taxes for the year 1988, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Robert P. Halloran a/k/a Robert Paul Halloran and Linda S. Halloran a/k/a Linda Sue Halloran, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the

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

First:

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

Second:

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

Third:

In payment of Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, in the amount of \$26.48, personal property taxes which are currently due and owing.

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

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

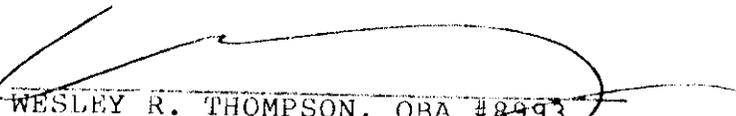
[Signed] H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney


~~WESLEY R. THOMPSON, OBA #8593~~
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Creek County, Oklahoma

Judgment of Foreclosure
Civil Action No. 89-C-630-C

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Ante

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
RONNIE L. JOHNSON; REBECCA D.)
JOHNSON; COUNTY TREASURER,)
Tulsa County, Oklahoma; and)
BOARD OF COUNTY COMMISSIONERS,)
Tulsa County, Oklahoma,)
)
Defendants.)

FILED
DEC 18 1989
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 88-C-1622-C

DEFICIENCY JUDGMENT

This matter comes on before the Court this 15th 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 Ronnie L. Johnson and Rebecca D. Johnson, 1646 South 77th West Avenue, Tulsa, Oklahoma 74127, 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 Peter Bernhardt, Assistant United States Attorney, and the Defendants, Ronnie L. Johnson and Rebecca D. Johnson, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on February 17, 1989, in favor of the Plaintiff United States of America, and against the Defendants, Ronnie L. Johnson and Rebecca D. Johnson, with interest and costs to date of sale is \$39,566.73.

The Court further finds that the appraised value of the real property at the time of sale was \$15,791.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered February 17, 1989, for the sum of \$26,364.00 which is more 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 29th day of November, 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, Ronnie L. Johnson and Rebecca D. Johnson, as follows:

Principal Balance as of 2/17/89	\$32,687.59
Interest	5,518.34
Late Charges to Date of Judgment	187.80
Appraisal by Agency	425.00
Management Broker Fees to Date of Sale	274.00
Abstracting	<u>474.00</u>
TOTAL	\$39,566.73
Less Credit of Sale Proceeds	- <u>26,364.00</u>
DEFICIENCY	\$13,202.73

plus interest on said deficiency judgment at the legal rate of 7.6% percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the proceeds of the sale of the property herein.

IT IS WHEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Ronnie L. Johnson and Rebecca D. Johnson, a deficiency judgment in the amount of \$13,202.73, plus interest at the legal rate of 6.5% percent per annum on said deficiency judgment from date of judgment until paid.

[Signed] H. Dale Cook

UNITED STATES DISTRICT JUDGE

PB/css

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

THE PROSPECTIVE INVESTMENT)
& TRADING COMPANY, LTD.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
v.)
)
ARKLA, INC., a/k/a ARKANSAS)
LOUISIANA GAS COMPANY, a)
Delaware corporation,)
)
Defendant.)

Case No. 89-C-253-C

FILED
DEC 18 1989
Clerk
DISTRICT COURT

ORDER DISMISSING CLAIMS

The Application for Leave to Dismiss Claims with Prejudice of The Prospective Investment & Trading Company, Ltd. having come on for hearing, and good cause having been shown for the granting thereof,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Application is granted and the claims of The Prospective Investment & Trading Company, Ltd. are hereby dismissed with prejudice toward the refiling of same.


UNITED STATES DISTRICT JUDGE

Prepared by:
Dale Joseph Gilsinger
PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR
900 Oneok Plaza
Tulsa, Oklahoma 74103
(918) 584-4136

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

FILED

DEC 18 1989

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

THRIFTY RENT-A-CAR SYSTEM, INC.,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
JOSEPH F. THOMAS,)
)
Defendant.)

Case No. 89-C-547-E ✓

NOTICE OF DISMISSAL WITHOUT PREJUDICE

The plaintiff, Thrifty Rent-A-Car System, Inc., an Oklahoma corporation, by and through its counsel of record, and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, dismisses without prejudice all claims brought in this case by plaintiff.

Dated this 18th day of December, 1989.

Respectfully submitted,



Dana L. Rasure, OBA #7421
BAKER, HOSTER, McSPADDEN,
CLARK, RASURE & SLICKER
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555

John M. Hickey, OBA #11100
THRIFTY RENT-A-CAR SYSTEM, INC.
4608 South Garnett Road
Tulsa, Oklahoma 74153-0250

Attorneys for Plaintiff
Thrifty Rent-A-Car System, Inc.

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of December, 1989, a true and correct copy of the above and foregoing Notice of Dismissal Without Prejudice was mailed by first class mail, postage prepaid, to:

Joseph F. Thomas
C/O Christopher Weld, Jr., Esq.
Suite 3650
One Boston Place
Boston, Massachusetts 02108



Dana E. Rasure

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the title and possession in and to the coal mining leasehold estate for the purpose of mining coal upon, under, and from the following described real estate, to wit:

The S $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ and the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$, in Section 3, Township 27 North, Range 19 East of the Indian Meridian, Craig County, State of Oklahoma.

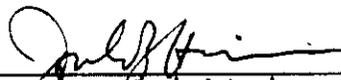
be and is hereby quieted in the Plaintiffs as against all claims and demands by Defendant and those claiming by, through, or under Defendant.

Ordered this _____ day of _____, 1989.

of JAMES C. ELLISON

Judge of the District Court

APPROVED BY:



Jon E. Brightmire, OBA#11623
DOERNER, STUART, SAUNDERS
DANIEL & ANDERSON
1000 Atlas Life Bldg.
Tulsa, OK 74103

Attorneys for Transwestern
Mining Company



Jot Hartley, OBA#3947
RORSCHACH, PITCHER, CASTOR
HARTLEY & JONES
244 South Scraper - P.O. Box 964
Vinita, OK 74301

Attorneys for Robert I. Hartley
and Phoenix Mineral Company

FILED

DEC 18 1988

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

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

IN RE:
ASBESTOS LITIGATION

) M-1417
) ASB(TW) No. 1751
)

-
- ERNEST L. ABLE, et al.,) No. 88-C-1126-E
 - MILLARD L. ABLE, et al.,) No. 88-C-803-B
 - LEWIS ADDINGTON, et al.,) No. 88-C-990-E
 - MARION D. ALLGOOD, et al.,) No. 88-C-1096-B
 - DELMAR RAY ANDERSON, et al.,) No. 88-C-838-C
 - BRENDA GAY ANDREWS, et al.,) No. 88-C-808-E
 - J. M. ANDREWS, et al.,) No. 88-C-911-C
 - ROBERT CAREY ARCHDALE, et al.,) No. 88-C-765-B
 - RONALD E. ARMSTRONG, et al.,) No. 88-C-1251-E
 - THOMAS REED ARNOLD, et al.,) No. 88-C-1176-E
 - ROBERT BRUCE ASH, et al.,) No. 88-C-1156-B
 - ELMER RAY ATKINSON, et al.,) No. 88-C-1136-C
 - CLYDE O. ATTERBERRY, et al.,) No. 88-C-1137-E
 - RALPH DELBERT AYRES, et al.,) No. 88-C-1106-E
 - TOMMY JOE AYRES, et al.,) No. 88-C-894-C
 - VIRGIL D. BAKER, et al.,) No. 88-C-983-E
 - BILL JOE BALDRIDGE, et al.,) No. 88-C-992-C
 - EVERETT E. BARGER, et al.,) No. 88-C-963-E
 - LAWRENCE E. BARGER, et al.,) No. 88-C-1026-E
 - RAYMOND E. BARGER, et al.,) No. 88-C-1024-B

ORDER OF DISMISSAL
(TW)

RICHARD ELLIS BARNES, et al.,	)	No. 88-C-1187-B
RAYMOND L. BARNETT, et al.,	)	No. 88-C-1252-C
THOMAS EDWARD BASS, et al.,	)	No. 88-C-746-B
KENNETH RAY BATTENFIELD, et al.,	)	No. 88-C-770-B
LAROY BATTENFIELD, et al.,	)	No. 88-C-1388-B
CHARLES EDWARD BATY, et al.,	)	No. 88-C-1001-E
BOBBY LEE BAUER, et al.,	)	No. 87-C-66-01-E
MARVIN E. BEEHLER, et al.,	)	No. 88-C-797-E
JACK N. BENBROOK, et al.,	)	No. 88-C-833-C
JOE MONROE BERRY, et al.,	)	No. 88-C-784-C
CLAUDE ELVIN BEST, et al.,	)	No. 88-C-1077-C
TOM J. BINGHAM, et al.,	)	No. 88-C-1138-B
NAOMI BLACK, et al.,	)	No. 88-C-1139-B
JAY WILLIAM BLAIR, et al.,	)	No. 88-C-720-B
ROBERT L. BLAYDES, et al.,	)	No. 88-C-1201-B
SANFORD MARION BOWEN, et al.,	)	No. 88-C-772-C
CHARLES LEE BOWMAN, et al.,	)	No. 88-C-799-B
RAYMOND EVERITT BOYD, et al.,	)	No. 88-C-873-B
VERNA BRADEN, et al.,	)	No. 88-C-905-B
ROBERT RAY BRADLEY, et al.,	)	No. 88-C-967-E
JOSEPH M. BRADY, et al.,	)	No. 88-C-937-B
HELEN AMELIA BRASHERS, et al.,	)	No. 88-C-900-B
WINFORD BRASHERS, et al.,	)	No. 88-C-938-E
ALBERT E. BREWSTER, et al.,	)	No. 88-C-989-B
BOBBY WAYNE BROWN, et al.,	)	No. 88-C-1036-B
KENNETH LEE BROWN, et al.,	)	No. 88-C-855-C
LOGAN W. BROWN, et al.,	)	No. 88-C-854-B

WALTER STEPHEN BROWN, et al.,	)	No. 88-C-885-C
WILLIAM ERNEST BROWN, et al.,	)	No. 88-C-1020-C
JAMES E. BRUCE, et al.,	)	No. 88-C-1188-C
WESLEY C. BRYANT, et al.,	)	No. 88-C-1112-E
HARRY D. BURNSIDE, et al.,	)	No. 88-C-1093-E
ROBERT EUGENE BURROWS, et al.,	)	No. 88-C-1030-B
ARLIS R. BUTLER, et al.,	)	No. 88-C-1084-E
ELMO JESS BUTLER, et al.,	)	No. 88-C-743-E
CHARLES JOHN BUTTON, et al.,	)	No. 88-C-1253-B
BLAINE O. BUZZARD, et al.,	)	No. 88-C-1124-E
GARNETT A. BUZZARD, et al.,	)	No. 88-C-903-B
FLOYD LAWRENCE CAMPBELL, et al.,	)	No. 88-C-964-B
DONNA L. CAPTAIN, et al.,	)	No. 88-C-907-B
DONALD EARL CARDER, et al.,	)	No. 88-C-801-E
JERRY REED CAVIN, et al.,	)	No. 87-C-66-04-E
JOSEPH NOBEL CAVIN, et al.,	)	No. 88-C-1061-C
TERRY V. CHAMBERLAIN, et al.,	)	No. 88-C-1149-E
THOMAS RAY CHAMPLIN, et al.,	)	No. 88-C-878-E
BILLY RAY CHANEY, et al.,	)	No. 88-C-877-E
CHARLES RAY CHANEY, et al.,	)	No. 88-C-724-E
GEORGE WALKER CHANEY, et al.,	)	No. 88-C-1189-C
DAVE EDWARD CHARLOE, et al.,	)	No. 88-C-1035-C
DONALD LEE CHENOWETH, et al.,	)	No. 88-C-1207-B
PAUL DEAN CLARK, et al.,	)	No. 88-C-871-E
WILLIAM CLARK, et al.,	)	No. 88-C-912-B
WORTH EDWARD CLAYTON, et al.,	)	No. 88-C-887-E
CARL THOMAS COLLINS, et al.,)	No. 88-C-1401-E

ROY THOMAS COLLINS, et al.,)	No. 88-C-1317-E
PAUL O. COMPTON, et al.,)	No. 88-C-1058-B
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MARION D. TRONE, et al.,)	No. 88-C-1408-B
ESTELL EUGENE TUNNELL, et al.,)	No. 88-C-1045-E
CHARLES F. TUSINGER, et al.,)	No. 88-C-783-E
JOHN FREDRICK TYREE, et al.,)	No. 88-C-699-E
HENRY W. VANDEVENTER, et al.,)	No. 88-C-1296-E
JAMES ALVIN VINCENT, et al.,)	No. 88-C-1311-C
RONALD K. VINCENT, et al.,)	No. 88-C-1485-E
ROBERT L. WAGNER, et al.,)	No. 88-C-788-E
HUBERT EUGENE WALKER, et al.,)	No. 88-C-1409-B

RESSIE MAE WALL, et al.,	)	No. 88-C-1410-C
ADOLPH F. WALSER, et al.,	)	No. 88-C-1122-B
J. D. WARD, et al.,	)	No. 88-C-980-B
RICHARD WARD WARNER, et al.,	)	No. 88-C-814-E
TERRY P. WARREN, et al.,	)	No. 88-C-804-B
HARSE EDWARD WATERS, JR., et al.,	)	No. 88-C-1180-C
CHARLES WATTERSON, et al.,	)	No. 88-C-978-E
WAYNE LEROY WEBB, et al.,	)	No. 88-C-901-E
WOODROW WILSON WEBBER, et al.,	)	No. 88-C-948-E
GLEN ELDON WEBER, et al.,	)	No. 88-C-775-E
JAMES E. WESTERVELT, et al.,	)	No. 88-C-1008-C
BILLY EUGENE WHITE, et al.,	)	No. 88-C-1298-E
ROBERT HARRY WHITE, et al.,	)	No. 88-C-1153-C
CLIFFORD RAY WHITEHEAD, et al.,	)	No. 88-C-1164-B
WILLIAM E. WHITEHEAD, et al.,	)	No. 88-C-1297-B
RICHARD SCOTT WHITWORTH, et al.,	)	No. 88-C-875-C
EDWARD R. WILBURN, et al.,	)	No. 88-C-1007-E
EARL DEAN WILCOX, et al.,	)	No. 88-C-1107-B
BILLY FRANKLIN WILLIAMS, et al.,	)	No. 88-C-716-B
BOBBY GENE WILLIAMS, et al.,	)	No. 88-C-66-03-E
DOUGLAS ALLEN WILLIAMS, et al.,	)	No. 88-C-1046-B
GENE REED WILLIAMS, et al.,	)	No. 88-C-774-B
JOE WENTZ WILLIAMS, et al.,	)	No. 88-C-1095-E
LEROY WILLIAMS, et al.,	)	No. 88-C-818-E
VIRGIL E. WILLIAMS, et al.,	)	No. 88-C-1099-E
FRANCIS EUGENE WILMOTH, et al.,	)	No. 88-C-952-B
ELLEN BERNICE WILSON, et al.,	)	No. 88-C-1411-B

JULIAN L. WILSON, et al.,	)	No. 88-C-993-E
MARVIN LEE WILSON, et al.,	)	No. 88-C-1080-E
LEONARD LEROY WINDLE, et al.,	)	No. 88-C-902-E
PAUL R. WITTE, et al.,	)	No. 88-C-1299-C
MORRIS V. WOOLDRIDGE, et al.,	)	No. 88-C-747-C
SIDNEY MARTIN WOOLDRIDGE, et al.,	)	No. 88-C-1300-E
ELMER DEEWITT WYNN, et al.,	)	No. 88-C-1190-B
WILLIAM JACKSON WYNN, et al.,	)	No. 88-C-951-C
WILLIAM WYRICK, et al.,	)	No. 88-C-1412-B
JOSEPH F. YINGER, et al.,	)	No. 88-C-977-E
BENJAMIN ROBERT YOST, et al.,	)	No. 88-C-767-E
Plaintiffs,)	
vs.)	
ANCHOR PACKING, et al.,)	
Defendants.)	

ORDER OF DISMISSAL
(TW)

NOW on this 10 day of December, 1989, upon the written application of each of the plaintiffs in the Oklahoma Tireworker Litigation as above entitled, and the defendant, International Talc Company, Inc., for a dismissal of the Complaints of each of said plaintiffs, and all causes of action therein, the Court, having examined said application, finds that said parties have requested the Court to dismiss said Complaints without prejudice. The Court, being fully advised in the premises, finds said dismissal is to the best interest of the parties and that said Complaints should be dismissed pursuant to said application, with each party to bear their respective costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaints and all causes of action therein against International Talc Company, Inc. be and the same hereby are dismissed as to each plaintiff in the above entitled Oklahoma Tireworker Litigation, with each party to bear their respective costs.



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



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