

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 30 1990

JAMES J. SYKORA, et al.,
Plaintiffs,
v.
JILL ZINK TARBEL, et al.,
Defendants.

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

No. 88-C-553-B

ORDER

This Court has considered the Motion to Dismiss All Claims Involving Saul Stone & Co. Without Prejudice and Without Costs, and finds that it should be granted. Therefore the Court orders as follows:

1. All claims asserted by plaintiffs against Saul Stone & Co. are hereby dismissed without prejudice and without costs.
2. All cross claims and third party claims asserted by Saul Stone & Co. against other parties are hereby dismissed without prejudice and without costs.

Dated: March 30, 1990

S/ THOMAS R. BRETT

HONORABLE THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this _____ day of March, 1990, a true and correct copy of the foregoing motion and order was mailed, postage prepaid, to the following:

Stan P. Doyle
P.O. Box 1679
Tulsa, OK 74101

W. Thomas Finley
Nichols, Wolfe, Stamper,
Nally & Fallis
124 East Fourth Street
Suite 400
Old City Hall Bldg.
Tulsa, OK 74103

E. John Eagleton
C. Raymond Patton, Jr.
Houston & Klein
320 South Boston Avenue
Suite 700
Tulsa, OK 74103

James R. Eagleton
David F. James
Houston & Klein
320 South Boston Avenue
Suite 700
Tulsa, OK 74103

Donald R. Bradford
Blackstock, Joyce, Pollard
& Montgomery
575 South Main
Suite 300
Tulsa, OK 74103

Kerry L. Bocock
McKenzie & Sykora
210 West Park Avenue
Suite 300
Oklahoma City, OK 73102

Patrick M. Ryan
Charles Geister
Ryan, Holloman, Corbyn & Geister
119 North Robinson
Suite 900
Oklahoma City, OK 73102

J. C. Baker
Baker & Baker
1850 South Boulder
Tulsa, OK 74119

Gary C. Clark
Baker, Hoster, McSpadden,
Clark,
Rasure & Slicker
800 Kennedy Building
Tulsa, OK 74103

Harry Parrish
Knight, Wagner, Stuart
& Wilkerson
P.O. Box 1560
Tulsa, OK 74101-1560

P. David Newsome, Jr.
Conner & Winters
2400 First National Tower
Tulsa, OK 74103

Eddie Harper
STIPE, GOSSETT, STIPE,
HARPER,
ESTES, McCUNE and PARKS
P.O. Box 1368
McAlester, OK 74502

William J. Bolotin
Phelan & Doyle, Ltd.
Two North LaSalle Street
Suite 2009
Chicago, IL 60602

Jerry Day
4308 Classen Blvd.
Oklahoma City, OK 73118

Lance Stockwell
Boesche, McDermott & Eskridge
800 Oneok Plaza
100 West 5th Street
Tulsa, Oklahoma 74103

Alfred K. Morlan
Jones, Givens
3800 First National Tower
Tulsa, OK 74103

William J. Nissen
William J. Nissen

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

U.S. DISTRICT COURT

PHOENIX FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Plaintiff,

vs.

Case No. 89-C-751-B

JIMMY M. SMITH; ROBERT D.
MARSTERS; LONNIE E. SILER;
LENA M. SILER; DONALD H.
DINWIDDIE and MARY ANN
DINWIDDIE, husband and wife;
LAKELAND REAL ESTATE
DEVELOPMENT, INC.; JAMES M.
HENRY and KAREIN HENRY a/k/a
KAREIN L. HENRY, husband and
wife; QUINTON R. DODD and
VICKIE E. DODD, husband and
wife; UNITED STATES OF AMERICA,
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,

Defendants.

DISMISSAL WITHOUT PREJUDICE
AS TO CERTAIN PARTIES

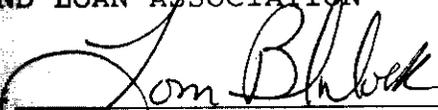
Cimarron Federal Savings and Loan Association, the
Substituted Party-Plaintiff in the above-styled cause hereby
dismisses its causes of action without prejudice against the
following parties:

1. Lakeland Real Estate Development, Inc.;
2. James M. Henry and Karein Henry, a/k/a Karein L.
Henry, husband and wife; and
3. Quinton R. Dodd and Vickie E. Dodd, husband and wife.

This Dismissal is limited to the parties herein named.

CIMARRON FEDERAL SAVINGS
AND LOAN ASSOCIATION

By



Thomas J. Blalock, OBA #11763
KIMBALL, WILSON, WALKER
& FERGUSON

301 N.W. 63rd Street, Suite 400
Oklahoma City, Oklahoma 73116
(405) 843-8855

CERTIFICATE OF MAILING

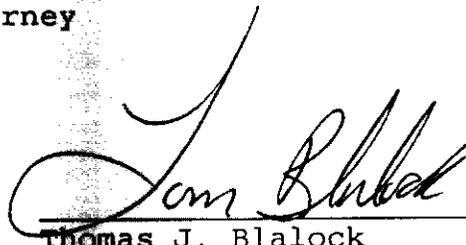
I hereby certify that on the 28th day of March, 1990, a true and correct copy of the above and foregoing Dismissal Without Prejudice as to Certain Parties was mailed by United States regular mail, to:

John A. Gaberino, Jr.
Larry D. Henry
Caroline B. Benediktson
Barry K. Beasley
HUFFMAN, ARRINGTON, KIHLE,
GABERINO & DUNN
1000 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103

Richard W. Lowry
LOGAN, LOWRY, JOHNSTON,
SWITZER, WEST & McGEADY
101 South Wilson Street
P. O. Box 558
Vinita, Oklahoma 74301-0558

Gregory C. Meier
Kevon V. Howald
RICHARDSON, MEIER & ASSOCIATES, P.C.
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105

Peter Bernhardt
Assistant United States Attorney
3600 U.S. Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103



Thomas J. Blalock

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

FILED

DISTRICT COURT

PHOENIX FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Plaintiff,

vs.

Case No. 89-C-752-B

STEPHEN H. HINKLE and JOY
HINKLE, husband and wife;
MARVIN LEDON PORCHE and CONNIE
IRENE PORCHE a/k/a CONNIE
IRENE HIGGINS, husband and wife;
J. ALAN GIBSON and MARY LOUISE
GIBSON, husband and wife; LLOYD
G. TOWERY and MARY J. TOWERY,
husband and wife; LAKELAND REAL
ESTATE DEVELOPMENT, INC.;
JAMES M. HENRY and KAREIN HENRY
a/k/a KAREIN L. HENRY, husband
and wife; QUINTON DODD and
VICKIE E. DODD, husband and
wife;

Defendants.

DISMISSAL WITHOUT PREJUDICE
AS TO CERTAIN PARTIES

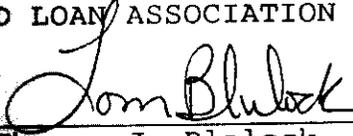
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CIMARRON FEDERAL SAVINGS
AND LOAN ASSOCIATION

By:


Thomas J. Blalock, OBA #11763
KIMBALL, WILSON, WALKER
& FERGUSON
301 N.W. 63rd Street, Suite 400
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Gregory C. Meier
Kevon V. Howald
RICHARDSON, MEIER & ASSOCIATES, P.C.
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105


Thomas J. Blalock

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

FILED
DISTRICT COURT

PHOENIX FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Plaintiff,

vs.

Case No. 89-C-757-B

RANDY WALLIS and CONNIE WALLIS,
husband and wife; JOHN C. FLUD,
SR. and MARILYN FLUD, husband
and wife; JOHN C. FLUD, JR. and
JANTHA K. FLUD, husband and
wife; RICHARD L. ATKINSON and
ROBBIE L. ATKINSON, husband and
wife; BETTY B. HESS; LAKELAND
REAL ESTATE DEVELOPMENT, INC.;
JAMES M. HENRY and KAREIN HENRY
a/k/a KAREIN L. HENRY, husband
and wife; QUINTON R. DODD and
VICKIE E. DODD, husband and
wife,

Defendants.

DISMISSAL WITHOUT PREJUDICE
AS TO CERTAIN PARTIES

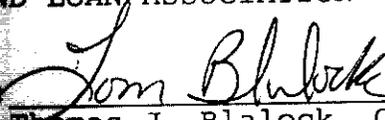
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CIMARRON FEDERAL SAVINGS
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By



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5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105



Thomas J. Blalock

Defendant now complains the Government has violated the plea agreement by initiating civil forfeiture proceedings in case 89-C-208-E, assigned to the Honorable James O. Ellison. The Defendant has raised the same plea violation issue in the forfeiture case, which is currently under referral to Magistrate Jeffrey S. Wolfe for the resolution of certain discovery issues.

The civil forfeiture case relates to two items of property: (1) \$10,000.00 in United States currency seized, pursuant to a search warrant, from the residence of James Charles Boone and Willadean Boone, his wife, and (2) one parcel of real property known as Rural Route 3, Box 209 L, City of Sapulpa, OK. in Creek County, Ok.². The Defendant has filed a claim and answer, claiming the currency. Willadean Boone has filed a claim and answer claiming ownership of the real property. Security National Bank of Sapulpa and Southeast Bank, N.A. Trustee, have both filed claims and answers, claiming mortgage interests in the real property.

The affidavit of Defendant's then attorney, Everett R. Bennett, Jr., confirms the government's position that the United States had, at all times, intended to pursue the \$10,000.00 currency forfeiture. Bennett, however, recalled Assistant U.S. Attorney Morgan's response to whether the Government intended to pursue other assets, including the real property, was in the negative. AUSA Morgan's affidavit concerning the real property is less positive. She believes she advised Mr. Bennett that no forfeiture of the realty by criminal indictment in a Continuing Criminal Enterprise charge would be sought but she does not

². which is the residence of the Boones.

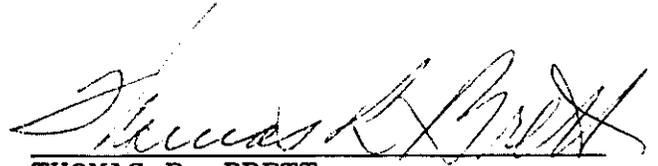
remember stating the Government would not seek forfeiture of any real property³ through a civil proceeding. AUSA Morgan believed she advised Bennett that if, as he suggested, there was no equity in the real property or trailer, the Government probably would not seek forfeiture of them.

The Court concludes the Government's attempted forfeiture of the \$10,000.00 currency, which the Defendant claims were legitimate funds used to buy chassis for his custom van business, was not in violation of the Defendant's plea agreement and, to that extent, Defendant's Motion pursuant to 28 U.S.C. §2255 is DENIED.

As to Defendant's contention that the Government's attempted forfeiture of the real property (including the trailer), claimed by Defendant's wife and two mortgage lien holders, is a violation of the plea agreement, the Court will reserve ruling on this matter pending resolution of the civil forfeiture case. If the real property forfeiture is resolved in favor of Willadean Boone and the two mortgage holders and against the Government, the Court will consider that issue moot as it now DENIES all collateral issues raised by Defendant relative to the plea agreement as impacted by real property forfeiture attempt of the Government. Movant has listed 18 facts under paragraph 17 of the Motion. Among these facts Movant presents the argument that mere dropping of the real property forfeiture by the Government or a decision favorable to Willadean Boone is not sufficient. Movant urges he should be re-sentenced and given less time in view of the circumstances. The Court, at this time, does not share that view.

³. including a house trailer situated thereon.

IT IS SO ORDERED this 30 day of March, 1990.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

THE FEDERAL DEPOSIT INSURANCE)
CORPORATION as manager of the)
FEDERAL SAVINGS AND LOAN)
INSURANCE CORPORATION RESOLUTION)
FUND, as receiver for)
VICTOR SAVINGS AND LOAN)
ASSOCIATION, a federally)
chartered savings and loan)
association,)

Plaintiff,)

vs.)

KERRY J. STALEY,)

Defendant.)

FILED

MAR 30 1990

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

Case No. 90-C0035-*FB*

JUDGMENT

This matter comes on for hearing on March 30th, 1990 upon Application and Affidavit of Plaintiff duly made for judgment by default. It appears that the Defendant herein is in default and that the clerk of the United States District Court has previously searched the records and entered the default of the Defendant. It further appears upon Plaintiff's Affidavit that Defendant is indebted to the Plaintiff in the sum of \$274,777.72 for failure to pay note together with interest, that default has been entered against the Defendant for failure to appear, and that Defendant is not an infant or incompetent person, and is not in the military service of the United States. The Court having heard the argument of counsel and being fully advised, finds that judgment should be entered for the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff will recover from the Defendant the sum \$274,777.72, together with interest at a rate of 11.50% per year from March 22, 1988 until paid, costs in the sum of \$369.90 and reasonable attorneys' fees in the sum of \$1,039.75, for all which said execution issued.

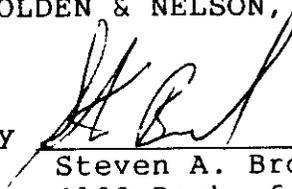
Judgment rendered this 30th day of March, 1990.

~~PL. THOMAS R. BRETT~~

UNITED STATES DISTRICT JUDGE

APPROVED:

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

By 

Steven A. Broussard, OBA #12582
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR PLAINTIFF

NOTE: THIS ORDER IS TO BE FILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA **MAR 30 1990**

WADRESS HUBERT METOYER, JR.,)
)
 Petitioner,)
)
 v.)
)
 STEPHEN KAISER, Warden,)
)
 Respondent.)

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

89-C-330-B

ORDER

Now before the Court are petitioner Wadress Hubert Metoyer, Jr.'s application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Docket #2)¹, respondents' Response (#4), petitioner's Traverse (#5), and petitioner's Motion for Leave to Amend (#10).

Petitioner was convicted in Tulsa County District Court, Case No. CRF-74-253, of Robbery with Firearms, and sentenced to a term of 200 years imprisonment. The Oklahoma Court of Criminal Appeals affirmed the judgment, but modified the sentence to 50 years. Petitioner's two applications for post-conviction relief were both denied.

The Magistrate in his Order of 8-23-89 granted petitioner leave to amend his petition to include the warden of the Lexington Correctional Center ("LCC"), Stephen Kaiser, where petitioner is presently incarcerated, because petitioner was transferred to LCC subsequent to the filing of his habeas petition. Petitioner has amended his habeas petition to include Stephen Kaiser as the proper party respondent.

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

Additionally, the Magistrate noted in his 8-23-90 order that he was unable to determine from the records whether petitioner met the "in custody" requirement of 28 U.S.C. § 2254(a). The Magistrate ordered respondent to provide him with an affidavit attesting to the status of petitioner's 1974 sentence in Case No. CRF-74-253. The affidavit received from petitioner's case manager, Mary Phillips, states that the sentence in Case No. CRF-74-253 is to be served in the future after completion of petitioner's sentence in Case No. CRF-82-3815. Therefore, the Court finds that petitioner has met the "in custody" requirement of 28 U.S.C. § 2254(a). See Peyton v. Rowe, 391 U.S. 54, 66 (1968).

Petitioner now seeks federal habeas relief on the alleged grounds that: (1) he was denied his constitutional right to notice and an opportunity to be heard before he was resentenced under 22 O.S. § 1066, (2) he was denied his constitutional right to due process and equal protection because 22 O.S. § 1066 was selectively applied to his case, and (3) the selective application of 22 O.S. § 1066 denied petitioner his constitutional right to due process for consideration of parole pursuant to 57 O.S. § 332.7.

Petitioner's Motion for Leave to Amend his habeas petition includes the alleged grounds that: (4) 22 O.S. § 1066 is vague as to legislative intent of the relief granted, and (5) that 22 O.S. § 1066 violates his constitutional right to equal protection because it allegedly allows for a defendant with no prior convictions under 22 O.S. § 801 to receive a greater sentence than

a defendant with prior convictions under 22 O.S. § 801 combined with 21 O.S. §§ 51(A) and 51(b) for the same offense.

The Court finds that petitioner fails to raise a federal question entitling him to relief in these claims. The statutes in question and their interpretation are matters of state law. In an action brought pursuant to 28 U.S.C. § 2254(a), the petitioner is required to demonstrate that he is being held unlawfully in violation of a federal law or constitutional provision. In considering habeas corpus petitions, federal courts must accept a state court's interpretation and application of its laws, unless such interpretation is inconsistent with fundamental principles of fairness and justice. Ewing v. Winans, 749 F.2d 607 (10th Cir. 1984). Matters relating to sentence and service of sentence are questions of state law and thus not cognizable under federal habeas corpus statutes. Handley v. Page, 279 F.Supp. 878 (W.D.Okla. 1968), 398 F.2d 351 (10th Cir. 1968).

In addition, the court has reviewed petitioner's claims and finds them to be frivolous. As his first ground for relief, petitioner claims he was denied his constitutional right to notice and an opportunity to be heard before he was resentenced. After carefully reviewing 22 O.S. § 1066,² the Court finds that the

² 22 O.S. § 1066 provides:

The appellate court may reverse, affirm or modify the judgment appealed from, and may, if necessary or proper, order a new trial. In either case, the cause must be remanded to the court below, with proper instructions, and the opinion of the court, within the time, and in the manner, to be prescribed by rule of the court.

If the case is reversed for a new trial, the clerk of the court from which such cause was appealed is required to make return showing that said case was specifically called to the attention of the trial court at the time of the setting of the docket following receipt of mandate, and showing the court's action in placing said

statute does not establish any hearing or notice requirements before the appellate court can enter a modification. Therefore, petitioner's first ground for relief is without merit.

As his second ground for relief, petitioner claims that he was denied his constitutional right to due process and equal protection because 22 O.S. § 1066 was selectively applied to his case. The court fails to see the basis of petitioner's argument. Under Oklahoma law, the Court of Criminal Appeals has the power to modify any sentence if the sentence is so excessive that it shocks the conscience of the court. See, Watkins v. State, 511 P.2d 589 (Okla.Crim.App. 1973). Petitioner benefitted substantially by the court's modification of his sentence from 200 years imposed by the jury to a sentence of 50 years. The court therefore finds petitioner's second ground for relief is without merit.

As the third ground for relief, petitioner claims that the selective application of 22 O.S. § 1066 denied him his constitutional right to due process for consideration of parole pursuant to 57 O.S. § 332.7.³

cause on the docket for trial, said return to be made immediately after the trial and entry of judgment, or earlier disposal. Should the case not be retried and should it be dismissed by the court, return shall be made, giving the reasons stated by the court in his minutes justifying such dismissal.

³ 57 O.S. § 332.7 states in part:

Upon completion of one-third (1/3) of the sentence of any person confined in a penal institution in the state, such person shall be eligible for consideration for a parole, and it shall be the duty of the Pardon and Parole Board, with or without application being made, to cause an examination to be made at the penal institution where the person is confined, and to make inquiry into the conduct and the record of the said person during his confinement in said penal institution, which shall be considered as a basis for consideration of said person for recommendation to the Governor for parole. However, the Pardon and Parole Board shall not be required to consider for parole any person who has completed one-third (1/3) of his sentence if the person has participated in a riot or in the taking of hostages, or has been placed on escape status, while in the custody of the Department of Corrections. The Pardon and Parole Board shall adopt policies and procedures governing parole consideration for such persons.

The court is unable to find any basis for this contention. Petitioner's rights under § 332.7 were not affected when his sentence was reduced by the appellate court. In his Traverse (#5), petitioner cites the case of Fields v. State, 501 P.2d 1390 (Okla.Crim.App. 1971). In Fields, the court discussed the policy of the Pardon and Parole Board concerning inmates serving a 45-year or more sentence. The Board's policy is that any inmates serving a sentence of 45 years or more shall be considered for parole after serving 15 years. Therefore, petitioner will be considered for parole after serving 15 years of his modified 50 year sentence in Case No. CRF-74-253. Under § 332.7 he would not be considered for parole until serving 1/3 of his fifty-year sentence, or 16 2/3 years.

As his fourth ground for relief in his amended petition, petitioner claims that 22 O.S. § 1066 is vague as to legislative intent of the relief granted. There is no constitutional requirement that a statute state the legislative intent behind its enactment and no merit to this argument.

As his fifth ground for relief in his amended petition, petitioner claims that 22 O.S. § 1066 violates his constitutional right to equal protection because it allows for a defendant with no prior convictions under 22 O.S. § 801 to receive a greater sentence than a defendant with prior convictions under 21 O.S. §§ 51(A) and (B) for the same offense. This argument is untenable, as 22 O.S. § 1066 is unrelated to any of the statutes setting punishments for specific crimes, such as 22 O.S. § 801 and 21 O.S.

§ 51, and allows the appellate court to modify any sentence set according to statutory scheme if it is seen as excessive under the specific facts of the case.⁴

It is therefore ordered **that** petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is dismissed.

Dated this 30th day of March, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

⁴ This court recognizes that under recent Tenth Circuit case law, the Court of Appeals would only have been able to sentence petitioner to the minimum sentence which the jury could have imposed. Carbray v. Champion, No. 89-5152 (10th Cir. Feb. 28, 1990). This is also true under recent Oklahoma case law. Clapton v. State, 742 P.2d 586 (Okla.Crim.App. 1987). However, this modification of sentence occurred in 1975, a significant time prior to these decisions, and the rulings in Carbray and Clapton were not given retroactive effect.

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

FILED

PHOENIX FEDERAL SAVINGS)
AND LOAN ASSOCIATION,)

Plaintiff,)

vs.)

ROBERT R. AUSTIN and PAULINE)
HINKLE AUSTIN, husband and)
wife; JOYCE EILEEN EATON;)
LLOYD K. SCHULTHEIS; WILLIAM L.)
BENKER; LAKELAND REAL ESTATE)
DEVELOPMENT, INC.; JAMES M.)
HENRY and KAREIN HENRY a/k/a)
KAREIN L. HENRY, husband and)
wife; QUINTON DODD and VICKIE)
E. DODD, husband and wife,)

Defendants.)

Case No. 89-C-759-C

(Consolidated with the
following cases into
Case No. 89-C-753-C:

Case No. 89-C-754-C;
Case No. 89-C-755-C;
Case No. 89-C-756-C;
Case No. 89-C-758-C;
and Case No. 89-C-759-C)

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

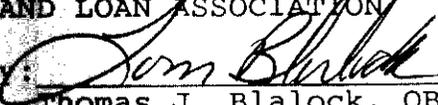
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HUFFMAN, ARRINGTON, KIHLE,
GABERINO & DUNN
1000 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103

Richard W. Lowry
LOGAN, LOWRY, JOHNSTON,
SWITZER, WEST & McGEADY
101 South Wilson Street
P. O. Box 558
Vinita, Oklahoma 74301-0558

Gregory C. Meier
Kevon V. Howald
RICHARDSON, MEIER & ASSOCIATES, P.C.
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105



Thomas J. Blalock

FILED

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

DISTRICT COURT

PHOENIX FEDERAL SAVINGS
AND LOAN ASSOCIATION,

Plaintiff,

vs.

ROBERT NEAL MCGUIRE and
SHARON E. MCGUIRE, husband and
wife; LAKELAND REAL ESTATE
DEVELOPMENT, INC.; JAMES M.
HENRY and KAREIN HENRY, a/k/a
KAREIN L. HENRY, husband and
wife; QUINTON R. DODD and
VICKIE E. DODD, husband and
wife,

Defendants.

Case No. 89-C-753-C

(Consolidated with the
following cases into
Case No. 89-C-753-C:

- Case No. 89-C-754-C;
- Case No. 89-C-755-C;
- Case No. 89-C-756-C;
- Case No. 89-C-758-C;
- and Case No. 89-C-759-C)

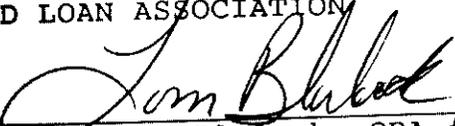
DISMISSAL WITHOUT PREJUDICE
AS TO CERTAIN PARTIES

Cimarron Federal Savings and Loan Association, the
Substituted Party-Plaintiff in the above-styled cause hereby
dismisses its causes of action without prejudice against the
following parties:

1. Lakeland Real Estate Development, Inc.;
2. James M. Henry and Karein Henry, a/k/a Karein L.
Henry, husband and wife; and
3. Quinton R. Dodd and Vickie E. Dodd, husband and wife.

This Dismissal is limited to the parties herein named.

CIMARRON FEDERAL SAVINGS
AND LOAN ASSOCIATION

By: 
Thomas J. Blalock, OBA #11763
KIMBALL, WILSON, WALKER
& FERGUSON
301 N.W. 63rd Street, Suite 400
Oklahoma City, Oklahoma 73116
(405) 843-8855

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of March, 1990, a true and correct copy of the above and foregoing Dismissal Without Prejudice as to Certain Parties was mailed by United States regular mail, to:

John A. Gaberino, Jr.
Larry D. Henry
Caroline B. Benediktson
Barry K. Beasley
HUFFMAN, ARRINGTON, KIHLE,
GABERINO & DUNN
1000 ONEOK Plaza
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Tulsa, Oklahoma 74103

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Gregory C. Meier
Kevon V. Howald
RICHARDSON, MEIER & ASSOCIATES, P.C.
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105



Thomas J. Blalock

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

FILED

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

PHOENIX FEDERAL SAVINGS)
AND LOAN ASSOCIATION,)
)
Plaintiff,)

vs.)

HERBERT L. BOLEN and INEZ L.)
BOLEN, husband and wife; JOHN)
C. FLUD, Sr. and MARILYN FLUD,)
husband and wife; RICHARD A.)
ROBAK and SUSIE ROBAK, husband)
and wife; JOHN C. FLUD, Jr.)
and JANTHA K. FLUD, husband and)
wife; ANTHAN D. FULLER and)
JANICE M. FULLER, husband and)
wife; CARL ABLES and ANNA JO)
ABLES, husband and wife;)
LAKELAND REAL ESTATE)
DEVELOPMENT, INC.; JAMES M.)
HENRY and KAREIN HENRY, a/k/a)
KAREIN L. HENRY, husband and)
wife; QUINTON DODD and VICKIE)
E. DODD, husband and wife,)

Defendants.)

Case No. 89-C-754-C

(Consolidated with the
following cases into
Case No. 89-C-753-C:

Case No. 89-C-754-C;
Case No. 89-C-755-C;
Case No. 89-C-756-C;
Case No. 89-C-758-C;
and Case No. 89-C-759-C)

DISMISSAL WITHOUT PREJUDICE
AS TO CERTAIN PARTIES

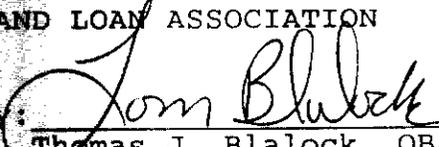
Cimarron Federal Savings and Loan Association, the
Substituted Party-Plaintiff in the above-styled cause hereby
dismisses its causes of action without prejudice against the
following parties:

1. Lakeland Real Estate Development, Inc.;
2. James M. Henry and Karein Henry, a/k/a Karein L. Henry, husband and wife; and
3. Quinton R. Dodd and Vickie E. Dodd, husband and wife.

This Dismissal is limited to the parties herein named.

CIMARRON FEDERAL SAVINGS
AND LOAN ASSOCIATION

By:


Thomas J. Blalock, OBA #11763

KIMBALL, WILSON, WALKER

& FERGUSON

301 N.W. 63rd Street, Suite 400

Oklahoma City, Oklahoma 73116

(405) 843-8855

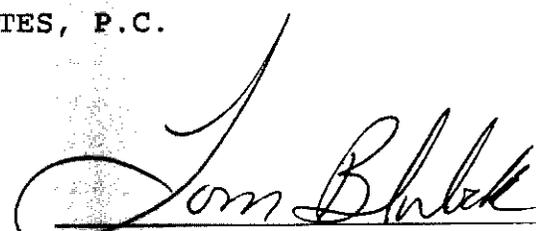
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Larry D. Henry
Caroline B. Benediktson
Barry K. Beasley
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GABERINO & DUNN
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Tulsa, Oklahoma 74103

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Gregory C. Meier
Kevon V. Howald
RICHARDSON, MEIER & ASSOCIATES, P.C.
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105


Thomas J. Blalock

FILED

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

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

PHOENIX FEDERAL SAVINGS)
AND LOAN ASSOCIATION,)

Plaintiff,)

vs.)

Case No. 89-C-755-C

ANTHAN D. FULLER and JANICE M.)
FULLER, husband and wife;)
VICTOR W. ADERHOLD; ANGELA B.)
BRAUER; QUINTON R. DODD and)
VICKIE E. DODD, husband and)
wife; LAKELAND REAL ESTATE)
DEVELOPMENT, INC.; JAMES M.)
HENRY and KAREIN HENRY a/k/a)
KAREIN L. HENRY, husband and)
wife,)

(Consolidated with the)
following cases into)
Case No. 89-C-753-C:)

Case No. 89-C-754-C;)
Case No. 89-C-755-C;)
Case No. 89-C-756-C;)
Case No. 89-C-758-C;)
and Case No. 89-C-759-C)

Defendants.)

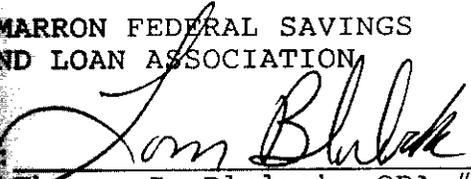
DISMISSAL WITHOUT PREJUDICE
AS TO CERTAIN PARTIES

Cimarron Federal Savings and Loan Association, the
Substituted Party-Plaintiff in the above-styled cause hereby
dismisses its causes of action without prejudice against the
following parties:

1. Lakeland Real Estate Development, Inc.; and
2. James M. Henry and Karein Henry, a/k/a Karein L.
Henry, husband and wife.

This Dismissal is limited to the parties herein named.

CIMARRON FEDERAL SAVINGS
AND LOAN ASSOCIATION

By: 
Thomas J. Blalock, OBA #11763
KIMBALL, WILSON, WALKER
& FERGUSON
301 N.W. 63rd Street, Suite 400
Oklahoma City, Oklahoma 73116
(405) 843-8855

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5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105



Thomas J. Blalock

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

FILED

PHOENIX FEDERAL SAVINGS
AND LOAN ASSOCIATION,

Plaintiff,

vs.

ROBERT NEAL MCGUIRE and SHARON
E. MCGUIRE, husband and wife;
WAYNE WILKINS and SULYN KAY
WILKINS, husband and wife;
J. ALAN GIBSON and MARY LOUISE
GIBSON, husband and wife;
JOYCE EILEEN EATON; WILLIAM L.
BENKER; LAKELAND REAL ESTATE
DEVELOPMENT, INC.; JAMES M.
HENRY and KAREIN HENRY a/k/a
KAREIN L. HENRY, husband and
wife; QUINTON R. DODD and
VICKIE E. DODD, husband and
wife,

Defendants.

Case No. 89-C-756-C

(Consolidated with the
following cases into
Case No. 89-C-753-C:

Case No. 89-C-754-C;
Case No. 89-C-755-C;
Case No. 89-C-756-C;
Case No. 89-C-758-C;
and Case No. 89-C-759-C)

U.S. DISTRICT COURT

DISMISSAL WITHOUT PREJUDICE
AS TO CERTAIN PARTIES

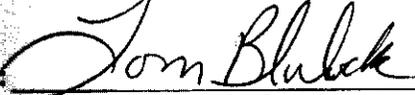
Cimarron Federal Savings and Loan Association, the
Substituted Party-Plaintiff in the above-styled cause hereby
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following parties:

1. Lakeland Real Estate Development, Inc.;
2. James M. Henry and Karein Henry, a/k/a Karein L.
Henry, husband and wife; and
3. Quinton R. Dodd and Vickie E. Dodd, husband and wife.

This Dismissal is limited to the parties herein named.

CIMARRON FEDERAL SAVINGS
AND LOAN ASSOCIATION

By


Thomas J. Blalock, OBA #11763

KIMBALL, WILSON, WALKER
& FERGUSON

301 N.W. 63rd Street, Suite 400
Oklahoma City, Oklahoma 73116
(405) 843-8855

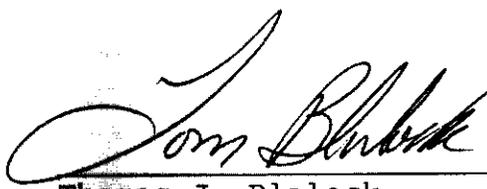
CERTIFICATE OF MAILING

I hereby certify that on the 28th day of March, 1990, a true and correct copy of the above and foregoing Dismissal Without Prejudice as to Certain Parties was mailed by United States regular mail, to:

John A. Gaberino, Jr.
Larry D. Henry
Caroline B. Benediktson
Barry K. Beasley
HUFFMAN, ARRINGTON, KIHLE,
GABERINO & DUNN
1000 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103

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Gregory C. Meier
Kevon V. Howald
RICHARDSON, MEIER & ASSOCIATES, P.C.
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105


Thomas J. Blalock

FILED

NOV 14 1989

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

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

PHOENIX FEDERAL SAVINGS
AND LOAN ASSOCIATION,

Plaintiff,

vs.

GLENN DARRELL McGUIRE and
BRENDA KAY McGUIRE, husband
and wife; ROBERT NEAL McGUIRE
and SHARON E. McGUIRE, husband
and wife; LAKELAND REAL ESTATE
DEVELOPMENT, INC.; JAMES M.
HENRY and KAREIN HENRY a/k/a
KAREIN L. HENRY, husband and
wife; QUINTON DODD and VICKIE
E. DODD, husband and wife,

Defendants.

Case No. 89-C-758-C

(Consolidated with the
following cases into
Case No. 89-C-753-C:

Case No. 89-C-754-C;
Case No. 89-C-755-C;
Case No. 89-C-756-C;
Case No. 89-C-758-C;
and Case No. 89-C-759-C)

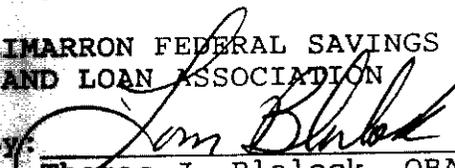
DISMISSAL WITHOUT PREJUDICE
AS TO CERTAIN PARTIES

Cimarron Federal Savings and Loan Association, the
Substituted Party-Plaintiff in the above-styled cause hereby
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1. Lakeland Real Estate Development, Inc.;
2. James M. Henry and Karein Henry, a/k/a Karein L. Henry, husband and wife; and
3. Quinton R. Dodd and Vickie E. Dodd, husband and wife.

This Dismissal is limited to the parties herein named.

CIMARRON FEDERAL SAVINGS
AND LOAN ASSOCIATION

By: 

Thomas J. Blalock, OBA #11763
KIMBALL, WILSON, WALKER
& FERGUSON

301 N.W. 63rd Street, Suite 400
Oklahoma City, Oklahoma 73116
(405) 843-8855

CERTIFICATE OF MAILING

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Caroline B. Benediktson
Barry K. Beasley
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Kevon V. Howald
RICHARDSON, MEIER & ASSOCIATES, P.C.
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105


Thomas J. Blalock

FILED

MAR 28 1990

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

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

FLOYD R. HARDESTY,

Plaintiff,

vs.

KARRIE DULIN,

Defendant.

Case No. 89-C-810-E

ORDER

NOW on this 28th day of March, 1990, comes on for consideration the above styled matter and the Court, being fully advised in all premises, finds that there is currently pending a motion to dismiss or, in the alternative, to stay the proceedings until completion of the concurrent state court action. This Court has carefully reviewed the file in this case, including the arguments made, authorities cited and exhibits provided, and finds that judicial abstention is appropriate in this matter. State court proceedings regarding these same issues are currently pending before Judge Wiseman, albeit under fictitious names, and were filed prior to this federal action. It may well be that resolution of these matters involves judicial construction of an order previously rendered in Tulsa County District Court. Well established principles of judicial comity and careful use of judicial resources dictate that this Court should stay its action to allow the state courts to determine the issues under state law in the previously filed and pending action between the same parties.

22

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Dulin's Motion to Dismiss should be and is hereby granted in part and denied in part. While this Court is not dismissing the action, the case will be administratively closed until such time as the state court proceedings have been completed. If within 30 days of such state court resolution, the parties have not moved to reopen this action, the federal case will then be dismissed.


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

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

FILED

MAR 28 1990

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

ADALINE NUCKOLS,

Plaintiff,

vs.

No. 89-C-185-E

MID-PLAINS LAND & MINERAL CORP.,
ROBERT L. BOWMAN, EARL WHITLEY,
MID-PLAINS LAND & MINERAL, a
limited partnership, FINANCIAL
MANAGEMENT SYSTEMS, INC., GINGER
WHITLEY, PROFESSIONAL INVESTORS
LIFE INSURANCE COMPANY, and
LEE LEVINSON,

Defendants.

ORDER

The Application for Dismissal Without Prejudice as to the Defendant Lee Levinson comes on for consideration and decision before me, the undersigned United States District Judge, and for good cause shown, the Application should be and is hereby approved.

Defendant Lee Levinson is hereby dismissed without prejudice, each party to pay their own costs and attorney's fees.

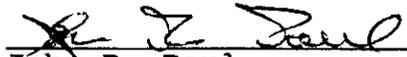
This Dismissal Without Prejudice shall not effect the Plaintiff's claim against all remaining Defendants.

SO ORDERED this 28 day of ^{March} ~~February~~, 1990.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



John R. Paul
Attorney for Plaintiff
Adaline Nuckols



Clark Brewster
Attorney for Lee Levinson

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

FILED

MAR 28 1990

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

JON ENGLER TRUCKING, INC.,
an Oklahoma Corporation,

Plaintiff,

vs.

Case No. 89-C-403-E

SUNBELT EXPRESS, INC.,
a Texas corporation,
PROGRESSIVE CASUALTY INSURANCE
COMPANY, and GILBERT SILVA

Defendant.

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, Jon Engles Trucking, Inc., pursuant to Rule 41(a) of the Federal Rules of Civil Procedure and dismisses the Defendant Gilbert Silva without prejudice to refiling. In support of this Dismissal, Plaintiff would show the Court that valid service was not obtained on Mr. Silva nor has Mr. Silva entered an appearance in this case.

Respectfully submitted,

MOYERS, MARTIN, SANTEE, IMEL & TETRICK

By Frank V. Cooper
Frank V. Cooper, OBA #11795
320 South Boston Bldg., Suite 920
Tulsa, Oklahoma 74103
(918) 582-5281

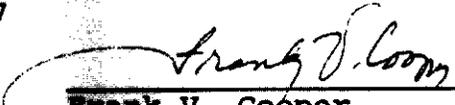
ATTORNEYS FOR PLAINTIFF
JON ENGLER TRUCKING, INC.

CERTIFICATE OF MAILING

I hereby certify that on this 28 day of March, 1990, I mailed a true and correct copy of the above and foregoing Dismissal, with proper postage thereon, to:

John R. Woodward
525 South Main, Suite 1400
Tulsa, Oklahoma 74103-4409

Gilbert Silva
2127 W. Henderson
Porterville, CA 93257



Frank V. Cooper

3-28-90
FVC/dl
5.0/engles.dsm

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

Helén M. Murphy

Plaintiff(s),

vs.

Lawrence Polston, et al

Defendant(s).

No. 88-C-1115-E ✓

FILED

MAR 28 1990

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

ORDER

Rule 35(a) of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may in the Court's discretion be entered.

In the action herein, notice pursuant to Rule 36(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on February 20, 1990. No action has been taken in the case within thirty (30) days of the date of the notice.

Therefore, it is the Order of the Court that this action is in all respects dismissed.

Dated this 28th day of March, 1990.


UNITED STATES DISTRICT JUDGE

26

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

FILED

MAR 28 1990

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

SANTA FE-ANDOVER OIL COMPANY,)
ANDOVER 1980 INVESTMENT PROGRAM,)
LTD., and SANTA FE-ANDOVER 1982)
INVESTMENT PROGRAM, LTD.,)

Plaintiffs,)

v.)

No. 88-C-418-E

ARKLA, INC., a Delaware corpora-)
tion and ARKANSAS-LOUISIANA GAS)
COMPANY, a Delaware corporation,)

Defendants.)

ORDER OF DISMISSAL AND
AGREED PROTECTIVE ORDER

Upon the Joint Motion of the parties hereto, the Court finds it appropriate to enter this Order of Dismissal and Agreed Protective Order; it is hereby

ORDERED that the above-styled cause be and hereby is dismissed with prejudice, each party to bear its own costs; and it is further hereby

ORDERED that the terms and conditions of the Settlement Agreement between the parties be treated in a confidential manner, not to be disclosed or revealed in any way to any person or organization, except as provided by the terms of that Settlement Agreement; and it is further hereby

ORDERED that this order for confidentiality does not affect any title to real property.

Entered this 28 day of March, 1990.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

FILED

MAR 28 1990

John L. Silver, Clerk
U.S. DISTRICT COURT

THE CATTS COMPANY,

Plaintiff,

vs.

RONALD J. LATIMER, d/b/a SEVEN
OAKS CENTER, INC., et al

Defendants.

Case No. 89-C-004-B

Notice to Dismiss Pursuant to Rule 41
MOTION TO DISMISS WITHOUT PREJUDICE

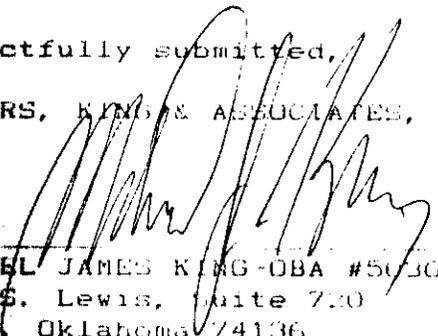
The Plaintiff, The Catts Company, pursuant to Rule 41 of the Federal Rules of Civil Procedure, hereby moves to dismiss without prejudice, its claim against Ronald J. Latimer, d/b/a Seven Oaks Center, Inc.

Further, Plaintiff prays that the Status/Schedule Conference set for March 28, 1990 before the honorable Judge Thomas R. Brett be stricken as there are no remaining party defendants in this case.

DATED this 28th day of March, 1990.

Respectfully submitted,

WINTERS, KING & ASSOCIATES, INC.

By: 
MICHAEL JAMES KING-OBA #5036
7130 S. Lewis, Suite 720
Tulsa, Oklahoma 74136
(918) 494-6868

ATTORNEY FOR PLAINTIFF

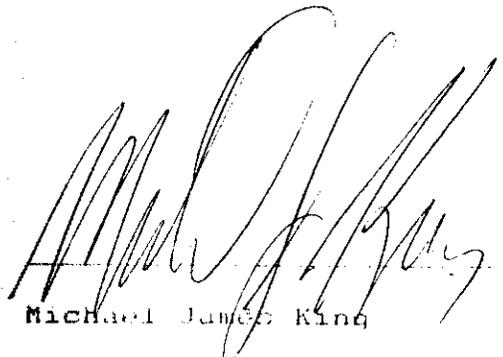
CERTIFICATE OF SERVICE

I, Michael James King, hereby certify that a true and correct copy of the above and foregoing instrument was mailed on the 28th day of March, 1990, to the following, with postage prepaid thereon:

Michael J. Gibbens, Esq.
JONES, GIVENS, GOTCHER,
BOGAN & HILBORNE
3800 First National Tower
Tulsa, OK 74103

Mr. Ronald J. Latimer
d/b/a Seven Oaks Center
Route 1, Box 131-2
Coweta, OK 74429

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



Michael James King

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

Crest Industries Corp.

Plaintiff(s),

vs.

Allen Thomsic, et al

Defendant(s).

No. 88-C-1568-E

FILED

MAR 20 1990

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

ORDER

Rule 35(a) of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may in the Court's discretion be entered.

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Therefore, it is the Order of the Court that this action is in all respects dismissed.

Dated this 28th day of March, 1990.


UNITED STATES DISTRICT JUDGE

FILED

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

MAR 28 1990

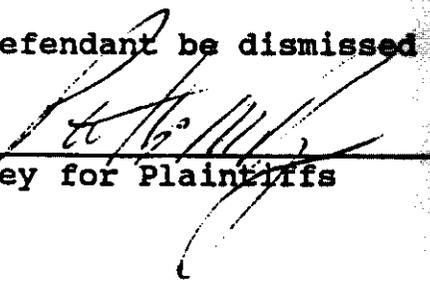
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JAMES J. SYKORA, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 JILL ZINK TARBEL et al.,)
)
 Defendants.)

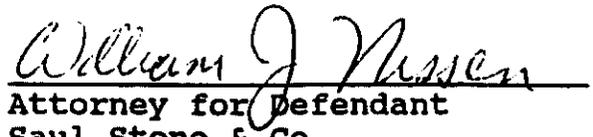
Case No. 88-C-553-B

STIPULATION TO DISMISS

Plaintiffs James J. Sykora, James J. Sykora as Trustee of the James J. Sykora Money Purchase Plan, and James J. Sykora as Custodian of the James J. Sykora IRA, and defendant Saul Stone & Co. hereby stipulate that all claims of said plaintiffs against said defendant be dismissed without prejudice, and without costs.



Attorney for Plaintiffs



Attorney for Defendant
Saul Stone & Co.

Patrick M. Ryan
Ryan, Holloman, Corbyn &
Geister
119 North Robinson
Suite 900
Oklahoma City, Oklahoma 73102

William J. Nissen
Jo Lynn Haley
Sidley & Austin
One First National Plaza
Suite 5400
Chicago, Illinois 60603

Harry Parrish
Knight, Wagner, Stuart &
Wilkerson
P.O. Box 1560
Tulsa, Oklahoma 74101-1560

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

FILED

MAR 28 1990

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

SANTA FE MINERALS, INC.,
(formerly Santa Fe-Andover
Oil Company), a Wyoming
corporation,

Plaintiff,

v.

ARKLA, INC., a
Delaware corporation,

Defendant.

No. 89-C-1048E

ORDER OF DISMISSAL AND
AGREED PROTECTIVE ORDER

Upon the Joint Motion of the parties hereto, the Court finds it appropriate to enter this Order of Dismissal and Agreed Protective Order; it is hereby

ORDERED that the above-styled cause be and hereby is dismissed with prejudice, each party to bear its own costs; and it is further hereby

ORDERED that the terms and conditions of the Settlement Agreement between the parties be treated in a confidential manner, not to be disclosed or revealed in any way to any person or organization, except as provided by the terms of that Settlement Agreement; and it is further hereby

ORDERED that this order for confidentiality does not affect any title to real property.

Entered this 28 day of March, 1990.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

FILED

MAR 28 1990

DEBRA LYNN FLEMING,)
)
 Plaintiff,)
)
 vs.)
)
 WAL-MART STORES, INC., a)
 Delaware corporation, doing)
 business in Oklahoma,)
)
 Defendant.)

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

No. 89-C-231C

JOURNAL ENTRY OF JUDGMENT

The matter came on for jury trial before this Court on the 26th day of February, 1990, plaintiff present and represented by her attorney, Tom Tannehill, and defendant present and represented by its attorney, Jon B. Comstock; trial by jury was had and verdict returned finding plaintiff's negligence 75% responsible for the causation of the accident, and defendant's agent 25% responsible for the causation of the accident; accordingly no monetary award to the plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant, Wal-Mart Stores, Inc., have judgment against the plaintiff, Debra Fleming, on her Complaint and that the plaintiff take nothing by way of her Complaint.

Dated this 28th day of March, 1990.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

50

APPROVED AS TO FORM AND CONTENT:

By Tom Tannehill
Tom Tannehill, OBA #8840

P. O. Box 700209
Tulsa, OK 74170
(918) 493-2996

Attorney for Plaintiff

ROSENSTEIN, FIST & RINGOLD

By Jon B. Comstock
Jon B. Comstock, OBA #1836

525 S. Main, Suite 300
Tulsa, OK 74103
(918) 585-9211

Attorneys for Defendant, Wal-
Mart Stores, Inc.

FILED

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

MAR 28 1990

JAKE UNDERWOOD,
Petitioner,

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

v.

90-C-169-C

RON CHAMPION and THE
ATTORNEY GENERAL OF
THE STATE OF OKLAHOMA,
Respondents.

ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed March 8, 1990, in which the Magistrate recommended that petitioner's application for a writ of habeas corpus be dismissed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is dismissed.

Dated this 28th day of March, 1990.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 27 1990 *OS*

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

LOUISE PLAISTED,
Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.,
Secretary of the Department
of Human Services,

Defendant.

No. 89-C-5-E ✓

JUDGMENT

This action came on for consideration before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiff Louise Plaisted take nothing from the Defendant Louis W. Sullivan, M.D., that the action be dismissed on the merits, and that the Defendant recover of the Plaintiff his costs of action.

ORDERED this 27th day of March, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

MAR 27 1996

U.S. District Court
NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its Corporate)
Capacity for First National Bank)
of Skiatook, Skiatook, Oklahoma,)

Plaintiff,)

v.)

No. 88-C-1505-E

D. STEVE MOSHER; and DEAN)
WITTER REYNOLDS INC.,)

Defendants.)

D. STEVEN MOSHER,)

Third-Party Plaintiff,)

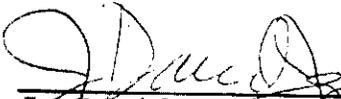
v.)

GENE P. DENNISON,)

Third-Party Defendant.)

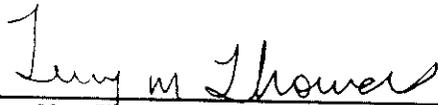
JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Defendant Dean Witter Reynolds, Inc. ("Dean Witter") and Defendant D. Steven Mosher ("Mosher"), pursuant to Fed.R.Civ.P. 41(a)(1), stipulate to the dismissal of, and do hereby dismiss, without prejudice, Dean Witter's cross-claim against Mosher herein, each party to bear its own costs and attorneys' fees.



J. David Jorgenson (OBA #4839)
CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorney for Defendant
DEAN WITTER REYNOLDS INC.



Terry M. Thomas
NORMAN & WOHLGEMUTH
2900 Mid-Continent Tower
Tulsa, Oklahoma 74103
(918) 583-7571

Attorney for Defendant
D. STEVEN MOSHER

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

FILED
MAR 27 1990

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

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its corporate)
capacity for the FIRST)
NATIONAL BANK OF SKIATOOK,)
Skiatook, Oklahoma,)

Plaintiff,)

vs.)

D. STEVEN MOSHER and DEAN)
WITTER REYNOLDS, INC.,)

Defendants.)

No. 88-C-1505-E

D. STEVEN MOSHER,)

Third-Party Plaintiff,)

vs.)

GENE P. DENNISON,)

Third-Party Defendant.)

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

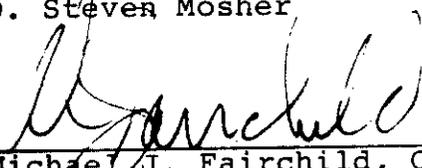
Defendant and Third-Party Complainant D. Steven Mosher ("Mosher") and Third-Party Defendant and Cross-Complainant Gene P. Dennison ("Dennison") hereby stipulate that Mosher's Third-Party Complaint against Dennison and Dennison's Cross-Complaint against Mosher are hereby dismissed without prejudice, each party to bear his own costs and fees herein.

Respectfully submitted,



Terry M. Thomas, OBA #8951
NORMAN & WOHLGEMUTH
2900 Mid-Continent Tower
Tulsa, Oklahoma 74103
(918) 583-7571

Attorneys for Defendant and
Third-Party Complainant
D. Steven Mosher



Michael J. Fairchild, OBA #2807
The Downing Mansion
232 North Santa Fe
Tulsa, OK 74070

Attorney for Third-Party
Defendant and Cross-Complainant
Gene P. Dennison

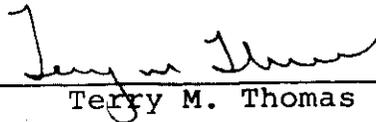
CERTIFICATE OF MAILING

I hereby certify that on the 27th day of March,
1990, a true and correct copy of the above and foregoing
instrument was mailed to the following by depositing said
copy in the United States Mail with sufficient postage
thereon prepaid:

J. David Jorgenson, Esq.
M.E. McCollam, Esq.
CONNER & WINTERS
2400 First National Tower
Tulsa, OK 74103

Bradley K. Beasley, Esq.
BOESCHE, McDERMOTT & ESKRIDGE
100 West Fifth Street, Suite 800
Tulsa, OK 74103

Michael J. Fairchild, Esq.
The Downing Mansion
232 North Santa Fe
Tulsa, OK 74070


Terry M. Thomas

ORDERED this 26th day of March, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 27 1990

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

MICHELLE UNDERKOFER, Personal
Representative of the Estate of
Dorothy Frizelle, Deceased,

Plaintiff,

vs.

JASPER MCPHAIL, M.D.;
GRADY CORE, M.D.;
P.M.PAN, M.D.;
FRANCIS KUMAR, M.D.; and
CITY OF FAITH MEDICAL AND RESEARCH
CENTER, an Oklahoma Corporation,

Defendants.

Case No. 88-C-76-E

ORDER OF DISMISSAL NUNC PRO TUNC

NOW, ON THIS 26th day of March, 1989, comes on for consideration the application for dismissal with prejudice. The Court, being advised in the premises, does hereby find that said application is well taken and the above-captioned cause is hereby dismissed with prejudice to any refiling. Further, the Court recognizes the fact that no sums of money or other compensation have been paid to the Plaintiff on behalf of the Defendant, Grady Core, M.D.

Dated this 26th of March, 1989.

James Ellison
United States District Judge

FILED

MAR 27 1990

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

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

MID-CENTURY INSURANCE COMPANY,)
A Foreign Corporation,)

Plaintiff,)

vs.)

No. 89-C-269-E

KENNETH LEE WYNN and ANNA LEE)
WYNN, As Guardians of MATTHEW)
PAUL DAVIS and DEXTER RAY)
CAMERON, JR., and JOHN PAUL)
DAVIS,)

Defendants.)

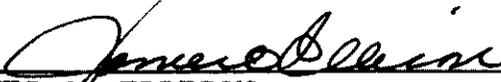
ORDER

There being no response to either the Motion for Summary Judgment or the Application for Summary Disposition on Defendants' Default in Failing to File a Response Brief to Plaintiff's Motion for Summary Judgment, and more than ten (10) days having passed since the filing of both such motions and no extension of time having been sought by Defendants, the Court, pursuant to Local Rule 15(a), as amended effective May 1, 1988, concludes that Defendants have therefore waived any objection or opposition to the Motion for Summary Judgment. See Woods Constr. Co. v. Atlas Chemical Indus. Inc., 337 F.2d 888, 890 (10th Cir. 1964). The Court has, however, additionally examined the merits of the motion and finds that it should be granted, there being no material issues of fact and the case of Gilbertson v. State Farm Mut. Auto. Ins., 845 F.2d 245 (10th Cir. 1988) being persuasive.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED Plaintiff's

Motion for Summary Judgment should be and is hereby granted. Plaintiff's counsel is directed to prepare and file an appropriate form of Judgment within 10 days.

ORDERED this 27th day of March, 1990.



JAMES C. ELLISON
UNITED STATES DISTRICT JUDGE

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

FEDERAL DEPOSIT INSURANCE CORPORATION,)
acting in its corporate capacity as successor to)
The Citizens Bank, Drumright, Oklahoma; 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.)

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.)

FILED

MAR 27 1990

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

Case No. 89-C-965-E

ORDER OF DISMISSAL WITHOUT PREJUDICE - COUNT VI

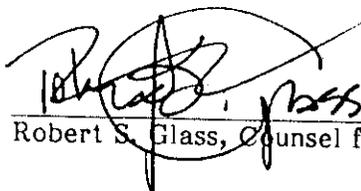
NOW came on before the Court pursuant to regular assignment the Stipulation of Dismissal Without Prejudice - Count VI, wherein Federal Deposit Insurance Corporation ("FDIC") has requested that the Court permit it to dismiss without prejudice its cause of action against Defendant, Angela Saliba, more fully set forth in Count VI of FDIC's Complaint for Money Judgment and Foreclosure filed herein on November 22, 1989 for the reason that Angela Saliba does not presently reside in the United States and FDIC desires to reserve its claim against Angela Saliba for prosecution at a later date, at FDIC's sole election.

For good cause and sufficient grounds having been stated by FDIC in support of its Motion, IT IS ORDERED that FDIC's Count VI, setting forth a claim against Angela Saliba, is hereby dismissed without prejudice to the rights of FDIC to reassert such claim against Angela Saliba, pursuant to Fed.R.Civ.P. 41(a)(1)(ii), and with each of the parties bearing their own expenses in connection with Count VI herein.

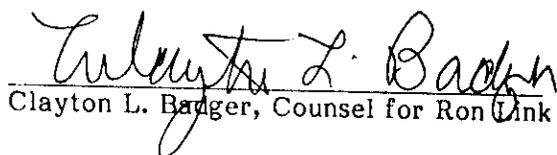
IT IS SO ORDERED and DATED this 26 day of March, 1990.

S/ JAMES O. ELLISON
HONORABLE JAMES O. ELLISON,
UNITED STATES DISTRICT COURT JUDGE

APPROVED FOR ENTRY:


Robert S. Glass, Counsel for FDIC


Lee I. Levinson, Counsel for
Freddie Saliba and Cecilia Saliba


Clayton L. Bauger, Counsel for Ron Link

UNITED STATES DISTRICT COURT

Entered

JACK C. SILVER
CLERK

**NORTHERN DISTRICT OF OKLAHOMA
CLERK'S OFFICE
UNITED STATES COURT HOUSE
333 West Fourth Street, Room 411
TULSA, OKLAHOMA 74103**

(918) 581-7796
(FTS) 745-7796

March 27, 1990

TO ALL COUNSEL OF RECORD:

IN RE: Daniels vs. Cundiff et al
89-C-687-C

Please be advised that Chief Judge H. Dale Cook entered the following Minute Order in the above styled case:

Defendants' motion for partial dismissal filed on September 28, 1989 is hereby granted. The Court has no record of a response filed by the plaintiff. Pursuant to Local Rule 15(a), the failure of a party to respond to a motion amounts to a confession and acquiescence of the matter contained therein.

Very truly yours,

JACK C. SILVER, CLERK

JCS
Deputy Clerk

CC:

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

Original filed in 89-6275 T L E D

LUC J. VAN RAMPENBERG,
Plaintiff,
vs.
U.S. POSTAL SERVICE,
et al.
Defendants.

) Case no: 89-C-627 E
) 89-C-829 E
) 89-C-883 E
) 89C-898 B
) 89-C-911 C
) 89-C-912 E
) 89-C-928 B
) 89-C-929 E
) 89-C-931 B
) 89-C-934 B
) 89-C-651 E
) 89-C-761 C

MAR 26 1990

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

CONSOLIDATED



VOLUNTARY DISMISSAL.

Plaintiff, Luc J. VanRampelberg hereby pursuant rule 41(a) of the Federal Rules of Civil Procedure dismisses voluntarily without prejudice the cases captioned above defendant as of yet having not served an answer.



LUC J. VAN RAMPENBERG.

Certificate of service.

The undersigned hereby certifies that a true and correct copy of this dismissal was served by hand delivery to the U.S. District Attorney for the Northern District of Oklahoma, this 26th day of March 1990.



LUC J. VAN RAMPENBERG

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

original filed in 89-6270 FILED

LUC J. VAN RAMPENBERG,

Plaintiff,

vs.

U.S. POSTAL SERVICE,

et al.

Defendants.

Case no: 89-C-627 E

89-C-829 E

89-C-883 E

898C-898 B

89-C-911 C

89-C-912 E

89-C-928 B

89-C-929 E

89-C-931 B

89-C-934 B

89-C-651 E

89-C-761 C

CONSOLIDATED

MAR 26 1990

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

VOLUNTARY DISMISSAL.

Plaintiff, Luc J. VanRampenberg hereby pursuant rule 41(a) of the Federal Rules of Civil Procedure dismisses voluntarily without prejudice the cases captioned above defendant as of yet having not served an answer.

LUC J. VAN RAMPENBERG.

Certificate of service.

The undersigned hereby certifies that a true and correct copy of this dismissal was served by hand delivery to the U.S. District Attorney for the Northern District of Oklahoma, this 26th day of March 1990.

LUC J. VAN RAMPENBERG

FILED

MAR 26 1990

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

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

SAMSON RESOURCES COMPANY,)
)
Plaintiff,)
)
vs.)
)
DELHI GAS PIPELINE CORPORATION)
)
Defendant.)
)
)
)

Case No. 88-C-374-E

ORDER

NOW on this 23^d day of March, 1990, comes on for consideration the above styled matter and the Court, being fully advised in all premises, finds that this case was previously referred to an Arbitration Panel on Counts I and III of the Complaint. Counts II and III were subsequently resolved and withdrawn, leaving only Count I to be presented to the Panel. Such Panel entered its Award, at which time Plaintiff moved for confirmation and Defendant moved for a new trial. The Panel subsequently denied the motion for new trial but extensively clarified its previous Award.

Based upon the Award and subsequent clarification of the Award as defined by the Panel, this Court finds that such Award should properly be confirmed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Award of the Arbitration Panel in this matter should be and is hereby confirmed.


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

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

FILED

MAR 26 1990

TOM PLUMLEE,

Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE
COMPANY

Defendant.

)
)
)
)
)
)
)
)
)
)

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

Case No. 89-C-470-B

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 26th day of Mar, 1990.


United States District Judge

11

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

Original filed in 89-6277 T L E D

LUC J. VAN RAMPENBERG,
Plaintiff,
vs.
U.S. POSTAL SERVICE,
et al.
Defendants.

) Case no: 89-C-627 E
) 89-C-829 E
) 89-C-883 E
) 89C-898 B
) 89-C-911 C
) 89-C-912 E
) 89-C-928 B
) 89-C-929 E
) 89-C-931 B
) 89-C-934 B
) 89-C-651 E
) 89-C-761 C
) CONSOLIDATED

MAR 26 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT



VOLUNTARY DISMISSAL.

Plaintiff, Luc J. VanRampenberg hereby pursuant rule 41(a) of the Federal Rules of Civil Procedure dismisses voluntarily without prejudice the cases captioned above defendant as of yet having not served an answer.



LUC J. VAN RAMPENBERG.

Certificate of service.

The undersigned hereby certifies that a true and correct copy of this dismissal was served by hand delivery to the U.S. District Attorney for the Northern District of Oklahoma, this 26th day of March 1990.



LUC J. VAN RAMPENBERG

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

Original filed in 89-6270 FILED

LUC J. VAN RAMPENBERG,
Plaintiff,
vs.
U.S. POSTAL SERVICE,
et al.
Defendants.

) Case no: 89-C-627 E
) 89-C-829 E
) 89-C-883 E
) 89C-898 B
) 89-C-911 C
) 89-C-912 E
) 89-C-928 B
) 89-C-929 E
) 89-C-931 B
) 89-C-934 B
) 89-C-651 E
) 89-C-761 C

MAR 26 1990

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

CONSOLIDATED



VOLUNTARY DISMISSAL.

Plaintiff, Luc J. VanRampelberg hereby pursuant rule 41(a) of the Federal Rules of Civil Procedure dismisses voluntarily without prejudice the cases captioned above defendant as of yet having not served an answer.



LUC J. VAN RAMPENBERG.

Certificate of service.

The undersigned hereby certifies that a true and correct copy of this dismissal was served by hand delivery to the U.S. District Attorney for the Northern District of Oklahoma, this 26th day of March 1990.



LUC J. VAN RAMPENBERG

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

FILED

MAR 26 1990

LUC J. VAN RAMPENBERG,

Plaintiff,

vs.

U.S. POSTAL SERVICE,

et al.

Defendants.

) Case no: 89-C-627 E
) 89-C-829 E
) 89-C-883 E
) 89C-898 B
) 89-C-911 C
) 89-C-912 E
) 89-C-928 B
) 89-C-929 E
) 89-C-931 B
) 89-C-934 B
) 89-C-651 E
) 89-C-761 C
) CONSOLIDATED

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

LEAVE GRANTED TO FILE
S/JOHN LEO WAGNER
U. S. Magistrate

VOLUNTARY DISMISSAL.

Plaintiff, Luc J. VanRampelberg hereby pursuant rule 41(a) of the Federal Rules of Civil Procedure dismisses voluntarily without prejudice the cases captioned above defendant as of yet having not served an answer.



LUC J. VAN RAMPENBERG.

Certificate of service.

The undersigned hereby certifies that a true and correct copy of this dismissal was served by hand delivery to the U.S. District Attorney for the Northern District of Oklahoma, this 26th day of March 1990.



LUC J. VAN RAMPENBERG

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

Original filed in 89-6277 FILED

LUC J. VAN RAMPENBERG,

Plaintiff,

vs.

U.S. POSTAL SERVICE,

et al.

Defendants.

) Case no: 89-C-627 E
) 89-C-829 E
) 89-C-883 E
) 898C-898 B
) 89-C-911 C
) 89-C-912 E
) 89-C-928 B
) 89-C-929 E
) 89-C-931 B
) 89-C-934 B
) 89-C-651 E
) 89-C-761 C

CONSOLIDATED

MAR 26 1990

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



VOLUNTARY DISMISSAL.

Plaintiff, Luc J. VanRampelberg hereby pursuant rule 41(a) of the Federal Rules of Civil Procedure dismisses voluntarily without prejudice the cases captioned above defendant as of yet having not served an answer.



LUC J. VAN RAMPENBERG.

Certificate of service.

The undersigned hereby certifies that a true and correct copy of this dismissal was served by hand delivery to the U.S. District Attorney for the Northern District of Oklahoma, this 26th day of March 1990.



LUC J. VAN RAMPENBERG

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

FILED

MAR 26 1990

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

DELAWARE CROSSING CONDOMINIUMS)
ASSOCIATION, INC.,)

Plaintiff,)

v.)

88-C-1493-C

HEARTLAND FEDERAL SAVINGS)
AND LOAN ASSOCIATION, et al.,)

Defendant.)

ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed March 6, 1990, in which the Magistrate recommended that the Motion for Summary Judgment should be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that the Motion for Summary Judgment is granted.

Dated this 26 day of March, 1990.



H. DALE COOK
CHIEF JUDGE

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

Original filed in 89-6277 T L E D

LUC J. VAN RAMPENBERG,

Plaintiff,

vs.

U.S. POSTAL SERVICE,

et al.

Defendants.

) Case no: 89-C-627 E

) 89-C-829 E

) 89-C-883 E

) ~~89C-898 B~~

) 89-C-911 C

) 89-C-912 E

) 89-C-928 B

) 89-C-929 E

) 89-C-931 B

) 89-C-934 B

) 89-C-651 E

) 89-C-761 C

CONSOLIDATED

MAR 26 1990

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



VOLUNTARY DISMISSAL.

Plaintiff, Luc J. VanRampenberg hereby pursuant rule 41(a) of the Federal Rules of Civil Procedure dismisses voluntarily without prejudice the cases captioned above defendant as of yet having not served an answer.



LUC J. VAN RAMPENBERG.

Certificate of service.

The undersigned hereby certifies that a true and correct copy of this dismissal was served by hand delivery to the U.S. District Attorney for the Northern District of Oklahoma, this 26th day of March 1990.



LUC J. VAN RAMPENBERG

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

Original filed in 89-6277 FILED

LUC J. VAN RAMPENBERG,
Plaintiff,
vs.
U.S. POSTAL SERVICE,
et al.
Defendants.

) Case no: 89-C-627 E
) 89-C-829 E
) 89-C-883 E
) 898C-898 B
) 89-C-911 C
) 89-C-912 E
) 89-C-928 B
) 89-C-929 E
) 89-C-931 B
) 89-C-934 B
) 89-C-651 E
) 89-C-761 C

MAR 26 1990

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

CONSOLIDATED

VOLUNTARY DISMISSAL.

Plaintiff, Luc J. VanRampelberg hereby pursuant rule 41(a) of the Federal Rules of Civil Procedure dismisses voluntarily without prejudice the cases captioned above defendant as of yet having not served an answer.

LUC J. VAN RAMPENBERG.

Certificate of service.

The undersigned hereby certifies that a true and correct copy of this dismissal was served by hand delivery to the U.S. District Attorney for the Northern District of Oklahoma, this 26th day of March 1990.

LUC J. VAN RAMPENBERG

Handwritten mark resembling a stylized 'A' or '1'.

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

Original filed in 89-6277 T L E D

LUC J. VAN RAMPENBERG,

Plaintiff,

vs.

U.S. POSTAL SERVICE,

et al.

Defendants.

) Case no: 89-C-627 E
) 89-C-829 E
) 89-C-883 E
) 898C-898 B
) 89-C-911 C
) 89-C-912 E
) 89-C-928 B
) 89-C-929 E
) 89-C-931 B
) 89-C-934 B
) 89-C-651 E
) 89-C-761 C

MAR 26 1990 dt

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

CONSOLIDATED

89-C-917-EV

LEAVE TO FILE
[Signature]
U.S. DISTRICT COURT

VOLUNTARY DISMISSAL.

Plaintiff, Luc J. VanRampelberg hereby pursuant rule 41(a) of the Federal Rules of Civil Procedure dismisses voluntarily without prejudice the cases captioned above defendant as of yet having not served an answer.

[Signature]

LUC J. VAN RAMPENBERG.

Certificate of service.

The undersigned hereby certifies that a true and correct copy of this dismissal was served by hand delivery to the U.S. District Attorney for the Northern District of Oklahoma, this 26th day of March 1990.

[Signature]

LUC J. VAN RAMPENBERG

25-

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

FILED

MAR 26 1990

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

MAX FOOTE CONSTRUCTION COMPANY,
INC., a Louisiana corporation,

Plaintiff,

vs.

THE CITY OF TULSA, OKLAHOMA,
an Oklahoma municipal corporation,

Defendant,

and

DICARLO CONSTRUCTION COMPANY,
a Missouri general partnership,

Intervenor.

No. 90-C-163-B

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This case came on for hearing on the Plaintiff's Objections to the Report and Recommendations of the United States Magistrate filed March 9, 1990. The Plaintiff, Max Foote Construction, seeks a preliminary and permanent injunction against the City of Tulsa from awarding a construction contract low bid to Intervenor DiCarlo Construction Company, as Plaintiff alleges it is the valid low bidder. This Court conducted a hearing on the 15th day of March, 1990 and after hearing oral arguments, considering all briefs of the parties, as well as the statements of counsel, stipulations, exhibits and relevant legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Max Foote is a corporation incorporated under the laws of the State of Louisiana having its principal place of business in the State of Louisiana. Max Foote is in the business of providing all phases of public utility construction work, including construction of various water and waste treatment facilities. Max Foote has completed numerous construction projects involving the building of water and waste treatment facilities. (Stipulation 1, para. 1).¹

2. Max Foote received from the Oklahoma Secretary of State a Certificate of Authority to transact business in Oklahoma on March 6, 1990. (Plff. Ex. No. 12). Prior to the submission of its bid in this case, Max Foote never performed work in Oklahoma and never bid on an Oklahoma project. (Stipulation 1, para. 2).

3. Defendant, The City of Tulsa, Oklahoma, is an Oklahoma municipal corporation with a Board of Commissioners acting as its administrative and governing body. Further, the City of Tulsa is a "home rule" city operating under its own charter. (Stipulation 1, para. 3).

4. The Intervenor, DiCarlo Construction Company, is a general partnership formed under the laws of the State of Missouri with its principal offices located in Kansas City, Missouri. DiCarlo Construction Company has been in the construction business

¹There were two stipulations filed of record. Stipulation with docket number 14 will be referred to as Stipulation 1 and Stipulation with docket number 15 will be referred to as Stipulation 2).

for over forty years and in the business of providing all phases of public construction work, including construction of various water and waste water treatment facilities, for over twenty-five years. During that time, DiCarlo Construction Company has completed numerous construction projects involving the building of water and waste water treatment facilities. (Stipulation 2, para. 4).

5. The amount in controversy exceeds, exclusive of interest and costs, the sum of \$50,000.00.

6. If the Court concludes it has jurisdiction, all parties have expressed that time is of the essence in regard to the letting of the contract to the valid low bidder and that sufficient facts are before the Court to determine the merits of the Permanent Injunction.

7. The United States Environmental Protection Agency ("EPA") has found the City of Tulsa to be in violation of National Pollutant Discharge Elimination System Permit No. OK0026239, by violating Section 7, Subsection B of the Oklahoma State Department of Health Rules and Regulations Governing the Operations of Water Pollution Control Facilities, and Section 301(a) of the Clean Water Act. As a result of these violations, the EPA issued Administrative Order Docket No. VI-89-1212 on December 16, 1988. This Administrative Order requires the City of Tulsa to construct the Project on a specific schedule and subjects the City of Tulsa to substantial fines and penalties on a daily basis for each day the City of Tulsa is not in compliance with the Administrative Order

shall entitle the holder to bid upon all proposed contracts for the construction, erection and installation of buildings, warehouses, and all other public improvements and public structures, except those described as Class C and Class D."

and further

"The Class D Utility Construction Certificate shall entitle the holder to bid upon the installation and construction of all public utilities, such as waterworks, water lines, sanitary sewers, storm sewers, and related facilities."

(Prequalification Ordinance, Section 63(d), Plff. Ex. No. 1).

13. Prior to January 11, 1989, the Contractors Prequalification Ordinance provided as follows:

(a) No bid for the construction of any public improvement shall be received and filed by the City Auditor of the City of Tulsa unless the person submitting said bid has been prequalified as provided herein and is the holder of a current certificate of prequalification in full force and effect on the date such bid is submitted and filed, provided that the bid of any contractor shall be received if such contractor has filed an application with the City Auditor for the issuance or renewal of a prequalification certificate not less than ten days prior to the date upon which such bid is submitted.

(b) The City Auditor shall return unopened all bids of any bidder who is not shown by the records of the City Auditor to be the holder of a current prequalification certificate or who has not filed an application for the certificate of prequalification as provided herein, and unless the certificate number and the statement of no change of condition as herein provided are endorsed upon and accompanied by the submission of such bid.

(Stipulation 1, para. 7).

14. The Contractors Prequalification Ordinance was amended

on January 11, 1990, by the Board of Commissioners of the City to provide as follows (Section 65):

(a) No bid for the construction of any public improvement the estimated cost of which exceeds \$100,000.00, or in the case of Class S construction \$600,000.00, shall be received and filed by the City Auditor of the City of Tulsa unless the person submitting the bid has prequalified as provided herein and is the holder of a current certificate or prequalification in full force and effect on the date such bid is submitted and filed.

(b) The City Auditor shall return unopened all bids of any bidder who is not shown by the records of the City Auditor to be the holder of a current prequalification certificate and unless the certificate number and the statement of no change of condition as herein provided are endorsed upon and accompanied by that submission of such bid.

(Stipulation 1, para. 8).

15. Max Foote is engaged as a contractor for the construction of utility improvements and facilities of the type described in the Notice to Bidders. Pursuant to the provisions of the Contractors Prequalification Ordinance, Max Foote filed an application with the Prequalification Advisory Board for the issuance of a Class D prequalification certificate. The Prequalification Advisory Board, after reviewing the qualifications and experience of Max Foote, recommended to the Board of Commissioners that Max Foote be approved for a Class D prequalification certificate. The Board of Commissioners of the City approved on January 9, 1990 the recommendation of the Prequalification Advisory Board and authorized the issuance of Prequalification Certificate No. 756 to Max Foote which, pursuant to the provisions of the Contractors

of the Prequalification Advisory Board and requested by letter dated January 8, 1990 (Plff. Ex. No. 5) that it be allowed to submit additional information to the Prequalification Advisory Board and requested that the Prequalification Advisory Board reconsider its revised application. (Stipulation 1, para. 11).

21. On January 8, 1990, at the direction of the City of Tulsa, DiCarlo Construction Company revised and resubmitted its application for prequalification to advise the City of Tulsa of its extensive experience in the construction of public and utility projects. (Stipulation 2, para. 9).

22. On January 11, 1990, after a complete review of DiCarlo Construction Company's experience and qualifications, the City of Tulsa's Contractors Prequalification Advisory Board recommended to the Board of Commissioners that DiCarlo Construction Company was qualified to hold a Class "D" prequalification certificate. (Stipulation 1, para. 11).

23. On January 12, 1990, DiCarlo Construction Company submitted to the City Auditor a sealed bid on the Project with the notation on the bid envelope that DiCarlo Construction Company possessed Prequalification Certificate No. 755, DiCarlo's Class B permit number. (Stipulation 1, para. 12).

24. The City Auditor, notwithstanding the provisions of the Contractors Prequalification Ordinance and specifically Section 65 thereof, received and filed the bid of DiCarlo and submitted the bid to the Board of Commissioners for opening. At the time the bid was received by the City Auditor, DiCarlo Construction Company held

contract on the Project. (Stipulation 2, para. 12).

29. On January 24, 1990, Neal E. McNeill, Jr., City Attorney of the City of Tulsa, advised Commissioner Charles King that, based on his review of the facts pertaining to the Notice to Bidders and the opening of the bids for the construction of the Project, DiCarlo Construction Company's bid should not have been received by the City Auditor as DiCarlo did not hold the required Class A or D Certificate and that the receipt and opening of the bid of DiCarlo did not conform to the requirements of the Contractors Prequalification Ordinance (Plff. Ex. No. 6).

30. On January 26, 1990, R. James Unruh, Special Counsel to the Tulsa Metropolitan Utility Authority, advised the Director of Engineering of the Water and Sewer Department of the City that it would be necessary to recommend the award of the contract to Max Foote "... (who in fact is the low bidder) since DiCarlo was not qualified to bid on the project at the time the bids were open[ed] per Neal's opinion". (Plff. Ex. No. 7).

31. At a meeting held on February 14, 1990, after receiving the opinions and recommendations of its staff and attorneys and after hearing arguments on behalf of DiCarlo and Max Foote, the Tulsa Metropolitan Utility Authority recommended to the Board of Commissioners by a vote of four to one that the contract be awarded to Max Foote. (Stipulation 1, para. 15; Stipulation 2, para. 13).

32. The Board of Commissioners, at a meeting held on February 20, 1990, reviewed the recommendations of the Tulsa Metropolitan Utility Authority and after hearing comments and arguments by

DiCarlo and Max Foote voted two in favor and two against a motion to reject the recommendation of the Tulsa Metropolitan Utility Authority and to award the contract for the Project to DiCarlo.

33. On February 23, 1990, the Board of Commissioners again met and considered bids on the Project. For a second time, both DiCarlo Construction Company and Max Foote discussed with the Board the subject of the low valid bid.

34. On February 23, 1990, a motion to accept the bid of Max Foote was presented to the Board of Commissioners, and again was withdrawn for lack of a second.

35. Subsequently, the Board of Commissioners considered the bid of DiCarlo Construction Company. The Board of Commissioners then, by a vote of 4-1, adopted a motion "that the irregularity in the prequalification requirement in DiCarlo's file be waived and that the bid of [sic] DiCarlo Construction Company, Inc., ... be accepted and that contract be so awarded." (Plff. Ex. Nos. 9 & 10).

36. The Minutes of the February 23, 1990 meeting of the Board of Commissioners reflect that the purported waiver of the prequalification requirements was intended to be "* * * a specific exemption in this specific instance only." (Plff. Ex. No. 10, p. 2).

37. DiCarlo Construction Company stands ready, willing and able to enter into a contract with the City of Tulsa. Further, DiCarlo Construction Company has the financial capability and the requisite construction experience to satisfactorily complete the

Project. (Stipulation 2, para. 16).

38. Max Foote is financially able and has the requisite construction experience to satisfactorily complete the Project. Max Foote stands ready, willing and able to enter into a contract with the City of Tulsa and to properly complete the Project thereunder. (Stipulation 1, para. 15; Stipulation 2, para. 16).

39. At the hearing of March 15, 1990, Neal E. McNeill, Jr., City Attorney of the City of Tulsa, stated that the City intended to sign a contract with DiCarlo, but that in the event that this Court determined that the City was legally prohibited from entering into a contract with DiCarlo, the City would award the contract to Max Foote.

CONCLUSIONS OF LAW

1. Venue is properly established herein and subject matter jurisdiction over this action is present pursuant to 28 U.S.C. §1332. The Court rejects Defendant's argument the amount in controversy does not exceed \$50,000 because this is not an action in law, but an action in equity with an amount in controversy in excess of \$16 million.³

2. Any Finding of Fact above which might be properly characterized as a Conclusion of Law is incorporated herein.

³While the City originally contested the Court's jurisdiction, the City Attorney at the hearing on March 15, 1990, specifically requested the Court to consider the case and to decide the permanent injunction on the merits.

3. Municipalities may adopt charters containing provisions not in accord with the general law, and insofar as such charter provisions conflict with the state law on subjects relating to purely municipal matters, the state law is thereby suspended. U.S. Elevator Corp. v. City of Tulsa, 610 P.2d 791 (Okla. 1980). A conflict between the supremacy of state law and the exercise of municipal power under its charter is resolved by determining "whether such law pertains to general matters of the state and its government or pertains to municipal affairs." Id., quoting Lackey v. State, 29 Okl. 255, 116 P. 913 (1911). The City of Tulsa is under order from the Environmental Protection Agency to build a new waste water treatment facility according to a specified schedule or face civil penalties. These penalties would be borne by the City and not by the State. The Court concludes this matter is one relating purely to municipal matters and the municipal charter should control to the extent there is a conflict with the state's competitive bidding statute, 61 Okla.Stat. §101 et seq.

4. Plaintiff has standing to maintain this suit as the action herein presents a live case or controversy. Standing in federal courts requires injury in fact traceable to the challenged action and the likelihood the injury would be redressed by a favorable decision. United States v. Sutton, 585 F. Supp. 1478 (N.D. Okla. 1984). To be entitled to a permanent injunction, Plaintiff must also establish that the conduct to be enjoined is imminent and will suffer irreparable injury. Sullivan v. Division

of Elections, 718 F.2d 363 (11th Cir. 1983). Tulsa City Attorney represented to the Court the City fully intends to execute the contract with Defendant DiCarlo unless prohibited by the Court from doing so. In City Bank Farmers' Trust Co. v. Schnader, 291 U.S. 24 (1934), the Supreme Court held that an action was not brought prematurely even though a tax which had been assessed had not yet been collected. The Court reasoned:

"The commonwealth's law officers plainly intend to perform what they consider their duty, and will, unless restrained, cause the assessment and imposition of the tax. The action, the legality of which is challenged, thus appears sufficiently imminent and certain to justify the intervention of a court of equity. ... Moreover, no purpose would be served by dismissing the bill, if, as we hold, the moment the proposed assessment is made another suit may be instituted in the federal court."

Id. at 34. This action presents similar circumstances in that the City has indicated its clear intent to enter into a contract the Plaintiff asserts was illegally awarded to DiCarlo.

Additionally, Plaintiff's legal damages would be inadequate. An unsuccessful bidder is not entitled to his anticipated profits, but only the costs associated with preparing the bid. Funderburg Builders v. Abbeville County Memorial Hospital, 467 F.Supp. 821 (D.S.C. 1979); Keco Industries, Inc. v. United States, 428 F.2d 1233, 1240 (Ct. Cl. 1970). Consequently, the legal remedy would be wholly inadequate to compensate Plaintiff for the loss incurred by not being awarded the contract. Finally, the City has indicated its willingness to enter into a contract with Plaintiff if Defendant DiCarlo is declared to have been an ineligible bidder.

Therefore, the Court concludes Plaintiff faces a real and irreparable injury if the Court does not consider its prayer for injunctive relief and that the injury is likely to be redressed should this Court issue an injunction.

5. The Tulsa Revised Ordinances place affirmative obligations upon the City Auditor when receiving bids for public contracts. Title 5, Tulsa Revised Ordinances § 65 provides:

(a) No bid for the construction of any improvement the estimated cost of which exceeds \$100,000, ... shall be received and filed by the City Auditor of the City of Tulsa unless the person submitting the bid has prequalified as provided herein and is the holder of a current certificate of prequalification in full force and effect on the date such bid is submitted and filed.

(b) The City Auditor shall return unopened all bids of any bidder who is not shown by the records of the City Auditor to be the holder of a current prequalification certificate and unless the certificate number and the statement of no change of condition as herein provided are endorsed upon and accompanied by that submission of such bid.

From this Ordinance, the City Auditor cannot accept a bid unless the bidder holds a current prequalification certificate and is recorded on the City Auditor's records as a holder of a such certificate. At the time the bids were opened, DiCarlo did not possess a current Class D prequalification certificate, but only possessed a Class B prequalification certificate, although the Prequalification Advisory Board had recommended DiCarlo be awarded a Class D certificate. At the time the bid was received and opened, the City Commission had not acted upon the Advisor Board's

recommendation.

6. The Tulsa City Auditor did not have the authority to receive and open DiCarlo's bid. The ordinance's language sets forth the City Auditor's obligations in mandatory form by stating the City Auditor shall accept no bid unless the bidder is prequalified and is reflected as such in the City Auditor's records. The ordinance's language is not directory in nature, but is mandatory.

"The legislature's choice of the word 'shall' is of significance because that word usually is given its common meaning of 'must', which implies a command or mandate. It rules out the idea of discretion." (footnotes omitted)

Morton v. Adair County Excise Board, 780 P.2d 707, 709-710 (Okla. 1989). Defendant's reliance upon City of Norman v. Liddell is not inconsistent with this holding.

"Although the word 'shall' is generally indicative of a mandatory action, a statute, or as in this case an ordinance, will be construed as directory if that appears to be the legislative intent."

596 P.2d 879, 880 (Okla. 1979). There is no legislative history before the Court. The only means the Court has to discern the legislative intent behind the ordinance is to compare the language of the ordinance before and after it was amended on January 11, 1989. The amendment to Title 5, §65 deleted the City Auditor's authority to receive and open a bid from any contractor that has filed an application with the City Auditor for the issuance or renewal of a prequalification certificate. Based upon that amendment, the clear intent from the ordinance is that the City

Commission did not want the City Auditor to accept bids from bidders who had applications pending, but no current prequalification certificate. Construing the ordinance to allow a contractor that does not possess the prequalification certificate to bid would render the amendment a nullity. The Court concludes the word "shall", as it appears in this ordinance, imposes affirmative rather than discretionary obligations upon the City Auditor to return all bids submitted by entities not holding the necessary prequalification certificate as reflected on the City Auditor's records.

7. The Tulsa City Commission did not have the authority to issue a one time waiver. The purpose of the waiver provision under the state's competitive bidding act is to allow clerical errors to be rectified on behalf of an otherwise qualified bidder. The bids at issue, however, were not submitted pursuant to the state act, but pursuant to local ordinances. Assuming arguendo the act were applicable, DiCarlo would still not be entitled to a waiver. To the extent the state's competitive bidding act allows a waiver, the Court concludes the City's ordinance requiring specific action is in conflict and that the ordinance should control because this is a matter of purely local concern. Additionally, the waiver only applies to clerical errors. Title 61, section 113(D) provides that the awarding public agency, upon discovering an administrative error that would void an otherwise valid award, may suspend the time for executing the contract until the issue can be presented to the governing body. Waiving the prequalification requirement

is more than an administrative error because the City has adopted an elaborate procedure by which to guarantee all of the bids it receives are qualified. The City Commission did not waive a clerical error, but the very purpose for which the ordinance was created. The City Commission's waiver was not one of a mere administrative error, but of whether the bid could have been received in the first instance. If DiCarlo's bid should not have been received in the first instance, DiCarlo cannot be considered an "otherwise qualified bidder".

Defendant also argues, without authority, the City Commission has the inherent authority to waive any of its own enactments. If the City Commission, acting in its legislative capacity, desires to adopt a waiver provision to the prequalification ordinances, it certainly has the authority to do so. However, the integrity of the bidding process is undermined when the Commission, acting in its administrative capacity, authorizes a one time waiver in conflict with its previous legislative enactments. As such, the City Commission did not have the authority, express or implied, to waive the prequalification ordinance.

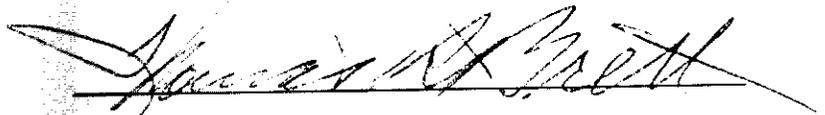
8. The Court concludes Plaintiff Max Foote Construction Company is entitled to a Permanent Injunction to prevent the City of Tulsa from executing a contract with DiCarlo Construction Company based upon the bids received, filed, and opened on January 12, 1990. If the City of Tulsa chooses not to solicit a second round of bids, it is directed to enter into a contract with Max Foote Construction Company for the construction of the waste water

treatment facility as it submitted the valid low bid at the bid opening of January 12, 1990. The Magistrate's Report and Recommendation is Overruled for the reasons expressed herein.

9. If a party deems it necessary that security be posted herein pursuant to Fed.R.Civ.P. 65, the Court should be advised so the matter can be set for hearing.

A separate Judgment in keeping with the Findings of Fact and Conclusions of Law will be filed contemporaneously herewith.

ENTERED, this 26th day of March, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 26 1990

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

MAX FOOTE CONSTRUCTION COMPANY,)
INC., a Louisiana corporation,)
)
Plaintiff,)
)
vs.)
)
THE CITY OF TULSA, OKLAHOMA,)
an Oklahoma municipal corporation,)
)
Defendant,)
)
and)
)
DICARLO CONSTRUCTION COMPANY,)
a Missouri general partnership,)
)
Intervenor.)

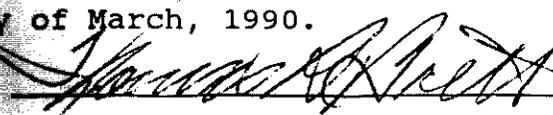
No. 90-C-163-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered herein on this date, the Court concludes Plaintiff Max Foote Construction Company is entitled to a Permanent Injunction and finds the City of Tulsa is permanently enjoined from executing a construction contract with DiCarlo Construction Company based upon the bids opened on January 12, 1990.

It is FURTHER ADJUDICATED that if the City of Tulsa chooses not to solicit a second round of bids for the construction project, it is directed to enter into a contract with Max Foote Construction Company for the bids opened on January 12, 1990. The parties are to pay their respective costs and attorney's fees.

ENTERED, this 26th day of March, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

Original filed in 89-6270 FILED

LUC J. VAN RAMPENBERG,
Plaintiff,
vs.
U.S. POSTAL SERVICE,
et al.
Defendants.

) Case no: 89-C-627 E
) 89-C-829 E
) 89-C-883 E
) 89C-898 B
) 89-C-911 C
) 89-C-912 E
) 89-C-928 B
) 89-C-929 E
) 89-C-931 B
) 89-C-934 B
) 89-C-651 E
) 89-C-761 C

MAR 26 1990

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

CONSOLIDATED

VOLUNTARY DISMISSAL.

Plaintiff, Luc J. VanRampenberg hereby pursuant rule 41(a) of the Federal Rules of Civil Procedure dismisses voluntarily without prejudice the cases captioned above defendant as of yet having not served an answer.

LUC J. VAN RAMPENBERG.

Certificate of service.

The undersigned hereby certifies that a true and correct copy of this dismissal was served by hand delivery to the U.S. District Attorney for the Northern District of Oklahoma, this 26th day of March 1990.

LUC J. VAN RAMPENBERG

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

Original filed in 89-6270 T L E D

LUC J. VAN RAMPENBERG,

Plaintiff,

vs.

U.S. POSTAL SERVICE,

et al.

Defendants.

Case no: 89-C-627 E

89-C-829 E

89-C-883 E

89C-898 B

89-C-911 C

89-C-912 E

89-C-928 B

89-C-929 E

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89-C-761 C

CONSOLIDATED

MAR 26 1990

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

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LUC J. VAN RAMPENBERG

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

Original filed in 89-6275 FILED

LUC J. VAN RAMPENBERG,
Plaintiff,
vs.
U.S. POSTAL SERVICE,
et al.
Defendants.

) Case no: 89-C-627 E
) 89-C-829 E
) 89-C-883 E
) 89C-898 B
) 89-C-911 C
) 89-C-912 E
) 89-C-928 B
) 89-C-929 E
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) 89-C-651 E
) 89-C-761 C

MAR 26 1990

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

CONSOLIDATED

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LUC J. VAN RAMPENBERG.

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LUC J. VAN RAMPENBERG

IN THE U.S. DISTRICT COURT FOR THE NORTHERN

DISTRICT OF OKLAHOMA

Original filed in 89-6270 T L E D

LUC J. VAN RAMPENBERG,
Plaintiff,
vs.
U.S. POSTAL SERVICE,
et al.
Defendants.

) Case no: 89-C-627 E
) 89-C-829 E
) 89-C-883 E
) 898C-898 B
) 89-C-911 C
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) 89-C-651 E
) 89-C-761 C

MAR 26 1990

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

CONSOLIDATED



VOLUNTARY DISMISSAL.

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LUC J. VAN RAMPENBERG.

Certificate of service.

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LUC J. VAN RAMPENBERG

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 26 1990

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ISAAC C. GIDDENS; WANDA J.
GIDDENS; JOHN DOE, Tenant;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 89-C-1027-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 26th day
of March, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; the Defendant, John Doe, Tenant, appears not, and
should be dismissed from this action; and the Defendants,
Isaac C. Giddens and Wanda J. Giddens, appear pro se.

The Court being fully advised and having examined the
file herein finds that the Defendants, Isaac C. Giddens and
Wanda J. Giddens, acknowledged receipt of Summons and Complaint
on December 27, 1989; that Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on December 13, 1989; and that Defendant, Board of County

Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 14, 1989.

The Court further finds that Defendant, John Doe, Tenant, has not been served herein as such person does not exist, and should therefore be dismissed as a Defendant herein.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on January 2, 1990.

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

Lot Seventeen (17), Block One (1) HENSON ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 30, 1982, the Defendants, Isaac C. Giddens and Wanda J. Giddens, 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 \$44,000.00, payable in monthly installments, with interest thereon at the rate of fourteen percent (14%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Isaac C. Giddens and Wanda J. Giddens, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs,

a mortgage dated August 30, 1982, covering the above-described property. Said mortgage was recorded on September 2, 1982, in Book 4635, Page 2061, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Isaac C. Giddens and Wanda J. Giddens, 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, Isaac C. Giddens and Wanda J. Giddens, are indebted to the Plaintiff in the principal sum of \$43,158.39, plus interest at the rate of 14 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 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 \$493.00, plus penalties and interest, for the year 1989. 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.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Isaac C. Giddens and Wanda J. Giddens, in the principal sum of \$43,158.39, plus interest at the rate of 14 percent per annum from June 1, 1988 until judgment, plus interest thereafter at the

current legal rate of 8.36 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 \$493.00, plus penalties and interest, for ad valorem taxes for the year 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, John Doe, Tenant, has no right, title, or interest in the subject real property and is hereby dismissed as a Defendant herein.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Isaac C. Giddens and Wanda J. Giddens, 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 Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$493.00, 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.

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

PHIL PINNELL, OBA #7169
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

Judgment of Foreclosure
Civil Action No. 89-C-1027-C

Isaac C. Giddens

ISAAC C. GIDDENS

Wanda J. Giddens

WANDA J. GIDDENS

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

FILED

MAR 26 1990

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

SAM DOYLE HINES,

Plaintiff,

v.

BURLINGTON NORTHERN RAILROAD
COMPANY, a Delaware
corporation,

Defendant.

Case No. 89-C-812-C

ORDER

NOW on this 23 day of March, 1990, and upon review of the Joint Application for Dismissal and for good cause shown, the Court hereby grants the parties their requested relief and hereby orders that the above-styled and captioned matter is dismissed with prejudice.


UNITED STATES DISTRICT JUDGE

8

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

FILED
MAR 26 1990
U.S. DISTRICT COURT

MARTHA WELLS,

Plaintiff,

vs.

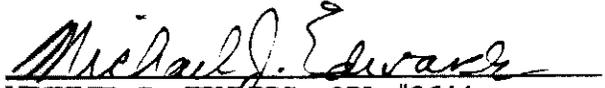
Case No. 89-C-659-C

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Liquidating
Agent for Stillwater
Community Bank,
Stillwater, Oklahoma;
STATE OF OKLAHOMA, ex rel.,
STATE BANKING COMMISSIONER;
DAN TAYLOR, individually and/or
as employee of the Federal
Deposit Insurance Corporation,
as Liquidating Agent for
Stillwater Community Bank,
Stillwater, Oklahoma; and
JOHN AND JANE DOES,
individually and/or in their
capacity as employees of the
Federal Deposit Insurance
Corporation, as Liquidating
Agents for Stillwater
Community Bank, Stillwater,
Oklahoma,

Defendants.

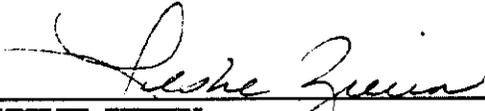
STIPULATION OF DISMISSAL

COMES NOW the Plaintiff, Martha Wells, pursuant to Federal Rules of Civil Procedure, Rule 41(a)(1)(ii) and stipulates to the dismissal of the above styled and numbered action, with prejudice. The State of Oklahoma, ex rel, State Banking Commission, was previously dismissed, by stipulation, without prejudice, by stipulation of dismissal filed on September 21, 1989. It is agreed that each party shall bear its own costs and attorney fees.

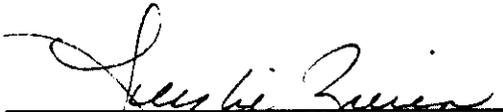


MICHAEL J. EDWARDS, OBA #2644
Post Office Box 52278
Tulsa, Oklahoma 74152
(918) 745-0077
Attorney for Plaintiff

APPROVED:



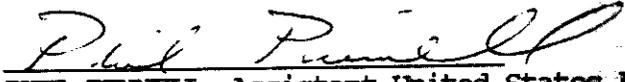
LESLIE ZIEREN
Boesche, McDermott & Eskridge
800 OneOk Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
Attorney for FDIC,
in its corporate Capacity

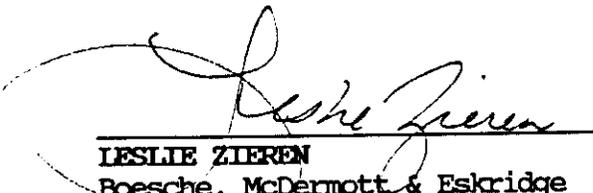


LESLIE ZIEREN
Boesche, McDermott & Eskridge
800 OneOk Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
Attorney for FDIC,
in its capacity as liquidating
agent for Stillwater Community Bank,
Stillwater, Oklahoma



PHIL PINNELL, Assistant United States Attorney
TONY M. GRAHAM, United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
Attorney for the Defendant,
United States of America


PHIL PINNELL, Assistant United States Attorney
TONY M. GRAHAM, United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
Attorney for the Defendant,
Dan Taylor and John and Jane Does


LESLIE ZIEREN
Boesche, McDermott & Eskridge
800 OneOk Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
Attorney for the Defendants,
John and Jane Does

CERTIFICATE OF MAILING

I hereby certify that on the 26th day of March, 1990, I mailed a true and correct copy of the above and foregoing document with sufficient and proper postage thereon fully prepaid to:

LESLIE ZIEREN

Boesche, McDermott & Eskridge
800 OneOk Plaza
100 West 5th Street
Tulsa, Oklahoma 74103

PHIL PINNELL, Assistant United States Attorney
TONY M. GRAHAM, United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103

JAMES B. FRANKS, Assistant Attorney General
ROBERT H. HENRY, Attorney General of Oklahoma
Chief, Tort & Contract Litigation Division
420 West Main, Suite 550
Oklahoma City, Oklahoma 73102



Michael J. Edwards

FILED

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

MAR 23 1990

Jack O. Sargent, Clerk
U. S. DISTRICT COURT

VIRGINIA SNELLING,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 89 C-944 E

STIPULATION FOR DISMISSAL

IT IS HEREBY STIPULATED AND AGREED that the Complaint in the above-entitled case, filed against the United States of America be dismissed with prejudice.

Jeffrey D. Stoermer

JEFFREY D. STOERMER
Jarboe & Stoermer
1810 Mid Continent Tower
Tulsa, OK 74103

Attorney for Plaintiff

Kathryn J. Brown

KATHRYN J. BROWN
Trial Attorney, Tax Division
U.S. Department of Justice
P. O. Box 227
Washington, D.C. 20044

Attorney for Defendant

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

VIRGINIA SNELLING,

Plaintiff,

v.

UNITED STATES OF AMERICA,

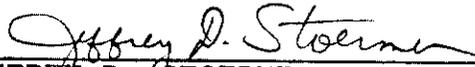
Defendant.

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Civil Action No. 89 C-944 E

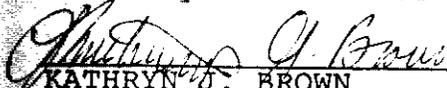
STIPULATION FOR DISMISSAL

IT IS HEREBY STIPULATED AND AGREED that the Complaint in the above-entitled case, filed against the United States of America be dismissed with prejudice.



JEFFREY D. STOERMER
Jarboe & Stoermer
1810 Mid Continent Tower
Tulsa, OK 74103

Attorney for Plaintiff



KATHRYN D. BROWN
Trial Attorney, Tax Division
U.S. Department of Justice
P. O. Box 227
Washington, D.C. 20044

Attorney for Defendant

JDS/jh

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 23 1990

COTTER ACCEPTANCE CORPORATION,)
)
 Plaintiff,)
)
 v.)
)
 SECURITY NATIONAL BANK OF)
 SAPULPA, a national bank, and)
 DWIGHT W. MAULDING, an individual,)
)
 Defendants.)

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

Case No. 89-C-307-B

ORDER OF DISMISSAL WITH PREJUDICE
FOLLOWING STIPULATED COMPROMISE

It appearing to the court that the above-entitled action has been fully settled, adjusted, and compromised, and based on stipulation; therefore:

IT IS ORDERED AND ADJUDGED that the above-entitled action be, and it is hereby, dismissed without cost to either party and with prejudice to the plaintiff.

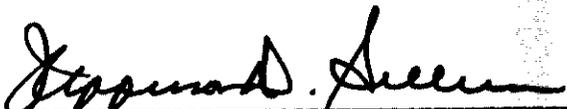
Dated: ~~February~~ ^{March} 23, 1990.

S/ THOMAS R. BRETT

Hon. Thomas R. Brett
United States District Judge

APPROVED AS TO FORM:


Bruce N. Powers
Attorney for Plaintiff


Jefferson D. Sellers
Attorney for Defendants

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

Entered

ANITA LYNN FOSTER,

Plaintiff,

vs.

No. 89-C-697-C

CHRISTOPHER C. McCONNELL and
CHARLES G. McCONNELL,

Defendants.

FILED

MAR 23 1990

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

ORDER

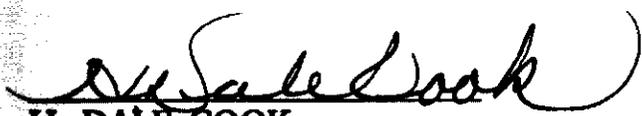
The Court has independently reviewed the record in this case. On December 19, 1989 the Magistrate entered a recommendation that defendants' affirmative defenses be stricken for failure of the defense attorney, at the status conference, to articulate the factual basis supporting the defenses pled.

In their objection, the defendants acquiesce in dismissal of their affirmative defense of contributory negligence, but object to striking of "the affirmative defense of denial of negligence".

The Court finds that although the Magistrate's report is somewhat confusing as to the defenses he recommends be stricken, the Court will construe the report as recommending dismissal only as to the affirmative defense of contributory negligence.

Under this construction, the Magistrate's recommendation is AFFIRMED.

IT IS SO ORDERED this 23rd day of March, 1990.



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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 22 1990 *dst*

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

GARY S. PIPPITT)
a/k/a GARY PIPPITT)

Defendant.)

CIVIL ACTION NO: 89-C-380-E ✓

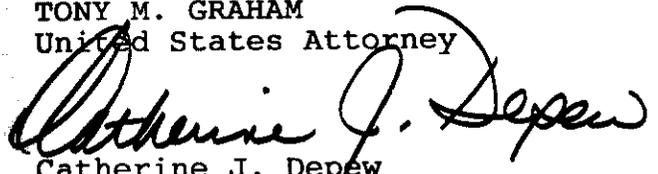
NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M. Graham,
United States Attorney for the Northern District of Oklahoma,
Plaintiff herein, through Catherine J. Depew, Assistant United
States Attorney, and hereby gives notice of its dismissal,
pursuant Rule 41, Federal Rules of Civil Procedure, of this
action without prejudice for the reason that the indebtedness has
been satisfied.

Dated this 22nd day of March, 1990.

UNITED STATES OF AMERICA

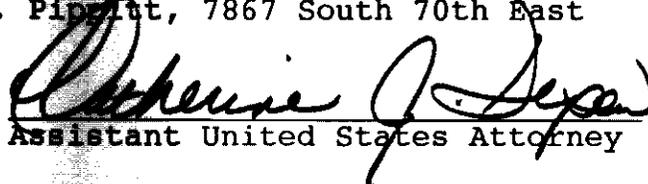
TONY M. GRAHAM
United States Attorney



Catherine J. Depew
Assistant United States
Attorney
3600 United States Courthouse
Tulsa, OK 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of March, 1990, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Gary S. Piplett, 7867 South 70th East Avenue, Tulsa, OK 74133.


Assistant United States Attorney

CD:mlc

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

FILED

MAR 22 1990

**Jack C. Silver, 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 CONFESSION

This matter comes on before the Court, the Honorable James O. Ellison presiding, on this 21 day of ~~January~~ ^{MARCH}, 1990, pursuant to regular assignment. 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. and the Defendants, Freddie Saliba ("Freddie") and Cecilia Saliba ("Cecilia"), are represented by their counsel, Lee I. Levinson of Gasaway and Levinson, P.A.; and said counsel having represented to the Court by virtue of their signatures

together with the signatures of Freddie and Cecilia hereinbelow, that the parties have agreed to the entry of this Judgment By Confession of liability in favor Plaintiffs and against Freddie and Cecilia in the sums herein below stated, 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 attorneys' fees in the sum of \$3,000.00 and all accruing collection costs. The Court makes the following FINDINGS pursuant to the stipulations and agreement of the parties to this Judgment By Confession:

(A) This Court has jurisdiction over the subject matter and the parties hereto. The issues in this case have been resolved either by agreement by the parties or by virtue of the confession of judgment by Freddie and Cecilia, and each of them.

(B) All of the allegations of Plaintiffs' Complaint, Count I, Count IV, Count V, Count VIII, Count IX, Count X, Count XI, Count XIII are true and correct and Plaintiffs are entitled to judgment under their respective Counts against the Defendants, Freddie and Cecilia, and each of them, as follows:

1. On its Count I, FDIC/Citizens is entitled to judgment against Freddie and Cecilia, jointly and severally, in the aggregate sum of \$92,786.38, calculated as of November 22, 1989, together with all other charges, expenses, attorneys' fees and accrued and accruing interest to the date of this Judgment at the rate of 19.5% per annum, plus interest accruing on the unpaid indebtedness from the date of this Judgment at the rate of 7.66% per annum until paid in full; that the FDIC/Citizens Note I Mortgage (described in the Complaint, paragraph 9) has been breached and same may be foreclosed by FDIC/Citizens; that the FDIC/Citizens Note I Mortgage is a valid lien encumbering the FDIC/Citizens Note I Collateral (described in the Complaint, paragraph 9) prior and superior to the interests of Freddie and Cecilia and all persons and entities claiming under them; that FDIC/Citizens 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/Citizens' sole election, to advertise and sell upon **execution** the FDIC/Citizens Note I Collateral; that the FDIC/Citizens Note I Collateral may be sold and the proceeds shall be applied to the payment of:

- (i) first, all costs, including **attorney's fees** incurred by FDIC/Citizens in connection **with this action**;
- (ii) second, the Judgment of **FDIC/Citizens** under Count I;
- (iii) third, that the balance, **if any remaining**, be paid into this Court;

that Freddie and Cecilia and all **persons** and entities claiming under them shall be barred, restrained and enjoined **from having** or asserting any right, title, interest or right of redemption in or against **the FDIC/Citizens Note I Collateral**; and that a Writ of Assistance shall issue **in favor of the purchaser** at sale.

2. On its Count IV, **FDIC/Citizens** is entitled to judgment against Freddie in the aggregate sum of \$584,568.01, **calculated as of** November 22, 1989, together with accrued and accruing interest on **the unpaid** indebtedness at the rate of 19.0% per annum to the date of this Judgment **and at** the rate of 7.66% per annum from the date of this Judgment until paid in full, plus all attorneys' fees and costs of this action.

3. On its Count V, **FDIC/Citizens** is entitled to judgment against Freddie in the aggregate sum of \$135,903.21, **calculated as of** November 22, 1989, together with all other charges, expenses, **attorneys' fees** and accrued and accruing interest on the unpaid indebtedness at the **rate of** 18.5% per annum to the date of this Judgment and interest accruing **on the unpaid** indebtedness from the date of this Judgment at the rate of 7.66% per annum until paid in full.

4. On its Count VIII, FDIC/Citizens is entitled to judgment against Freddie in the aggregate sum of \$65,812.30, calculated as of November 22, 1989, plus accrued and accruing interest on the unpaid indebtedness at the rate of 11.5% per annum to the date of this Judgment, and interest accruing from the date of this Judgment at the rate of 7.66% per annum until paid in full, together with all attorneys' fees and costs of this action.

5. On its Count IX, FDIC/Citizens is entitled to judgment against Freddie in the aggregate sum of \$97,771.36, calculated as of November 22, 1989, together with all other charges, expenses, attorneys' fees and accrued and accruing interest at the rate of 18.5% per annum to the date of this Judgment and interest accruing from the date of this Judgment at the rate of 7.66% per annum until paid in full.

6. On its Count X, FDIC/Citizens is entitled to judgment against Freddie and Cecilia, jointly and severally, in the aggregate sum of \$177,222.47, calculated as of November 22, 1989, together with all other charges, expenses, attorneys' fees and accrued and accruing interest at the rate of 19.5% per annum to the date of this Judgment, and interest accruing on such indebtedness at the rate of 7.66% per annum from the date of this Judgment until paid in full; that the FDIC/Citizens Note VIII Mortgage (described in the Complaint, paragraph 74) is a valid lien encumbering the FDIC/Citizens Note VIII Collateral (described in the Complaint, paragraph 74) prior and superior to the interests of Freddie and Cecilia and all persons and entities claiming under them; that FDIC/Citizens is entitled 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/Citizens' sole election, to advertise and sell upon execution the FDIC/Citizens Note VIII Collateral; that the FDIC/Citizens Note VIII Collateral may be sold and the

proceeds shall be applied to the payment of:

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

that Freddie and Cecilia and all persons and entities claiming under them shall be barred, restrained and enjoined from having or asserting any right, title, interest or right of redemption in or against the FDIC/Citizens Note VIII Collateral; and that the purchaser at sale shall be entitled to the issuance of a Writ of Assistance.

(C) On its Count XI, FDIC/Oilton is entitled to judgment against Freddie in the aggregate sum of \$19,727.80, 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 accruing on the unpaid indebtedness from the date of Judgment at the rate of 7.66% per annum until paid in full.

(D) On its Count XIII, FDIC/Hartshorne is entitled judgment against Freddie 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 accruing on the unpaid indebtedness from the date of this Judgment at the rate of 7.66% per annum until paid in full; that the FDIC/Hartshorne Note I Mortgage (described in the Complaint, paragraph 94) may be foreclosed 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 Freddie and all persons and entities claiming under him; that FDIC/Hartshorne is entitled to the issuance of an

Order or 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; that the FDIC/Hartshorne Note I Collateral may be sold and 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;

that Freddie and Cecilia and all persons and entities claiming under them 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.

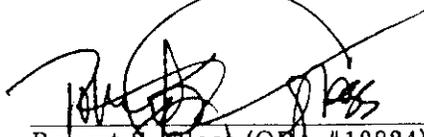
IT IS THEREFORE ORDERED and DECREED by this Court that the Plaintiffs, FDIC/Citizens, FDIC/Oilton and FDIC/Hartshorne, shall recover of and from the Defendants, Freddie and Cecilia, and each of them, under their respective Counts the amounts set forth hereinabove; that interest shall accrue on the unpaid indebtedness at the rate of a 7.66% per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment until paid in full, and these Plaintiffs shall recover all costs of this action, including attorneys' fees in the sum of \$3,000.00, for all of which general and special execution shall issue.

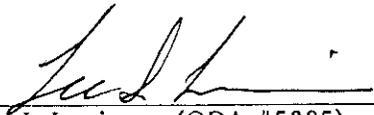
IT IS SO ORDERED.

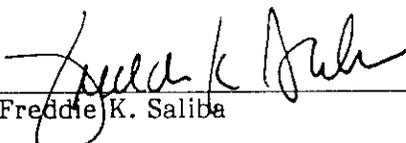
BY JAMES O. ELLISON

HONORABLE JAMES O. ELLISON,
UNITED STATES DISTRICT COURT JUDGE

APPROVED AND AGREED TO:


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


Lee I. Levinson (OBA #5395)
Counsel for Defendants,
Freddie K. Saliba and Cecilia A. Saliba


Freddie K. Saliba


Cecilia A. Saliba

Entered

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

CARL DEMETRIUS MITCHELL, }
 }
 Petitioner, }
 }
 vs. }
 }
 TED WALLMAN, WARDEN; and }
 ROBERT H. HENRY, ATTORNEY }
 GENERAL, STATE OF OKLAHOMA, }
 }
 Defendant. }

No. 88-C-433-C

FILED

MAR 22 1990

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

ORDER

The Court conducted an evidentiary hearing to determine whether petitioner's plea before the District Court of Tulsa County, Oklahoma, was knowingly and voluntarily entered pursuant to the mandate of the Tenth Circuit Court of Appeals.¹

Based upon the evidence, the Court finds:

1. The petitioner was charged in Case No. CRF-87-867 with larceny of merchandise after three former felony convictions. He was also charged in a second case with escape from a penal institution.

2. On March 10, 1987 a preliminary hearing was held. Assistant Public Defender Jack Kearny was assigned to the petitioner. On this date, Mr. Kearny advised petitioner he faced a twenty years to life sentence upon conviction as a habitual

¹Carl Demetrius Mitchell v. Ted Wallman, Warden; Robert H. Henry, Attorney General, State of Oklahoma, Order and Judgment, No. 88-2555 (July 20, 1989).

offender. Petitioner was bound over for arraignment to be held on March 12, 1987.

3. On March 12, 1987, as part of a chain gang, petitioner was taken to the courtroom and put in the jury box. It was unknown to him why he was being taken to the courtroom.

4. While in the jury box, a different Assistant Public Defender, Richard O'Carroll, approached petitioner. Mr. O'Carroll had never spoken to petitioner prior to the date of the arraignment.

5. Mr. O'Carroll informed petitioner the State was willing to drop from his current charges two of the former convictions, dismiss the escape charge, and recommend ten years imprisonment if petitioner plead guilty to larceny of merchandise after a former conviction. If he did not accept the offer, it would be withdrawn and he would immediately proceed to trial.

6. During the hearing before the court, the petitioner remained chained to other defendants, in the jury box, and Mr. O'Carroll advised the court that petitioner waived all his constitutional rights.

7. The initial conversation occurred among the judge, assistant public defender and prosecutor. Petitioner was not brought before the bench nor allowed a meaningful participation in the proceeding. He could not clearly hear what was being said at the bench.

8. The judge addressed the petitioner and asked if he waived his rights. Petitioner replied that he did.

9. The judge inquired into a few underlying facts, which were admitted by the petitioner.

10. The judge ordered the information amended, and he accepted petitioner's plea of guilty.

11. The petitioner was immediately sentenced to ten years.

12. At the hearing before this Court, Mr. O'Carroll testified that he did not remember petitioner, could not identify petitioner, and had no independent recollection of what transpired on March 12, 1987.

Based upon the evidence, the Court concludes:

1. Mr. O'Carroll, as public defender, failed to fulfill his responsibilities to represent the petitioner. Mr. O'Carroll knew nothing of the facts underlying the offense. He failed in all respects to advise the petitioner of his constitutional rights.

2. The state court failed to adequately advise petitioner of his constitutional rights. Specifically, the court failed to advise petitioner of the minimum and maximum sentence for the offense of larceny of merchandise after former conviction, of his right not to incriminate himself, and of his right to confront and cross-examine witnesses.

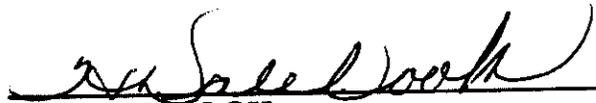
The Court therefore concludes that petitioner's plea of guilty was not voluntarily and knowingly entered into. The entire proceeding before the state court was replete with constitutional error.

Accordingly, it is the Order of the Court that petitioner's plea of guilty in CRF-87-867 is hereby vacated. The State of

Oklahoma is directed to provide petitioner within sixty days a trial by jury or petitioner's writ of habeas corpus as to the sentence imposed in CRF-87-867 will be granted.

The State is to file a status report with this Court in sixty days.

IT IS SO ORDERED this 17th day of March, 1990.



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

F I L E D

MAR 22 1990

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

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

THRIFTY RENT-A-CAR SYSTEM, INC.,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
PAUL ROBINSON & SONS CAR RENTAL,)
INC., a Delaware corporation)
)
Defendant.)

Case No. 89-C-1007B

22nd DEFAULT JUDGMENT

On this 22nd day of March, 1990, this matter comes on for consideration. The Clerk of the United States District Court for the Northern District of Oklahoma entered default herein on January 5, 1990. Summons and a copy of the Complaint herein were duly served upon the Defendant Paul Robinson & Sons Car Rental, Inc. (the "Defendant"), by certified mail on December 9, 1989, but the Defendant has not answered or otherwise appeared herein and the time for appearance has expired and the Defendant is in default.

The defaulting Defendant, having failed to plead or answer, is hereby adjudged to be in default.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that a judgment be entered in favor of Thrifty Rent-A-Car System, Inc. and against the Defendant in the amount of \$315,942.78 as of

January 5, 1990, together with post-judgment interest thereon accruing from and after January 5, 1990 at 7.66 percent per annum until paid in full.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

IN RE:

L. B. JACKSON DRILLING
COMPANY,

Debtor.

JOHN H. BURGHER, JR.,

Plaintiff/Appellant,

v.

L. B. JACKSON DRILLING
COMPANY,

Defendant/Appellee.

Bky. No. 88-02536-C
Chapter 11

FILED

MAR 22 1990

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

89-C-442-B

ORDER

Now before the court is the appeal of John H. Burgher, Jr. from the Final Judgment of the United States Bankruptcy Court for the Northern District of Oklahoma, entered on May 9, 1989. An advisory hearing was held on January 9, 1990 and oral arguments were heard. Having reviewed the record of the advisory hearing before the Magistrate and the applicable law, the court finds as follows.

In August, 1984, appellee L. B. Jackson Drilling Co. ("LBJ") retained appellant John H. Burgher, Jr. ("Burgher") as Executive Vice President and General Counsel. Subsequently, on May 16, 1985, the two parties entered into a written employment agreement whereby Burgher would be similarly employed for a three-year period at a rate of \$5,000.00 per month, with additional benefits and incentives. Section 7(C) of the agreement constituted a liquidated damages provision to become operative in the event of breach of the agreement by LBJ. This section made no reference to the payment

7

of fees in the event of litigation over the agreement.

On May 18, 1985, two days after the parties executed the agreement, LBJ fired Burgher. Burgher then sued LBJ in the District Court of Tulsa County, Oklahoma, for breach of the agreement and won a judgment in the amount of \$135,000.00, plus pre-judgment interest of \$6,435.62 and attorney's fees of \$20,022.30. The judgment was filed with the state court on July 15, 1988.

LBJ subsequently filed a voluntary Petition for Relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Oklahoma on August 25, 1988, which stayed Burgher's collection efforts. On February 1, 1989, Burgher filed a Proof of Claim for \$161,458.42; on April 4, 1989, he amended his claim to \$167,382.84 to reflect the amount owed on the date of the bankruptcy filing. LBJ objected to the claim, alleging that it exceeded the reasonable value of services of an attorney and should thus be disallowed under 11 U.S.C. §502 (b) (4)¹ and subject to the limitation of §502 (b) (7).²

¹ Title 11 U.S.C. §502(b)(4) reads as follows:

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount except to the extent that--

(4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services...

² Title 11 U.S.C. § 502(b)(7) reads as follows:

(b) Except as provided in subsections (e)(2), (f),(g),(h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount except to the extent that--

On May 9, 1989, the Bankruptcy Court ruled that Burgher's claim was for damages caused by breach of an employment agreement, and, as such, was governed by 11 U.S.C. § 502(b)(7), limiting damage awards to one year's compensation without acceleration. Thus, Burgher's total award was reduced to \$60,000.00. The court specifically rejected LBJ's argument that Burgher's was a claim for services rendered by an attorney or insider within the meaning of 11 U.S.C. § 502(b)(4), which would have limited his damage award to "the reasonable value of such services", i.e., two days' service. The court also found that Burgher's claim for attorney fees of \$20,022.30 represented damages resulting from the contract termination and thus were subject to the limitations of 11 U.S.C. § 502(b)(7).

The District Court has jurisdiction to hear appeals from final decisions of the Bankruptcy Court under 28 U.S.C. § 158(a).³ Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claims exceeds---

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of---

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates...

³ Title 28 U.S.C. § 158(a) reads as follows: "The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title [28 USCS § 157]. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving."

appellate review of bankruptcy rulings with respect to findings of fact.⁴ In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). However, this "clearly erroneous" standard does not apply to review of mixed questions of law and fact, which are subject to the de novo standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d 677, 679 (10th Cir. 1987). The parties agree that this appeal challenges the legal conclusion drawn from the facts presented at trial, so de novo review is proper.

The U.S. Supreme Court has characterized the discretionary power of bankruptcy judges as "the power to sift the circumstances surrounding any claim to see that injustice and unfairness is not done in the administration of a bankrupt estate". Pepper v. Litton, 308 U.S. 295, 308 (1939). Thus, when faced with an issue that lacks clear statutory or judicial definition, the bankruptcy judge is free to exercise his equitable powers to render a fair decision on the proper amount due on a claim.

The issue that Burgher presented on appeal was whether the attorney's fee of \$20,022.30 awarded to him by the state court is included within the meaning of damages under 11 U.S.C. § 502(b)(7). "Damages" is not specifically defined in the Bankruptcy Code. Although Burgher did not contest the application of this section of the Bankruptcy Code to his claim, he asserted that his claim for

⁴ Bankruptcy Rule 8013 reads as follows: "On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses."

attorney's fees awarded before the filing of the bankruptcy should be allowed in addition to his \$60,000.00 damage award.

Burgher contended that **damages** are determined under state law when an employment contract is rejected under 11 U.S.C. § 365(a).⁵ However, this section concerns itself with rejection of an executory contract by the trustee, not with the Bankruptcy Court's reduction of a pre-petition claim awarded by a state court.

Furthermore, although the state court did not make it clear on what authority it awarded attorney fees in addition to the liquidated damages under section 7(C) of the agreement, Burgher argued on appeal that the court presumably awarded them under 12 O.S. § 936⁶, which governs recovery under a claim for labor or services. Both parties agreed, however, that the state court may well have used its equitable powers in determining this part of the total award since the question of attorney fees was not specifically covered in the employment agreement. The state court did not identify the attorney fees as "damages" or "costs".

This court recognizes that the crux of the issue is whether the Bankruptcy Code controls if one's entitlement to an award of attorney fees is based on state law. If this court concludes that the state court judgment was rendered under 12 O.S. § 936, the

⁵ Title 11 U.S.C. §365(a) reads as follows: "Except as provided in sections 765 and 766 of this title [11 USCS §§ 765, 766] and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor."

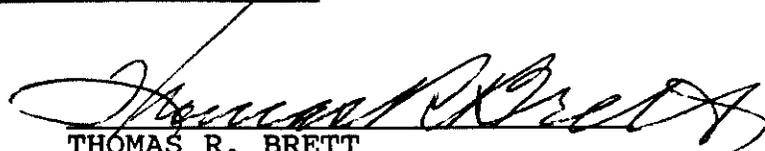
⁶ Title 12 O.S. § 936 reads as follows: "In any civil action to recover on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, or for labor or services, unless otherwise provided by law or the contract which is the subject [of] the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs."

Bankruptcy Court's decision could be reversed and Burgher's entire claim could be reduced to \$22,022.30 for attorney fees plus compensation for two days' service under the employment agreement. Alternatively, this court could reverse the Bankruptcy decision and remand for a separate award of attorney fees. However, neither of these choices seems appropriate since there is no clear basis for reversal in law and no "clearly erroneous" decision by the Bankruptcy Court.

Given the state court's lack of characterization of the attorney fees as "costs" or "damages", and without the certain application of 12 O.S. § 936 to this case by the state court, the Bankruptcy Court did not clearly err in including the fees in issue as part of the maximum allowable award under 11 U.S.C. § 502(b)(7). The Bankruptcy Court, deeming the claim one "for damages resulting from the termination of an employment contract" under federal law did not apply state law to decide the fee issue, since Burgher argued at the trial level that his was not a claim arising from the rendition of labor or services.

Upon de novo review of the record, it appears to this court that the Bankruptcy Judge employed his equitable powers in a fair and just manner. The Bankruptcy Court's decision in this matter should be and is affirmed.

Dated this 22 day of Mar., 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 22 1990

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

JERRY WAYNE NOLES,)
)
Petitioner,)
)
v.)
)
RON CHAMPION, et al,)
)
Respondents.)

89-C-427-B ✓

ORDER

The Application of Petitioner Jerry Wayne Noles for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2254 is now before the Court for consideration. Petitioner was convicted in Oklahoma County District court, Case No. CRF-70-109 on April 8, 1970 and sentenced to fifteen (15) years. He was paroled in 1974. Thereafter, in 1977, he was charged with and pled guilty to the crime of Second Degree Murder, and sentenced to twenty-one (21) years on April 22, 1977. On June 17, 1977, some type of hearing was held prior to Petitioner's parole being formally revoked in Case No. CRF-70-109. Petitioner filed a Petition for relief under the Oklahoma Post Conviction Procedure Act, 22 O.S. §1080 et seq. The Petition was denied and the denial was affirmed by the Court of Criminal Appeals in Case No. PC-89-213. Petitioner now seeks federal habeas relief, alleging his parole was revoked without due process because the State did not hold an "Executive Hearing". Respondent informs the Court that Noles is presently incarcerated pursuant to the 1970 sentence in Case No. CRF 70-109, and Respondent concedes Noles has exhausted his state remedies.

Petitioner's entire habeas attack rests on the foundational argument that he was entitled to a formal, second "Executive Hearing" before his parole could be validly revoked. Respondent asserts that there was no requirement of a hearing because Noles' own plea of guilty to Second Degree Murder, was an admission of Noles' violation of the conditions of parole (i.e., the condition that a parolee is to obey all laws).

The state court has considered the issue and ruled that the method of revoking Noles' parole did not violate state law. *Noles v. State*, Case No. PC 89-313 (Okla. Crim. App. 1989). A federal court must accept as correct a state's interpretation of its own laws, when rendered by the state's highest court, as it was here. Thus, this Court must accept the state court's ruling that a state prisoner's parole may be revoked without an "Executive hearing" in circumstances such as these.

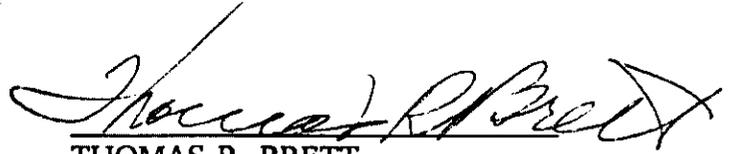
Noles, however, also claims the procedure deprived him of his federal right to due process. In an attempt to clarify Noles' position, the United States Magistrate asked Petitioner (by way of Rule 7 Interrogatory), upon what authority he relied. From Petitioner's answer it is clear he relies on the United States Supreme Court case of *Fuentes v. Shevin*, 91 S.Ct. 1983 (1972), as authority for his argument that the absence of an "Executive Hearing" was a denial of due process.

Yet, far from addressing deprivations of one's liberty, *Fuentes v. Shevin* addresses only the process that is due before the government may deprive one of property in a pre-judgment replevin action context. This court finds that *Fuentes v. Shevin* offers little guidance in a case of post-conviction parole revocation; and, having reviewed the course of events in the case at bar, finds that no due process violation occurred in the process

of revoking Noles' parole.

Therefore, the Court hereby **orders**, adjudges, and decrees, that Noles' Petition for a Writ of Habeas Corpus is hereby **denied**.

Dated this 27 day of Mar, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

MAR 22 1990

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

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

Hesston Corporation, a Kansas corporation,)
)
 Plaintiff,)
)
 vs.)
)
 Stockyards Equipment & Supply, Inc., an Oklahoma corporation,)
 LeFlore County Equipment, Inc., an Oklahoma corporation,)
 Stanley C. Turner; Barbara A. Turner; Dee D. Baxter; Mary A. Baxter; Everett Salley; Marilyn B. Salley; and Marjorie Burst;)
)
 Defendants.)

Case No. 89-C-084 E

ORDER DISMISSING THE CROSS CLAIM OF DEFENDANT, MARJORIE BURST, AGAINST DEFENDANT, DEE D. BAXTER, WITH PREJUDICE, AND DISMISSING THE CROSS CLAIM OF DEFENDANT, DEE D. BAXTER, AGAINST DEFENDANT, MARJORIE BURST, WITH PREJUDICE

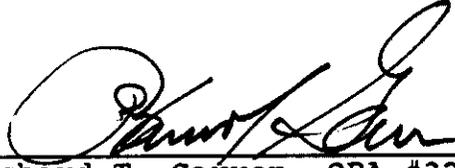
Upon the Joint Stipulation and Request for Entry of Order Dismissing the Cross Claim of Defendant, Marjorie Burst, Against Defendant, Dee D. Baxter, With Prejudice, and Dismissing the Cross Claim of Defendant, Dee D. Baxter, Against Defendant, Marjorie Burst, With Prejudice, and pursuant to Rule 41, Federal Rules of Civil Procedure;

IT IS THEREFORE ORDERED that Defendant Marjorie Burst's, claims in this case against Defendant Dee D. Baxter, and Defendant Dee D. Baxter's claims in this case against Defendant Marjorie Burst are each dismissed with prejudice, with each party to bear its own costs and attorney's fees.

/s/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT

APPROVED:



Richard T. Garren OBA #3253
P. O. Box 52400
Tulsa, Ok 74152
918/743-9633
Attorney for Defendant
Marjorie Burst



Dennis J. Downing OBA #2467
2642 E. 21 St., Suite 251
Tulsa, Ok 74114
918/748-8484
Attorney for Defendant
Dee D. Baxter

Burst.Dis

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

ARVLE E. MEDLIN,

Plaintiff,

vs.

SAMUEL NED EVANS, ROBERT
WHITE and JEFFREY L. FULTON,
Agents of the Federal Bureau
of Alcohol, Tobacco and
Firearms,

Defendants.

No. 88-C-1670-C

FILED

MAR 22 1990

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

ORDER

The Court has independently reviewed the record and concludes that the Report and Recommendation of the Magistrate entered on October 23, 1989 is hereby affirmed and adopted as the findings and conclusions of this Court.

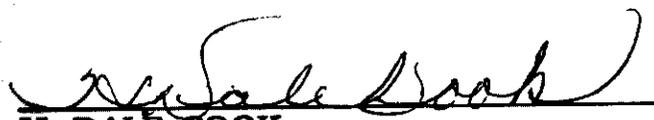
The Magistrate recommended that defendant's motion to dismiss be granted in that plaintiff's action is barred by a two-year statute of limitation.

The Court agrees with the Magistrate that actions brought under Biven v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) have a two year limitation period,

analogous to actions brought under 42 U.S.C. §1983 as construed in Wilson v. Garcia, 471 U.S. 261 (1985).

It is therefore the Order of the Court that the motion of defendant to dismiss is hereby GRANTED.

IT IS SO ORDERED this 17th day of March, 1990.


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

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

intended

THEODORE W. FORD,
Petitioner,

vs.

JACK COWLEY AND THE ATTORNEY
GENERAL OF THE STATE OF
OKLAHOMA,

Respondents.

No. 88-C-631-C

FILED

MAR 22 1990

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

ORDER

Before the Court is the objection of petitioner to the Findings and Recommendation of the Magistrate.

Petitioner brought this action pursuant to 28 U.S.C. §2254. On September 23, 1988, the United States Magistrate recommended that petitioner's application be denied on procedural grounds for failure of petitioner to perfect a direct appeal. On December 20, 1988, this Court determined that petitioner did not possess the full understanding of the consequences of a waiver of direct appeal of his conviction to have made such a waiver voluntarily and intelligently.

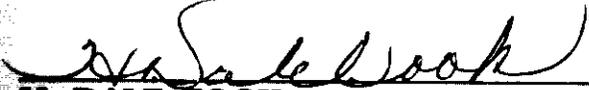
Petitioner must exhaust his state court remedies prior to this Court assuming jurisdiction under 28 U.S.C. §2254.

Therefore, it is the Order of the Court that this habeas corpus action is stayed for a period of six months to enable the Oklahoma Court of Appeals to provide petitioner with a court

appointed attorney to file a direct appeal from his conviction in the District Court of Tulsa County, Oklahoma.

After exhaustion of petitioner's state court remedies, the Court will consider whether continuance of federal jurisdiction is necessary.

IT IS SO ORDERED this 17th day of March, 1990.



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

The Court has reviewed the arguments, the evidentiary materials submitted and, the applicable authorities. The Court has determined that oral argument would not materially assist the determination of these issues and that these matters can be resolved on the basis of the record before the Court. The pending matters will be addressed in turn.

1. The August 22, 1989 Report and Recommendation of the Magistrate:

No objections to the Magistrate's report and recommendation have been filed by any party. The Court has concluded that the Magistrate's report and recommendation should be adopted by the Court.

2. Plaintiff's Motion in Limine:

Plaintiffs' motion seeks a ruling determining how damages will be proved. This motion will be held in abeyance pending the determination of liability.

3. The Motion of Defendants Greer & Greer for Partial Summary Judgment:

This motion is denied. The original Complaint adequately pled the Braden issue. The Second Amended Complaint particularized this matter but did not change the theory. Greer & Greer admits it had actual notice of the theory at the time of the original complaint. It will not, therefore, be prejudiced by the amendment.

4. The Motion of Volkswagenwerk AG, Herzfeld and Rubin, and Myron Shapiro for Summary Judgment:

This motion is denied. The Court finds that disputed issues of material fact exist regarding representations made to

Plaintiffs' attorneys in the first lawsuit which led to the dismissal of Volkswagenwerk AG from the first lawsuit. Further, Defendants have not shown that reliance on their alleged misrepresentations was unjustifiable as a matter of law.

5. The Motion of Volkswagenwerk AG, Herzfeld and Rubin, and Myron Shapiro to Dismiss Plaintiffs' Second Amended Complaint:

This motion is denied. Defendants argue that the Second Amended Complaint presents an attack on the judgment in the prior litigation and that such claims are barred by res judicata, collateral estoppel and the law of the case. Plaintiffs deny that the Second Amended Complaint attempts to set aside the prior judgment or to relitigate the issues of negligence, products liability and breach of warranty which were resolved against them in the prior litigation. Plaintiffs contend that the Second Amended Complaint merely particularizes their allegations and adds references to evidence revealed in discovery which, Plaintiffs contend, supports their allegations.

This Court already has ruled that the previous products liability action will not be relitigated here. This action concerns only the issue of fraud and other intentional torts. All other claims for relief have been dismissed. By their response to this motion, Plaintiffs concede that this action is so limited. Whatever Plaintiffs' Second Amended Complaint adds to this action, it does not change the claims upon which this action will proceed.

With regard to Defendants' argument that attorneys are absolute immune from liability for their statements made in court

proceedings, any immunity that might attach to a private attorney's conduct does not attach to the conduct alleged in this case to be fraudulent.

In summary the Court orders as follows:

1. The report and recommendation of the Magistrate entered August 22, 1989 is adopted by the Court. Case No. 88-1435 is dismissed on the basis of the oral stipulation of counsel on record August 8, 1989. Greer & Greer will proceed with its allegations of fraud and fraudulent concealment as a cross-claim in case no. 88-C-367-E. This action will be bifurcated; the liability issue will be tried first and the issue of damages is reserved for future decision.
2. Plaintiff's motion in limine addressing how damages would be proved is held in abeyance and will be addressed if and when the damages issue is tried;
3. The motion of Greer & Greer for partial summary judgment is denied;
4. The motion of Volkswagenwerk AG, Herzfeld and Rubin, and Myron Shapiro for summary judgment is denied;
5. The motion of Volkswagenwerk AG, Herzfeld and Rubin, and Myron Shapiro to dismiss Plaintiffs' Second Amended Complaint is denied.

The hearing on these matters scheduled for April 13, 1990 is stricken.

ORDERED this 21st day of March, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

MAR 21 1990

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

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate
capacity,

Plaintiff,

vs.

No. 89-C-144-E

HENDERSON HILLS SHOPS, INC.,
an Oklahoma corporation, C. A.
HENDERSON, an individual, WALTER
TULLOS, an individual, TILLMAN
M. HERSHBERGER, an individual,
RAYMOND DOYAL HOOVER, an
individual, and ROBERT J. NALE,
an individual,

Defendants.

ADMINISTRATIVE CLOSURE ORDER

Upon joint motion of the parties and for good cause therein shown, it is hereby Ordered as follows:

A. This action is administratively closed for one hundred eighty (180) days from the date of the filing of this Order, without prejudice to the parties' respective rights to reopen this action on or before that time, if further litigation becomes necessary;

B. Any pending scheduled deadlines and hearings, if any, are hereby stricken; and,

C. If no motion to reopen or motion to extend the administrative closure is filed on or before the expiration of the 180th day, then the parties' claims, if any, against each other herein are hereby dismissed with prejudice, with each party to bear their own attorney's fees, costs and expenses.

Dated this 21st day of March, 1990.

JAMES O. ELISON

**District Judge
United States District Court for
the Northern District of Oklahoma**

FILED

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

MAR 21 1990 *dst*

ROBERT L. PARKER and CATHERINE)
MAE PARKER, TRUSTEES OF THE)
ROBERT L. PARKER TRUST,)

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

Plaintiffs,)

vs.)

Case No. 90-C-158-EV ✓

MANUFACTURERS HANOVER TRUST)
COMPANY, A NEW YORK BANKING)
CORPORATION, and SHEARSON LEHMAN)
HUTTON INC., A DELAWARE)
CORPORATION,)

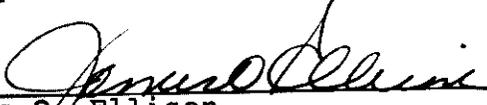
Defendants.)

**ORDER DISMISSING DEFENDANT
SHEARSON LEHMAN HUTTON INC.**

The Defendant Shearson Lehman Hutton Inc. ("Shearson") has filed a Cross-Claim in Interpleader herein, and has deposited the sum of \$50,000.00 with the Clerk of this Court, and has further deposited the sum of \$4,950,000.00 with Morgan Guaranty Trust Company of New York ("Morgan") pursuant to an Escrow Agreement entered into between Plaintiffs, Shearson, Manufacturers Hanover Trust Company and Morgan. All parties to this action have stipulated that Shearson may be dismissed from this action.

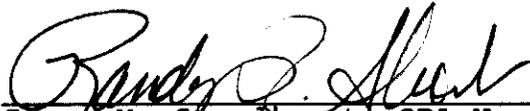
The Court does hereby ORDER that the Defendant Shearson Lehman Hutton, Inc. be and it is hereby dismissed with prejudice as a party to this action.

SO ORDERED this 21st day of March, 1990.


James O. Ellison
United States District Judge

7

APPROVED AS TO FORM AND CONTENT:



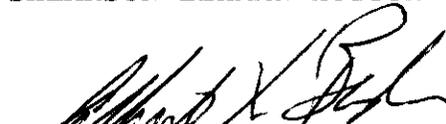
James M. Sturdivant, OBA No. 8723
Randy R. Shorb, OBA No. 11517
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119-5447
(918) 582-9201

ATTORNEYS FOR PLAINTIFFS



Kathryn S. Reimann
SHEARSON LEHMAN HUTTON INC.
Office of the General Counsel
Shearson Lehman Hutton Plaza
388 Greenwich Street
New York, New York 10013
(212) 464-7286

ATTORNEY FOR DEFENDANT
SHEARSON LEHMAN HUTTON INC.



Albert X. Bader, Jr.
L. Francis Huck
SIMPSON THACHER & BARTLETT
425 Lexington Avenue
New York, New York 10017
(212) 455-2000

ATTORNEYS FOR DEFENDANT
MANUFACTURERS HANOVER TRUST COMPANY

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

FILED

CARLA COATS, Special
Administratrix of the
Estate of THOMAS JEFFERSON
ODEN,

MAR 21 1990

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

Plaintiff,

-vs-

Case No. 89-C0009 E

CLARA BOSIER NELSON, an
Individual, JANICE K.
ROZMIAREK, an Individual,
and WINFORD ODEN, an
Individual,

Defendants.

ORDER OF DISMISSAL

NOW on this 21 day of March, 1990, I the undersigned
Judge of the United States District Court for the Northern District
of Oklahoma, upon request of the Plaintiff, find that said
cause should be and the same is hereby dismissed with preju-
dice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the
Court that Plaintiff's cause of action pending herein is
dismissed with prejudice to refiling same, upon her applica-
tion.

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

FILED

MAR 20 1990

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JACK STERLING BURDEN,
Defendant.

Civil Action No. 89-C-469-E

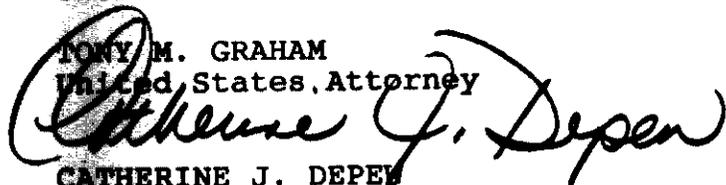
NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Catherine J. Depew, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 20th day of March, 1990.

UNITED STATES OF AMERICA

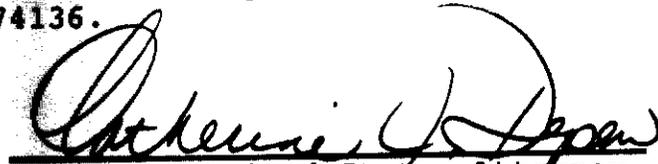
TONY M. GRAHAM
United States Attorney



CATHERINE J. DEPEW
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 20th day of March, 1990, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Jack Sterling Burden, 4364 East 72nd Street, Tulsa, Oklahoma 74136.


Assistant United States Attorney

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MAR 20 1990

dt

WINSTON A. ABELSON,)
)
 Plaintiff,)
)
 vs.)
 PHILIP A. BENNETT and)
 JEFF HAYS,)
)
 Defendants.)

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

Case No. 89 C 926 E ✓

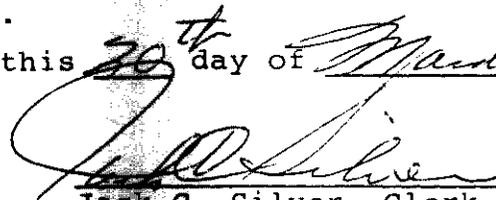
JUDGMENT BY DEFAULT UPON APPLICATION TO CLERK

In this action the Defendant, Jeff Hays, having been regularly served with the Summons and Complaint, and having failed to plead or otherwise defend, the legal time for pleading or otherwise defending having expired and the default of the said Defendant, Jeff Hays, in the premises having been duly entered according to law; upon the application of said Plaintiff, judgment is hereby entered against said Defendant in pursuance of the Prayer of said Complaint.

WHEREFORE, by virtue of the law and by reason of the premises aforesaid,

IT IS ORDERED, ADJUDGED AND DECREED, that the said Plaintiff do have and recover from said Defendant the sum of \$ 31,500.00 with interest thereon at the rate of 8.36 % from the date hereof, till paid, together with said Plaintiff's costs and disbursements incurred in this action amounting to the sum of \$ 420.00, and that the Plaintiff have execution therefor.

Judgment rendered this 20th day of March, 1990.



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

Charles Peters Seger, OBA #8052
Attorney for Plaintiff, Abelson
707 S. Houston, Ste. 306
Tulsa, OK 74127
(918) 585-5595

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 KENNETH R. DAUGHERTY a/k/a)
 KENNETH RAY DAUGHERTY; SARAH)
 DAUGHERTY a/k/a SARAH LYNN)
 DAUGHERTY; COUNTY TREASURER,)
 Creek County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Creek County, Oklahoma,)
)
 Defendants.)

FILED

MAR 19 1990

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

CIVIL ACTION NO. 89-C-1040-BV ✓

ORDER

Upon the Motion of the United States of America acting on behalf of the Secretary of Veterans Affairs by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, to which there are no objections, it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 19th day of Mar, 1990.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney



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

E F I L E D

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

MAR 19 1990

JERRY LAYMON,

Plaintiff,

vs.

PAT MAYS, GARY ROHR, RAY REAVIS,
DON BOARDWINE, DEWEY JOHNSON and
the CITY OF CLAREMORE,

Defendants.

No. 89-C-426-B ✓

ORDER

Currently before the Court is Defendants Rohr, Reavis and the City of Claremore's Motion to Dismiss for failure to state a claim upon which relief can be granted.

Plaintiff invoked this Court's jurisdiction pursuant to 42 U.S.C. §1983 and the Fourth, Fifth and Fourteenth Amendments. Count I of Plaintiff's Complaint provides in part:

"7. Due to the comingled [sic] gross negligence of all Defendants above named, Plaintiff has been deprived of his Constitutional rights, and has sustained serious, permanent and painful injuries."

Nowhere has Plaintiff asserted what constitutional rights have been violated or what actions taken by the City amount to an official policy or custom. The Court is left to guess as to what cause of actions Plaintiff asserts.

Count II is similarly vague. Count II provides:

"3. Plaintiff has heretofore made claim against Defendant Dewey Johnson and Defendant City of Claremore, for damages resulting from their actions which claims have been denied. Plaintiff now brings this action pursuant to

Title 51 O.S. §151, et seq."

Count II does not identify a cause of action, but merely recites that Plaintiff has complied with the Oklahoma Governmental Tort Claims Act.

Defendant seeks to dismiss for failure to state a claim. Plaintiff may very well have a claim; however, the Complaint as drafted does not even comport with the requirements of notice pleading under Rule 8. Rather than dismiss the case, Plaintiff will be given the opportunity to file an Amended Complaint so that he may identify the grounds on which relief is sought.

It is therefore ORDERED that Plaintiff file an Amended Complaint within 20 days from the date of this Order or the case shall be dismissed.

IT IS SO ORDERED, this 19th day of March, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED
MAR 19, 1990
U.S. DISTRICT COURT

PROTECTION AND ADVOCACY AGENCY,)
)
Plaintiff,)
)
vs.)
)
OKLAHOMA DEPARTMENT OF MENTAL)
HEALTH AND THE ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA,)
ROBERT H. HENRY,)
)
Defendants.)

No. 89-C-572-B ✓

ORDER

Currently before the Court is Defendants' Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b). As the Defendant references exhibits attached to the Complaint, the Court will treat the motion as one for summary judgment pursuant to Rule 56. Plaintiff initiated this declaratory judgment action to have its rights declared regarding access to a patient's medical records. Defendants assert the Attorney General is immune from suit by virtue of the Eleventh Amendment, or in the alternative, that it is not required to disclose its files compiled in anticipation of litigation. Defendants also assert there is no live case or controversy because the Department of Mental Health has provided all of the pertinent records.

Plaintiff is an agency established pursuant to the Protection and Advocacy for Mentally Ill Individuals Act of 1986, 42 U.S.C. §10801 *et seq.* Relevant portions of the Act provide to what extent Plaintiff is entitled to an individual's records. An eligible system, such as Plaintiff, shall have access to all records to

which the individual has access if the individual consents. 42 U.S.C. §10805 (4)(A). The eligible system may also have access to a person's records if the individual is unable to consent due to his mental or physical condition, does not have a legal guardian, conservator or other legal representative, and with respect to whom a complaint has been received or there is probable cause to believe that such individual has been subject to abuse or neglect. 42 U.S.C. §10805 (4)(B). An eligible system which has access to records under this section must maintain the confidentiality of said records if the mental health service provider is required to maintain the records in a confidential manner. Additionally, the system cannot disclose any record to an individual if such disclosure would be detrimental to the health of the individual.¹ 42 U.S.C. §10806. Finally, the Act defines "record" to include

"reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records." 42 U.S.C. §10806(b)(3)(A) (emphasis added)

It is clear the Plaintiff is to have access to records of incidents kept by a mental health service provider, or its investigating agency. Contrary to Plaintiff's argument, there is

¹ An eligible system can seek independent review by a mental health professional as to whether information will be detrimental to the health of an individual.

no indication the Act is to be read so broad as to include the Attorney General's confidential files compiled in anticipation of tort litigation. The Court chooses not to read §10806(b)(3)(A) so broad as to include agencies that are not charged with investigating incidents of abuse, neglect or injury.

With regard to the Department of Mental Health, Defendants assert there is no live case or controversy because all relevant records have been provided. Plaintiff asserts this is premised upon an unacceptable assumption. The exhibits attached to Plaintiff's Complaint indicate the Department of Mental Health's investigatory files were forwarded to the Attorney General's office to defend a tort claim. Merely because an investigatory file will be used in litigation does not make the file privileged *per se*. Under the provisions of the Act, Plaintiff is authorized to obtain copies of the files compiled by the agency responsible for investigating incidents of abuse, neglect or injury. 42 U.S.C. §10806(b)(3)(A).

Therefore, the Defendant's Motion for Summary Judgment is SUSTAINED with regard to the Attorney General and OVERRULED with regard to the Department of Mental Health. It is FURTHER ORDERED the Defendant, Department of Mental Health, provide to Plaintiff within thirty (30) days of the date of this Order:

1. A copy of all reports prepared by any staff member of the Carl Albert Community Mental Health Center that describe incidents of abuse, neglect and injury occurring to individual D.S. at the Carl Albert Community Mental Health Center, and the steps taken to investigate same; and

2. A copy of any report prepared by the Department of Mental Health investigating reports of incidents of abuse, neglect, or injury occurring to individual D.S. at the Carl Albert Community Mental Health Center, or any report that describes said incidents, and the steps taken to investigate same.²

IT IS SO ORDERED this 19th day of March, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

²The Court notes Plaintiff's Exhibit 2 wherein the Department of Mental Health refused to disclose individual defendants' psychiatric records. Said records should be made available if they are prepared because of or describe an incident of abuse, neglect or injury.

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

FILED

MAR 19 1990

JACK D. SILVER, CLERK
UNITED STATES DISTRICT COURT

Farmers Insurance
Plaintiff(s),

vs.

No. 89-C-401-C

Clyde Keizor, et al
Defendant(s).

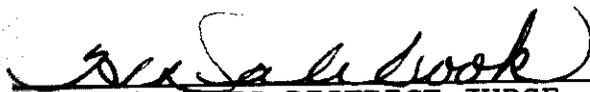
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 16th day of March, 1990.


UNITED STATES DISTRICT JUDGE

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

FILED

MAR 19 1990

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

LOWELL H. LISTROM
Plaintiff(s),

vs.

No. 84-C-833-C

DENNIS WORDEN, ET AL
Defendant(s).

ORDER

Rule 35A of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

A. In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may, in the Court's discretion, be entered.

In the action herein, notice pursuant to Rule 35A was mailed to counsel of record or to the parties, at their last address of record with the Court, on October 3, 1989. No action has been taken in the case within thirty (30) days of the date of the notice.

THEREFORE, it is the Order of the Court that this action is in all respects dismissed.

Dated this 16th day of March,
1990.


United States District Judge

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

FILED

MAR 19 1990

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

LOWELL H. LISTROM
Plaintiff(s),

vs.

No. 84-C-832-C

BRADLEY TAYLOR, ET AL
Defendant(s).

ORDER

Rule 35A of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

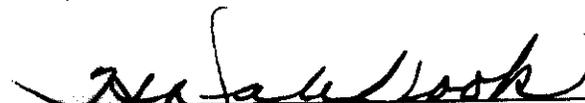
A. In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may, in the Court's discretion, be entered.

In the action herein, notice pursuant to Rule 35A was mailed to counsel of record or to the parties, at their last address of record with the Court, on October 3, 1989. No action has been taken in the case within thirty (30) days of the date of the notice.

THEREFORE, it is the Order of the Court that this action is in all respects dismissed.

Dated this 16th day of March,

1990.


United States District Judge

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA MAR 19 1990

PROTECTION AND ADVOCACY AGENCY,)
)
 Plaintiff,)
)
 vs.)
)
 OKLAHOMA DEPARTMENT OF MENTAL)
 HEALTH AND THE ATTORNEY GENERAL)
 OF THE STATE OF OKLAHOMA,)
 ROBERT H. HENRY,)
)
 Defendants.)

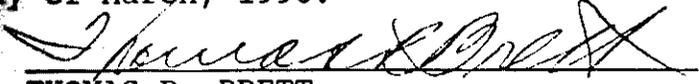
Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 89-C-572-B /

JUDGMENT

Consistent with the Court's Order entered this date declaring the rights of the Plaintiff, Protection and Advocacy Agency, the Court hereby enters Judgment in favor of Protection and Advocacy Agency and against the Oklahoma Department of Mental Health. Plaintiff is entitled to a copy of all reports prepared by any staff member of the Carl Albert Community Mental Health Center that describe incidents of abuse, neglect and injury occurring to individual D.S. at the Carl Albert Community Mental Health Center, and the steps taken to investigate same. Plaintiff is also entitled to a copy of any report prepared by the Department of Mental Health investigating reports of incidents of abuse, neglect, or injury occurring to individual D.S. at the Carl Albert Community Mental Health Center, or any report that describes said incidents, and the steps taken to investigate same. Each party is to pay its respective costs and attorney fees.

ENTERED, this 19 day of March, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entered

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

THURMAN L. ROWE,
Plaintiff,
vs.
PUBLIC SERVICE COMPANY OF
OKLAHOMA,
Defendant.

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No. 89-C-332-C

F I L E D

MAR 16 1990

ORDER

The Court has before it defendant's motion to tax attorney's fees against plaintiff in the amount of \$8,820.00 pursuant to 42 U.S.C. § 2000e-5(k). In a civil rights action, the prevailing defendant may only receive attorney's fees if the Court finds the action by the plaintiff clearly "frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so." Christianburg Garment Co. v. EEOC, 434 U.S. 412, 422 (1989).

The Court finds this standard has not been met and that plaintiff brought this action in good faith. Therefore, it is the Order of the Court that defendant's motion for attorney's fees is hereby denied.

IT IS SO ORDERED this 15th day of March, 1990.

H. Dale Cook

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

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

RAMONA K. WILLIAMS

Plaintiff,

vs.

**KARA GAE WILSON, TULSA
COUNTY SUPERINTENDENT OF
SCHOOLS**

Defendant.

Case No. 89-C-534 C

FILED

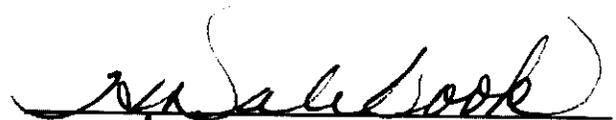
MAR 15 1990

**U.S. District Court
District of Oklahoma**

JUDGEMENT

In keeping with the verdict of the Court in a non-jury trial entered herein on the 13th day of March, 1990, relative to plaintiff Ramona William's claim of racial discrimination pursuant to 42 USC § 2000 (e) *et seq*, Judgement is hereby entered in favor of the Defendant, Kara Gae Williams, Tulsa County Superintendent of Schools, and against the plaintiff, Ramona Williams, and the plaintiff is to take nothing on said claim. The costs are hereby assessed against the plaintiff, Ramona Williams.

DATED this 16th day of March, 1990.



**H. DALE COOK
UNITED STATES DISTRICT JUDGE**

27

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

FILED

MAR 15 1990

SENECA-CAYUGA TRIBE OF OKLAHOMA,)

Plaintiff-Appellee,)

v.)

STATE OF OKLAHOMA, et al.,)

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

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

QUAPAW TRIBE OF OKLAHOMA et al.,)

Plaintiffs-Appellees,)

v.)

STATE OF OKLAHOMA, et al.,)

Defendants-Appellants.)

ORDER

This matter comes on for consideration upon the Applications for Attorneys Fees filed by both the Quapaw Tribe of Oklahoma and the Seneca-Cayuga Tribe of Oklahoma, on December 26, 1989. None of the Defendants-Appellants have filed any response thereto.

Rule 6 G., Local Rules for the Northern District of Oklahoma, provides that parties entitled to attorneys fees shall, within 15 days of the entry of judgment of decree, file an application with an affidavit setting forth an itemized accounting of the time spent, work performed and the billing rate for such hours. An Agreed Judgment was entered herein on December 8, 1989, the last line of which stated "All parties further agree and stipulate to

entry of judgment that Plaintiffs are the prevailing parties under 42 U.S.C. Sections 1983 and 1988."

Applicants were required to file their application for attorneys fees within 15 days from the entry of judgment (December 8, 1989), which was December 23, a Saturday. Rule 6, Federal Rules of Civil Procedure provides that the first day of a designated period shall not be counted but the last shall, unless it is a Saturday, Sunday, or legal holiday. Monday, December 25, 1989, was Christmas, a legal holiday. Applicants filed their application on Tuesday, December 26, 1989, which Court concludes is timely.

Rule 6 G. of the Local Northern District Rules also provides all parties objecting to an attorneys fees application shall file such objection within 15 days of the application. The last sentence thereof states: "Any party failing to comply with this Rule waives attorney fees or objections thereto." The Court concludes that defendants, having failed to file any response or objection, have waived any right to object thereto.

The Court concludes that the Quapaw Tribe of Oklahoma should be and the same is hereby awarded attorneys fees against the defendants herein in the amount of \$24,320.00. The Court further concludes that the Seneca-Cayuga Tribe of Oklahoma should be and the same is hereby awarded attorneys fees against the defendants herein in the amount of \$18,309.75.¹

¹. The Seneca-Cayuga Tribe also itemized out-of-pocket expenses of \$1,102.17 of which the sum of \$60.00 was taxed as costs by the Clerk of the Court for the Northern District on January 3, 1990. It is the Court's opinion the remaining amount should have been pursued by cost procedure before the Clerk of the Court.

IT IS SO ORDERED this 15 day of March, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

GLORIA J. GALLOWAY,

Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.,
SECRETARY OF HEALTH AND HUMAN
SERVICES,

Defendant.

No. 88-C-1641-C

F I L E D

MAR 1 1990

ORDER

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

The Court has independently reviewed the record and concludes that the Report and Recommendation of the Magistrate should be and hereby is affirmed and adopted as the findings and conclusions of the Court.

Plaintiff appeals the decision of the Secretary of Health and Human Services denying her application for disability benefits.

After de novo review of the record, the Court agrees that the decision of the Secretary was arrived at by applying the appropriate standard, supported by substantial evidence in the record.

Accordingly, it is the Order of the Court that the determination of the Secretary of Health and Human Services denying

plaintiff's benefits is hereby **AFFIRMED**.

IT IS SO ORDERED this 16th day of March, 1990.



H. DALE' COOK

Chief Judge, U. S. District Court

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

F I L E D

MAR 15 1990

MRS. DAVID E. COON,
ON BEHALF OF TOMMY COON,
DAVID E. COON, JR.,
JERYE LYN DYER, EDWARD D.
COON, JAMES R. COON,

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

Plaintiffs,

vs.

Case No. 89-C-194-B

INGERSOLL-RAND COMPANY,
INGERSOLL-RAND OIL FIELD
PRODUCTS COMPANY, IRI
INTERNATIONAL CORP.,

Defendant.

**ORDER OF DISMISSAL WITHOUT PREJUDICE
AS TO DEFENDANT INGERSOLL-RAND COMPANY**

Upon the application of Plaintiffs for Dismissal Without Prejudice as to Ingersoll-Rand Company and upon the agreement of Counsel for the Defendants, the Court finds that this action should be dismissed without prejudice as to Ingersoll-Rand Company. This action is therefore dismissed without prejudice as to Defendant Ingersoll-Rand Company only.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

MAR 15 1990

Jack C. Silver, Clerk
DISTRICT COURT

B. I. BROOKS, AND SONS, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 FIGGIE INTERNATIONAL, INC., d/b/a)
 LOGAN COMPANY, and INSURANCE)
 COMPANY OF NORTH AMERICA,)
)
 Defendant and)
 Third-Party Plaintiff,)
)
 vs.)
 Commercial Union Insurance)
 Company,)
)
 Third-Party Defendant.)

Case No. 89 C-1057E

NOTICE OF DISMISSAL WITHOUT PREJUDICE OF
THIRD-PARTY COMPLAINT AGAINST COMMERCIAL
UNION INSURANCE COMPANY

Defendant Figgie International, Inc., doing business as Logan Company, dismisses the third-party complaint which it filed on February 1, 1990, against Commercial Union Insurance Company, without prejudice, however, to the prosecution of the claims asserted in the third-party complaint by counterclaim against Commercial Union Insurance Company in this action or otherwise, as authorized by Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Dated: March 5, 1990.

NICHOLS, WOLFE, STAMPER,
NALLY & FALLIS, INC.

By: Gerald G. Stamper
Gerald G. Stamper, OBA # 8546
400 Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103-4004

Attorneys for Defendant Figgie
International, Inc., d/b/a/
Logan Co.

CERTIFICATE OF SERVICE

I hereby certify that on the fifth day of March, 1990, a copy of the foregoing was placed in the United States mail, with postage prepaid, addressed to:

Thomas M. Moore
Frederick G. Thompson, IV
Gould & Moore, P.C.
Post Office Box 8620
Kansas City, Missouri 64114-8620

David M. Thornton, Jr.
Thornton & Thornton
Suite 660
525 South Main Mall
Tulsa, Oklahoma 74103

Gerald G. Stamper
Gerald G. Stamper

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

FILED

MAR 15 1990

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

COMMITTEE FOR THE FIRST AMENDMENT,)
an unincorporated association of)
students, faculty, and other)
members of the University commu-)
nity of Oklahoma State University,)
including the following individual)
members, et al.,)
Plaintiffs.)

v.)

JOHN R. CAMPBELL, individually)
and in his official capacity)
as President of Oklahoma State)
University, et al.,)
Defendants.)

89-C-830-B ✓

ORDER

On November 13, 1989, Defendants filed their Motion for Summary Judgment with supporting brief. Plaintiffs, after timely extensions were sought and granted, filed, on December 28, 1989, their Partial Response to Defendants' Motion for Summary Judgment, which included, inter alia, Plaintiffs' request that any ruling on the Summary Judgment Motion be deferred until all discovery has been completed, notably the deposing of OSU President John R. Campbell desired by Plaintiffs. The Court is informed that, as of this date, the deposition of President Campbell has not yet been taken.

Typically, Motions to Dismiss are converted into Motions for Summary Judgment when matters outside the pleadings are presented

to and not excluded by the Court. Rule 12 (b), F.R.Civ.P.. However, motions for summary Judgment can be functionally equivalent to a motion to dismiss, when circumstances dictate. Bogosian v. Gulf Oil Corp., 561 F.2nd 434, 444, (3rd Cir.-1977); Schwartz v. Compagnie General Transatlantique, 405 F2nd 270, (2nd Cir.-1968), where the following appears at 273:

" Where appropriate, a trial judge may dismiss for failure to state a cause of action upon motion for summary judgment. 'A motion for summary judgment may be made solely on the pleadings, when it is so made it is functionally the same as a motion to dismiss or a motion for judgment on the pleadings.' 6 Moore's Federal Practice ¶ 56.02(3), p. 2035. See Mercantile Nat'l. Bank at Dallas, v. Franklin Life Ins. Co., 248 F.2d 57 (5th Cir. 1957). Summary judgment procedure may be properly invoked for determination of a legal question. Agrashell, Inc. v. Hammons Products Co., 248 F.Supp. 258 (S.D.N.Y.), aff'd 352 F.2d 443 (2nd Cir. 1966).

See also, Reed v. Allegan County, W.D. Mich. 1988, 688 F. Supp 1239.

Plaintiffs brought this action seeking declaratory and injunctive relief for alleged violations of their civil rights under the First and Fourteenth Amendments of the Constitution of the United States. Plaintiffs reserved the right to amend the complaint, and did amend the complaint¹, for the purpose of joining a claim for damages for loss of their civil rights in the event a delay in the presentation of the film, The Last Temptation of Christ, should occur as a result of the action of the Defendants.

The film was originally scheduled to be shown on October 19,

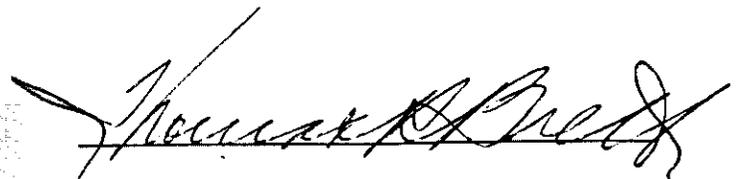
¹. Plaintiffs' Amended Complaint seeks "at least nominal damages against the individual Defendants for violation of civil rights."

20, and 21, 1989, in Stillwater, Oklahoma. The film was shown on October 19, 20 and 21, 1989, in Stillwater. The Court considers the issue moot.

In their Partial Response to Defendants' Motion for Summary Judgment, Plaintiffs state this is not a suit about a specific movie (by this time already shown) but rather about the alleged custom and practice of the Board of Regents of Oklahoma State University and its administration to engage in content-based censorship in violation of the First Amendment, and the alleged intent to continue to do so. The Court is not inclined to issue constitutional fiat in futuro. The Court presumes the parties on both sides will conduct themselves, constitutionally and morally, in appropriate manner.

The Court concludes the Plaintiffs' action should be and the same is hereby DISMISSED, with prejudice. Any party desiring to make application for costs and/or attorneys fees, if appropriate, should do so within the time prescribed by Rule 6, Rules of the District Court for the Northern District of Oklahoma.

IT IS SO ORDERED this 15th day of March, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

MAR 14 1990

THRIFTY RENT-A-CAR SYSTEM, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
ARTHUR J. GALLAGHER INTERNATIONAL,)
INC.; ARTHUR J. GALLAGHER & CO.;)
ARTHUR J. GALLAGHER & CO.)
(BERMUDA), LIMITED; AND GALLAGHER)
BASSETT SERVICES, INC.,)
)
Defendants.)

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

No. 88-C-488-B

ORDER FOR DISMISSALS

Now on this 14th day of March, 1990, the Court has for its consideration the Stipulation for Dismissals With Prejudice jointly filed in the above-styled and numbered cause by plaintiff, Thrifty Rent-A-Car System, Inc. ("Thrifty"), and the defendants, Arthur J. Gallagher International, Inc., Arthur J. Gallagher & Co., Arthur J. Gallagher & Co. (Bermuda), Limited, and Gallagher Bassett Services, Inc. (collectively referred to as the "Gallagher Companies"). Based upon the representations and requests of the parties as set forth in the foregoing Stipulation, it is hereby

ORDERED that Thrifty's Complaint, Amended Complaint and claims for relief against the Gallagher Companies be and the same are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that the Gallagher Companies' counterclaims and amended counterclaims against Thrifty be and

the same are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that each party shall bear its own costs and fees.

S/ THOMAS R. BRETT
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

John B. Stuart
John B. Stuart, OBA #8708
KNIGHT, WAGNER, STUART,
& WILKERSON
233 West 11th Street
P. O. Box 1560
Tulsa, Oklahoma 74101-1560
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Brian V. Gray
Vice President/Counsel
GALLAGHER BASSETT SERVICES, INC.
60 Gould Center
Rolling Meadows, Illinois 60008
(708) 640-6971

John E. Dowdell
John E. Dowdell, OBA #2460
Geel L. Wohlgemuth, OBA #9811
NORMAN & WOHLGEMUTH
2900 Mid-Continent Tower
Tulsa, Oklahoma 74103
(918) 583-7571

ATTORNEYS FOR DEFENDANTS,
ARTHUR J. GALLAGHER INTER-
NATIONAL, INC., ARTHUR J.
GALLAGHER & CO., ARTHUR J.
GALLAGHER & CO. (BERMUDA),
LIMITED, AND GALLAGHER BASSETT
SERVICES, INC.

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

FILED

MAR 14 1990

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

SHEET METAL J.A.C. TRAINING SCHOOL,)
INC.; THE NATIONAL TRAINING FUND)
FOR THE SHEET METAL AND AIR CONDI-)
TIONING INDUSTRY; JAMES E. ROTH;)
EDWARD J. CARLOUGH,)

Plaintiffs,)

vs.)

BRIAN GRIFFIN,)

Defendant.)

No. 87-C-814-B

ORDER

Currently before the Court is Defendant's application for attorney's fees pursuant to the Tenth Circuit Court of Appeals Opinion dated January 5, 1990. The parties stipulated that \$4,830 is a reasonable fee for the trial. The Circuit opinion also provided that Defendant is to receive the fees incurred from pursuing the appeal. Defendant seeks additional fees in the amount of \$5,637.50 for 45.10 hours of work. Although Plaintiff objects to the amount of time Defendant expended on the appeal, the Court concludes the time was reasonable. It is therefore ORDERED that Defendant be awarded attorney's fees in the amount of \$10,467.50.

IT IS SO ORDERED, this 14th day of March, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

*Already
Closed*

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

F I L E D

MAR 14 1990

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

SCOTT MARTIN, TRUSTEE; AND)
CANADIAN COMMERCIAL BANK,)
a banking corporation,)
Plaintiffs,)

-vs-

NO. 85-C-977-C

PACIFIC INSURANCE COMPANY,)
Defendant.)

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties hereby stipulate that the captioned cause has been settled and that the plaintiff dismisses the cause with prejudice to refileing.

William C. Kellogg

WILLIAM C. KELLOGH
500 Oneok Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
918/587-0000
ATTORNEY FOR PLAINTIFFS

Lee Endicott

LEE ENDICOTT - OBA #10795
of Green, James & Williams
P.O. Box 2248
Oklahoma City, Oklahoma 73101
405/525-0033
ATTORNEYS FOR DEFENDANT

FILED

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

MAR 14 1990

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs-)
)
 DAVID B. SHEPHERD,)
 CSS 266 48 9734)
)
 Defendant,)

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

CIVIL NUMBER 90-C-0049 E

DEFAULT JUDGMENT

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

JUDGMENT is rendered in favor of the Plaintiff, United States of America, and against the Defendant, DAVID B. SHEPHERD, in the principal sum of \$1136.53, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$. Future costs and interest at the legal rate of 8.36%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 14th day of March, 1990.

Jack C. Silver, Clerk
U.S. DISTRICT COURT CLERK
NORTHERN DISTRICT OF OKLAHOMA

By: H Campbell
Deputy Clerk

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

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

FILED

MAR 13 1990

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

UNITED STATES OF AMERICA,)

Plaintiff)

v.)

89-C-372-B

ONE PARCEL OF REAL PROPERTY)
WITH BUILDINGS, APPURTENANCES,)
AND IMPROVEMENTS KNOWN AS)

ROUTE 3, BOX 128-A)
ANTLERS, PUSHMATAHA, OKLAHOMA;)

and)
ONE 1966 CESSNA 310 AIRCRAFT,)
REGISTRATION NUMBER N917MB;)

and)
ONE 1968 CESSNA 310 AIRCRAFT,)
REGISTRATION NUMBER N577OM;)

and)
ONE 1969 CESSNA 310 177B)
AIRCRAFT, REGISTRATION NUMBER)
N30713,)

Defendants.

ORDER

This matter comes on for consideration upon the Motion of Claimant, Barbara Stewart, for a Change of Venue of this forfeiture proceeding from the Northern District of Oklahoma to Oregon.

As a general proposition it is judicially efficient that a forfeiture proceeding be litigated in the same court as the related criminal proceeding. However, compelling reasons may alter this course.

Convenience to the parties and economic reasons should weight heavily in the Court's decision as to venue change. In this matter the government intends to call 19 witnesses, 10 of whom are from Oklahoma, with two being from Pittsburg, Kansas and two from

Burkville, Texas. Only two government witnesses are listed as being from Oregon. Claimant states in her affidavit that she intends to call as witnesses "Don Hunt, Lee Hansen & possibly family members Debra Muir and Tom Steward", all of whom reside in or near Sutherlin, Oregon. It appears to the Court the inconvenience and cost to the government is prospectively much greater than to the claimant.

It appears the claimant may have waived any objection to venue, not having included a venue change in preliminary motions or in her answer (claimant's answer was the subject of considerable latitude by the Court in its Order of January 17, 1990, wherein the Court deemed claimant's answer a claim and thus in compliance, discretionarily, with claim procedures). Rule 12(h)(1) & (g). Notwithstanding, the Court is of the opinion the matter should be decided on the principle of judicial economy.

The Court concludes Claimant's Motion for Change of Venue should be and the same is hereby DENIED.

IT IS SO ORDERED this 13 day of March, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 13 1990

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

US WEST FINANCIAL SERVICES,)
INC., a Colorado corporation,)
)
Plaintiff,)

vs.)

Case No. 88-C-1075-B

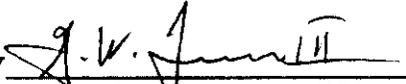
MOORAD MANAGEMENT, INC.,)
an Oklahoma corporation,)
et al.,)
)
Defendants.)

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff, US West Financial Services, Inc. ("US West"), and Defendant, Steve M. Schneider ("Schneider"), hereby jointly stipulate, pursuant to Rule 41(a)(1) and (c) of the Federal Rules of Civil Procedure, to dismissal of all claims asserted by US West against Schneider in its Complaint, with prejudice, with each party to bear their own costs.

Dated this 24 day of February, 1990.

LYNNWOOD R. MOORE, JR.
J. DAVID JORGENSON
G. W. TURNER, III

By 
G. W. Turner, III

Conner & Winters
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiff,
US WEST FINANCIAL SERVICES, INC.

OLLIE W. GRESHAM

By *Ollie W. Gresham*
Ollie W. Gresham

2727 E. 21st Street
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Tulsa, Oklahoma 74114

Attorney for Defendant
STEVE M. SCHNEIDER

CERTIFICATE OF SERVICE

The undersigned certifies that on this 13 day of ^{March}~~February~~, 1990, a true and correct copy of the above and foregoing document was mailed with proper postage thereon to:

Ronald E. Goins, Esq.
Holliman, Langholz, Runnels & Dorwart
10 East 3rd Street, Ste. 700
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Houston & Klein
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Kenneth C. Ellison, Esq.
James R. Hayes, Esq.
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Tulsa, Oklahoma 74135

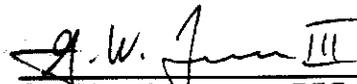
Graydon Dean Luthey, Jr., Esq.
Roy C. Breedlove, Esq.
Stephen W. Ray, Esq.
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Kelly F. Monaghan, Esq.
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Thomas F. Birmingham, Esq.
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David C. Duncan, M.D.
602 S. Main
Jenks, OK 74037



G. W. Turner, III

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 13 1990

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

US WEST FINANCIAL SERVICES,)
INC., a Colorado corporation,)
)
Plaintiff,)
)
vs.)
)
MOORAD MANAGEMENT, INC.,)
an Oklahoma corporation,)
et al.,)
)
Defendants.)

Case No. 88-C-1075-B

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff, US West Financial Services, Inc. ("US West"), and Defendant, James A. Green ("Green"), hereby jointly stipulate, pursuant to Rule 41(a)(1) and (c) of the Federal Rules of Civil Procedure, to dismissal of all claims asserted by US West against Green in its Complaint, and all claims asserted by Green against US West in his Counterclaim, with prejudice, with each party to bear their own costs.

Dated this 29 day of February, 1990.

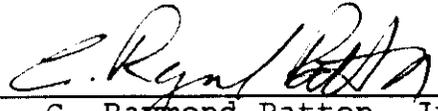
LYNNWOOD R. MOORE, JR.
J. DAVID JORGENSON
G. W. TURNER, III

By G. W. Turner III
G. W. Turner, III

Conner & Winters
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiff,
US WEST FINANCIAL SERVICES, INC.

JAMES A. EAGLETON
C. RAYMOND PATTON, JR.

By 
C. Raymond Patton, Jr.

Houston & Klein
Suite 700
320 South Boston
Tulsa, Oklahoma 74103

Attorneys for Defendant
JAMES A. GREEN

CERTIFICATE OF SERVICE

The undersigned certifies that on this 13 day of ^{March} ~~February~~, 1990, a true and correct copy of the above and foregoing document was mailed with proper postage thereon to:

Ronald E. Goins, Esq.
Holliman, Langholz, Runnels & Dorwart
10 East 3rd Street, Ste. 700
Tulsa, Oklahoma 74103

Graydon Dean Luthey, Jr., Esq.
Roy C. Breedlove, Esq.
Steven W. Ray, Esq.
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Tulsa, Oklahoma 74170

David C. Duncan, M.D.
602 S. Main
Jenks, OK 74037

G. W. Turner, III
G. W. Turner, III

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 13 1990

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ONE PARCEL OF REAL PROPERTY,
WITH BUILDINGS, APPURTENANCES,
IMPROVEMENTS, AND CONTENTS,
KNOWN AS 5632 EAST 76TH STREET,
TULSA, OKLAHOMA 74136;

and

\$43,000.00 CERTIFICATE OF
DEPOSIT NO. 18565 ISSUED
BY COMMUNITY BANK AND
TRUST COMPANY, TULSA,
OKLAHOMA, REPRESENTING
PROCEEDS FROM SALE OF ONE
1989 MERCEDES BENZ 300 CE,
VIN WDBEA50DIK819873;

and

\$25,000.00 CASH SURRENDER
VALUE OF SINGLE PREMIUM
ANNUITY POLICY ISSUED
JANUARY 17, 1989, TO
ROBERT L. JOHNSON BY
UNITED COMPANIES LIFE
INSURANCE COMPANY,
BATON ROUGE, LOUISIANA,

Defendants.

CIVIL ACTION NO. 89-C-722-E

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure the plaintiff, United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and the Claimant, Mary Johnson, hereby stipulate to dismissal against all contents of the defendant property known as 5632 East 76th Street, Tulsa, Oklahoma 74136, with prejudice

and without costs, except the following contents, which are the subject of a separate motion for appointment of a substitute custodian.

Hitachi TV/Monitor, Model #CT4561,
S/N-W6H000450. 45" TV with
Hitachi Hi-Fi VCR Model #VT-86A,
S/N-50400392. (located in the
family room)

Mitsubishi 25" TV, Model #CK2560R,
S/N - not located. (located in
the master bedroom)

Oak "canopy bar" which has front
bar, back bar, and canopy with two
bar stools. (located in the
family room)

Oak roll-top desk and matching oak
chair. (located in the family
room)

Oak oval table with two leaves and
six Custom Wood Products wood
chairs. (located in the formal
dining room)

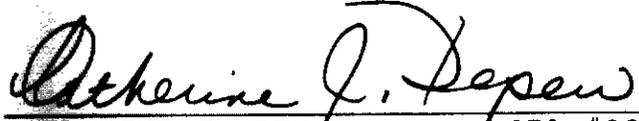
Wilclif Mfg. oak china cabinet and
hutch with four leaded glass doors
and oak buffet with four leaded
glass doors.

Executive desk, Inspection No.
062488; High Point No. 7235
executive high back chair;
executive credenza, Inspection No.
093087; executive two drawer
lateral file cabinets, all
matching. (located in the office -
upstairs)

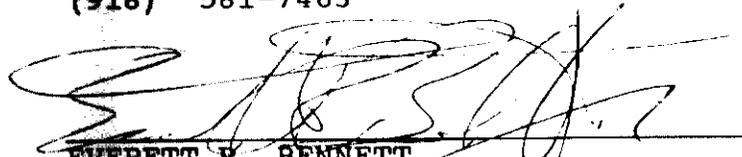
Kincaid Mfg. master bedroom set,
consisting of a king bed, chest of
drawers, dresser with mirror, and
two nightstands, all of pine wood
(located in the master bedroom)

TONY M. GRAHAM

United States Attorney



CATHERINE J. DEPEW, OBA #3836
Assistant United States Attorney
3600 United States Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74104
(918) 581-7463



EVERETT R. BENNETT,
Attorney for Mary Johnson

CJD/ch
00575

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA **F I L E D**

MAR 13 1990

US WEST FINANCIAL SERVICES,)
INC., a Colorado corporation,)
)
Plaintiff,)
)
vs.)
)
MOORAD MANAGEMENT, INC.,)
an Oklahoma corporation,)
et al.,)
)
Defendants.)

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

Case No. 88-C-1075-B

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff, US West Financial Services, Inc. ("US West"), and Defendants, Mark A. Kelley and William R. Ford ("Kelley and Ford"), hereby jointly stipulate, pursuant to Rule 41(a)(1) and (c) of the Federal Rules of Civil Procedure, to dismissal of all claims asserted by US West against Kelly and Ford in its Complaint, with prejudice, with each party to bear their own costs.

Dated this 13th day of February, 1990.

LYNNWOOD R. MOORE, JR.
J. DAVID JORGENSON
G. W. TURNER, III

By G. W. Turner
G. W. Turner, III

Conner & Winters
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiff,
US WEST FINANCIAL SERVICES, INC.

KENNETH C. ELLISON
ROBIN A. PADEK

By *Kenneth C. Ellison*
Kenneth C. Ellison

Ellison, Hays & Nelson
4815 S. Harvard
Suite 534
Tulsa, Oklahoma 74135

Attorneys for Defendants
MARK A. KELLEY and WILLIAM
F. FORD

CERTIFICATE OF SERVICE

~~February~~ ^{March} The undersigned certifies that on this 13 day of ~~February~~, 1990, a true and correct copy of the above and foregoing document was mailed with proper postage thereon to:

Ronald E. Goins, Esq.
Holliman, Langholz, Runnels & Dorwart
10 East 3rd Street, Ste. 700
Tulsa, Oklahoma 74103

Graydon Dean Luthey, Jr., Esq.
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Steven W. Ray, Esq.
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Tulsa, Oklahoma 74103

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Houston & Klein
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Tulsa, Oklahoma 74103

Ollie W. Greshamm, Esq.
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Tulsa, Oklahoma 74114

Kelly F. Monaghan, Esq.
Barrow, Wilkinson, Gaddis, Griffith & Grimm
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Steven W. Strange, Esq.
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Thomas F. Birmingham, Esq.
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P. O. Box 701917
Tulsa, Oklahoma 74170

David C. Duncan, M.D.
602 S. Main
Jenks, OK 74037



G. W. Turner, III

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 13 1990

US WEST FINANCIAL SERVICES,)
INC., a Colorado corporation,)

Plaintiff,)

vs.)

MOORAD MANAGEMENT, INC.,)
an Oklahoma corporation,)
et al.,)

Defendants.)

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

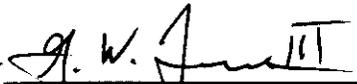
Case No. 88-C-1075-B

JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, US West Financial Services, Inc. ("US West"), and Defendants Haresh K. Ajmera, Lofty L. Basta, Larry D. Bowler, Ulysses S. Bowler, Robert M. Gold, Harleen K. Grewal, Shivrajpal Grewal, Ned T. Harney, Craig S. Jones, John F. Josephson, Jean F. Legler, Thomas A. Marberry, James F. Millar, Darwin D. Olsen, Lawrence Reed, Richard W. Seifert, Barry Von Hartitzsch, Kenneth K. Wheatley, Milton R. Workman, Eddie Abbott, Robert J. Capehart, Steven S. Cohenour, David F. Frow, Arthur D. Hagan, John W. Hickman, Shashi Husain, Altaf Husain, Brad W. Miller, Varsha R. Sikka, Jack E. Lester, Robert W. Weger, and Bobby R. Woodard (the "Defendants"), hereby jointly stipulate, pursuant to Rule 41(a)(1) and (c) of the Federal Rules of Civil Procedure, to dismissal of all claims asserted by US West against the Defendants in its Complaint, and all claims asserted by the Defendants against US West in their Counterclaim, without prejudice, with each party to bear their own costs.

Dated this 13 day of ^{March}~~February~~, 1990.

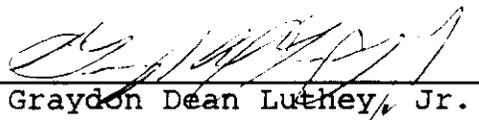
LYNNWOOD R. MOORE, JR.
J. DAVID JORGENSON
G. W. TURNER, III

By 
G. W. Turner, III

Conner & Winters
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiff,
US WEST FINANCIAL SERVICES, INC.

GRAYDON DEAN LUTHEY, JR.,
ROY C. BREEDLOVE
STEPHEN W. RAY

By 
Graydon Dean Luthey, Jr.

Jones, Givens, Gotcher,
Bogan & Hilborne
3800 First National Tower
Tulsa, Oklahoma 74103

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that on this 13 day of February, 1990, a true and correct copy of the above and foregoing document was mailed with proper postage thereon to:

Ronald E. Goins, Esq.
Holliman, Langholz, Runnels & Dorwart
10 East 3rd Street, Ste. 700
Tulsa, Oklahoma 74103

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Kenneth C. Ellison, Esq.
James R. Hayes, Esq.
4815 South Harvard
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Tulsa, Oklahoma 74135

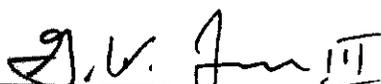
Ollie W. Greshamm, Esq.
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Tulsa, Oklahoma 74114

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Barrow, Wilkinson, Gaddis, Griffith & Grimm
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Tulsa, Oklahoma 74119

Steven W. Strange, Esq.
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P. O. Box 701917
Tulsa, Oklahoma 74170

David C. Duncan, M.D.
602 S. Main
Jenks, OK 74037



G. W. Turner, III

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

FILED

MAR 13 1990

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

LISA ASHWORTH,
Plaintiff,

vs.

NO. 90-C-0093 B

H. EDWARD MCAFOOSE and THE
SHERWIN-WILLIAMS COMPANY,
a foreign corporation,

Defendants.

NOTICE OF DISMISSAL

COMES NOW the Plaintiff and hereby dismisses the above cause
without prejudice.

DATED THIS 12th day of March, 1990.

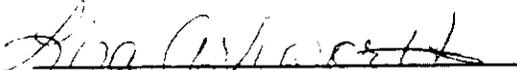

LLOYD G. LARKIN, O.B.A.#5247
Attorney for Plaintiff
5801 East 41st Street
Suite 801
Tulsa, Oklahoma 74135
(918) 664-9155

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of March, 1990, a
true and correct copy of the foregoing was mailed with proper
postage thereon prepaid to, Robert P. Redemann, Attorney for
Defendants, 2800 Fourth National Building, Tulsa, Oklahoma
74119.


LLOYD G. LARKIN

EXAMINED AND APPROVED:


LISA ASHWORTH

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

SANDRA BREWER,)
)
 Plaintiff,)
)
 vs.)
)
 TEXOMA BROADCASTING LIMITED)
 PARTNERSHIP,)
)
 Defendant.)

Case No. 89-C-374-C

FILED
MAR 13 1990

ORDER OF DISMISSAL WITH PREJUDICE

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

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

IT IS SO ORDERED this 13 day of March, 1990.

(Signed) H. Dale Cook

United States District Judge