

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

**F I L E D**

MAY 31 1990 *mm*

GLORIA STEVENS, )  
)  
Plaintiff, )  
)  
vs. )  
)  
EN-COM PROPERTIES, LTD., )  
)  
Defendant. )

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

Civil Action No. 89-C-683-B ✓

JOINT STIPLUATION FOR OF  
DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff Gloria Stevens and the Defendant En-Com Properties, Ltd., and jointly stipulate and agree that this cause be dismissed with prejudice, each party to bear her or its own costs, expenses, and attorneys' fees.

DAVID E. STRECKER  
DEIRDRE O. DEXTER

JEFF NIX

By:

*Deirdre O. Dexter*

*Jeff Nix*

CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

Suite 710  
2171 South Columbia  
Tulsa, Oklahoma 74114  
(918) 742-4486

Attorneys for Defendant  
EN-COM PROPERTIES, LTD.

Attorney for Plaintiff  
Gloria Stevens

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

DAVID R. DUNLAP, EUGENE N. BROWN  
AND REFRACTORY ANCHORS, INC., an  
Oklahoma Corporation,

Plaintiffs,

vs.

B. DOUG HULSE,

Defendant.

**F I L E D**

MAY 31 1990

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

Case No. 90 C-317 E

ORDER OF DISMISSAL

Motion for Approval of Settlement Agreement and Motion for Dismissal coming on before me this 30<sup>th</sup> day of May, 1990, and this Court being well and fully advised in the premises, FINDS:

1. That Settlement Agreement has been entered into by the parties resolving all disputes relating to or arising from the current pending cause of action before this Court, and the same should hereby be approved;

2. That, based upon this Settlement Agreement having been entered into by all parties, the pending cause of action should be dismissed;

WHEREFORE, IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED that the Settlement Agreement submitted by the parties is hereby approved and the parties' Motion for Dismissal is hereby granted.

S/ JAMES O. ELLISON

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

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

**FILED**

MAY 31 1990

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

FEDERAL DEPOSIT INSURANCE CORPORATION, )  
as Receiver for FIRST NATIONAL BANK & )  
TRUST COMPANY, CUSHING, OKLAHOMA, )

Plaintiff, )

v. )

Case No. 90-C0039 B

ASBESTOS DISPOSAL SERVICES, INC., an )  
Oklahoma corporation; REX RUDY, a/k/a )  
REX R. RUDY, an individual; REX RUDY, )  
d/b/a ASBESTOS DISPOSAL SERVICE; )  
REX RUDY II, an individual; BONNIE )  
RUDY, a/k/a BONNIE L. RUDY, an )  
individual; FEDERAL NATIONAL MORTGAGE )  
ASSOCIATION; AMERICAN FLORAL SERVICES, )  
INC.; FOUNDERS BANK & TRUST COMPANY; )  
UNITED STATES OF AMERICA, DEPARTMENT )  
OF THE TREASURY, INTERNAL REVENUE )  
DIVISION; STATE OF OKLAHOMA, OKLAHOMA )  
TAX COMMISSION; and TIVOLI VENTURES, )  
INC. )

Defendants. )

DISMISSAL WITHOUT PREJUDICE OF REX RUDY II

The Plaintiff, the Federal Deposit Insurance Corporation, as Receiver for First National Bank and Trust Company, Cushing, Oklahoma ("FDIC"), by and through its attorneys of record, Edwards, Sonders & Propester, dismisses its cause of action asserted in its January 22, 1990 Complaint filed in the United States District Court for the Northern District of Oklahoma, Case No. 90-C-0039-B, insofar and only insofar as said Complaint alleges a claim or cause of action against Rex Rudy II ("Rudy II"). The dismissal of the allegations presented against Rudy II shall in no way be

interpreted to affect the remaining allegations and causes of action presented in FDIC's January 22, 1990 Complaint against any other Defendant.

Respectfully submitted,



DONALD P. FISCHBACH

Of the Firm:

EDWARDS, SONNERS & PROPESTER  
Suite 2900  
First Oklahoma Tower  
210 West Park Avenue  
Oklahoma City, Oklahoma 73102-5605  
Telephone: (405) 239-2121

ATTORNEYS FOR FEDERAL DEPOSIT  
INSURANCE CORPORATION, AS RECEIVER  
FOR FIRST NATIONAL BANK AND TRUST  
COMPANY, CUSHING, OKLAHOMA

CERTIFICATE OF MAILING

This is to certify that on this 30<sup>th</sup> day of May, 1990, true and correct copies of the above and foregoing document were mailed, postage prepaid, to:

Allen Mitchell  
P.O. Box 190  
Sapulpa, Oklahoma 74067

ATTORNEY FOR DEFENDANT, ASBESTOS DISPOSAL  
SERVICES, INC., REX RUDY d/b/a ASBESTOS  
DISPOSAL SERVICE and BONNIE RUDY

Phil Pinnell  
Assistant United States Attorney  
3600 United States Courthouse  
Tulsa, Oklahoma 74103

ATTORNEY FOR DEFENDANT, UNITED STATES  
OF AMERICA

Carl Bagwell  
1000 Robinson Renaissance Bldg.  
119 North Robinson  
Oklahoma City, Oklahoma 73102

ATTORNEY FOR DEFENDANT, AMERICAN  
FLORAL SERVICES, INC.

Lisa Haws  
Assistant General Counsel  
2501 Lincoln Boulevard  
Oklahoma City, Oklahoma 73194-0111

ATTORNEY FOR DEFENDANT, STATE OF OKLAHOMA  
ex rel OKLAHOMA TAX COMMISSION



---

Donald P. Fischbach

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

F F D

MAR 31 1993

GA

DARELL L. GONSER, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 RON CHAMPION, et al, )  
 )  
 Defendants. )

90-C-439-B

Clerk  
COURT

ORDER

Now before the court for consideration is the civil rights Complaint of Darell L. Gonser. Gonser brings this action against the warden of the prison facility where he is currently being held, and the Governor of the State of Oklahoma.

Plaintiff's Motion to Proceed in forma Pauperis was granted and Plaintiff's Complaint was filed. The Complaint is now to be tested under the standard set forth in 28 U.S.C. §1915(d). If the Complaint is found to be obviously without merit, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the Plaintiff can make a rational argument on the law or the facts to support his claim. Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986). Applying the test to Plaintiff's claims, the Court finds that the instant action should be dismissed as obviously without merit for the following reasons.

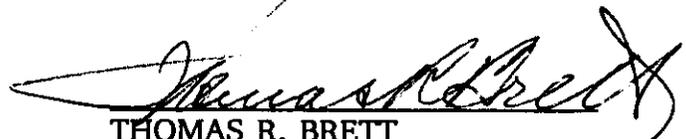
Plaintiff is currently incarcerated in the Oklahoma prison system as a result of a conviction and sentence, following his guilty plea. He complains that with the passage of Oklahoma House Bill 1541 his eligibility to receive "emergency time credits" was

adversely affected. He contends the effect is to breach his plea agreement.

A review of paragraphs two and three of Gonser's Complaint indicate both Defendants are being sued for breach of the plea agreement and both Defendants are being sued in their official capacity, and not in their individual capacity. Gonser may not bring suit against the State of Oklahoma or its employees acting in their official capacity in this court because of the immunity granted by the Eleventh Amendment. "The eleventh amendment generally bars lawsuits in federal court seeking damages against states as well as against state agencies, departments, and employees acting in their official capacity." Bishop v. John Doe 1, \_\_\_ F.2d \_\_\_, No. 89-2154 (10th Cir. May 4, 1990); See also, Will v. Michigan Dept. of State Police, \_\_\_ U.S. \_\_\_, slip op. at 7 (June 15, 1989 ("Section 1983 ... does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties .... The Eleventh Amendment bars such suits unless the State has waived its immunity.") Plaintiff makes no assertion that the State of Oklahoma has waived its immunity for this type of claim, and this court finds none.

Therefore, Gonser's Complaint is frivolous and under the authority of 28 U.S.C. §1915(d), shall be dismissed.

SO ORDERED THIS 31<sup>st</sup> day of May, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

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

KELLY OIL & GAS CO., INC.,  
a California Corporation,

Plaintiff,

vs.

Case No. 89-C-625-B

Clerk  
COURT

COSSACK ENERGY GROUP LTD., an  
Oklahoma corporation; DENNIS LEE,  
individually and as a stockholder,  
director and officer of COSSACK  
ENERGY GROUP LTD.; BANK OF CUSHING  
& TRUST CO., a state bank,

Defendants.

ORDER FOR LEAVE TO DEPOSIT MONEY WITH COURT AND  
FOR DISMISSAL OF DEFENDANT BANK OF CUSHING & TRUST CO.

NOW on this 31st day of May, 1990, came on for  
consideration the Combined Motion for Leave to Deposit Money With  
Court and for Dismissal of Defendant Bank of Cushing & Trust Co.  
The Court, after reviewing the motion, the court file, and being  
fully advised in the premises, finds as follows:

1. The defendant, Bank of Cushing & Trust Co., was included  
as a defendant in the above styled case only for the purpose of  
freezing the balance of \$1,357.81 in account number 1274871 at Bank  
of Cushing & Trust Co.

2. That the plaintiff, Kelly Oil & Gas Co., Inc., has filed  
a response stating that it has no objection to deposit of \$1,357.81  
in account number 1274871 at Bank of Cushing & Trust Co. with the  
Court pending final disposition of the above styled case.

3. That the other parties to this case have failed to file  
any response to said motion, and therefore, under Rule 15A of the

Local Rules, have waived any objection and confessed the matters raised by said motion.

4. That for good cause shown the defendant, Bank of Cushing & Trust Co.'s Motion for Leave to Deposit money with Court should be granted, allowing the deposit of \$1,357.81 in account number 1274871 at Bank of Cushing & Trust Co. with the Court Clerk for the United States District Court for the Northern District of Oklahoma.

5. That for good cause shown the defendant's Motion for Dismissal should be granted, dismissing defendant Bank of Cushing & Trust Co. as a party to this case upon deposit of the sum of \$1,357.81 with the Court Clerk for the United States District Court for the Northern District of Oklahoma.

IT IS ORDERED, ADJUDGED AND DECREED that the defendant, Bank of Cushing & Trust Co., be and hereby is granted leave to deposit the sum of \$1,357.81 from account number 1274871 with the Court Clerk for the United States District Court for the Northern District of Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that counsel presenting this Order serve a copy thereof on the Clerk of this Court or the Chief Deputy, personally. Absent the aforesaid service the Clerk is hereby relieved of any personal liability relative to compliance with this Order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, Bank of Cushing & Trust Co., be and hereby is granted dismissal as a party to this case upon deposit of the sum of

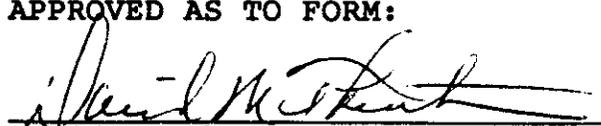
\$1,357.81 with the Court Clerk for the United States District Court  
for the Northern District of Oklahoma or the Chief Deputy.

S/ THOMAS R. BRET  

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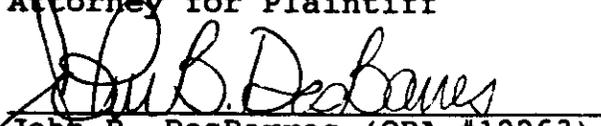
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

---

David M. Thornton (OBA #8999),  
Attorney for Plaintiff

---

John B. DesBarres (OBA #12263),  
Attorney for Bank of Cushing &  
Trust Co.

DRUMMOND, RAYMOND & CLAUSING  
1924 S. Utica, Suite 410  
Tulsa, Oklahoma 74104  
(918) 749-7378

3:3a:cushing.ord

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

WILLIE B. HOSKINS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 OTIS R. BOWEN, Secretary of )  
 the Department of Health and )  
 Human Services, )  
 )  
 Defendant. )

87-C-345-B FILED

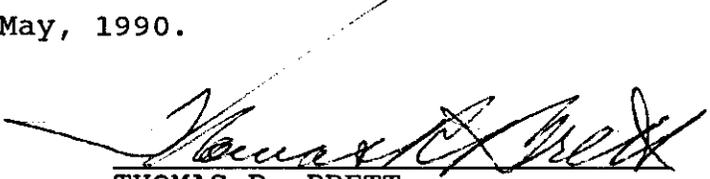
MAY 31 1990

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

ORDER

The Court finds that the case should be and is remanded to the Secretary for further proceedings pursuant to the order of the Tenth Circuit Court of Appeals filed December 2, 1988.

Dated this 31<sup>ST</sup> day of May, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**FILED**

**MAY 31 1990**

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

CLIFTON ASHER and KELLY ASHER, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 JIM BARTLETT d/b/a MCDONALD TRUCK )  
 CENTER, )  
 )  
 Defendant. )

No. 88-C-1262-B-P ✓

JUDGMENT

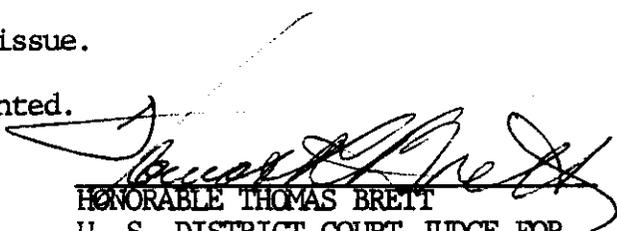
The above matter having been tried to the jury on May 29 and May 30, 1990, and the Court having received the verdict of the jury;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that judgment shall be ordered as follows:

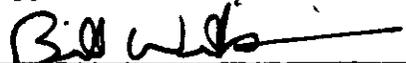
1. On Plaintiffs' claim for Negligence, judgment shall be for the Defendant.
2. On Plaintiffs' claim for Breach of Warranty, judgment shall be for the Defendant.
3. On Plaintiffs' claim for Conversion, judgment for Defendant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that judgment as set forth herein shall issue.

Exception to Plaintiffs is granted.

  
HONORABLE THOMAS BRETT  
U. S. DISTRICT COURT JUDGE FOR  
THE NORTHERN DISTRICT OF  
OKLAHOMA

Approved as to Form:

  
BILL V. WILKINSON, Attorney for Plaintiffs

  
PHIL FRAZIER, Attorney for Defendant

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

**FILED**

MAY 31 1990

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

EQUITABLE LOMAS LEASING CORPORATION, )  
a Delaware corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
INLAND MORTGAGE CORPORATION, )  
an Oklahoma corporation, and )  
PSI BANCSHARES, INC., )  
 )  
Defendants. )

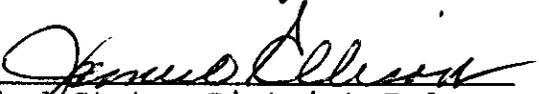
No. 89-C-633-P

**JUDGMENT**

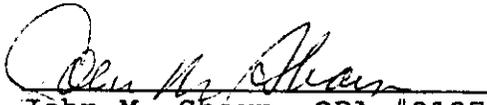
The above-styled and number action came on for trial on May 29-30, 1990, before the Honorable Layn R. Phillips, District Judge, the plaintiff appearing by and through its counsel, John M. Sharp, of Huffman Arrington Kihle Gaberino & Dunn, and the defendant appearing by and through its counsel, Joe M. Fears, of Marsh, Shacklett & Fears, and the issues have been duly tried and heard, and a decision having been duly rendered,

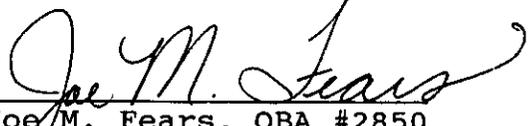
IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff, Equitable Lomas Leasing Corporation, have and recover of and from the defendant, Inland Mortgage Corporation, the sum of \$59,374.75, together with interest thereon at the rate of forty-five per cent (45%) per annum from August 10, 1984, (\$73.20 per diem), until paid, a reasonable attorneys' fee, to be determined after application and hearing on same, and costs of the action, accrued and accruing.

DATED at Tulsa, Oklahoma, this 31<sup>st</sup> day of May, 1990.

  
United States District Judge

APPROVED AS TO FORM:

  
John M. Sharp, OBA #8127  
HUFFMAN ARRINGTON KIHLE GABERINO & DUNN  
A Professional Corporation  
1000 ONEOK Plaza  
Tulsa, Oklahoma 74103  
(918) 585-8141  
Attorneys for Plaintiff

  
Joe M. Fears, OBA #2850  
Marsh, Shacklett & Fears  
525 South Main, Suite 201  
Tulsa, Oklahoma 74103  
(918) 587-0141  
Attorneys for Defendant  
Inland Mortgage Corporation

FILED

MAY 31 1990

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

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

TERRI CALICO, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 EN-COM PROPERTIES, LTD., )  
 )  
 Defendant. )

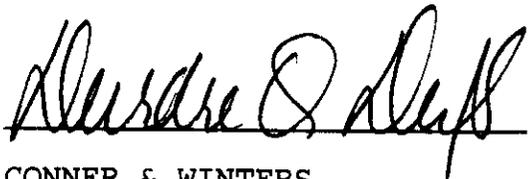
Civil Action No. 89-C-682-B

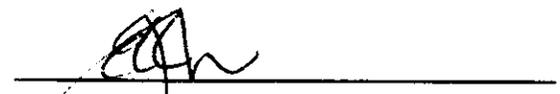
JOINT STIPLUATION FOR OF  
DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff Terri Calico and the Defendant En-Com Properties, Ltd., and jointly stipulate and agree that this cause be dismissed with prejudice, each party to bear her or its own costs, expenses, and attorneys' fees.

DAVID E. STRECKER  
DEIRDRE O. DEXTER

JEFF NIX

By: 



CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

Suite 710  
2121 South Columbia  
Tulsa, Oklahoma 74114  
(918) 742-4486

Attorneys for Defendant  
EN-COM PROPERTIES, LTD.

Attorney for Plaintiff  
Terri Calico

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

**F I L E D**

**MAY 30 1990**

NORTHERN MEDICAL SUPPLY, INC., )  
an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FOXMEYER-TBL, INC., )  
a Texas corporation, )  
 )  
Defendant. )

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

Case No. 88-C-692-B

ORDER OF DISMISSAL

This matter came on to be heard on the Joint Application for Dismissal executed by each of the parties hereto, and sufficient good cause appearing therefore,

IT IS ORDERED, ADJUDGED AND DECREED that this matter be, and the same is hereby dismissed with prejudice, each party to bear its own costs and attorney fees incurred herein.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ALEX G. BERRY, JR.; MARSHA J. )  
 BERRY; FIDELITY FINANCIAL )  
 SERVICES, INC.; VICKERS )  
 EMPLOYEE'S FEDERAL CREDIT )  
 UNION; COUNTY TREASURER, Tulsa )  
 County, Oklahoma; BOARD OF )  
 COUNTY COMMISSIONERS, Tulsa )  
 County, Oklahoma; and STATE )  
 OF OKLAHOMA ex rel. OKLAHOMA )  
 TAX COMMISSION, )  
 )  
 Defendants. )

FILED  
1990  
Clerk  
COURT

CIVIL ACTION NO. 90-C-181-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 30<sup>th</sup> day  
of May, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; the Defendant, State of  
Oklahoma ex rel. Oklahoma Tax Commission, appears by its attorney  
Lisa Haws; and the Defendants, Alex G. Berry, Jr., Marsha J.  
Berry, Fidelity Financial Services, Inc., and Vickers Employee's  
Federal Credit Union, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendants, Alex G. Berry, Jr. and

Marsha J. Berry, acknowledged receipt of Summons and Complaint on March 12, 1990; that Defendant, Fidelity Financial Services, Inc., acknowledged receipt of Summons and Complaint on March 9, 1990; that Defendant, Vickers Employee's Federal Credit Union, acknowledged receipt of Summons and Amended Complaint on April 6, 1990; that Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Amended Complaint on April 6, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 6, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 6, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on March 22, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on April 30, 1990; and that the Defendants, Alex G. Berry, Jr., Marsha J. Berry, Fidelity Financial Services, Inc., and Vickers Employee's Federal Credit Union, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Nine (9), Block Forty-two (42), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on May 14, 1982, the Defendant, Alex G. Berry, Jr., executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$26,125.00, payable in monthly installments, with interest thereon at the rate of fifteen and one-half percent (15.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Alex G. Berry, Jr., executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated May 14, 1982, covering the above-described property. Said mortgage was recorded on May 13, 1982, in Book 4612, Page 2366, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Alex G. Berry, Jr., made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Alex G. Berry, Jr., is indebted to the Plaintiff in the principal sum of \$25,824.00, plus interest at the rate of 15.5 percent per annum from July 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, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of

Tax Warrant No. ITI 89 025020 00, dated December 16, 1989, in the amount of \$2,052.11 plus interest and penalty according to law. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that Defendants, Marsha J. Berry, Fidelity Financial Services, Inc., and Vickers Employee's Federal Credit Union, are in default and have no right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Alex G. Berry, Jr., in the principal sum of \$25,824.00, plus interest at the rate of 15.5 percent per annum from July 1, 1988 until judgment, plus interest thereafter at the current legal rate of 8.70 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, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$2,052.11 plus interest and penalty according to law by virtue of Tax Warrant No. ITI 89 025020 00, dated December 16, 1989.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Marsha J. Berry, Fidelity Financial Services, Inc., Vickers Employee's Federal Credit Union, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Alex G. Berry, Jr., to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

Third:

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of \$2,052.11 plus interest and penalty according to law.

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

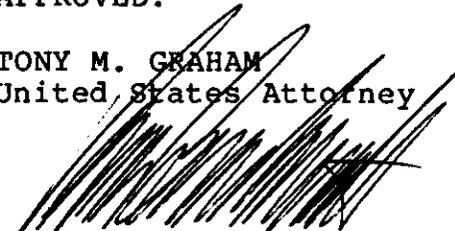
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT

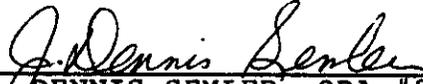
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT, OBA #741  
Assistant United States Attorney

  
LISA HAWS, OBA #12695  
Attorney for Defendant,  
State of Oklahoma ex rel.  
Oklahoma Tax Commission

  
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. 90-C-181-B

4022-030

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

IN RE: )  
 )  
400 SOUTH BOSTON, LTD., an )  
Oklahoma limited partnership, )  
a/k/a 400 Building, ID #73-1130427,) )  
 )  
Debtor. )  
 )  
SOONER FEDERAL SAVINGS )  
AND LOAN ASSOCIATION, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
400 SOUTH BOSTON, LTD., )  
 )  
Appellee. )

Case No. 89-0094-C  
(Chapter 11)

**F I L E D**

**MAY 30 1990**

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

District Court Appeal  
No. 89-C-563-B

ORDER OF DISMISSAL

There comes on for hearing before the undersigned Judge of the United States District Court, the Joint Stipulation of Sooner Federal Savings and Loan Association and 400 South Boston, Ltd., for dismissal with prejudice of Sooner Federal Savings and Loan Association's appeal from the Bankruptcy Court's order determining the value of Sooner Federal's collateral. The Court is of the opinion that this stipulation is well taken and,

IT IS THEREFORE ORDERED that the appeal of Sooner Federal Savings and Loan Association, the Appellant herein, of the Bankruptcy Court's determination of the value of its collateral be, and is hereby, dismissed with prejudice. Further, that each party shall pay their own costs of the action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT COURT JUDGE

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

**FILED**

MAY 29 1990

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 RONALD S. LLOYD, )  
 CSS 441 62 9532 )  
 )  
 Defendant, )

CIVIL NUMBER 90-C-0048 C

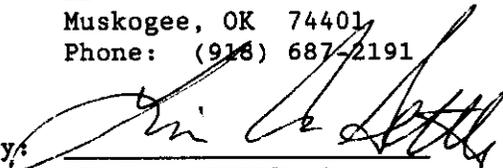
NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Department of Veterans Affairs, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully Submitted,

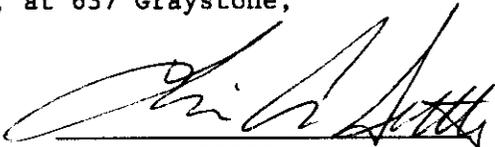
UNITED STATES OF AMERICA

Herbert N. Standeven  
District Counsel  
Department of Veterans Affairs  
125 South Main Street  
Muskogee, OK 74401  
Phone: (918) 687-2191

By:   
LISA A. SETTLE, Attorney

CERTIFICATE OF MAILING

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: RONALD S. LLOYD, at 637 Graystone, Bartlesville, OK 74003.

  
LISA A. SETTLE, Attorney

**FILED**

**MAY 29 1990**

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

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 PHILLIP N. JACKSON, )  
 CSS 447 40 3415 )  
 )  
 Defendant, )

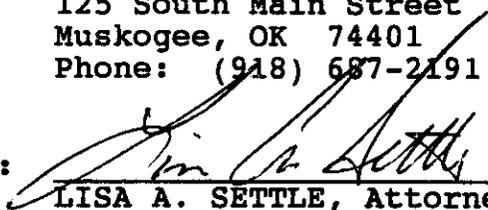
CIVIL NUMBER 90-C0046 B

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Department of Veterans Affairs, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

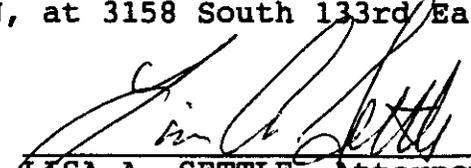
Respectfully Submitted,

UNITED STATES OF AMERICA  
Herbert N. Standeven  
District Counsel  
Department of Veterans Affairs  
125 South Main Street  
Muskogee, OK 74401  
Phone: (918) 687-2191

By:   
LISA A. SETTLE, Attorney

CERTIFICATE OF MAILING

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: PHILLIP N. JACKSON, at 3158 South 133rd East Ave., Tulsa, OK 74134.

  
LISA A. SETTLE, Attorney

**FILED**

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

MAY 29 1990

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 FRED A. R. PETERS, )  
 C 05 695 403 )  
 )  
 Defendant, )

CIVIL NUMBER 90-C0050 B

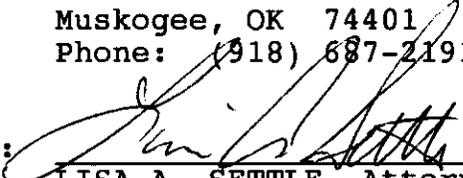
NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Department of Veterans Affairs, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully Submitted,

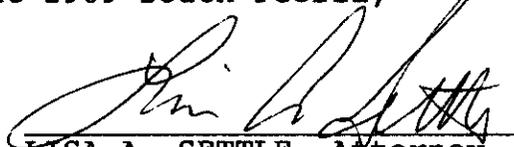
UNITED STATES OF AMERICA

Herbert N. Standeven  
District Counsel  
Department of Veterans Affairs  
125 South Main Street  
Muskogee, OK 74401  
Phone: (918) 687-2191

By:   
LISA A. SETTLE, Attorney

CERTIFICATE OF MAILING

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: FRED A. R. PETERS, at 2909 South Peoria, Tulsa, OK 74114.

  
LISA A. SETTLE, Attorney

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

FILED

MAY 25 1990

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

LOUIS LOVITT WASHINGTON, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 THE DISTRICT COURT OF )  
 TULSA, HONORABLE JUDGE )  
 JOE JENNES, )  
 )  
 Respondents. )

90-C-404-B ✓

ORDER

Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is now before the court for initial consideration. Petitioner alleges that he was charged in Tulsa County District Court in Case Nos. CRF-89-2497, 2531, and 2532 on June 20, 1989, and has been in jail since that date awaiting trial in violation of due process and the Speedy Trial Act.

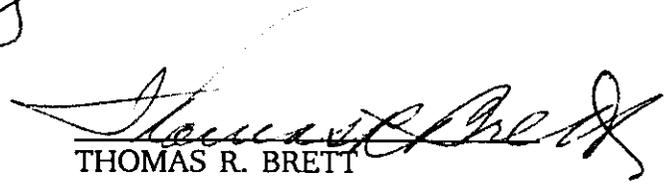
Because the petition is by a pro se litigant, its sufficiency must be judged by standards less stringent than those established for pleadings drafted by attorneys. Haines v. Kerner, 404 U. S. 519, 520 (1972). The petition does not allege facts sufficient to obtain redress under 28 U.S.C. § 2254, as petitioner is not in custody pursuant to a judgment of a state court. However, his allegations, if found to be true, would constitute a habeas claim pursuant to 28 U.S.C. § 2241, which prohibits keeping an individual in custody in violation of his constitutional rights. The court finds that petitioner's petition should be interpreted as seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

District courts have jurisdiction under 28 U.S.C. § 2241 to grant writs of habeas corpus to petitioners in state custody who have not yet been tried. Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 488-93 (1973). The exercise of this jurisdiction, however, is subject to restraints, as comity and federalism prevent the federal court from asserting jurisdiction when a petitioner has not exhausted his state remedies. Id. See also, United States Ex Rel. Parish v. Elrod, 589 F.2d 327 (7th Cir. 1979); Moore v. DeYoung, 515 F.2d 437 (3rd Cir. 1975).

Petitioner has not alleged that he has made demands for trial to the courts of Oklahoma, offering those courts an opportunity to consider on the merits his constitutional claim of denial of a speedy trial. It is clear that he has not exhausted all his available state court remedies for consideration of his claim, so the fundamental interests underlying the exhaustion doctrine have not been satisfied.

The court therefore finds that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, now interpreted by the court as pursuant to § 2241, should be and is dismissed.

Dated this 25<sup>th</sup> day of May, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**FILED**

MAY 25 1990

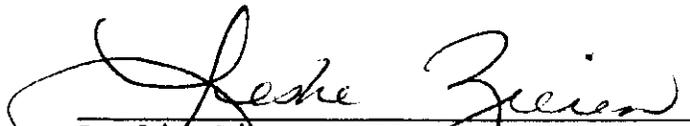
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, in its )  
corporate capacity, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DON H. GALLEMORE, )  
 )  
Defendant. )

Case No. 90-C-0074-B

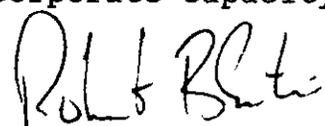
STIPULATION OF DISMISSAL

Plaintiff, Federal Deposit Insurance Corporation, and Defendant Don H. Gallemore, pursuant to Federal Rules of Civil Procedure, Rule 41(a)(1)(ii), hereby stipulate to dismissal of the above styled and numbered action, with prejudice, for the reason that all issues involved in the action, including attorney fees and expenses, have been settled.



Leslie Zieren OBA No. 9999  
Beesche McDermott & Eskridge  
800 Oneok Plaza  
100 West 5th Street  
Tulsa, Oklahoma 74103  
(918) 583-1777

ATTORNEYS FOR FEDERAL DEPOSIT  
INSURANCE CORPORATION, in its  
corporate capacity



Robert B. Sartin, Esq.  
Barrow Gaddis Griffith & Grimm  
610 S. Main, Suite 300  
Tulsa, Oklahoma 74119-1226

ATTORNEYS FOR DON H. GALLEMORE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ANTHONY R. MATHIS a/k/a ANTHONY )  
 RICKEY MATHIS a/k/a ANTHONY )  
 RICKERY MATHIS a/k/a ANTHONY )  
 MATHIS; MARILYN J. MATHIS a/k/a )  
 MARILYN JANE MATHIS a/k/a )  
 M. J. MATHIS a/k/a MARILYN )  
 MATHIS; STATE OF OKLAHOMA )  
 ex rel. OKLAHOMA TAX COMMISSION; )  
 COUNTY TREASURER, Tulsa County, )  
 Oklahoma; and BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

FILED  
MAY 24 1990  
Jack C. Silver, Clerk  
DISTRICT COURT

CIVIL ACTION NO. 90-C-236-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 24 day  
of May, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; the Defendant, State of  
Oklahoma ex rel. Oklahoma Tax Commission, appears by its attorney  
Lisa Haws; and the Defendants, Anthony R. Mathis a/k/a Anthony  
Rickey Mathis a/k/a Anthony Rickery Mathis a/k/a Anthony Mathis  
and Marilyn J. Mathis a/k/a Marilyn Jane Mathis a/k/a  
M. J. Mathis a/k/a Marilyn Mathis, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, Anthony R. Mathis a/k/a Anthony Rickey Mathis a/k/a Anthony Rickery Mathis a/k/a Anthony Mathis and Marilyn J. Mathis a/k/a Marilyn Jane Mathis a/k/a M. J. Mathis a/k/a Marilyn Mathis, acknowledged receipt of Summons and Complaint on April 4, 1990; that Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on March 22, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 22, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 22, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on April 11, 1990; and that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on April 12, 1990; that the Defendants, Anthony R. Mathis a/k/a Anthony Rickey Mathis a/k/a Anthony Rickery Mathis a/k/a Anthony Mathis and Marilyn J. Mathis a/k/a Marilyn Jane Mathis a/k/a M. J. Mathis a/k/a Marilyn Mathis, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on December 2, 1988, Anthony Rickey Mathis and Marilyn Jane Mathis filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-03679-W. On March 13, 1989, the United States Bankruptcy

Court for the Northern District of Oklahoma entered a Discharge of Debtor releasing debtors from all dischargeable debts. Subject bankruptcy case was closed on April 28, 1989.

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 Sixteen (16), Block Three (3), in HAYDEN-LEWIS ADDITION, a Subdivision to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on December 15, 1987, Anthony R. Mathis and Marilyn J. Mathis executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$37,750.00, payable in monthly installments, with interest thereon at the rate of ten and one-half percent (10.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Anthony R. Mathis and Marilyn J. Mathis executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated December 15, 1987, covering the above-described property. Said mortgage was recorded on December 16, 1987, in Book 5069, Page 2703, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Anthony R. Mathis a/k/a Anthony Rickey Mathis a/k/a Anthony Rickery Mathis a/k/a Anthony Mathis and Marilyn J. Mathis a/k/a Marilyn Jane Mathis a/k/a M. J. Mathis a/k/a Marilyn Mathis, 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, Anthony R. Mathis a/k/a Anthony Rickey Mathis a/k/a Anthony Rickery Mathis a/k/a Anthony Mathis and Marilyn J. Mathis a/k/a Marilyn Jane Mathis a/k/a M. J. Mathis a/k/a Marilyn Mathis, are indebted to the Plaintiff in the principal sum of \$37,577.62, plus interest at the rate of 10.5 percent per annum from January 1, 1989 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, State of Oklahoma ex rel. Oklahoma Tax Commission, has liens on the property which is the subject matter of this action by virtue of Tax Warrant No. ITI 88 003571 00 in the amount of \$1,189.35 plus interest and penalties according to law and by virtue of Tax Warrant No. ITI 88 012147 00 in the amount of \$748.34 plus interest and penalties according to law. Said liens are inferior to the interest of the Plaintiff, United States of America.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Anthony R. Mathis a/k/a Anthony Rickey Mathis a/k/a Anthony Rickery Mathis a/k/a Anthony Mathis and Marilyn J. Mathis a/k/a Marilyn Jane Mathis a/k/a M. J. Mathis a/k/a Marilyn Mathis, in the principal sum of \$37,577.62, plus interest at the rate of 10.5 percent per annum from January 1, 1989 until judgment, plus interest thereafter at the current legal rate of 8.70 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, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$1,937.69 plus interest and penalties according to law by virtue of Tax Warrants Nos. ITI 88 003571 00 and ITI 88 012147 00.

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

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

First:

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

Second:

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

Third:

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of \$1,937.69 plus interest and penalties according to law.

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

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

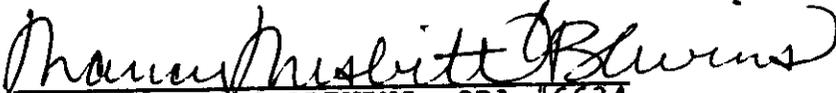
S/ THOMAS R. BRETT

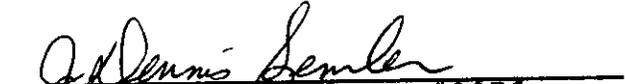
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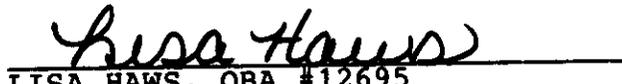
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
\_\_\_\_\_  
NANCY NESBITT BLEVINS, OBA #6634  
Assistant United States Attorney

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

  
\_\_\_\_\_  
LISA HAWS, OBA #12695  
Attorney for Defendant,  
State of Oklahoma ex rel.  
Oklahoma Tax Commission

Judgment of Foreclosure  
Civil Action No. 90-C-236-B

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

FILED

MAY 23 1990

MIDAMERICA FEDERAL SAVINGS )  
AND LOAN ASSOCIATION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
HAROLD W. BURLINGAME and )  
BARBARA JEAN BURLINGAME, )  
husband and wife; PHILLIP H. )  
RYAN and CHARLOTTE M. RYAN, )  
husband and wife; JOHN F. )  
CANTRELL, TULSA COUNTY )  
TREASURER; BOARD OF COUNTY )  
COMMISSIONERS, Tulsa County, )  
Oklahoma; D.P. BYERS & COMPANY, )  
a corporation; and A.P. GENTRY, )  
 )  
Defendants. )

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

Case No. 88-C-1339-B

ORDER OF DISMISSAL WITHOUT PREJUDICE

This matter comes on before me, the undersigned Judge on the 23 day of May, 1990, pursuant to the Motion of Plaintiff, Local America Bank of Tulsa, F.S.B. to dismiss the fifth, sixth, fifteenth, sixteenth, seventeenth, eighteenth, twenty-fifth and twenty-sixth causes of action without prejudice. For good cause shown, the Court FINDS that the Plaintiff's Motion should be granted.

IT IS THEREFORE ORDERED that the fifth, sixth, fifteenth, sixteenth, seventeenth, eighteenth, twenty-fifth and twenty-sixth causes of action alleged by Plaintiff, Local America in its Petition are hereby dismissed without prejudice.

S/ THOMAS R. BRETT

District Court Judge for the  
Northern District of Oklahoma

FILED

MAY 23 1990

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

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

ARTIE BURTON, III, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SUTHERLAND LUMBER COMPANY, )  
 a Missouri Limited )  
 Partnership, )  
 )  
 Defendant. )

Case No. 90 C-172 E

ORDER OF DISMISSAL

NOW on this 22<sup>nd</sup> day of May, 1990, the Court being advised that a settlement being reached between the Plaintiff and the named Defendant Sutherland Lumber Company, and those parties stipulating to a Dismissal with Prejudice, the Court orders that the claims of the Plaintiff against Sutherland Lumber Company be dismissed with prejudice. Sutherland Building Material Company will remain unaffected by this Order of Dismissal with Prejudice.

W. W. WILSON

UNITED STATES DISTRICT JUDGE

Jeff Nix, OBA #6688  
2121 South Columbia, Suite 710  
Tulsa, Oklahoma 74114  
(918) 742-4486

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

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

FILED  
MAY 23 1990  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-056-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23<sup>rd</sup> day  
of May, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States  
Attorney; the Defendants, County Treasurer, Osage County,  
Oklahoma, and Board of County Commissioners, Osage County,  
Oklahoma, appear by John S. Boggs, Jr., Assistant District  
Attorney, Osage County, Oklahoma; and the Defendants, Mark A.  
Pestel a/k/a Mark Allen Pestel a/k/a Mark Pestel and Deborah E.  
Pestel a/k/a Deborah Pestel a/k/a Deborah E. Swarer, appear not,  
but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, County Treasurer, Osage  
County, Oklahoma, acknowledged receipt of Summons and Complaint  
on January 30, 1989; and that Defendant, Board of County

Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on January 25, 1989.

The Court further finds that Defendants, Mark A. Pestel a/k/a Mark Allen Pestel a/k/a Mark Pestel and Deborah E. Pestel a/k/a Deborah Pestel a/k/a Deborah E. Swarer, were served by publishing notice of this action in the Pawhuska Journal-Capital, a newspaper of general circulation in Osage County, Oklahoma, once a week for six (6) consecutive weeks beginning April 1, 1989, and continuing to May 6, 1989, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Mark A. Pestel a/k/a Mark Allen Pestel a/k/a Mark Pestel and Deborah E. Pestel a/k/a Deborah Pestel a/k/a Deborah E. Swarer, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Mark A. Pestel a/k/a Mark Allen Pestel a/k/a Mark Pestel and Deborah E. Pestel a/k/a Deborah Pestel a/k/a Deborah E. Swarer. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together

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

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer herein on February 1, 1989; and that the Defendants, Mark A. Pestel a/k/a Mark Allen Pestel a/k/a Mark Pestel and Deborah E. Pestel a/k/a Deborah Pestel a/k/a Deborah E. Swarer, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on June 6, 1989, Mark Alan Pestel and Deborah Eileen Pestel filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 89-01613-W. On March 1, 1990, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

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

West 30 feet of Lot 7, and the East 40 feet of Lot 8, in Block 4, in Russell Addition to Skiatook, Osage County, Oklahoma according to the recorded Plat thereof.  
Subject, however, to all valid outstanding easements, rights-of-way, mineral leases, mineral reservations and mineral conveyances of record.

The Court further finds that on August 5, 1982, Mark A. Pestel and Deborah E. Pestel executed and delivered to the United States of America, acting through the Farmers Home Administration, their mortgage note in the amount of \$38,000.00, payable in monthly installments, with interest thereon at the rate of 13.25 percent per annum.

The Court further finds that as security for the payment of the above-described note, Mark A. Pestel and Deborah E. Pestel executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated August 5, 1982, covering the above-described property. Said mortgage was recorded on August 5, 1982, in Book 620, Page 937, in the records of Osage County, Oklahoma.

The Court further finds that on August 5, 1982, Mark A. Pestel and Deborah E. Pestel executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on July 16, 1984, Mark Pestel and Deborah Pestel executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on June 24, 1985, Mark A. Pestel and Deborah E. Pestel executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date was made principal.

The Court further finds that on June 24, 1985, Mark A. Pestel and Deborah E. Pestel executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on June 13, 1986, Mark Pestel executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on May 14, 1987, Mark Pestel executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendants, Mark A. Pestel a/k/a Mark Allen Pestel a/k/a Mark Pestel and Deborah E.

Pestel a/k/a Deborah Pestel a/k/a Deborah E. Swarer, 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, Mark A. Pestel a/k/a Mark Allen Pestel a/k/a Mark Pestel and Deborah E. Pestel a/k/a Deborah Pestel a/k/a Deborah E. Swarer, are indebted to the Plaintiff in the principal sum of \$38,020.47, plus accrued interest in the amount of \$3,419.62 as of October 18, 1988, plus interest accruing thereafter at the rate of 13.25 percent per annum or \$13.8019 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements and the reamortization and/or deferral agreement of \$8,936.33, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$296.93, plus penalties and fees, for the year 1988. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount

of \$28.83 for the year 1986, \$31.56 for the year 1987, and \$30.21 for the year 1988, plus penalties and fees. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Mark A. Pestel a/k/a Mark Allen Pestel a/k/a Mark Pestel and Deborah E. Pestel a/k/a Deborah Pestel a/k/a Deborah E. Swarer, in the principal sum of \$38,020.47, plus accrued interest in the amount of \$3,419.62 as of October 18, 1988, plus interest accruing thereafter at the rate of 13.25 percent per annum or \$13.8019 per day until judgment, plus interest thereafter at the current legal rate of \_\_\_\_\_ percent per annum until fully paid, and the further sum due and owing under the interest credit agreements and the reamortization and/or deferral agreement of \$8,936.33, plus interest on that sum at the current legal rate of \_\_\_\_\_ percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have and recover judgment in the amount of \$296.93, plus penalties and fees, for ad valorem taxes for the year 1988, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have and recover judgment in the amount

of \$28.83 for the year 1986, \$31.56 for the year 1987, and \$30.21 for the year 1988, plus penalties and fees, for personal property taxes, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with 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 Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, in the amount of \$296.93, plus penalties and fees, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, in the amount of \$28.83 for the year 1986, \$31.56 for the year 1987, and \$30.21 for the year 1988, plus penalties and fees, for personal property taxes which are currently due and owing.

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

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

S/ THOMAS R. BRETT

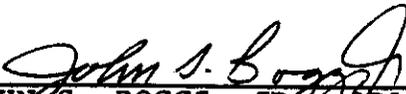
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UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
NANCY NESEITT BLEVINS, OBA #6634  
Assistant United States Attorney

  
JOHN S. BOGGS, JR., OBA # 0920  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Osage County, Oklahoma

NNB/css

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

**FILED**

MAY 23 1990

FREDA LANNON,

Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE  
COMPANY, a New York  
corporation,

Defendant.

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

Case No. 89-C-657-E

ORDER OF DISMISSAL

The Court having been advised by counsel that the above  
action has been settled, it is

ORDERED that this cause be hereby dismissed with prejudice,  
with each party to bear its own costs and attorneys' fees.

DATED: 5-22-90

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

**F I L E D**

MAY 23 1990 *OK*

JESS OLSON,

Plaintiff,

vs.

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

Defendants.

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

CASE NO. 89-C-979-E ✓

O R D E R

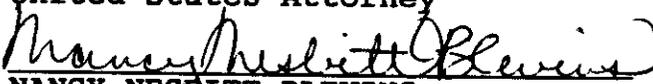
Upon the motion of the Defendant, Secretary of Health and Human Services, by Tony M. Graham, United States Attorney of the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that this case be remanded to the Secretary to attain a mental status examination and vocational expert testimony.

DATED this 22<sup>nd</sup> day of May, 1990.

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

SUBMITTED BY:

TONY M. GRAHAM  
United States Attorney

  
\_\_\_\_\_  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

entered

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

FILED

MAY 23 1990 A

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

IN RE:

SAMUEL CROSSLEN and  
MARY CROSSLEN,

Debtors.

)  
)  
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)  
)  
)

No. 90-C-373-C

ORDER

Before the Court is the motion of D. E. Schirmer to withdraw the reference of a proceeding from the United States Bankruptcy Court. No response has been filed, but this Court has independently reviewed the record.

Movant relies upon 28 U.S.C. §157(d) which states:

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both Title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

Under the second sentence of this provision, withdrawal of reference is required when substantial material consideration of federal statutes other than the Bankruptcy Code is necessary for resolution of the case or proceeding. In re Chateaugay Corp., 108 B.R. 27 (S.D.N.Y. 1989). Movant contends that the proceeding in Bankruptcy Court sufficiently implicates the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001 et seq., that the standard is met.

This Court finds that it cannot make the determination on the record before it. The Adversary Complaint has not been provided,

and therefore the Court cannot ascertain the precise nature of the proceeding. In his motion, movant refers to various attachments which are not in fact attached. In sum, the record presented is inadequate.

It is the Order of the Court that the motion to withdraw reference is hereby denied without prejudice to renewal.

*IT IS SO ORDERED* this 22<sup>nd</sup> day of May, 1990.

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

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

FILED

MAY 23 1990

FIBERCAST COMPANY, a Delaware  
corporation,

Plaintiff,

vs.

INDUSTRIAL SYSTEMS & EQUIPMENT  
CO., a Puerto Rican corporation,

Defendant.

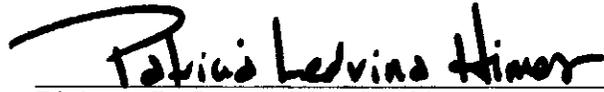
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JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

Case No. 90-C-225 C

NOTICE OF DISMISSAL WITH PREJUDICE

Pursuant to F.R.C.P. 41(a)(1), the Plaintiff, Fibercast Company, hereby dismisses  
this action with prejudice.



Richard D. Jones, OBA #4798  
Oliver S. Howard, OBA #4403  
Patricia Ledvina Himes, OBA #5331  
GABLE & GOTWALS, INC.  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119

ATTORNEYS FOR PLAINTIFF  
FIBERCAST COMPANY

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

WILMA WILLIAMS,

Plaintiff,

vs.

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

Defendant.

FILED

MAY 22 1990

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

CASE NO. 89-C-942-C

ORDER

Upon the motion of the Defendant, Secretary of Health and Human Services, by Tony M. Graham, United States Attorney of the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that this case be remanded to the Secretary for further administrative action.

DATED this 22 day of May, 1990.

(Signed) H. Dale Cook  
UNITED STATES MAGISTRATE District  
Judge

SUBMITTED BY:

TONY M. GRAHAM  
United States Attorney

Phil Pinnell  
PHIL PINNELL  
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
vs. )  
)  
THE UNKNOWN HEIRS, EXECUTORS, )  
ADMINISTRATORS, DEVISEES, )  
TRUSTEES, SUCCESSORS AND )  
ASSIGNS OF WALTER B. LOVELL, )  
Deceased; DELORIS M. LOVELL )  
a/k/a DELORIS LOVELL; )  
PHOENIX FEDERAL SAVINGS )  
AND LOAN ASSOCIATION; )  
E. W. FISHER III; FRANKLIN )  
AND UNDERWOOD PROPERTIES, an )  
Oklahoma general partnership, )  
COUNTY TREASURER, Tulsa County, )  
Oklahoma; BOARD OF COUNTY )  
COMMISSIONERS, Tulsa County, )  
Oklahoma; )  
Defendants. )

**F I L E D**

**MAY 22 1990**

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

CIVIL ACTION NO. 89-C-042-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22 day  
of May, 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; Defendant, Cimarron Federal Savings and Loan Association  
successor to Phoenix Federal Savings and Loan Association, appears  
not, having previously filed its Disclaimer; and Defendants, The  
Unknown Heirs, Executors, Administrators, Devisees, Trustees,  
Successors and Assigns of Walter B. Lovell, Deceased, Deloris M.  
Lovell a/k/a Deloris Lovell, E. W. Fisher III, and Franklin and  
Underwood Properties, an Oklahoma general partnership, appear  
not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Deloris M. Lovell a/k/a Deloris Lovell, acknowledged receipt of Summons and Complaint on April 30, 1989; that the Defendant, Cimarron Federal Savings and Loan Association successor to Phoenix Federal Savings and Loan Association, acknowledged receipt of Summons and Complaint on February 1, 1989; that Defendant, E. W. Fisher III, acknowledged receipt of Summons and Complaint on January 27, 1989; that the Defendant, Franklin and Underwood Properties, an Oklahoma general partnership, was served with Summons and Complaint on March 8, 1989; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 25, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 24, 1989.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Walter B. Lovell, Deceased, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning February 23, 1990, and continuing to March 30, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, The Unknown

Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Walter B. Lovell, Deceased, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Walter B. Lovell, Deceased. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners,

Tulsa County, Oklahoma, filed their Answers on February 13, 1989 and their Answers to Amended Petition on February 16, 1989; that the Defendant, Cimarron Federal Savings and Loan Association successor to Phoenix Federal Savings and Loan Association, filed its Disclaimer on February 16, 1989; and that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Walter B. Lovell, Deceased, Deloris M. Lovell a/k/a Deloris Lovell, E. W. Fisher III, and Franklin and Underwood Properties, an Oklahoma general partnership, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that Cimarron Federal Savings and Loan Association is the successor to Phoenix Federal Savings and Loan Association.

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

Lot Thirty (30), Block Six (6), Suburban Acres Third Addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that this is a suit brought for the further prupose of judicially determining the death of Walter B. Lovell and of judicially terminating the joint tenancy of Walter B. Lovell and Deloris M. Lovell a/k/a Deloris Lovell.

The Court further finds that Walter B. Lovell and Deloris Lovell became the records owners of the real property

involved in this action, by virtue of that certain Warranty Deed dated January 29, 1975, from Richard L. Roudebush as Administrator of Veterans Affairs to Walter B. Lovell and Deloris Lovell, husband and wife, as joint tenants and not as tenants in common, with full right of survivorship, the whole of the estate to vest in the survivor in the event of the death of either, which Warranty Deed was filed of record on January 30, 1975, in Book 4152, Page 469, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that Walter B. Lovell died on January 2, 1976. Upon the death of Walter B. Lovell the subject property vested in his surviving joint tenant, Deloris Lovell, by operation of law. Certificate of Death No. 01886 issued by the Oklahoma State Department of Health certifies Walter B. Lovell's death.

The Court further finds that on January 30, 1975, Walter B. Lovell, now deceased, and Deloris Lovell executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$9,750.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Walter B. Lovell, now deceased, and Deloris Lovell 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 January 30, 1975, covering the above-described property. Said mortgage was recorded on January 30, 1975, in Book 4152, Page 471, in the records of Tulsa County, Oklahoma.

The Court further finds that General Warranty Deed dated July 6, 1982, and recorded on August 18, 1982, in Book 4632, Page 1424, in the records of Tulsa County, Oklahoma, should be determined invalid as the death of Walter B. Lovell occurred on January 2, 1976, which is before the date of said deed.

The Court further finds that Walter B. Lovell, now deceased, and Deloris M. Lovell a/k/a Deloris Lovell, 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 there is now due and owing to the Plaintiff the principal sum of \$8,723.64, plus interest at the rate of 9.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that Plaintiff is entitled to a judicial determination of the death of Walter B. Lovell, and to a judicial termination of the joint tenancy of Walter B. Lovell and Deloris M. Lovell a/k/a Deloris Lovell.

The Court further finds that the Defendant, Cimarron Federal Savings and Loan Association successor to Phoenix Federal Savings and Loan Association, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors

and Assigns of Walter B. Lovell, Deceased, Deloris M. Lovell a/k/a Deloris Lovell, E. W. Fisher III, and Franklin and Underwood Properties, an Oklahoma general partnership, are in default and have no right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the death of Walter B. Lovell be and the same hereby is judicially determined to have occurred on January 2, 1976, in the City of Tulsa, Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the joint tenancy of Walter B. Lovell and Deloris M. Lovell a/k/a Deloris Lovell in the above-described real property be and the same hereby is judicially terminated as of the date of the death of Walter B. Lovell on January 2, 1976.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem in the principal sum of \$8,723.64, plus interest at the rate of 9.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the current legal rate of 8.70 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Walter B. Lovell, Deceased, Deloris M. Lovell a/k/a Deloris Lovell, Cimarron Federal Savings and Loan Association successor to Phoenix Federal Savings and Loan Association, E. W. Fisher III, Franklin and Underwood Properties, an Oklahoma general partnership, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

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

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

(Signed) H. Dale Cook

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UNITED STATES DISTRICT JUDGE

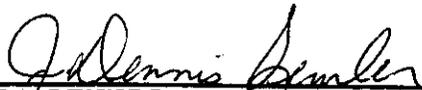
APPROVED:

TONY M. GRAHAM  
United States Attorney



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PHIL PINNELL, OBA #7169  
Assistant United States Attorney



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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-042-C

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JERRY B. SAMPSON; MARY E. )  
 SAMPSON; CIMARRON FEDERAL )  
 SAVINGS AND LOAN ASSOCIATION, )  
 Successor in Interest to )  
 Phoenix Federal Savings and )  
 Loan Association; TALLANT )  
 RENTAL PROPERTIES, INC., )  
 f/k/a Tallant Development )  
 Corporation; FRANKLIN AND )  
 UNDERWOOD PROPERTIES, an )  
 Oklahoma General Partnership; )  
 RED RIVER FEDERAL SAVINGS & )  
 LOAN ASSOCIATION, Formerly Home )  
 Savings Bank, F.A., Formerly )  
 Home Savings & Loan Association; )  
 COUNTY TREASURER, Tulsa County, )  
 Oklahoma; and BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

**F I L E D**

**MAY 22 1990**

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

CIVIL ACTION NO. 89-C-636-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22 day  
of May, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; the Defendants, Cimarron  
Federal Savings and Loan Association, Successor in Interest to

Phoenix Federal Savings and Loan Association and Red River Federal Savings & Loan Association, Formerly Home Savings Bank, F.A., Formerly Home Savings & Loan Association, appear not, having previously filed their Disclaimers; and the Defendants, Jerry B. Sampson, Mary E. Sampson, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation, and Franklin and Underwood Properties, an Oklahoma General Partnership, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association, acknowledged receipt of Summons and Complaint on August 9, 1989; that Defendant, Franklin and Underwood Properties, an Oklahoma General Partnership, acknowledged receipt of Summons and Complaint on August 3, 1989; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 7, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 4, 1989.

The Court further finds that the Defendants, Jerry B. Sampson, Mary E. Sampson, and Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning February 23, 1990, and continuing to March 30, 1990, as more

fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Jerry B. Sampson, Mary E. Sampson, and Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Jerry B. Sampson, Mary E. Sampson, and Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication

is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on August 18, 1989; that the Defendant, Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association, filed its Disclaimer on August 10, 1989; that the Defendant, Red River Federal Savings & Loan Association, Formerly Home Savings Bank, F.A., Formerly Home Savings & Loan Association, filed its Disclaimer on September 5, 1989; and that the Defendants, Jerry B. Sampson, Mary E. Sampson, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation, and Franklin and Underwood Properties, an Oklahoma General Partnership, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Two (2), Block Thirty-one (31), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on June 11, 1964, the Defendants, Jerry B. Sampson and Mary E. Sampson, 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 \$10,650.00, payable in monthly installments, with interest thereon at the rate of 5.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Jerry B. Sampson and Mary E. Sampson, 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 June 11, 1964, covering the above-described property. Said mortgage was recorded on June 11, 1964, in Book 3459, Page 260, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Jerry B. Sampson and Mary E. Sampson, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Jerry B. Sampson and Mary E. Sampson, are indebted to the Plaintiff in the principal sum of \$4,166.62, plus interest at the rate of 5.5 percent per annum from August 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association and Red River Federal Savings & Loan Association, Formerly Home Savings Bank, F.A., Formerly Home Savings & Loan Association, disclaim any right, title, or interest in the subject real property.

The Court further finds that the Defendants, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation, and Franklin and Underwood Properties, an Oklahoma General Partnership, are in default and have no right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Jerry B. Sampson and Mary E. Sampson, in the principal sum of \$4,166.62, plus interest at the rate of 5.5 percent per annum from August 1, 1987 until judgment, plus interest thereafter at the current legal rate of 8.70 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Cimarron Federal Savings and Loan Association, Successor in Interest to Phoenix Federal Savings and Loan Association, Tallant Rental Properties, Inc., f/k/a Tallant Development Corporation, Franklin and Underwood Properties, an Oklahoma General Partnership, Red River Federal Savings & Loan Association, Formerly Home Savings Bank, F.A., Formerly Home

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

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

First:

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

Second:

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

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

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

(Signed) H. Dale Cook

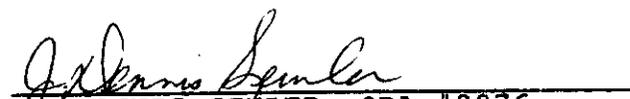
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UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
NANCY NESBITT BLEVINS, OBA #6634  
Assistant United States Attorney

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

Judgment of Foreclosure  
Civil Action No. 89-C-636-C

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

**FILED**

MAY 21 1990

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

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, a corporation )  
organized and existing under )  
the laws of the United States )  
of America, )

Plaintiff, )

v. )

CASE NO. 88-C-277E

LASER ADVERTISING, INC.; )  
G. L. LAND DEVELOPMENT, INC.; )  
RAY L. HORNER; ROBERT D. )  
HARDCASTLE; DAN EICHHORN; )  
COLLIE E. THOMAS and IDA B. )  
THOMAS, husband and wife; )  
ED H. DANIELS and GRACE M. )  
DANIELS, husband and wife; )  
WESLEY E. COX and LAURA JEAN )  
COX, husband and wife; )  
CLIFFORD LEON CROWDER; )  
DALE POWERS; JIMMY FULLER; )  
DONALD LOWER; LAKEMONT )  
SHORES PROPERTY OWNERS )  
ASSOCIATION, INC.; ELAINE )  
WITT, COUNTY TREASURER OF )  
DELAWARE COUNTY; BOARD OF )  
COUNTY COMMISSIONERS OF )  
DELAWARE COUNTY, OKLAHOMA; )  
PUBLISHERS UNLIMITED, INC.; )  
and KERM G. MULLIS, )

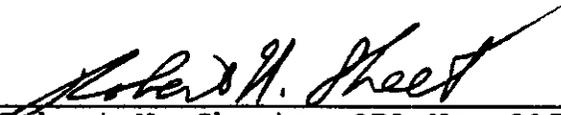
Defendants. )

DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff herein and dismisses without prejudice its First and Second Causes of Action in its Complaint against the Defendants, G. L. Land Development, Inc.; Ray L. Horner; Robert D. Hardcastle; Dan Eichhorn; Collie E. Thomas; Ida B. Thomas; Ed H. Daniels; Grance M. Daniels; Wesley E. Cox; Laura Jean Cox; Clifford Leon Crowder; Dale Powers, Jimmy Fuller; Donald Lower; Lakemont Shores Property Owners Association, Inc.

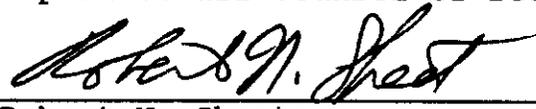
DATED this \_\_\_\_\_ day of May, 1990.

Respectfully Submitted,

  
\_\_\_\_\_  
Robert N. Sheets, OBA No. 8152  
OF  
PHILLIPS McFALL McCAFFREY McVAY  
SHEETS & LOVELACE, P.C.  
1001 N.W. 63rd, Suite 205  
Oklahoma City, Oklahoma 73116  
(405) 848-1684  
Attorneys for Plaintiff

CERTIFICATE OF MAILING

The undersigned certifies that on the \_\_\_\_\_ day of May, 1990, a true and correct copy of the above Dismissal Without Prejudice was mailed postage prepaid to all counsel of record.

  
\_\_\_\_\_  
Robert N. Sheets

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

FILED

MAY 21 1990

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

STEPHEN H. POLLOCK, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 RON CHAMPION, Warden, )  
 )  
 Respondent. )

89-C-670-B

ORDER

Now before the court are petitioner's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Docket #1), Respondent's Response (#4), and Respondent's Amended Response (#11).<sup>1</sup>

Petitioner is incarcerated in the Dick Conner Correctional Center in Hominy, Oklahoma. He was jailed pursuant to judgments rendered in the District Court of Stephens County in Case Nos. CRF-85-153 and CRF-85-155. The convictions for controlled dangerous substance violations after former conviction of a felony were not appealed. An application for post-conviction relief was denied by the district court. The Court of Criminal Appeals affirmed the denial in Case No. PC-88-433. A writ of habeas corpus was granted by the Court of Criminal Appeals in Case No. C-89-272, and petitioner was declared eligible for CAP credits.

Petitioner has clearly stated in his Brief in Support of Petitioner's Traverse to Respondent's Response that he is not contesting the validity of his guilty plea, but merely

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

12

claims that he was sentenced under the wrong statute and received ineffective assistance of counsel when he was advised that he would be sentenced under the improper statute.

Petitioner was charged with drug offenses which followed an earlier drug offense and received an enhanced sentence pursuant to the Habitual Criminal Statute, 21 O.S. § 51(b).

It is clear to the court that Pollock's sentences should have been enhanced pursuant to the UCDSA provisions, more specifically 63 O.S. § 2-401,<sup>2</sup> because both the predicate offense and the new offense were drug offenses. It is well established that a person convicted of a second or subsequent felony violation under the UCDSA shall be given an enhanced sentence under the UCDSA provision, not the Habitual Criminal

---

<sup>2</sup>The pertinent sections of 63 O.S. § 2-401 read as follows:

- B. Any person who violates the provisions of this section with respect to:
  - 1. a substance classified in Schedule I or II which is a narcotic drug or lysergic acid diethylamide (LSD), upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not less than five (5) years nor more than life and a fine of not more than One Hundred Thousand Dollars (\$100,000.00). Said sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense.
  - 2. any other controlled dangerous substance classified in Schedule I, II, III, or IV, upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not less than two (2) years nor more than life and a fine of not more than Twenty Thousand Dollars (\$20,000). Said sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense.

. . .

- C. Any person convicted of a second or subsequent felony violation of the provisions of this section. . . shall be punished by a term of imprisonment twice that otherwise authorized and by twice the fine otherwise authorized. Convictions for second or subsequent violations of the provisions of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation.

. . .

- E. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person to manufacture or attempt to manufacture any controlled dangerous substance. Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance, upon conviction, is guilty of a felony and shall be punished by imprisonment in the State Penitentiary for not less than twenty (20) years, nor more than life and a fine of not more than Fifty Thousand Dollars (\$50,000.00). Said sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation.

Statute. Clopton v. State, 742 P.2d 586 (Okla. Ct. Crim. App. 1987); Novvey v. State, 709 P.2d 696 (Okla. Ct. Crim. App. 1985).

Under the UCDSA, 63 O.S. § 2-401 provides for sentence enhancement according to the related drug offense. The court concludes that petitioner could have been sentenced on the three (3) counts for manufacture of drugs to a minimum of twenty (20) years to life and the two (2) counts for possession to a minimum of four (4) years to life. Petitioner's counsel and the court informed him that there would be a minimum of twenty (20) years for each count. (Transcript of Sentencing dated July 22, 1985, Page 8)

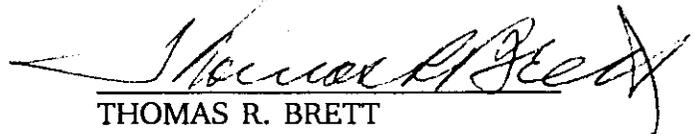
The Supreme Court set forth standards by which to judge ineffective assistance of counsel claims in Strickland v. Washington, 466 U.S. 668 (1984). To establish a claim that counsel's assistance was so defective as to require a reversal of conviction, a petitioner must show first, that counsel's performance was deficient, and second, that the deficient performance prejudiced the defense. The Supreme Court in Strickland stated that the bottom line for judging any claim of ineffectiveness must be "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." 466 U.S. at 686. The Strickland standards have consistently been followed by the Tenth Circuit. Hannon v. Maschner, 845 F.2d 1553 (10th Cir. 1988); United States v. Espinosa, 771 F.2d 1382, 1411 (10th Cir.), cert. den. 474 U.S. 1023 (1985).

While prisoner was incorrectly informed by the court and his attorney that twenty (20) years was the minimum sentence which he could receive on all five counts to which

he was pleading guilty, the twenty-year concurrent sentences he received were the minimum sentence he could have received, since three of his sentences required a minimum of twenty years. He was therefore not prejudiced by the information given him by his attorney when he pled guilty. In fact, by entering into the plea bargain, petitioner avoided facing additional pending charges, and several charges which had already been filed were dropped.

The court concludes the petitioner received the minimum sentence he could receive under the applicable statute, 63 O.S. § 2-401, and that, while his counsel's performance was deficient in some respect, that performance did not prejudice petitioner. Therefore, petitioner's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 should be and is dismissed.

Dated this 21<sup>st</sup> day of May, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**F I L E D**

MAY 21 1990

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

RICHARD STEPHENS, JR., )

Plaintiff, )

vs. )

No. 88-C-1578-E

BOB J. WHITWORTH, Sheriff of )  
Creek County, Oklahoma, and )  
THE BOARD OF COMMISSIONERS OF )  
THE COUNTY OF CREEK, STATE OF )  
OKLAHOMA, )

Defendants. )

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Richard Stephens, Jr., by and through his attorneys of record, Kevin R. Kelley and Cliff A. Stark, and hereby dismisses this action with prejudice to the refiling thereof for the reason that a full and final settlement of all issues has been reached in this case.

  
\_\_\_\_\_  
Kevin R. Kelley  
Cliff A. Stark  
Attorneys for Plaintiff  
16 E. 16th Street  
Suite 404  
Tulsa, Okla. 74119  
(918) 592-5592

CERTIFICATE OF MAILING

I, Kevin R. Kelley, do hereby certify that I placed a true and correct copy of the above and foregoing instrument in the

U.S. Mails, proper postage pre-paid, to: Dick Blakeley,  
Assistant District Attorney, 406 Tulsa County Courthouse, Tulsa,  
OK 74103 and to D. Max Cook, Assistant District Attorney, P.O.  
Box 1006, Sapulpa, OK 74067 on this 21 day of May, 1990.

  
Kevin R. Kelley

IN THE UNITED STATES DISTRICT COURT **FILED**  
FOR THE NORTHERN DISTRICT OF OKLAHOMA  
MAY 21 1990

CHARLIE MITCHELL'S OF )  
BROKEN ARROW, INC. )  
 )  
Plaintiffs, )

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

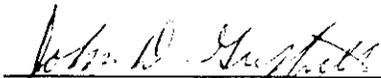
v. )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Defendants. )

Case No.: 89-C-919-C

STIPULATION <sup>OF</sup> ~~FOR~~ DISMISSAL

It is hereby stipulated and agreed that the complaint in the above-entitled case be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of litigation.

  
CRAIG BLACKSTOCK  
320 S. Boston  
Suite 1605  
Tulsa, Oklahoma 74103  
Attorney for Plaintiffs

  
JOHN D. GRIFFITH  
Trial Attorney  
Office of Special Litigation  
Tax Division  
U.S. Department of Justice  
P.O. Box 7238  
Washington, D.C. 20044  
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT **F I L E D**  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAY 21 1990

CHARLIE MITCHELL'S OF  
MID-TOWN, INC.

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendants.

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

Case No.: 89-C-921-B *C*

STIPULATION <sup>OF</sup> ~~FOR~~ DISMISSAL

It is hereby stipulated and agreed that the complaint in the above-entitled case be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of litigation.

*Craig Blackstock*

CRAIG BLACKSTOCK  
320 S. Boston  
Suite 1605  
Tulsa, Oklahoma 74103

Attorney for Plaintiffs

*John D. Griffith*

JOHN D. GRIFFITH  
Trial Attorney  
Office of Special Litigation  
Tax Division  
U.S. Department of Justice  
P.O. Box 7238  
Washington, D.C. 20044

Attorney for Defendant



**FILED**

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

MAY 21 1980

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

HIGHLANDS INSURANCE COMPANY, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
NICK WOLFE, d/b/a WOLFE CONSTRUCTION )  
COMPANY, et al., )  
 )  
Defendants. )

No. 75-C-355-P  
and 75-C-364-P

JOURNAL ENTRY OF JUDGMENT

This judgment is being entered pursuant to the agreement of Highlands Insurance Company, Great American Insurance Company, Nick Wolfe and Patricia Wolfe following a summary jury trial and settlement conference.

Highlands Insurance Company is entitled to judgment against Nick Wolfe in the following amounts:

1. \$1,652,115.00 in principal losses incurred by Highlands as Wolfe's Miller Act surety on Corps of Engineer contracts:

- A. DACW 56-73-C-0053
- B. DACW 56-73-C-0229
- C. DACW 56-73-C-0233

The principal amount shall earn both prejudgment and post-judgment interest from the dates upon which each payment comprising the total was made at the semi-annual interest rates for which the Corps is liable to Wolfe under the Corps of Engineers Board of Contract Appeals decision.

2. \$323,000.00 in expenses, costs and attorney fees incurred by Highlands in financing Wolfe's appeals to the Corps of Engineers Board of Contract Appeals and in prosecuting this action. The amount does not include the \$301,826.13 awarded by the Board for the benefit of Highlands.

Great American Insurance Company is entitled to judgment against Nick Wolfe and Patricia Wolfe, jointly and severally, in the following amounts:

1. \$95,126.00 in principal losses incurred by Great American as Wolfe's Miller Act surety on Corps of Engineer contracts:

A. DACW 56-74-0148

B. DACW 56-74-0193

The principal amount shall earn both prejudgment and post-judgment interest from the dates upon which each payment comprising the total was made at the semi-annual rates for which the Corps is liable to Wolfe under the Corps of Engineers Board of Contract Appeals decision.

2. \$15,000.00 in expenses, costs and attorney fees incurred by Great American in prosecuting the appeals to the Corps of Engineers Board of Contract Appeals and in prosecuting this action.

Pursuant to the agreement of the parties the Court finds and concludes that Highlands and Great American, as performing and bill paying Miller Act sureties, have a superior right to any and all funds due or to become due on or under the contracts which they bonded, including the awards made by the Corps of Engineers Board of Contract Appeals. Because of their positions as completing and

bill paying sureties the rights of Highlands and Great American are prior and superior to any claims of Nick Wolfe, Oak Forest Bank (which has now disclaimed any interest in the funds) and the Internal Revenue Service to the extent of the judgments hereafter rendered in their favor. All funds in excess of those required to fully pay the judgments in favor of Highlands and Great American shall belong to Nick Wolfe, subject to the claim of the Internal Revenue Service. The Court has been advised that Nick Wolfe and the Internal Revenue Service are attempting to negotiate a compromise of the tax claim.

Pursuant to the foregoing, the Court enters judgments in accordance with the settlement agreements which Highlands, Great American, Nick Wolfe and Patricia Wolfe agree shall be deemed final and non-appealable, as evidenced by the signatures of their counsel appearing below.

1. Highlands Insurance Company is granted judgment against Nick Wolfe in the principal amount of \$1,652,115.00, plus interest thereon at the semi-annual rates for which the Corps is liable to Wolfe under the Corps of Engineers Board of Contract Appeals decisions and orders. The interest shall begin accruing on the dates the respective losses comprising the total were incurred by Highlands and shall continue until all principal and interest is paid in full. In addition, Highlands is granted judgment against Nick Wolfe in the principal amount of \$323,000.00, plus prejudgment interest thereon at the rate provided by Oklahoma law. The prejudgment interest shall accrue from the dates the respective

losses comprising the total were incurred by Highlands. Highlands is granted post-judgment interest at the applicable rate on the total of the prejudgment interest and principal amount of \$323,000.00.

2. Great American Insurance Company is granted judgment against Nick Wolfe and Patricia Wolfe, jointly and severally, in the principal amount of \$95,126.00, plus interest thereon at the semi-annual rates for which the Corps is liable to Wolfe under the Corps of Engineers Board of Contract Appeals decisions and orders. The interest shall begin accruing on the dates the respective losses comprising the totals were incurred by Great American and shall continue until all principal and interest is paid in full. In addition, Great American is granted judgment against Nick Wolfe and Patricia Wolfe, jointly and severally, in the principal amount of \$15,000.00, plus prejudgment interest thereon at the rate provided by Oklahoma law. The prejudgment interest shall accrue from the dates the respective losses comprising the total were incurred by Great American. Great American is granted post-judgment interest at the applicable rate on the total of the prejudgment interest and principal amount of \$15,000.00.

3. The counterclaims of Nick Wolfe against Highlands Insurance Company and Great American Insurance Company are dismissed with prejudice subject to the provisions of the settlement agreements entered into by and between the parties.

4. Highlands and Great American are entitled to be paid directly out of the funds to be deposited in the registry of the Court pursuant to the Order entered on April 17, 1990, all in accordance with the further order of the Court. Satisfaction of this judgment will be in accordance with the settlement agreements entered into by the parties.

A contested issue remaining before the Court is the claim of the Internal Revenue Service against any funds which are payable to Nick Wolfe under the Board orders after the judgments in favor of Highlands and Great American have been paid in full. That issue is to be resolved as soon as possible. The Court acknowledges that the Tilly attorney lien claim was resolved recently.

Entered: May 16, 1990.



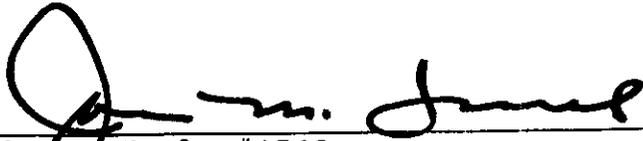
Layn Phillips  
United States District Judge

Approved:



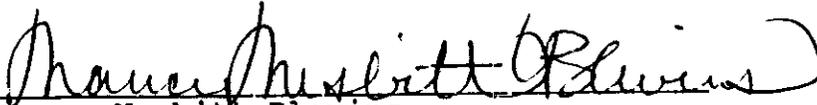
John B. Hayes, #4005  
Looney, Nichols, Johnson & Hayes  
528 N.W. 12th, P.O. Box 468  
Oklahoma City, Oklahoma 73101  
(405) 235-7641

Counsel for Highlands Insurance Company  
and Great American Insurance Company



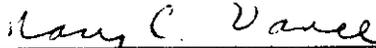
John M. Imel, #4542  
Frank V. Cooper, #11795  
Moyers, Martin, Santee, Imel & Tetrick  
320 South Boston, Suite 920  
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Counsel for the Internal Revenue Service

JBH/1-16-90

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

**FILED**

MAY 21 1990

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

HIGHLANDS INSURANCE COMPANY, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
NICK WOLFE, d/b/a WOLFE CONSTRUCTION )  
COMPANY, et al., )  
 )  
Defendants. )

No. 75-C-355-P  
and 75-C-364-P

JOURNAL ENTRY OF JUDGMENT

This judgment is being entered pursuant to the agreement of Highlands Insurance Company, Great American Insurance Company, Nick Wolfe and Patricia Wolfe following a summary jury trial and settlement conference.

Highlands Insurance Company is entitled to judgment against Nick Wolfe in the following amounts:

1. \$1,652,115.00 in principal losses incurred by Highlands as Wolfe's Miller Act surety on Corps of Engineer contracts:

- A. DACW 56-73-C-0053
- B. DACW 56-73-C-0229
- C. DACW 56-73-C-0233

The principal amount shall earn both prejudgment and post-judgment interest from the dates upon which each payment comprising the total was made at the semi-annual interest rates for which the Corps is liable to Wolfe under the Corps of Engineers Board of Contract Appeals decision.

2. \$323,000.00 in expenses, costs and attorney fees incurred by Highlands in financing Wolfe's appeals to the Corps of Engineers Board of Contract Appeals and in prosecuting this action. The amount does not include the \$301,826.13 awarded by the Board for the benefit of Highlands.

Great American Insurance Company is entitled to judgment against Nick Wolfe and Patricia Wolfe, jointly and severally, in the following amounts:

1. \$95,126.00 in principal losses incurred by Great American as Wolfe's Miller Act surety on Corps of Engineer contracts:

A. DACW 56-74-0148

B. DACW 56-74-0193

The principal amount shall earn both prejudgment and post-judgment interest from the dates upon which each payment comprising the total was made at the semi-annual rates for which the Corps is liable to Wolfe under the Corps of Engineers Board of Contract Appeals decision.

2. \$15,000.00 in expenses, costs and attorney fees incurred by Great American in prosecuting the appeals to the Corps of Engineers Board of Contract Appeals and in prosecuting this action.

Pursuant to the agreement of the parties the Court finds and concludes that Highlands and Great American, as performing and bill paying Miller Act sureties, have a superior right to any and all funds due or to become due on or under the contracts which they bonded, including the awards made by the Corps of Engineers Board of Contract Appeals. Because of their positions as completing and

bill paying sureties the rights of Highlands and Great American are prior and superior to any claims of Nick Wolfe, Oak Forest Bank (which has now disclaimed any interest in the funds) and the Internal Revenue Service to the extent of the judgments hereafter rendered in their favor. All funds in excess of those required to fully pay the judgments in favor of Highlands and Great American shall belong to Nick Wolfe, subject to the claim of the Internal Revenue Service. The Court has been advised that Nick Wolfe and the Internal Revenue Service are attempting to negotiate a compromise of the tax claim.

Pursuant to the foregoing, the Court enters judgments in accordance with the settlement agreements which Highlands, Great American, Nick Wolfe and Patricia Wolfe agree shall be deemed final and non-appealable, as evidenced by the signatures of their counsel appearing below.

1. Highlands Insurance Company is granted judgment against Nick Wolfe in the principal amount of \$1,652,115.00, plus interest thereon at the semi-annual rates for which the Corps is liable to Wolfe under the Corps of Engineers Board of Contract Appeals decisions and orders. The interest shall begin accruing on the dates the respective losses comprising the total were incurred by Highlands and shall continue until all principal and interest is paid in full. In addition, Highlands is granted judgment against Nick Wolfe in the principal amount of \$323,000.00, plus prejudgment interest thereon at the rate provided by Oklahoma law. The prejudgment interest shall accrue from the dates the respective

losses comprising the total were incurred by Highlands. Highlands is granted post-judgment interest at the applicable rate on the total of the prejudgment interest and principal amount of \$323,000.00.

2. Great American Insurance Company is granted judgment against Nick Wolfe and Patricia Wolfe, jointly and severally, in the principal amount of \$95,126.00, plus interest thereon at the semi-annual rates for which the Corps is liable to Wolfe under the Corps of Engineers Board of Contract Appeals decisions and orders. The interest shall begin accruing on the dates the respective losses comprising the totals were incurred by Great American and shall continue until all principal and interest is paid in full. In addition, Great American is granted judgment against Nick Wolfe and Patricia Wolfe, jointly and severally, in the principal amount of \$15,000.00, plus prejudgment interest thereon at the rate provided by Oklahoma law. The prejudgment interest shall accrue from the dates the respective losses comprising the total were incurred by Great American. Great American is granted post-judgment interest at the applicable rate on the total of the prejudgment interest and principal amount of \$15,000.00.

3. The counterclaims of Nick Wolfe against Highlands Insurance Company and Great American Insurance Company are dismissed with prejudice subject to the provisions of the settlement agreements entered into by and between the parties.

4. Highlands and Great American are entitled to be paid directly out of the funds to be deposited in the registry of the Court pursuant to the Order entered on April 17, 1990, all in accordance with the further order of the Court. Satisfaction of this judgment will be in accordance with the settlement agreements entered into by the parties.

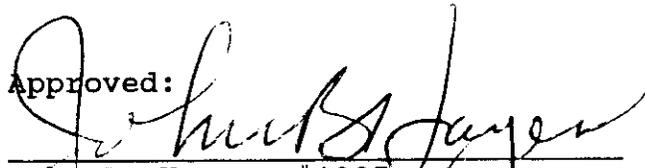
A contested issue remaining before the Court is the claim of the Internal Revenue Service against any funds which are payable to Nick Wolfe under the Board orders after the judgments in favor of Highlands and Great American have been paid in full. That issue is to be resolved as soon as possible. The Court acknowledges that the Tilly attorney lien claim was resolved recently.

Entered: May 16, 1990.



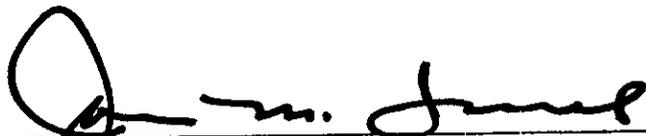
Layn Phillips  
United States District Judge

Approved:



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