

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,
v.
BILL D. SHELTON
Defendant.

Civil Action No. 90-C-664-E

FILED

DEC 14 1990

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

DEFAULT JUDGMENT

This matter comes on for consideration this 14 day of Dec, 1990, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, Bill D. Shelton, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Bill D. Shelton, was served with Summons and Complaint on August 7, 1990. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Bill D. Shelton, for the principal amount of \$27,332.93, plus accrued interest of \$2,908.58 as of May 31, 1990, plus interest thereafter at the rate of 4 percent per annum until judgment, plus interest

thereafter at the current legal rate of 7.02 percent per annum until paid, plus costs of this action.

United States District Judge

Submitted By:



KATHLEEN BLISS ADAMS
Assistant United States Attorney
333 West 4th Street
Tulsa, Oklahoma 74103
(918)581-7463

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

FILED

DEC 14 1990

BILL A. GREENE,

Plaintiff,

vs.

AMFAC DISTRIBUTION CORPORATION,
d/b/a AMFAC SUPPLY COMPANY, a
California Corporation, and
IRON-OAK SUPPLY CORPORATION, a
California corporation,

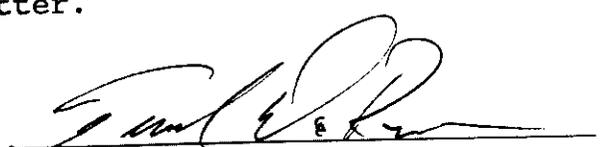
Defendant.

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

No. 90-C-095-B

STIPULATION ^{OF} FOR DISMISSAL WITH PREJUDICE

The Plaintiff, Bill A. Greene, and the Defendants, Amfac Distribution Corporation d/b/a Amfac Supply Company, and Iron-Oak Supply Corporation, hereby file this Stipulation of Dismissal with Prejudice pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, with each party to bear its own costs and attorneys fees incurred in this matter.

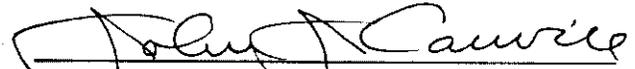

Terrel B. DoRemus
100 Center Plaza, Suite D
Tulsa, OK 74119
(918) 585-1993

ATTORNEY FOR THE PLAINTIFF,
BILL A. GREENE


J. Ronald Petrikin
Richard D. Koljack, Jr.
GABLE & GOTWALS
2000 4th National Bank Bldg.
Tulsa, OK 74119-5447
(918) 582-9201

ATTORNEYS FOR DEFENDANT,
IRON-OAK SUPPLY CORPORATION

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON



~~Lynn P. Mattson~~
John J. Carwile
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

ATTORNEYS FOR DEFENDANT, AMFAC
DISTRIBUTION CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

JACK C. SILVER
CLERK

(518) 581-7796
(FTS) 736-7786

December 14, 1990

TO: Counsel/Parties of Record

RE: Case # 90-C-667-C Pearson Electric vs. United States *MS*

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

This case is hereby transferred to the Eastern District of Oklahoma per request of the parties at the November 11, 1990 status and scheduling conference.

Very truly yours,

JACK C. SILVER, CLERK

By: *Phyllis*

Deputy Clerk

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

GEIR BJORNSON and DORSIE BJORNSON,)
)
 Plaintiffs,)
)
 vs.)
)
 WAYNE W. THOMAS, SR. d/b/a CLUB)
 ST. THOMAS,)
)
 Defendant.)

Case No. 90-C-370-E

FILED

DEC 11 1990

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

ORDER GRANTING REQUEST FOR
ENTRY OF JUDGMENT

On this 14 day of Dec, 1990, there came on for consideration the Joint Stipulations and Request for Entry of Judgment ("Joint Application") filed in this case by the Plaintiffs, Geir Bjornson and Dorsie Bjornson and the Defendant Wayne W. Thomas, Sr. Upon consideration of the Joint Application, the Court finds that the request for entry of judgment in the Joint Application should be granted, and that judgment should be entered in favor of the Plaintiffs and against Defendant in the amount of \$68,200.00, with pre-judgment interest from April 24, 1988 at the rate of \$11.21 per day until judgment, attorneys fees in the sum of \$4,500.00, plus court costs and post judgment interest thereon as provided by law.

IT IS THEREFORE ORDERED that the request for entry of judgment filed by the Plaintiffs and Defendant is granted. Judgment shall be entered in favor of the Plaintiffs, Geir Bjornson and Dorsie Bjornson, and against Defendant, Wayne W. Thomas, Sr. in the amount of \$68,200.00, with pre-judgment interest from April 24, 1988 at the rate of \$11.21 per day until judgment, attorneys fees in the

sum of \$4,500.00, plus court costs and post judgment interest thereon as provided by law.

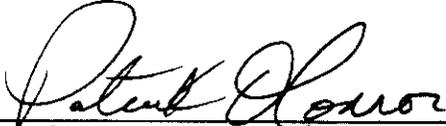
S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

APPROVED:

MOYERS, MARTIN, SANTEE,
IMEL & TETRICK

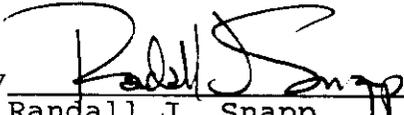
By


Patrick O'Connor, OBA #6743
320 South Boston, Suite 920
Tulsa, Oklahoma 74103
(918) 582-5281

ATTORNEYS FOR PLAINTIFFS,
GEIR BJORNSON AND DORSIE BJORNSON

JONES, GIVENS, GOTCHER & BOGAN

By


Randall J. Snapp
3800 First National Tower
15 East Fifth Street
Tulsa, Oklahoma 74103
(918) 581-8200

ATTORNEY FOR DEFENDANT
WAYNE W. THOMAS, SR.

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

J. A. JOHNSON-BARRY,

Plaintiff,

vs.

UNITED STATES CELLULAR TELEPHONE
COMPANY OF GREATER TULSA,
UNITED STATES CELLULAR CORP-
ORATION, TELEPHONE AND DATA
SYSTEMS, INC., CHARLES LEVINE,
AND DOES I - X,

Defendants.

No. 90-C-0017-E

F I L E D

DEC 14 1990

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

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes before the Court on the Joint Stipulation of Dismissal with Prejudice of the parties. The parties represent to the Court that they have entered into an agreement for an order of dismissal in this matter with no finding of liability on the part of Defendants.

IT IS THEREFORE ORDERED that this matter is dismissed with prejudice with no finding of employment discrimination on the part of Defendants. Each party shall bear its own attorney fees and costs.

S/ JAMES O. ELLISON

James O. Ellison,
United States District Judge

FILED

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA DEC 14 1990

RAYMOND A. DROZ,
Plaintiff,
vs.
AMERICAN GENERAL LIFE &
ACCIDENT INSURANCE COMPANY,
Defendant.

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

Case No. 89-C-635-E

ORDER DISMISSING COUNTERCLAIM WITHOUT PREJUDICE

ON THIS 12th day December, 1990, the Court hereby
dismisses the Counterclaim asserted herein by Defendant American
General Life and Accident Insurance Company without prejudice.

UNITED STATES DISTRICT JUDGE

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

RUSS SERVISS,)
)
 Plaintiff,)
)
 -vs-)
)
 TRUCK CENTER OF TULSA, INC.,)
 an Oklahoma Corporation,)
)
 Defendant and Third)
 Party Plaintiff,)
)
 -vs-)
)
 CATERPILLAR, INC.,)
 a Delaware Corporation,)
)
 Third Party)
 Defendant.)

F I L E D

DEC 4 3 1990

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

Case No. 89-C-⁵⁰⁹~~590~~-E

ORDER OF DISMISSAL WITH PREJUDICE

Upon application of the parties, and for good cause shown, the Court finds that the above styled and numbered cause of action should be dismissed with prejudice to refileing in the future.

IT IS SO ORDERED this 12th day of November, 1990.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

DEC 13 1990

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

JAMES EUGENE ADAMS,

Plaintiff,

vs.

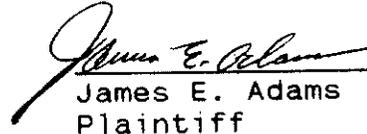
GULF INSURANCE COMPANY,
a foreign corporation,

Defendant.

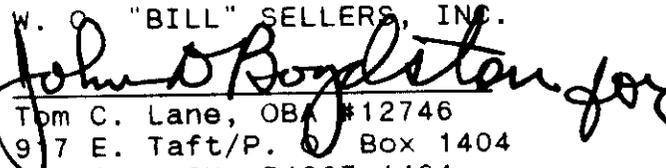
No. 89-C-1058-B

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, James Eugene Adams, and hereby dismisses the above entitled and numbered cause with prejudice to future filing of all claims. In support, Plaintiff would show the Court that this matter has been fully compromised and settled.


James E. Adams
Plaintiff

W. O. "BILL" SELLERS, INC.


Tom C. Lane, OBA #12746
917 E. Taft/P. O. Box 1404
Sapulpa, OK 74067-1404
918-224-5357

Attorney for Plaintiff
James E. Adams

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

STEVEN SHIRCK,

Plaintiff,

vs.

SOONER FEDERAL SAVINGS AND
LOAN ASSOCIATION; SOONER
FEDERAL SAVINGS ASSOCIATION;
FIRST HOME SERVICE
CORPORATION; RESOLUTION TRUST
CORPORATION, in its capacity
as conservator for Sooner
Federal Savings Association,

Defendants,

AND

BROKEN ARROW PLUMBING, INC.;
VANGUARD PLASTICS, INC.;
ADMIRAL MARINE COMPANY;
PLAST-A-MATIC CORP.; AND
CELANESE CORPORATION,

Third-Party
Defendants.

Case No. 90-C-108-*de*

90-C-105-E
cons.

FILED

DEC 13 1990 *at*

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

DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff, Steven Shirck and hereby dismisses
the above-referenced cause with prejudice. Each party shall bear
their own costs and attorney fees.

PICKARD, MILLER & GRAY

[Handwritten Signature]
RANDALL S. PICKARD, OBA #10437
4870 S Lewis, Suite 200
Tulsa, OK 74105

CERTIFICATE OF MAILING

I, Randall S. Pickard, certify that on the 30th day of February, 1990, I caused to be mailed a true and correct copy of the above-documents with postage prepaid to:

Eugene Robinson
P. O. Box 2619
Tulsa, OK 74101
Admiral Marine

Gregory D. Nellis
Thomas, Glass, Atkinson, Haskins, Nellis &
Boudreaux
525 S. Main, Suite 1500
Tulsa, OK 74103
Plast-E-Matic Corporation

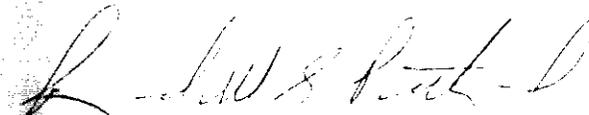
John K. Harlin
2622 East 21st Street, #11
Tulsa, OK 74114
Broken Arrow Plumbing

Randall Snapp
Jones, Givens, Gotcher, Bogan &
Hilborne
3800 1st National Tower
Tulsa, OK 74103
Sooner Federal Savings and Loan Association

Mary Quinn-Cooper
2800 Fourth National Bank Building
Tulsa, OK 74119
Celanese Corporation

John B. Stuart
Wagner, Stuart & Cannon
902 South Boulder
Tulsa, OK 74119
Vanguard Plastics

Anthony P. Sutton
525 South Main, Suite 1400
Tulsa, OK 74103
Insurance Company of North America



RANDALL S. PICKARD

F I L E D

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

DEC 13 1990

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

THRIFTY RENT-A-CAR SYSTEM, INC.,
an Oklahoma corporation,

Plaintiff,

vs.

LOGAN E. GREEN,
an individual,

Defendant.

Case No. 90-C-0139-E

**ORDER GRANTING APPLICATION FOR ATTORNEY
FEES AND FORM OF JUDGMENT**

Upon the Plaintiff's Application for Attorney Fees, filed on October 3, 1990, and there being no response or opposition filed within the time provided therefor by the Defendant, and upon Plaintiff's Application for Entry of Award of Attorney's Fees, filed on December 4, 1990, the Court finds as follows:

1. Thrifty filed its Motion for Summary Judgment on August 6, 1990, and the Court granted Thrifty's Motion and entered Summary Judgment in Thrifty's favor on September 18, 1990 in the principal amount of \$185,494.61, plus interest through date of Judgment at the contract rate, plus interest on that total at the statutory rate until paid, plus Thrifty's costs and attorneys fees to be determined upon application of Thrifty.

2. Thrifty filed its Bill of Costs on October 3, 1990. On October 31, 1990, the Court Clerk taxed Thrifty's costs in the amount of \$1,139.78.

3. Thrifty filed its Application for Attorney Fees on October 3, 1990, seeking attorney fees in the amount of \$8,588.50 through date of judgment and \$600.00 for preparation of Thrifty's verified bill of costs and its attorney fee application, for a total fee of \$9,188.50. Defendant failed to respond or object to Thrifty's application and, pursuant to Local Rule 6(G) is deemed to have waived any objections thereto. The Court hereby finds that Thrifty's Application for Attorney Fees should be, and hereby is, granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that final judgment be entered in favor of Plaintiff Thrifty Rent-A-Car System, Inc. in the amount of \$185,494.61, plus interest through date of judgment in the total amount of \$39,020.00, plus interest on that total accruing from date of judgment at the statutory rate of 7.28% until paid, together with Thrifty's costs in the amount of \$1,139.78 and attorneys fees in the amount of \$9,188.50.

DATED THIS 12th DAY OF Nov., 1990

S/ JAMES O. ELLISON

The Honorable James O. Ellison
UNITED STATES DISTRICT JUDGE

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

STEVEN SHIRCK,

Plaintiff,

vs.

Case No. 90-C-108-*JE* ✓

SOONER FEDERAL SAVINGS AND
LOAN ASSOCIATION; SOONER
FEDERAL SAVINGS ASSOCIATION;
FIRST HOME SERVICE
CORPORATION; RESOLUTION TRUST
CORPORATION, in its capacity
as conservator for Sooner
Federal Savings Association,

Defendants,

AND

BROKEN ARROW PLUMBING, INC.;
VANGUARD PLASTICS, INC.;
ADMIRAL MARINE COMPANY;
PLAST-A-MATIC CORP.; AND
CELANESE CORPORATION,

Third-Party
Defendants.

F I L E D

DEC 13 1990

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

DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff, Steven Shirck and hereby dismisses
the above-referenced cause with prejudice. Each party shall bear
their own costs and attorney fees.

PICKARD, MIKLER & GRAY


RANDALL S. PICKARD, OBA #10437
4870 S Lewis, Suite 200
Tulsa, OK 74105

CERTIFICATE OF MAILING

I, Randall S. Pickard, certify that on the 20th day of November, 1990, I caused to be mailed a true and correct copy of the above-documents with postage prepaid to:

Eugene Robinson
P. O. Box 2619
Tulsa, OK 74101
Admiral Marine

Gregory D. Nellis
Thomas, Glass, Atkinson, Haskins, Nellis &
Boudreaux
525 S. Main, Suite 1500
Tulsa, OK 74103
Plast-E-Matic Corporation

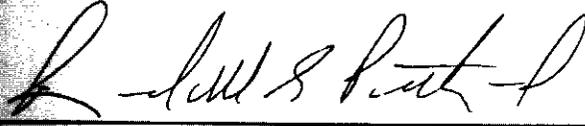
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Tulsa, OK 74114
Broken Arrow Plumbing

Randall Snapp
Jones, Givens, Gotcher, Bogan &
Hilborne
3800 1st National Tower
Tulsa, OK 74103
Sooner Federal Savings and Loan Association

Mary Quinn-Cooper
2800 Fourth National Bank Building
Tulsa, OK 74119
Celanese Corporation

John B. Stuart
Wagner, Stuart & Cannon
902 South Boulder
Tulsa, OK 74119
Vanguard Plastics

Anthony P. Sutton
525 South Main, Suite 1400
Tulsa, OK 74103
Insurance Company of North America



RANDALL S. PICKARD

FILED

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

DEC 4 1990

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

CAESAR C. LATIMER,)	
)	
Appellant,)	
)	
v.)	90-C-499-E
)	
ANDREA VANDYKE,)	
)	
Appellee.)	

ORDER

Appellee has filed a Motion to Dismiss this appeal of the Bankruptcy Court for the reason that the notice of appeal was filed out of time. On May 15, 1990 the Bankruptcy Court ordered the adversary proceeding below dismissed. Not until June 11, 1990 did appellant file his notice of appeal.

Bankruptcy Rule 8002(a) prescribes a ten (10) day period in which to file the notice of appeal. A timely filed notice of appeal is jurisdictional. *Matter of G. General Electro Components, Inc.*, 113 B.R. 122 (D. Conn. 1990); *Matter of Martin*, 92 B.R. 364 (N.D. Ind. 1988); *In re Stagecoach Utilities, Inc.*, 86 B.R. 229 (9th Cir. B.A.P. 1988); *In re Crystal Sands Properties*, 84 B.R. 665 (9th Cir. B.A.P. 1988); *Matter of Endicott*, 79 B.R. 439 (W.D. Mo. 1987). As Appellant filed his appeal outside the ten (10) day jurisdictional window, this Court is left without jurisdiction to hear his appeal.

Therefore, it is hereby ordered that the appeal be dismissed.

SO ORDERED THIS 12th day of December, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

DEC 13 1990

U.S. DISTRICT CLERK
U.S. DISTRICT COURT

THE FIRST NATIONAL BANK OF
CHICAGO,

Plaintiff,

vs.

RESOURCE SCIENCES CORPORATION,

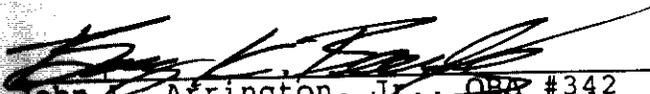
Defendant.

Case No. 90-C-948-B

Notice

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the Plaintiff, First National Bank of Chicago, hereby dismisses without prejudice its cause of action against the Defendant, Resource Sciences Corporation.



John A. Arrington, Jr., OBA #342
Donald A. Kihle, OBA #5008
Larry D. Henry, OBA #4105
Barry K. Beasley, OBA #11220

Attorneys for The First National
Bank of Chicago

OF COUNSEL:

HUFFMAN ARRINGTON KIHLE
GABERINO & DUNN
A Professional Corporation
1000 ONEOK Plaza
Tulsa, Oklahoma 74103
(918) 585-8141

CERTIFICATE OF MAILING

I, Barry K. Beasley, hereby certify that on the 13th day of December, 1990, a true, correct and exact copy of the foregoing STIPULATION OF DISMISSAL WITHOUT PREJUDICE was mailed with postage fully prepaid thereon to the following:

Michael T. Keester
Jones Givens Gotcher & Bogan
3800 1st National Tower
Tulsa, Oklahoma 74103


Barry K. Beasley

F I L E D

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

DEC 13 1990

GENEVIEVE THACHER now WILSON,)

Plaintiff,)

vs.)

BLAGG WRECKING CO., INC.,)
and BAXTER L. BLAGG,)

Defendants.)

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

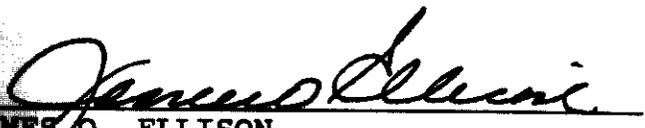
No. 90-C-750-E

ADMINISTRATIVE CLOSING ORDER

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

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 12th day of December, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

DEC 13 1990

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

JOHN W. WHALEN,

Plaintiff,

vs.

URE CO., a Texas corporation,
formerly UNIT RIG AND
EQUIPMENT COMPANY, a
Texas corporation; UNIT RIG
INC., a Delaware corporation;
MRL ACQUISITION CORP., a
Delaware corporation; and
TEREX CORPORATION, a Delaware
corporation,

Defendants.

Case No. 88-C-1667-B ✓

J U D G M E N T

In accordance with the jury verdict rendered on December 12, 1990, Judgment is hereby entered in favor of Plaintiff, John W. Whalen and against the Defendants, UNIT RIG INC., MRL ACQUISITION CORP., and TEREX CORPORATION, in the amount of \$106,766.95, plus post-judgment interest at the rate of 7.28% (28 U.S.C. § 1961) from December 13, 1990, until said Judgment is paid. Costs are assessed against the Defendants, if timely applied for under Local Rule 6. Attorney fees, if appropriate, may be requested if timely applied for under Local Rule 6.

DATED this 13th day of December, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

For good cause shown, said Motion is granted and the above-styled actions are hereby dismissed with prejudice, specifically preserving Plaintiffs' right to, and do not dismiss with prejudice, their potential claims for cancer and fear of cancer, against the Defendant, Owens-Corning Fiberglas Corporation, only, specifically reserving Plaintiffs' rights as to all other parties or entities herein. This dismissal with prejudice shall be deemed to be effective as of January 15, 1990.

IT IS SO ORDERED.

JUDGE OF THE DISTRICT COURT

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

DEC 13 1990
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

ANITA M. DESCHER,

Plaintiff,

vs.

Case No. 90-C-213-B

AMERICAN FOUNDRY GROUP
INCORPORATED, an Oklahoma
corporation; REXNORD HOLDINGS
INC., a Delaware Corporation;
and DANA CORPORATION, a
Delaware corporation,

Defendants.

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE
BETWEEN AND AS TO ANITA M. DESCHER,
REXNORD HOLDINGS AND DANA CORPORATION

COMES NOW Anita M. Descher, Rexnord Holdings Inc., and
Dana Corporation by and through their attorneys of record
and, pursuant to FRCP 41, do dismiss this cause of action
against each other with prejudice.

DATED this 12th day of Dec., 1990.

REXNORD HOLDING, INC.
DANA CORPORATION

Anita M. Descher

By:

Madalene A. B. Witterholt
Madalene A. B. Witterholt
Crowe & Dunlevy
321 S. Boston
Suite 500
Tulsa, OK 74103

By:

Thomas H. Hull
Thomas H. Hull
Council Oak Center
1717 South Cheyenne Avenue
Tulsa, Oklahoma 74119

Attorney for Rexnord Holdings
Inc. and Dana Corporation

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, this 12th day of December, 1990, to:

Thomas H. Hull
Council Oak Center
1717 South Cheyenne Avenue
Tulsa, Oklahoma 74119

M. W. Schubert

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

DEC 13 1990

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

LILLIAN A. GRAHAM,
Plaintiff,
vs.
AMERICAN AIRLINES, INC.,
Defendant.

No. 86-C-516-C

ORDER

Before the Court is the motion of the plaintiff to vacate. On August 11, 1989, the Court entered judgment in this Title VII action in favor of the defendant. On August 8, 1990, plaintiff filed the present motion.

Plaintiff expressly states that her motion is made pursuant to Rule 60(b)(3) F.R.Cv.P., which provides authorization to vacate a judgment for "fraud ... misrepresentation, or other misconduct of an adverse party." See Anderson v. Dept. of Health & Human Services, 907 F.2d 936, 952 (10th Cir. 1990). The motion has been made within the one year time limit imposed by the Rule.

Defendant spends some portion of its response brief addressing the distinction between intrinsic and extrinsic fraud. However, Rule 60(b)(3) abolishes that distinction. Wilkin v. Sunbeam Corp., 466 F.2d 714, 717 (10th Cir. 1972), cert. denied, 409 U.S. 1126 (1973). While some cases have applied the old distinction in an independent action to set aside the judgment (including Wood v.

McEwen, 644 F.2d 797 (9th Cir. 1981), which defendant cites), they are disapproved. See C.Wright & A.Miller, Federal Practice and Procedure, §2861 at 196. Consequently, defendant's assertion that perjury or discovery abuse do not permit relief under the Rule is incorrect. Therefore, the Court will consider the plaintiff's assertions without regard to the purported distinction.

To prevail on such a motion, the movant must present clear and convincing proof of fraud, misrepresentation, or misconduct. Anderson, 907 F.2d at 952. In her lengthy papers, plaintiff makes wide-ranging accusations of bogus engine records, discovery abuse and perjury. Upon review, the Court finds that the vast majority of these issues were dealt with during the course of the trial, or were previously denied as untimely requests for discovery, i.e., reflecting lack of due diligence in raising the matters. Further, many of these allegations have now been litigated in Graham v. American Airlines, 89-C-815-P, an action in which summary judgment has been orally entered in defendant's favor. The errors in records which are reflected do not rise to the level of a "scheme of fraud", as plaintiff alleges. Upon full review, the Court concludes that plaintiff has not sustained her burden of proof.

Although the first paragraph of her brief refers to Rule 60(b)(3), some of the language plaintiff uses indicates that she also seeks to assert "fraud upon the court", which is a separate,

albeit nebulous, concept under Rule 60(b).¹ The Tenth Circuit has stated that fraud on the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), cert. denied, 474 U.S. 1086 (1986). Again, plaintiff has made no such showing.

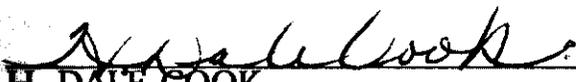
On November 21, 1990, plaintiff filed an application for leave to file supplemental brief and for limited discovery allowance. The application states that it is made pursuant to Rule 60(b)(2) F.R.Cv.P., i.e., newly discovered evidence. The application is thus made beyond the one-year limitation imposed by the Rule. The Court does not believe that the time limit may be circumvented by attempting to "supplement" a timely filed motion, particularly when the new motion relies upon a different provision of the Rule. Even viewing the motion as timely, the material presented by plaintiff fails to meet the requirements for relief under Rule 60(b)(2). See Graham v. Wyeth Laboratories, 906 F.2d 1399, 1416 (10th Cir. 1990); McCullough Tool Co. v. Well Surveys, Inc., 343 F.2d 381, 410 (10th Cir. 1965), cert. denied, 383 U.S. 933 (1966). The request for additional discovery is likewise far too late, for the reasons expressed in the Court's Order of May 15, 1989.

It is the Order of the Court that the motion of the plaintiff, Lillian A. Graham, to vacate is hereby DENIED.

¹*Any fraud connected with the presentation of a case to a court is a fraud upon the court, in a broad sense. That cannot be the sense in which the term is used in the final saving clause of Rule 60(b)." Wright & Miller, §2870 at 253. (footnote omitted).*

It is the further Order of the Court that plaintiff Graham's application for leave to file supplemental brief and for limited discovery allowance is hereby DENIED.

IT IS SO ORDERED this 13th day of December, 1990.


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

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

FILED

DEC 12 1990

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

KENNETH D. CAZZELL, an individual,)
and ZELCO MANUFACTURING, INC., an)
Oklahoma corporation,)

Plaintiffs,)

vs.)

PIEDMONT AMERICAN LIFE, AMERICAN)
INSTITUTE OF MANAGEMENT SERVICES,)
INC., EMPLOYEE BENEFIT ANALYSTS,)
and DON KENNEDY,)

Defendants.)

No. 90-C-0026-B

ORDER

Before the Court for decision are a Motion for Partial Summary Judgment filed by Defendants Don Kennedy ("Kennedy") and Employee Benefit Analysts ("EBA") and Defendant Piedmont American Life's ("Piedmont") Motion for Summary Judgment. The Court has previously held in overruling Plaintiffs' Motion to Remand and denying Plaintiffs' jury trial demand that Plaintiffs' causes of action are governed by the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") and that all of Plaintiffs' state law claims are preempted by ERISA. At a hearing before the Court on September 14, 1990, the parties agreed to rest on their briefs regarding the Motions for Summary Judgment.

On August 11, 1988, Piedmont issued its Group Health Policy No. 1111 ("policy") to the Trustees of the Insurance Trust Fund of the American Association of Independent Employers, Inc. ("AAIE"). The policy provided that employees of AAIE member employers

electing to participate would be covered for major medical and other specified health insurance benefits. On November 30, 1988, Zelco submitted an application for participation under the Policy, together with an application for membership to AAIE. Effective December 1, 1988, Zelco was admitted to AAIE membership and its employees were issued a certificate of insurance under the policy. Plaintiff Zelco issued premium checks to numerous payees in the total sum of \$15,565.99, covering a period from December 2, 1988 through September 25, 1989. Plaintiff Cazzell suffered a heart attack on April 20, 1989 and incurred medical expenses in the approximate sum of \$30,000.00. Cazzell filed his claim with Piedmont who then denied said claim because of an alleged misrepresentation contained in Cazzell's application for insurance. On September 18, 1989, Defendants notified Plaintiffs that the insurance policy was being canceled effective 11:59 p.m. on October 31, 1989.

On December 13, 1989, Plaintiffs initiated in Tulsa County District Court an action for breach of contract, negligence, and breach of fiduciary duty arising out of a group health insurance policy. Plaintiffs also assert Piedmont wrongfully canceled its health insurance policy. Defendant Piedmont petitioned for removal to this Court on January 12, 1990, citing this Court's original jurisdiction over ERISA matters, pursuant to 28 U.S.C. § 1331.

In their Motion for Partial Summary Judgment, Defendants EBA and Kennedy assert that Plaintiffs failed to produce any evidence in support of their claim for wrongful post-claim underwriting and

negligence in issuance of the policy; additionally, they ask for sanctions to be imposed on Plaintiffs. Plaintiffs claim in their Response that the Motion is premature inasmuch as Plaintiffs were awaiting completion of discovery, but they have now waived same conceding that the Motions are at issue.

Defendant Piedmont argues that Plaintiffs' state law claims are preempted by ERISA, and that under ERISA the propriety of Piedmont's decisions are to be determined on the terms of the employee benefit plan, which in this situation is the insurance policy itself, as well as applicable federal law. Piedmont contends that ERISA does not entitle Plaintiffs to recover punitive or consequential damages under any circumstances or to assert a claim for emotional distress. As fiduciary of the benefit plan, Piedmont maintains that its decisions regarding the awarding of benefits and cancellation of the policy should be reviewed under the arbitrary and capricious standard. Piedmont continues urging that since the certificate of insurance and group enrollment form specifically provided that: 1) any misrepresentation of the applicant's medical history is grounds for rescission of coverage, and 2) no person was authorized to alter the form or advise an employee to answer any question inaccurately or untruthfully, Piedmont contends that its decisions were neither arbitrary nor capricious. Finally, Piedmont claims that, under ERISA, Zelco as an employer has no standing to bring suit for termination of the policy.

In their Response, Plaintiffs point to several controverted

material facts. They deny that their claims under state law are preempted by ERISA, since they dispute that the policy of insurance constitutes an ERISA plan. They argue that a question of fact remains as to whether the alleged diabetes misrepresentation was Cazzell's or Kennedy's. If it were Kennedy's, Plaintiffs assert that Piedmont is bound by it; however, even if it were Cazzell's, Plaintiffs submit that the misrepresentation was not material to the risk borne by the Defendant Piedmont, as Oklahoma law requires in order for Piedmont to prevail. Finally, Plaintiffs allege that Piedmont breached the policy contract with Zelco by canceling without cause when the policy had been in force fewer than twelve months, and the breach claim is governed by state law.

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

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish

that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

As noted above, this Court has previously held in its Orders overruling Plaintiffs' Motion to Remand and denying Plaintiffs' Demand for Jury Trial that the Plaintiffs' state law claims are preempted by ERISA and that the health insurance plan, Group Health Policy No. 1111, meets the statutory requirements of a welfare plan. In accordance with 29 U.S.C. § 1022 (b), the terms of the Policy specified the "plan's requirements respecting eligibility for participation and benefits" as well as the "circumstances which may result in disqualification, ineligibility, or denial or loss of benefits." By regulation, Piedmont is deemed to be the fiduciary of the plan, 29 CFR § 2560.503-1 (g)(2). In Firestone Tire and Rubber Co. v. Bruch, 57 U.S.L.W. 4194, 109 S. Ct. 948 (1989), the Supreme Court ruled that a denial of benefits challenge under 29 U.S.C. § 1132(a)(1)(B) should be reviewed

under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe terms of the plan. . . . Of course, if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conduct must be weighed as a "factor[] in determining whether there is an abuse of discretion." Id. at 4198 (citation omitted).

The Supreme Court did not explicitly state what standard should be applied in a situation such as the one currently before

the Court in which a fiduciary with a conflict of interest has the discretion to determine benefits. The Tenth Circuit Court of Appeals has not specifically addressed the issue to date; nevertheless, many other Circuit decisions previous and subsequent to Firestone used an "arbitrary and capricious standard," as urged by Defendant Piedmont. Regardless of whether this Court applies an arbitrary and capricious standard or one of abuse of discretion, the end result is identical: Because factual questions regarding (1) Cazzell's history of diabetes and the materiality of the diabetes condition to the risk assumed by Piedmont remain, as well as (2) Kennedy's knowledge, it is premature for the Court to grant summary judgment on legal disputes involving these disputed facts.

Whether Zelco's claim for wrongful termination of the policy falls under the provisions of ERISA or is a pendent state claim for breach of contract, Piedmont's motion for Summary Judgment regarding the wrongful cancellation of the policy based on the terms and provisions of the policy is nevertheless equally compelling. The undisputed facts before the Court are that Piedmont issued the policy to AAIE on August 1, 1988. The policy clearly and unambiguously outlines the possible ways in which it can end, which include the following: "After this Policy has been in force for 12 months, We may terminate all of the insurance under the Policy, by giving the Policyholder written notice 31 days in advance." (Paragraph d, Term and Policy Renewal Privilege, page P4.)

On November 30, 1988, Zelco submitted an application for

participation under the policy, along with an application for membership in AAIE; effective December 1, 1988, Zelco was admitted to AAIE membership and was issued a Certificate of Insurance by Piedmont. The Certificate states on its cover in large, capital letters: "After the Policy has been in force for 12 months, we have the right to terminate the policy with the policyholder." On September 10, 1989, in a letter from Frederic Marrow, Vice-President, Piedmont gave notice to participants in AAIE that the insurance would terminate effective 11:59 p.m. on October 31, 1989. Zelco received a copy of the termination letter on September 21, 1989. Thus, Piedmont canceled the policy in accordance with its terms.

Insofar as the claim by Zelco for wrongful cancellation of the policy is unsupported by the facts, the sole remaining dispute revolves around Plaintiff Cazzell's claim for improper denial of benefits against Piedmont as fiduciary under 29 U.S.C. § 1109. In Massachusetts Mutual Life Insurance Company v. Russell, 473 U.S. 134 (1985), the Supreme Court held that ERISA does not permit the recovery of punitive damages in a suit regarding the breach of fiduciary duty or in connection with the recovery of benefits. Even under state law, no punitive damage bad faith denial of coverage claim exists, because there is a legitimate coverage dispute centered in the alleged diabetic misrepresentation. See Norman's Heritage Real Estate Co. v. Aetna Casualty and Surety Co., 727 F. 2d 911 (10th Cir. 1984); Manis v. Hartford Fire Insurance Co., 681 P. 2d 760 (Ok. 1984); McCorkle v. Great Atlantic Insurance

Co., 637 P. 2d 583 (Ok. 1981).

Having thus considered the Motion for Partial Summary Judgment filed by Defendants Kennedy and EBA, the Court finds that it should be and is hereby DENIED.

Furthermore, having thus considered the Motion for Summary Judgment filed by Defendant Piedmont, the Court finds that it should be SUSTAINED with respect to the requests seeking relief from the claims for punitive damages and for wrongful cancellation of the policy asserted by Zelco. The Court has previously ruled that Plaintiff's state law claims are preempted by the provisions of ERISA. Because factual questions remain regarding Plaintiff Cazzell's claim for the wrongful denial of benefits, the Court finds that Defendant Piedmont's Motion in this regard should be and is hereby DENIED.

The Court hereby sets the following schedule:

January 11, 1991	AMEND THE PLEADINGS OR ADD ADDITIONAL PARTIES;
February 1, 1991	EXCHANGE THE NAMES AND ADDRESSES OF ALL WITNESSES, INCLUDING EXPERTS, IN WRITING, ALONG WITH A BRIEF STATEMENT REGARDING EACH WITNESS' EXPECTED TESTIMONY (UNNECESSARY IF WITNESS' DEPOSITION TAKEN);
February 15, 1991	COMPLETE ALL DISCOVERY;
March 11, 1991	FILE AN AGREED PRETRIAL ORDER AND EXCHANGE ALL PRENUMBERED EXHIBITS;
March 18, 1991	FILE SUGGESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ANY TRIAL BRIEFS;
March 25, 1991	NON-JURY TRIAL AT 9:00 A.M.

IT IS SO ORDERED **this** 12th day of DECEMBER, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 12 1990

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

RALPH COBLENTZ

Plaintiff

vs

No. 90-C-932-B

CONSOLIDATED LOCAL UNION 867

EMPIRE BLUE CROSS BLUE SHIELD

Defendants

ORDER OF DISMISSAL WITH PREJUDICE

On this 12 day of December, 1990 the court considered the Application for Dismissal filed herein by the Plaintiff showing the Court the issues in this case have been fully compromised and settled. Accordingly, the Court finds this action should be dismissed with prejudice.

IT IS SO ORDERED.



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

FILED

DEC 12 1990

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

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

DOYLE E. OWEN, JR.,

Plaintiff,

vs.

Case No. 89-C-615-B

MID-CENTURY INSURANCE COMPANY
and MISSOURI PACIFIC RAILROAD
COMPANY, a Delaware corporation,
d/b/a UNION PACIFIC,

Defendants.

O R D E R

NOW on this 12 day of Dec., 1990,
plaintiff's Application to Dismiss with Prejudice came on for
hearing. The Court being fully advised in the premises finds
that said Application should be sustained and the defendants,
should be dismissed from the above entitled action with
prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that
plaintiff's Application to Dismiss With Prejudice be sustained
and the above captioned action be dismissed with prejudice as to
defendants.

S/ THOMAS R. BRETT

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

entered

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

UNITED ENTERTAINMENT, INC.,)
)
Plaintiff,)
)
v.)
)
MEINHARD-COMMERCIAL WESTERN, INC.)
)
Defendant.)
)
THE CIT GROUP/FACTORING MEINHARD-)
COMMERCIAL WESTERN, INC.,)
)
Plaintiff,)
)
v.)
)
BILL F. BLAIR,)
)
Defendant.)

88-C-502-C

FILED

DEC 11 1990

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

88-C-1655-C

Consolidated

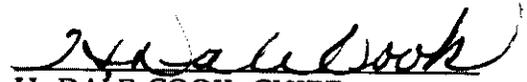
ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed October 31, 1990, in which the Magistrate recommended that fees be awarded in favor of CIT Group/Factoring Meinhard-Commercial Western, Inc. and against United Entertainment, Inc. and Bill F. Blair in the amount of \$62,105.50. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that fees are awarded in favor of CIT Group/Factoring Meinhard-Commercial Western, Inc. and against United Entertainment, Inc. and Bill F. Blair in the amount of \$62,105.50.

Dated this 10 day of December, 1990.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

FILED

DEC 11 1990

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

GERALD L. HEADLEY, ROBERT A.)
FRANDEN and JOHN O. DEAN,)
Trustees of the Otasco)
Employees Retirement Trust,)

Plaintiffs,)

v.)

MCCRORY CORPORATION; RAPID-)
AMERICAN CORPORATION, et al.,)

Defendants)

Case No. 90-C-891-C

JUDGMENT

Now on this 10 day of Dec, 1990, there comes on for consideration the application of Plaintiffs for default judgment against Defendant, Alzheimer and Gray. After being fully informed in the premises, the Court makes the following findings of fact and conclusions of law:

1. The Court finds that Defendant, Alzheimer and Gray, was duly and properly served with process in this action by U.S. First Class, Certified Mail, on October 26, 1990; that the answer date for said Defendant has passed and said Defendant is in default.

2. The Court further finds that, pursuant to the provisions of F.R.C.P. 55, Plaintiffs are entitled to immediately have judgment against said Defendant in the amount of Nine Million, Three Hundred Thousand Dollars (\$9,300,000.00); that the Court Clerk should immediately enter judgment in favor of Plaintiffs and against said Defendant in the stated amount.

3. The Court further finds that part of Plaintiffs' claims against Defendant, Alzheimer and Gray, are not for a sum certain;

NOTE: THIS ORDER IS TO BE MAILED
BY CLERK TO THE COURT AND
FILED WITHIN 24 HOURS
OF THE DATE.

therefore, Plaintiffs are immediately entitled to judgment on their remaining claims against Defendant, Alzheimer and Gray; however, judgment shall not be entered on said remaining claims until after the Court has conducted a hearing on such claims.

IT IS SO ORDERED.

s/ H. DALE COOK

H. DALE COOK, U.S. DISTRICT JUDGE

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

JEANETTA D. WILLIAMS,

Plaintiff,

v.

DECOR CORPORATION and
CLAIRE'S BOUTIQUES, INC., a
successor in interest to
DECOR CORPORATION,

Defendants.

Case No. 90-C-681-C

FILED

DEC 11 1990

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

ORDER

This matter having come before the Court this 11 day of
November, 1990, upon the parties' Joint Stipulation of Dismissal
With Prejudice and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this action
be dismissed with prejudice to the filing of the future action,
the parties to bear their own costs and attorney's fees.


UNITED STATES DISTRICT JUDGE

0770-0002
REE/nrs

Firm Bar No. 31

Entered

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

JOHN E. BURNS, RICHARD K.
GREEN, GARLAND RICHARDS
and RAYMOND J. ROMANO, on
behalf of themselves and all others
similarly situated,

Plaintiff,

v.

LIFELINE HEALTHCARE GROUP,
LTD., MICHAEL L. ANDERSON,
TRAVIS G. MILLER, ALAN
SCHULMAN, JOHN W. BENSON,
CECIL S. MATHIS, CHARLES J.
BAZARIAN, SOUTH CENTRAL
FINANCIAL COMPANY, NATURADE
PRODUCTS, INC., SFS ACQUISITION
CORP., NATURADE, INC., and
LIFELINE HOMECARE SERVICE, INC.,

Defendants.

Case. No. 90-C-705 C

FILED
DEC 11 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER GRANTING PARTIAL DISMISSAL WITHOUT PREJUDICE

NOW, on this 10 day of December, 1990, there comes on before
this Court the Plaintiff's Motion to dismiss without prejudice its third cause of action for common
law fraud and deceit against the Defendants, Alan Schulman and Naturade Products, Inc., only.
For good cause shown and in the interests of justice, the Court finds that said Motion should be
granted.

IT IS THEREFORE THE ORDER OF THE COURT that Plaintiff's third cause of action
for common law fraud and deceit herein is hereby dismissed without prejudice as against the
Defendants, Alan Schulman and Naturade Products, Inc.

IT IS FURTHER THE ORDER OF THE COURT that Defendants, Alan Schulman and Naturade Products, Inc., are hereby granted ten (10) days from the date of this Order within which to Answer or otherwise respond to Plaintiff's Amended Class Action Complaint for Damages filed herein on October 30, 1990.

LIFE OAK COURT

United States District Court Judge

APPROVED:

VANDIVORT & ASSOCIATES, INC.
ATTORNEYS FOR PLAINTIFF

By: 

Richard E. Elsea, OBA No. 10285
Suite 210, Avanti Building
810 South Cincinnati Avenue
Tulsa, Oklahoma 74119-1612
(918) 584-7700

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
ATTORNEYS FOR ALAN SCHULMAN
AND NATURADE, PRODUCTS, INC.

By: 

Donald L. Kahl, OBA #4855
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

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

KOTV, INC., a Delaware
corporation,

Plaintiff,

vs.

Case No. 89-C-798-C

GARY VANCE, an individual,
d/b/a BIG RED SALES,

Defendant and
Third Party
Plaintiff,

vs.

ROBIN REDDING, an individual,
d/b/a MEDIA CLIPS,

Third Party
Defendant.

FILED
DEC 11 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 10 day of December 1990, the Court,
having examined the Joint Stipulation for Dismissal With
Prejudice of the Complaint of the Plaintiff and the Counterclaim
and Third Party Claim of Defendant, Gary Vance, FINDS that the
case should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the
Complaint of the Plaintiff, KOTV, Inc., the Counterclaim of
Defendant, Gary Vance, and the Third Party Claim of Defendant,
Gary Vance, be dismissed with prejudice as to any further action.

s/H. DALE COOK

H. DALE COOK
United States District Judge

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

RONALD STEVE MASON,)
)
Plaintiff,)
)
v.)
)
CARL BARNETT,)
)
Defendant.)

90-C-754-C

FILED

DEC 11 1990

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

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed September 19, 1990 in which the Magistrate recommended that Plaintiff's action against both Defendants be dismissed as frivolous, pursuant to 28 U.S.C. §1915(d).

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

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

It is, therefore, Ordered that Plaintiff's action against both Defendants is dismissed as frivolous, pursuant to U.S.C. §1915(d).

Dated this 10th day of December, 1990.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ONE PARCEL OF REAL PROPERTY,
WITH BUILDINGS, APPURTENANCES,
IMPROVEMENTS, AND CONTENTS,

KNOWN AS:

2121 EAST 30TH STREET,

TULSA, OKLAHOMA,

and

ONE 1989 CADILLAC 4-DR.

FLEETWOOD,

Defendant.

CIVIL ACTION NO. 90-C-728-C

FILED

DEC 11 1990

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

JUDGMENT OF FORFEITURE

This cause having come before this Court upon Plaintiff's Application filed herein, and being otherwise fully apprised in the premises, the Court finds as follows:

That the verified Complaint for Forfeiture In Rem was filed in this action on the 24th day of August, 1990; the Complaint alleges that the defendant real property, with buildings, appurtenances, improvements, and contents, and the defendant vehicle, are subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(A), because they were involved in a transaction, or attempted transaction, in violation of 18 U.S.C. § 1957 and pursuant to 18 U.S.C. § 981(a)(1)(C), because they constitute proceeds or are derived from proceeds traceable to a violation of 18 U.S.C. § 1344.

That a Warrant of Arrest In Rem was issued on the 28th day of August, 1990, by the Honorable H. Dale Cook, Chief Judge of the United States District Court for the Northern District of Oklahoma, as to the defendant real property and contents.

That a Warrant of Arrest and Notice In Rem was issued on the 28th day of August, 1990, by the Clerk of the United States District Court for the Northern District of Oklahoma as to the defendant vehicle.

That the United States Marshals Service personally served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest In Rem on the defendant real property, with buildings, appurtenances, improvements, and contents on the 30th day of August, 1990.

That the United States Marshals Service served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest and Notice In Rem as to the defendant vehicle by serving FBI Forfeiture Analyst Beth Wilson at the Office of the Federal Bureau of Investigation, Oklahoma City, Oklahoma, on the 20th day of September, 1990.

That the United States Marshals Service personally served all persons having an interest in this action, as follows:

Gary B. Hobbs	August 30, 1990
Mary Kay Hobbs	August 30, 1990

Floyd R. Hardesty
by serving
Joel Wohlgemuth,
his Attorney September 6, 1990

Donna J. Hardesty
by serving
Joel Wohlgemuth,
her attorney September 6, 1990

J. Bryant Hobbs August 5, 1990

Mae Hobbs August 5, 1990

Citicorp Mortgage, Inc.,
a Delaware Corporation,
by serving its
Registered Agent,
The Corporation
Company October 18, 1990

That the United States Marshals Service attempted to make service upon Citicorp Mortgage, Inc. at its offices at 15851 Clayton Road, Ballwin, Missouri (Mail Station 338 - P. O. Box 790017, St. Louis, Missouri 63179), but was unsuccessful in making this service at this address; that this service was not required, since Citicorp Mortgage, Inc. was properly served by serving its Registered Agent, as set forth above.

That USMS Forms 285 reflecting the service and attempted service are on file herein.

That Floyd R. Hardesty and Donna J. Hardesty filed for an extension of time to file a claim in this action, through their attorney Joel L. Wohlgemuth; that these Claimants subsequently furnished to the plaintiff documentation of their purchase of a portion of the real property which was initially

included in this forfeiture action; that they purchased the following-described portion of the subject real property:

The East 45 feet of Lot Seven (7), Block Thirteen (13), FOREST HILLS, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof, being more particularly described as follows, to-wit:

Beginning at the Northeast corner of said Lot 7; thence Westerly along the North line of said Lot 7 a distance of 45 feet to a point; thence Southerly on a straight line parallel to the East line of said Lot 7 a distance of 162.92 feet to a point on the South line of said Lot 7; thence Easterly along the South line of said Lot 7 a distance of 45 feet to the Southeast corner of said Lot 7; thence Northerly along the East line of said Lot 7 a distance of 162.05 feet to the POINT OF BEGINNING,

and

That part of Lot Eight (8), Block Thirteen (13), FOREST HILLS, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof, being more particularly described as follows, to-wit:

BEGINNING at the Northwest corner of said Lot 8; thence Easterly along the North line of said Lot 8, 55 feet to a point; thence Southerly on a straight line to a point on the South line of said Lot 8, 55 feet Easterly from the Southwest corner of said Lot 8; thence Westerly along the South line of said Lot 8, 55 feet to the Southwest corner; thence Northerly along the West line of said Lot 8, 162.05 feet to the POINT OF BEGINNING.

That thereafter the plaintiff filed herein on the 19th day of October, 1990, its Notice of Partial Dismissal, covering that portion of the real property which was initially included in this action, as above described, and which was conveyed by Gary B. Hobbs and Mary K. Hobbs to Floyd R. Hardesty and Donna J. Hardesty by General Warranty Deed on the 29th day of September, 1989, recorded in Book 5210 at Page 2283 in the Office of the County Clerk of Tulsa County, Oklahoma.

That on the 19th day of October, 1990, plaintiff filed herein its Notice of Partial Dismissal as to all contents within the building on the real property which is the subject of this action, except those contents hereinafter specifically described.

That all persons interested in the defendant real and personal properties hereinafter described were required to file their claims herein within ten (10) days after service upon them of the respective Warrant(s), publication of the Notice of Arrest and Seizure, or actual notice of this action, whichever occurred first, and were required to file their answer(s) to the Complaint within twenty (20) days after filing their respective claim(s).

That the defendant properties and all persons and entities upon whom personal service was effectuated more than twenty (20) days ago have failed to file their respective claims or answers, as directed in the Warrants of Arrest In Rem on file

herein, except Citicorp Mortgage, Inc., which filed its Claim herein on the 9th day of November, 1990, as to the defendant real property, in the principal amount of \$441,754.11, plus interest accruing thereon from the 1st day of July, 1990, at the rate of 12% per annum, in support of its Mortgage executed by Gary B. Hobbs and Mary K. Hobbs on the 16th day of May, 1989, and recorded in Book 5185 at Page 415 as Instrument No. 805027 in the Office of the County Clerk of Tulsa County, Oklahoma, which Claim the plaintiff recognizes.

That the United States Marshals Service gave public notice of this action and arrests to all persons and entities by advertisement in the Tulsa Daily Business Journal & Legal Record on October 25 and November 1 and 8, 1990; and that Proof of Publication was filed of record on November 20, 1990.

That no other claims, papers, pleadings, or other defenses have been filed by the defendant properties or any persons or entities having an interest therein.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the following-described defendant real property, with buildings, appurtenances, improvements, and contents, subject to the Claim of Citicorp Mortgage, Inc., which Claim shall be satisfied by the United States Marshal for this District at the time the defendant real property is disposed of, in the order of priority indicated below, from the net proceeds from the sale of the defendant real property, and that said

defendant real property, with buildings, appurtenances, improvements, and contents be, and the same are, hereby forfeited to the United States of America for disposition by the United States Marshal according to law, and that no right, title, or interest shall exist in any other party:

REAL PROPERTY:

- a) All of Lots Six (6) and Seven (7), and that part of Lot Eight (8) described as follows, to-wit: BEGINNING at the NW Corner of said Lot Eight (8), thence Easterly along the N line of said Lot fifty-five (55) feet to a point; thence Southerly on a straight line to a point on the S line of said Lot fifty-five (55) feet Easterly from the SW Corner of said Lot; thence Westerly along the S line of said Lot fifty-five (55) feet to the SW Corner of said lot; thence Northerly along the W line of said Lot one-hundred sixty-two and five one-hundredths (162.05) feet to a point of beginning, all in Block Thirteen (13) of FOREST HILLS, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof,

LESS AND EXCEPT:

The East 45 feet of Lot Seven (7), Block Thirteen (13), FOREST HILLS, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof, being more particularly described as follows, to-wit:

Beginning at the Northeast corner of said Lot 7; thence Westerly along the North line of said Lot 7 a distance of 45 feet to a point; thence Southerly on a straight line parallel to the East line of said Lot 7 a distance of 162.92 feet to a point on the South line of said Lot 7; thence Easterly along the South line of said Lot 7 a distance of 45 feet to the Southeast corner of said Lot 7; thence Northerly along the East line of said Lot 7 a distance of 162.05 feet to the POINT OF BEGINNING,

and

That part of Lot Eight (8), Block Thirteen (13), FOREST HILLS, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof, being more particularly described as follows, to-wit:

BEGINNING at the Northwest corner of said Lot 8; thence Easterly along the North line of said Lot 8, 55 feet to a point; thence Southerly on a straight line to a point on the South line of said Lot 8, 55 feet Easterly from the Southwest corner of said Lot 8; thence Westerly along the South line of said Lot 8, 55 feet to the Southwest corner; thence Northerly along the West line of said Lot 8, 162.05 feet to the POINT OF BEGINNING,

and its contents,

CONTENTS:

One Epson Equity LT Laptop Computer,
Model #Q150A; Serial No. 022621

One Sharp FO-200 Facsimile,
Serial No. 75129464

One IBM Wheelwriter 3 Electric
Typewriter, ID No. 13567000523864

One Hewlett-Packard DeskJet Printer,
Model No. 2276A; Serial No. 2832S10231

One IBM 5 1/4" Disk Drive, Type 4869;
ID No. 86-0287821

One IBM Personal System 2 Computer
w/1.44 3 1/2" Disk Drive Model
50Z; Type 8550-031; Serial No. 72-
7120226

One IBM Personal System 2
Monochrome Monitor Type 8503-001;
Serial No. 72-0457976

One IBM Keyboard, Model M; ID No.
2890230

Two Matching Burgundy Leather
Office Side Chairs, St. Timothy
Chair Co.

One Steelcase Reclining/Swivel
Burgundy Leather Highback Office
Chair, Model #458/215SU

One Burgundy Leather Highback/
Wingback Reclining Swivel Office
Chair. St. Timothy Chair Co.

Three Kimball Two-Drawer Lateral
File Cabinets (Cherry Wood)

Two Alma Desk Co. Computer Tables
w/pullout Keyboard Tables (Cherry
Wood)

One Kimball 6-Drawer Credenza
(Cherry Wood)

One Kimball 9-Drawer Executive
Desk w/Glass Top (Cherry Wood)

Two Klipsch Stereo Speakers, Type
HFB; Serial No. 89112621 & Serial
No. 89112622

One Yamaha Turntable, Model YP-
701; Serial No. 8427

One Nakamichi High Definition
Tuner Amplifier, Model No. TA-3A;
Serial No. D10906817

One Toshiba Compact Disc Player
w/Toshiba Compact Disc Power
Supply, Model No. XR9459; ID No.
9660000330, Model No. TAC-210; ID
No. 9516

One Precor Ergo/Smart Push-Pedal-
Pull Treadmill M 9.4, Serial No.
32B09B0004

One SoloFlex w/Rubber Weights

Two Ethan Allen Arm Chairs, ID
Nos. 11-6211A and 18-0981

Five Ethan Allen Side Chairs, ID
Nos. 11-6211 and 18-1281

One Ethan Allen Side Chair, ID
Nos. 11-6211 and 18-1181

One Ethan Allen Oval Table w/2
Leaves, ID Nos. 1890-81 and 1-
609-11

One Ethan Allen Buffet

One Ethan Allen Server,

IT IS FURTHER ORDERED by the Court that the proceeds
of the sale of the above-described real property, with
buildings, improvements, and appurtenances, located at 2121 East
30th Street, Tulsa, Oklahoma, shall be distributed in the
following priority:

a) First, for the payment to the United States
of all expenses of forfeiture of the defendant
real property, including, but not limited to,
expenses of seizure, custody, advertising, and
sale.

b) Second, for payment of all real estate taxes owed on the property up to date of sale, to the extent that the United States of America is responsible for said taxes.

c) Third, for the payment of the Claim of Citicorp Mortgage, Inc. in the principal sum of \$441,754.11, plus interest accruing thereon from the 1st day of July, 1990, at the rate of 12% per annum, until date of closing.

d) Fourth, for payment to the United States of America of all amounts remaining after the above disbursements.

IT IS FURTHER ORDERED:

That Judgment be entered against the following-described personal property:

One 1989 Cadillac 4-Dr. Fleetwood,
VIN 1G6CD5159K4231261,

and against all persons and entities interested in such vehicle, and that the said defendant vehicle be, and the same is, hereby forfeited to the United States of America for disposition by the United States Marshal according to law.

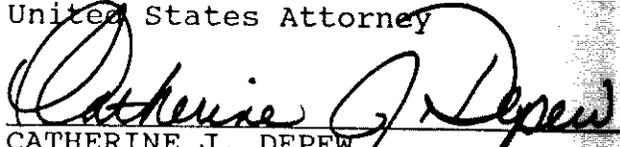
s/H. DALE COOK

H. DALE COOK, Chief Judge of the
United States District Court for the
Northern District of Oklahoma

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


CATHERINE J. DEPEW
Assistant United States Attorney

CJD/ch
01021

FILED

DEC 11 1990

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

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

SUSAN D. WHITAKER,)
)
 Plaintiff,)
)
 v.)
)
 PROGRESSIVE ACCEPTANCE CORP. and)
 PROFESSIONAL INVESTORS INSURANCE)
 GROUP,)
)
 Defendants.)

No. 89-C-718-B

ORDER

The Court has for decision the Plaintiff's Motion for Summary Judgment against the Defendants Progressive Acceptance Corporation ("PAC") and Professional Investors Insurance Group, Inc.'s ("PIIGI"), and Defendant PIIGI's Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(1) and (6). Defendant Progressive Acceptance Corporation filed a Notice of Bankruptcy on April 2, 1990; therefore, all actions against PAC are automatically stayed in accordance with 11 U.S.C. §362 (a). As the defendant PIIGI has referenced exhibits outside of the pleadings, its Motion to Dismiss will be considered a motion for summary judgment pursuant to Fed.R.Civ.P. 56. The Court will first address Defendant PIIGI's motion for summary judgment.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate if the record shows that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91

L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Windon Third Oil and Gas v. Federal Deposit Insurance Corp.*, 805 F.2d 342 (10th Cir. 1986). "[D]isputes over facts that might affect the outcome of the suit under governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

The uncontested facts are as follows: On or about July 25, 1988, the plaintiff, a black female, applied for employment with PAC in response to a newspaper advertisement placed by PAC for a position in its credit department as credit analyst. The advertisement stated that applicants for the position of credit analyst "[m]ust have 1 to 3 years automobile paper purchasing experience." At the time of application, the plaintiff had four and one-half years of experience as a credit analyst. The plaintiff was interviewed on the same date by the Personnel Director for both PAC and PIIGI, Lynn Connelly,¹ and the then manager of the Credit Department at PAC, Chuck Hall. Subsequently, PAC did not hire the plaintiff, but hired Michael D. Windler, a white male, who also applied for the position of credit analyst.

PIIGI asserts two grounds supporting dismissal (summary judgment) in its favor: 1) the Court lacks subject matter

¹ In its answer to Interrogatory No. 9 - "Did Lynn D. Connelly, Personnel Director, at any time, interview Plaintiff? If so, were the results of that interview at any time communicated to Credit Manager, Chuck Hall?" - PAC stated that Ms. Connelly could not remember whether or not she interviewed the plaintiff. The Court will therefore view the plaintiff's statement that she was interviewed by Ms. Connelly as uncontested.

jurisdiction over the plaintiff's Title VII claim, as PIIGI was not named in the plaintiff's charge of racial discrimination before the Oklahoma Human Rights Commission or in the subsequent right-to-sue letter issued by the Equal Employment Opportunity Commission (EEOC); and 2) the plaintiff has failed to state a claim against PIIGI, since the only wrongdoing alleged by the plaintiff arises from acts performed by PAC, and PIIGI and PAC are separate and distinct legal entities.

PIIGI argues that the Court has no jurisdiction to hear the plaintiff's Title VII claim against PIIGI, as PIIGI was not named, noticed or given the opportunity to respond to the plaintiff's charge of racial discrimination in the administrative proceedings before the Oklahoma Human Rights Commission (OHRC). The plaintiff named only PAC in her complaint to the OHRC (Exhibit A to the Plaintiff's Motion for Summary Judgment), and therefore, only PAC was named in the subsequent right-to-sue letter issued by the EEOC on August 17, 1989. PIIGI asserts that it must be named in the OHRC administrative investigation and in the resulting right-to-sue letter as a condition precedent under 42 U.S.C. §2000e-5 to maintaining an action under Title VII.

In *Romero v. Union Pacific Railroad*, 615 F.2d 1303 (10th Cir. 1980), the Tenth Circuit Court of Appeals rejected the argument that a defendant must be specifically named as respondent in an EEOC charge as a jurisdictional prerequisite to a subsequent Title VII action. The Tenth Circuit Court of Appeals adopted the test in *Glus v. G.C. Murphy Co.*, 562 F.2d 880 (3rd Cir. 1977) to evaluate a suit in

which the defendant has not been a named party before the EEOC:

1) whether the role of the unnamed party could through reasonable effort by the complainant be ascertained at the time of the filing of the EEOC complaint; 2) whether, under the circumstances, the interests of a named [sic] are so similar as the unnamed party's that for the purpose of obtaining voluntary conciliation and compliance it would be unnecessary to include the unnamed party in the EEOC proceedings; 3) whether its absence from the EEOC proceedings resulted in actual prejudice to the interests of the unnamed party; 4) whether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to be through the named party.²

It is obvious from a review of the above factors that the purpose of the naming requirement is to provide the unnamed party with notice of the alleged discrimination so that the party can respond to the charge during the administrative investigation and have an opportunity to comply voluntarily with the EEOC mandates. *Eggleston v. Chicago Journeymen Plumbers' Local Union No. 130*, 657 F.2d 890 (7th Cir. 1981).

In discussing factor 1 of the *Romero* test, PIIGI cites a letter dated February 6, 1989 to the OHRC requesting an extension to complete the OHRC's interrogatories to PAC (Exhibit A to the Reply Brief). PIIGI argues that the plaintiff was aware or should have been aware of PIIGI's existence and relation to PAC because the

² *Romero v. Union Pacific Railroad*, 615 F.2d 1303, 1312 (quoting *Glus v. G.C. Murphy Co.*, 562 F.2d 880, 888 (3rd Cir. 1977)).

letter was written on stationery with PIIGI's letterhead.³ Such evidence, however, works less to support PIIGI as to the first factor than to make any claim by PIIGI concerning factors 2 and 3 that it was unaware of the plaintiff's complaint and therefore precluded from any opportunity to participate in the OHRC's proceedings or to comply voluntarily with its mandates highly suspect. Indeed, PAC and PIIGI had a common personnel office and personnel director, Lynn Connelly. Any action taken against PAC would be known to PIIGI because Lynn Connelly was the responding party to OHRC's investigation. It would be rather inconsistent with the remedial purpose of Title VII to penalize the plaintiff for failure to follow "procedural exactness"⁴ by specifically naming PIIGI in her OHRC complaint, when the purpose behind the requirement has been met. The Court, therefore, finds that the case before it is one which meets the exception adopted in *Romero*, and the plaintiff's failure to name PIIGI in her complaint before the OHRC and EEOC does not deny this Court jurisdiction.

PIIGI also argues that the plaintiff has failed to state a claim against PIIGI, because it is a separate legal entity from

³ The plaintiff states that she did not have access to the OHRC file which included the letter and the interrogatories until September 11, 1989, after she filed suit in this Court. However, if the plaintiff would have had access to the letter during the OHRC's investigation, one could just as easily argue that the letter supports the plaintiff regarding factor 4 in that PIIGI has "in some way represented to the complainant that its relationship with the complainant is to be through" PAC.

⁴*Eggleston v. Chicago Journeymen Plumbers Local Union No.130*, 657 F.2d 890, 905 (7th Cir. 1981).

PAC⁵ and PAC's alleged wrongdoing cannot be attributed to it.

PIIGI asserts that the only basis upon which the plaintiff can bring this action against PIIGI is to show that PAC was a mere instrumentality or alter-ego of PIIGI, and that the plaintiff has failed to do so.⁶

The Court concludes that the appropriate test to be applied in Title VII actions to determine whether two corporations may be treated as single employer is that set forth in *Baker v. Stuart*

⁵ PIIGI attaches PAC's Certificate of Incorporation from the Oklahoma Secretary of State and PIIGI's (formerly Thurston Financial Corporation) Certificate of Incorporation from the Delaware Secretary of State to establish that PAC and PIIGI are separate legal entities.

⁶ PIIGI cites *Lockett v. Bethlehem Steel Corp.*, 618 F.2d 1373 (10th Cir. 1980) as providing the controlling alter ego test. The Court in *Lockett* stated that absent fraudulent or illegal use of separate corporate structures, "[i]t is necessary to establish more than ownership of virtually all of the subsidiary stock by the parent or identity of directors in order to treat the parent and subsidiary as one." *Id.* at 1379. The Court listed the factors to be considered:

- (1) The parent owns all the stock;
- (2) both have common directors and officers;
- (3) the parent finances the subsidiary;
- (4) the parent causes the subsidiary's incorporation;
- (5) the subsidiary has grossly inadequate capital;
- (6) the parent pays salaries or expenses of the subsidiary;
- (7) the subsidiary has no business except with its parent or subsidiary corporation or no assets except those transferred by its parent or subsidiary;
- (8) directors and officers do not act independently in the interests of the subsidiary;
- (9) formal legal corporate minutes are not observed;
- (10) distinctions between the parent and subsidiary and subsidiary and its subsidiary are disregarded or confused;
- (11) subsidiaries do not have full board of directors.

Id. at 1378 n.4.

Broadcasting Co., 560 F.2d 389 (8th Cir. 1977). The court in *Baker* in recognizing that Title VII should be "accorded a liberal construction in order to carry out the purpose of Congress to eliminate the inconvenience, unfairness and humiliation of racial discrimination,"⁷ adopted the single employer test promulgated by the National Labor Relations Board.⁸ The relevant factors to consider under this test include interrelation of operations, common management, centralized control of labor relations, and common ownership or financial control. After applying this test, the court in *Baker* found sufficient interrelation of operations between the two corporations to hold that the parent and subsidiary's employees could be consolidated to meet the jurisdictional requirements of §2000e(b) (requiring 15 employees to invoke §2000e jurisdiction). This standard has been adopted not only in reviewing possible consolidation of parent and subsidiary corporations in order to confer jurisdiction under §2000e(b),⁹ but also in holding a parent corporation liable for the subsidiary's purported discriminatory actions.¹⁰

⁷ *Parham v. Southwestern Bell Telephone Co.*, 433 F.2d 421, 425 (8th Cir. 1970).

⁸ *Radio & Television Broadcast Technicians Local Union 1264, International Brotherhood of Electrical Workers, AFL-CIO v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965).

⁹ *Armbruster v. Quinn*, 711 F.2d 1332, 1337 (6th Cir. 1983); *Smith v. Jones Warehouse, Inc.*, 590 F.Supp. 1206, 1207 (N.D. Ill. 1984).

¹⁰ *Sargent v. McGrath*, 685 F.Supp. 1087, 1089 (E.D. Wis. 1988); *Brenimer v. Great Western Sugar Co.*, 567 F.Supp. 218 (D.Colo. 1983) (extending the same test to an evaluation of parent corporation

In *Sargent v. McGrath*, 685 F.Supp. 1087 (E.D. Wis. 1988), the court applied the single employer test in determining whether the parent corporation, Zayre Corporation, could be held liable for its subsidiary's acts. Zayre Corporation had moved to dismiss the plaintiff's Title VII complaint against it on the same grounds as those asserted by PIIGI in its motion: on jurisdictional grounds - because Zayre was not named in the plaintiff's administrative discrimination charges, and on substantive grounds - that it may not be sued for the acts of its subsidiary. Because the motion referred to matters outside the pleadings, the court in *Sargent* also treated the motion as one for summary judgment. The court held that even the "rather weak showing of a connection in labor relations" - a Zayre officer had signed a settlement agreement resolving another discrimination dispute involving the subsidiary - raised a genuine issue of material fact as to the nature of the interrelationship between Zayre and its subsidiary so as to preclude summary judgment.

Applying the single employer test to the uncontested facts before it, the Court finds that there is at least a factual question as to whether PIIGI and PAC are so integrated that they should be viewed as a single employer in the plaintiff's Title VII action. There is evidence in the record of common management: PIIGI and PAC have "from time to time shared common officers and/or

liability as "employer" under the Age Discrimination in Employment Act).

directors;" ¹¹ Alexander J. Stone is the Chairman of the Board and Chief Executive Officer of both PIIGI and PAC; Adrienne D. Stone is the Executive Vice-President of both PIIGI and PAC; and PIIGI and PAC shared the same address and office building. More importantly, there is evidence indicating centralized control of labor relations: PIIGI and PAC shared a personnel office and director which "centralized and coordinated . . . payroll and employment advertisements and applications,"¹² and through which PAC responded to the OHRC investigation on PIIGI stationery.¹³ While such evidence might well constitute a "rather weak showing of a connection of labor relations" between PIIGI and PAC, the Court finds it sufficient to preclude judgment as a matter of law. The Court, therefore, denies summary judgment to the defendant, PIIGI.

As to the plaintiff's Motion for Summary Judgment, the plaintiff asserts that she is entitled to judgment as a matter of law because the Oklahoma Human Rights Commission determined there is reasonable cause to believe that the plaintiff was the victim of racial discrimination. This Court, however, is not bound by such a determination, but must make an independent inquiry into the allegations. *E.E.O.C. v. General Electric Co.*, 532 F.2d 359, 370-371 (4th

¹¹ Defendant PIIGI's Brief in Support of Motion to Dismiss, p. 10.

¹² Defendant PIIGI's Brief in Support of Motion to Dismiss, p.10.

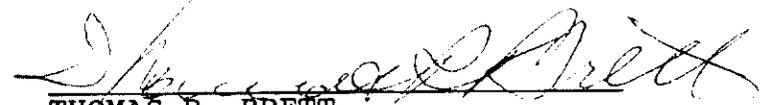
¹³ In *Smith v. Jones Warehouse, Inc.*, 590 F.Supp.1206 (N.D. Ill. 1984), the court noted that a letter of termination of the subsidiary's employee on the parent corporation's stationery was evidence of the centralized control of labor relations. *Id.* at 1208.

Cir. 1976). Upon review of the briefs, the Court finds that the following genuine issues of material fact remain: 1) whether the position of Credit Analyst was filled by PAC; 2) whether Michael D. Windler was hired into the position of Credit Analyst at PAC; 3) whether any Blacks have been hired in PAC's Credit Department; 4) whether the plaintiff applied for the position of Credit Analyst at PAC on more than one occasion; 5) whether PIIGI and PAC are sufficiently integrated so as to impose liability on PIIGI for any wrongdoing of its subsidiary, PAC; and 6) whether PAC's failure to employ the plaintiff was due to racial discrimination. Because of these factual questions, the Court denies the plaintiff's Motion for Summary Judgment.

The Court sets the following schedule:

January 4, 1991	EXCHANGE THE NAMES AND ADDRESSES OF ALL WITNESSES, INCLUDING EXPERTS, IN WRITING, ALONG WITH A BRIEF STATEMENT REGARDING EACH WITNESS' EXPECTED TESTIMONY (UNNECESSARY IF WITNESS' DEPOSITION TAKEN);
January 18, 1991	COMPLETE ALL DISCOVERY;
February 11, 1991	FILE AN AGREED PRETRIAL ORDER AND EXCHANGE ALL PRENUMBERED EXHIBITS (Defendant is to prepare the order);
February 19, 1991	FILE SUGGESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ANY TRIAL BRIEFS;
February 25, 1991	NON-JURY TRIAL AT 9:00 A.M.

IT IS SO ORDERED this 19th day of December, 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**

DEC 11 1990

FOREST OIL CORPORATION)

Plaintiff)

vs.)

OKLAHOMA NATURAL GAS COMPANY,)
a division of ONEOK Inc.)
Defendant.)

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

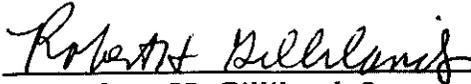
Case No. 87-C-801-C

ORDER

NOW on this 10th day of Dec. 1990, pursuant to the Stipulated Dismissal With Prejudice filed herein by the Plaintiff and the Defendant, it is ORDERED, ADJUDGED AND DECREED that the Complaint, as amended, and the Counterclaims, as amended, filed in this action, are hereby dismissed with prejudice. The parties shall each bear their own attorneys' fees and costs.


UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

APPROVED:



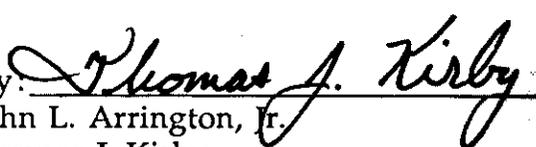
By: Robert H. Gilliland, Jr.
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Laurence M. Huffman
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(405) 235-9621

and

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Danny P. Richey
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Attorneys for Defendant,
Oklahoma Natural Gas Company,
a division of ONEOK Inc.

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

DONNA JONES, as next of kin)
ALLEEN ASBURY,)
)
Plaintiff,)
)
v.)
)
RONNIE L. NICKENS,)
)
Defendant,)
)
and LOUIS W. SULLIVAN, M.D.,)
Secretary, United States)
Department of Health and)
Human Services,)
)
Third-Party Defendant.)

90-C-371-C ✓

F I L E D

DEC 11 1990 *[Signature]*

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

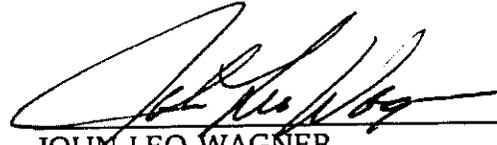
AMENDED JUDGMENT

This action came on for hearing before the court, Honorable John Leo Wagner, United States Magistrate, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the plaintiff take nothing from the third-party defendant and that the plaintiff pay the following sums upon negotiation of the liability insurance draft payable to plaintiff, her attorneys, and the Department of Health and Human Services:

- | | | |
|----|---|------------|
| 1. | Ninde Funeral Directors
(balance of funeral expenses) | \$2,393.94 |
| 2. | Ash, Crews & Reid
(\$500 attorney fee; \$816.55 court costs) | \$1,316.55 |
| 3. | Department of Health and Human
Services | \$6,289.51 |

Dated this 10th day of December, 1990.

A handwritten signature in black ink, appearing to read "John Leo Wagner", written over a horizontal line.

JOHN LEO WAGNER
UNITED STATES MAGISTRATE

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

DEC 10 1990

BANCOKLAHOMA MORTGAGE CORP.,
an Oklahoma corporation,

Plaintiff,

Case No. 90-C-154-C

VEREX ASSURANCE, INC., a
Wisconsin corporation,

Defendant.

JOINT STIPULATION ^{of} FOR DISMISSAL
WITH PREJUDICE

BancOklahoma Mortgage Corporation, individually, and by and through its counsel, Kenneth M. Smith of the firm Robinson, Lewis, Orbison, Smith & Coyle, and Verex Assurance, Inc., individually, and by and through its counsel, James P. McCann of Doerner, Stuart, Saunders, Daniel & Anderson, pursuant to the provisions of Rule 41(a)(1), Fed.R.Civ.P., hereby jointly stipulate to the dismissal of the above-captioned action, such dismissal to be with prejudice to any subsequent refiling.

ROBINSON, LEWIS, ORBISON
SMITH & COYLE

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By Kenneth M. Smith

Kenneth M. Smith
Patricia Neel
P.O. Box 1046
Tulsa, Oklahoma 74101
(918) 583-1232

By James P. McCann

James P. McCann (OBA#5865)
Kathy R. Neal (OBA#674)
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Plaintiff

Attorneys for Defendant

BANCOKLAHOMA MORTGAGE CORP.

VEREX ASSURANCE, INC.

By Robert J. [Signature]
its Vice President

By [Signature]
its Vice President

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

FILE

DEC 10 1990

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

FEDERAL DEPOSIT INSURANCE CORPORATION, as Manager of the FSLIC Resolution Fund, successor in interest to the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, as Receiver for VICTOR SAVINGS AND LOAN ASSOCIATION,

Plaintiff,

v.

HOWARD L. MILLER and LINDA A. MILLER, husband and wife,
DONALD R. MEINTS and CHERYL RENE MEINTS, husband and wife,
MILLER, MEINTS & DITTRICH, an Oklahoma General Partnership;
GRAND FEDERAL SAVINGS BANK OF GROVE, OKLAHOMA, and GAINES S. DITTRICH, an individual,

Defendants.

Case No. 89-C-872 E

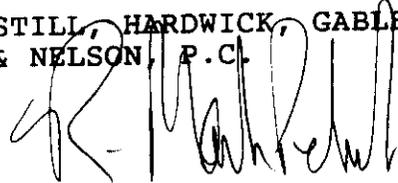
NOTICE OF DISMISSAL
OF PARTY DEFENDANT

Plaintiff, the Federal Deposit Insurance Corporation, manager of the FSLIC Resolution Fund, successor in interest to the Federal Savings and Loan Insurance Corporation as receiver for Victor Savings and Loan Association (the "FDIC"), pursuant to Fed. R. Civ. P. 41(a)(1), hereby dismisses all claims asserted herein against Defendant Grand Federal Savings Bank of Grove ("Grand Federal"). In support of its dismissal, the FDIC states that: (a) Grand Federal has not served an answer or responsive pleading herein; (b) Grand Federal has released and disclaimed any lien it may have to

the real property subject to this action as evidenced by Exhibit "A" attached hereto; and (c) Grand Federal is no longer a necessary party defendant in this action.

Respectfully submitted,

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



By: _____

James M. Reed, OBA #7466
R. Mark Petrich, OBA #11956
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR THE FEDERAL DEPOSIT
INSURANCE CORPORATION AS MANAGER
OF THE FSLIC RESOLUTION FUND, AS
SUCCESSOR IN INTEREST TO THE
FEDERAL SAVINGS AND LOAN INSURANCE
CORPORATION AS RECEIVER FOR VICTOR
SAVINGS AND LOAN ASSOCIATION

CERTIFICATE OF MAILING

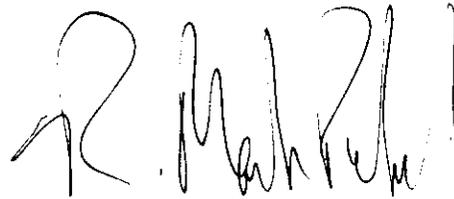
I the undersigned do hereby certify that on the 10th day of December, 1990, a true and correct copy of the above and foregoing Notice of Dismissal of Party Defendant was forwarded by U.S. Mail, with proper postage thereon fully prepaid, to the following counsel of record:

Howard L. Miller
712 Felix Street
St. Joseph, MO 64502

Linda A. Miller
No. 10 Stonecrest
St. Joseph, MO 64502

Mike Thompson
President
Grand Federal Savings Bank
1010 S. Main, Box 1809
Grove, Oklahoma 74344

Gregory A. Guerrero
Micah Sexton
Holliman, Longholz, Runnels
& Dorwart
Holarud Building, Suite 700
10 East Third Street
Tulsa, Oklahoma 74103



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

FILED
DEC 7 1990
C. S. S. Clerk
DISTRICT COURT

JOHN ELLISON,)
)
Plaintiff,)
)
vs.)
)
RAFAEL GONZALES, Colonel,)
UNITED STATES ARMY,)
)
Defendant.)

No. 89-C-711

ORDER

This matter comes on for consideration upon the Motion to Dismiss, filed by the Defendant, Rafael Gonzales, Colonel, United States Army, and the Motion of Plaintiff, John Ellison, to place this case in administrative abeyance during the pendency of certain administrative exhaustion efforts on the part of Plaintiff.

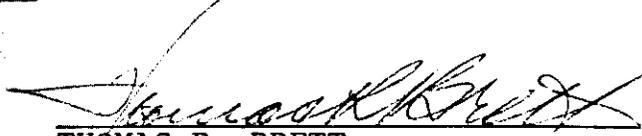
Defendant originally filed his Motion to Dismiss, alleging lack of subject matter jurisdiction and failure to exhaust administrative remedies, on December 22, 1989. Plaintiff sought and received several extensions of time to respond to Defendant's Motion to Dismiss. During this interim, the case was transferred to Honorable Layn Phillips.

Judge Phillips held several status conferences the result of which indicated the case was either settled or the issues therein were moot. At the last of these conferences Plaintiff requested and was granted permission to amend his Complaint to allege additional matters, which was done August 23, 1990.

On August 31, 1990, Defendant renewed his Motion to Dismiss as to the Amended Complaint, alleging the same grounds previously urged. Plaintiff requested and was granted additional time to respond to Defendant's Motion. Without responding to the Motion to Dismiss, Plaintiff moved, on September 28, 1990, to place this matter in administrative abeyance.

The Court concludes Plaintiff's Motion to place this case in administrative abeyance should be and the same is DENIED. Plaintiff is directed to file, within 15 days hereof, his response, if any, to Defendant's Motion to Dismiss, specifically addressing the issues of subject matter jurisdiction and failure to exhaust administrative remedies. Further extensions to response will not be granted by the Court. In the event Plaintiff chooses not to respond, within the time allowed, the Court will enter its Order dismissing, without prejudice, this action.

IT IS SO ORDERED this 7th day of December, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

DEC. 5 1990

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

CLAUDE FREDERICK TEARS, JR., a
resident of Texas,
Plaintiff,

vs.

MCGILL ENVIRONMENTAL
SYSTEMS, INC., an Oklahoma
corporation,

a/k/a

MCGILL AMERICAS, INC.,
Defendant.

Case No. 90-C-374-B

ORDER GRANTING DISMISSAL

NOW this 5th day of December, 1990, the Joint
Stipulation For Dismissal With Prejudice having been
previously filed herein it is the finding of this court that
the said cause of action should be Dismissed with Prejudice.

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

S/ THOMAS R. BRETT

JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

EUGENE GODWIN; COUNTY TREASURER,)
Creek County, Oklahoma; and)
BOARD OF COUNTY COMMISSIONERS,)
Creek County, Oklahoma,)

Defendants.)

DEC. 5 1990

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

CIVIL ACTION NO. 90-C-828-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5th day
of December, 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, Creek County, Oklahoma, and
Board of County Commissioners, Creek County, Oklahoma, appear by
Wesley R. Thompson, Assistant District Attorney, Creek County,
Oklahoma; and the Defendant, Eugene Godwin, appears not, but
makes default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Eugene Godwin, acknowledged
receipt of Summons and Complaint on or about October 4, 1990;
that the Defendant, County Treasurer, Creek County, Oklahoma,
acknowledged receipt of Summons and Complaint on October 1, 1990;
and that Defendant, Board of County Commissioners, Creek County,
Oklahoma, acknowledged receipt of Summons and Complaint on
September 26, 1990.

It appears that the Defendants, County Treasurer, County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Disclaimer on October 2, 1990; and that the Defendant, Eugene Godwin, has failed to answer and his default has therefore been entered by the Clerk of this Court.

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

Lot 15, Block 4, QUAIL VIEW WEST ADDITION to the City of Bristow, in Creek County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on June 11, 1982, the Defendant, Eugene Godwin, and Lorene C. Godwin, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$35,900.00, payable in monthly installments, with interest thereon at the rate of 13.25 percent (13.25%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Eugene Godwin, and Lorene C. Godwin, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated June 11, 1982, covering the above-described property. Said mortgage was recorded on June 11, 1982, in Book 119, Page 1437, in the records of Creek County, Oklahoma.

The Court further finds that on June 11, 1982, the Defendant, Eugene Godwin, and Lorene C. Godwin 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 October 26, 1982, the Defendant, Eugene Godwin, and Lorene C. Godwin 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 January 11, 1983, the Defendant, Eugene Godwin, and Lorene C. Godwin 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 17, 1983, the Defendant, Eugene Godwin, and Lorene C. Godwin 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 3, 1984, the Defendant, Eugene Godwin, 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 April 8, 1985, the Defendant, Eugene Godwin, 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 December 11, 1985, the Defendant, Eugene Godwin, 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 October 20, 1986, the Defendant, Eugene Godwin, 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 November 18, 1987, the Defendant, Eugene Godwin, 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 October 7, 1988, the Defendant, Eugene Godwin, 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 January 11, 1986, the Defendant, Eugene Godwin, 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 7, 1989, a Release From Personal Liability was executed by the Farmers Home Administration, releasing Lorene C. Godwin from personal liability to the Government for the indebtedness and obligation of said note and security instruments.

The Court further finds that the Defendant, Eugene Godwin, 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, Eugene Godwin, is indebted to the Plaintiff in the principal sum of \$34,592.65 plus accrued interest in the amount of \$495.44 as of January 23, 1990, plus interest accruing thereafter at the rate of 13.25 percent per annum or \$12.5576 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 of \$26.335.71 plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$28.00 (\$20.00 docket fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek 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, Eugene Godwin, in the principal sum of \$34,592.65 plus accrued interest in the amount of \$496.44 as of January 23, 1990, plus interest accruing thereafter at the rate of 13.25 percent per annum or \$12.5576 per day until judgment, plus interest thereafter at the current legal rate of 7.28 percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$26.335.71 plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$28.00 (\$20.00 docket fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners,

Creek County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

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

S/ THOMAS R. BRETT

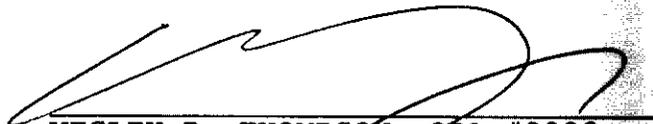
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



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



WESLEY R. THOMPSON, OBA #8993
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Creek County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-828-B

PP/esr

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

FILED

DEC. 5 1990

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

MILL CREEK LUMBER & SUPPLY)
COMPANY,)
)
Plaintiff,)
)
v.)
)
JAMES MICHAEL STRIPLING, et al,)
)
Defendants.)

89-C-558-B ✓

ORDER

Now before the Court is an appeal from a judgment of the Bankruptcy Court (dated June 15, 1989) denying the debtors James and Margaret Stripling a discharge. The Bankruptcy Court denied the discharges under 11 U.S.C. §727(a)(2) & (a)(4) finding that the debtors knowingly and fraudulently made false oaths and that the debtors transferred and concealed assets with specific intent to hinder, delay and defraud appellee creditor, Mill Creek Lumber & Supply Company. Debtors now appeal.

The Bankruptcy Court made the following findings and conclusions:

- a. The medical building was transferred to place it beyond the reach of creditors (Trial Tr. 252);
- b. The formation of Quality Care Medical Center, Inc. was designed to place the earnings and assets of Dr. Stripling's medical practice beyond the reach of creditors (Id.);
- c. The transfer of stock of Quality Care Medical Center, Inc. from Dr. Stripling

- to Dr. Trinidad (unknown to Dr. Trinidad) was to place the assets of Quality Care Medical Center, Inc. beyond the reach of Dr. Stripling's creditors (Id.);
- d. The stated income of James Stripling was a material error (Id.);
 - e. Omitting the transfer of the medical building was a material omission (Trial Tr. 253);
 - f. The asserted termination of Dr. Stripling's sole proprietor practice when in fact she continued to practice as a sole proprietor was a material omission (Id.);
 - g. Omitting the transfer of stock of Quality Care Medical Center, Inc. was a material omission (Id.);
 - h. Omitting the lawsuits where the Striplings were plaintiffs was a material omission (Trial Tr. 257).

Ten categories of circumstances which may deny a debtor's discharge in bankruptcy are described in 11 U.S.C. §727(a). A discharge may be denied if a debtor transfers or conceals his property either after filing bankruptcy or within one year prior to filing bankruptcy. §727(a)(2). Neither can it be disputed that a discharge may be denied where a debtor knowingly and fraudulently makes a false oath or account. §727(a)(4). An omission of assets from a Statement of Affairs or schedule may constitute a false oath under section §727(a)(4)(A). *In re Calder*, 907 F.2d 953 (10th Cir. 1990)(citing *Farmers Co-op. Association v. Strunk*, 671 F.2d 391, 395 (10th Cir. 1982)). To trigger §727(a)(4)(A), the false oath must relate to a material matter and must be made willfully with intent to defraud. *In re Calder*, 907 F.2d at 955 (citing 4 *Collier on Bankruptcy*,

¶727.04[1] at 727-54 to -57 (15th ed. 1987)).

The Tenth Circuit observed that "the problem in ascertaining whether a debtor acted with fraudulent intent is difficult because, ordinarily, the debtor will be the only person able to testify directly concerning his intent and he is unlikely to state that his intent was fraudulent....Therefore, fraudulent intent may be deduced from the facts and circumstances of a case." *In re Calder*, 907 F.2d at 955-56 (citations omitted). Where a discharge is denied based upon §727(a), "The bankruptcy court's ultimate determination concerning fraudulent intent will not be set aside unless clearly erroneous." *In re Calder*, 907 F.2d at 956.

Transfer of the Office Building

Appellants first attack the Bankruptcy Court's judgment asserting that before a transfer can be held fraudulent the transferred property must have some value. Since the debtors had no equity in the office building, the transfer of the building could not have been fraudulent. The Tenth Circuit addressed a similar argument in terms of omitted property, and found the argument to be specious. The *Calder* court held,

[The debtor] has argued that he should not be denied a discharge of his debts because the undisclosed bank accounts and mineral interest were worthless assets. However, a recalcitrant debtor may not escape a section 727(a)(4)(A) denial of discharge by asserting that the admittedly omitted ... information concerned a worthless business relationship or holding; such a defense is specious.'

In re Calder, 907 F.2d at 955 (quoting *In re Chalik*, 748 F.2d 616, 618 (11th Cir. 1984)).

Thus, if the omission of a worthless bank account or mineral interest may be fraudulent notwithstanding the worthless character of the asset, then applying the same reasoning, the transfer of an arguably worthless office building may be correctly held to be fraudulent

if transferred with the requisite intent to hinder, delay, or defraud creditors. Appellants' argument on this point is unpersuasive.

Appellants next attack the Bankruptcy Court's conclusion that the failure to list the office building on their schedules was a material omission. The Striplings argue (without reference to the record) that the omission was "an honest and inadvertent error, committed by the attorney for the Debtors." The bankruptcy court found otherwise and Appellants have made no showing that the finding is clearly erroneous. Thus, this argument too, is without merit.

Formation and Transfer of Quality Care Medical Center, Inc.

The Striplings next take issue with the Bankruptcy Court's finding that Quality Care Medical Center, Inc. was formed, and later transferred, with intent to hinder, delay, and defraud. Appellants claim that Quality Care Medical Center, Inc. was formed to enjoy some type of tax advantage. Appellants fail to identify support in the record for their explanation. The Bankruptcy Court observed that the corporation was formed after Appellants were sued by Appellee and a few days before Appellee obtained a judgment (Trial Tr. 246). Appellants also claim the stock was transferred to a physician associate of Stripling's (Dr. Trinidad) as incentive to remain with her in practice. The Bankruptcy Court found otherwise, noting that the stock transfer was accomplished without the knowledge of Dr. Trinidad (Trial Tr. 252), that no consideration was received for the transfer, and that the minutes of the Board of Directors meeting reflecting the transaction were a sham (Trial Tr. 246-248). In light of these contrary circumstances, it cannot be concluded that the Bankruptcy Court findings were clearly erroneous.

Denial of Discharge Based on Acts of Spouse

James Stripling argues that the Bankruptcy Court should not have denied him a discharge because of the acts and omissions of his wife. The Bankruptcy Court, however, found that James and Margaret Stripling "were a team, a partnership, and what Dr. Stripling had was available to Mr. Stripling, and certainly what Mr. Stripling had was available to Dr. Stripling." (Trial Tr. 245.) Although Appellants assert that each had their own separate businesses, Appellants fail to identify supporting evidence in the record. Absent such a showing the Bankruptcy Court's findings must be considered correct.

Estimated Income of Debtors

The Bankruptcy Court found that a material error was made in the scheduling of James Stripling's annual income (\$35,000), and that the error was "misleading" and could "materially affect administration of the estate and the rights of creditors." (Trial Tr. 253.) Appellants assert that James' true income was closer to \$19,000 and draw the unsupported conclusion that "to estimate Mr. Stripling's income high, can hardly impact creditors or the administration of the estate adversely." The positing as false without marshalling sufficient support from the record, that which the Bankruptcy Court has already found to be true, is no basis for reversing the judgment of the Bankruptcy Court. As that is all that Appellants have done here, this argument is also without merit.

Omitted Lawsuits

The Appellants' final argument is that the omission from the schedules of four lawsuits in which Appellants were plaintiffs "had no appreciable effect on the assets of the parties [and] should be considered harmless error." The Bankruptcy Court, however, had

a contrary opinion, "[t]he Court does **single out** and consider these lawsuits wherein the [Appellants] are Plaintiffs to be of **substantial significance**, and it is very important that these assets were in fact not listed on **Schedule B-2** of the Bankruptcy Petition." (Trial Tr. 257.) Under the previously cited reasoning of *In re Calder*, even omitting "worthless" assets of a debtor is sufficient for the denial of a **discharge** under §727(a). *In re Calder*, 709 F.2d at 955. Thus, Appellants' depiction of the omitted lawsuits as insignificant accounts receivable is hardly sufficient to **reverse** the Bankruptcy Court's finding as clearly erroneous.

Conclusion

None of the Bankruptcy Court **findings** that Appellants take to task are clearly erroneous. While each separately could **possibly** support a denial under 11 U.S.C. §727(a), taken together the decision of the **Bankruptcy Court** must be considered correct. Therefore, the Judgment of the Bankruptcy Court **is, hereby, AFFIRMED.**

SO ORDERED THIS 5 day of December, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

DEC. 5 1990 *DS*

NICHOLE DAVIS,)
)
 Plaintiff,)
)
 v.)
)
 DEPARTMENT OF HUMAN SERVICES,)
 et al,)
)
 Defendants.)

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

90-C-982-B ✓

ORDER OF DISMISSAL

Petitioner filed this action for a Writ of Habeas Corpus in federal court to test the legality of her detention by the Oklahoma Department of Human Services. Petitioner now moves to dismiss for the reason that the Department of Human Services released Petitioner from its custody on November 21, 1990 thus mooting the action. Without considering the merits of the habeas petition,¹ the Court agrees the case is now moot.

Therefore, it is hereby Ordered that this case be dismissed.

SO ORDERED THIS 5 day of December, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹ Petitioner should be aware that future case filings must be warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, not interposed for any improper purpose, and (after reasonable inquiry) grounded in fact to the best of the signor's knowledge. Rule 11 F.R.C.P. Where an action is without foundation Rule 11 sanctions may be imposed against the plaintiff. *Crabtree v. Muchmore*, 904 F.2d 1475 (10th Cir. 1990)(district court abused its discretion by withholding sanctions against plaintiffs bringing frivolous action under 42 U.S.C. §1983).

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FILED

DEC 5 1990

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

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

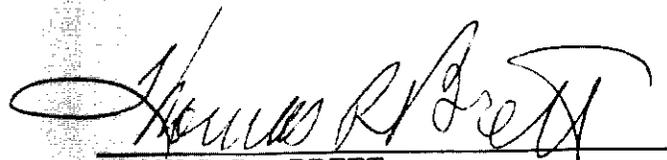
F & M BANK & TRUST COMPANY,)
)
Plaintiff,)
)
vs.)
)
FEDERAL SAVINGS AND LOAN INSURANCE)
CORPORATION as receiver for Victor)
Savings and Loan Association,)
)
Defendant.)

Case No. 88-C-1072-B

J U D G M E N T

In accordance with the Order entered herein on November 21, 1990, granting Motion For Summary Judgment in favor of Defendant, Federal Deposit Insurance Corporation as Receiver of Victor Savings & Loan Association, Judgment is hereby entered in favor of Defendant, Federal Deposit Insurance Corporation as Receiver of Victor Savings & Loan Association and against the Plaintiff, F & M Bank & Trust Company on the issues between the parties. Each party is to bear its own attorneys fees and costs, the Court having determined neither party is the prevailing party herein.

DATED this 5th day of December, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

GREGORY W. DAVIS,

Plaintiff,

v.

BEVERAGE PRODUCTS CORPORATION,
an Oklahoma Corporation, d/b/a
PEPSI-COLA BOTTLING COMPANY OF
TULSA,

Defendants.

CASE NO. 90-CO08 B

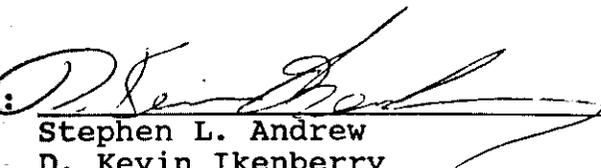
DEC 4 1990

STIPULATION OF DISMISSAL WITH PREJUDICE

The undersigned, counsel for the parties to this action, hereby stipulate pursuant to Rule 41(a) of the Federal Rules of Civil Procedure to dismiss this action with prejudice and stipulate that no costs, expenses, and attorneys' fees shall be assessed against either party.

This 3rd day of December, 1990.

MCCORMICK, ANDREW & CLARK
A Professional Corporation

By: 

Stephen L. Andrew
D. Kevin Ikenberry

Suite 100, Tulsa Union Depot
111 East First Street
Tulsa, Oklahoma 74103

Attorneys for Plaintiff

[Signatures continued next page.]

KILPATRICK & CODY

By: R. Slaton Tuggle III
R. Slaton Tuggle, III
Jeffrey A. Van Detta

Suite 3100
100 Peachtree Street
Atlanta, Georgia 30303

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

By: Thomas D. Robertson
Thomas D. Robertson

Suite 400, Old City Hall Bldg.
124 East Fourth Street
Tulsa, Oklahoma 74103

Attorneys for Defendant

IT IS SO ORDERED this _____ day of December, 1990.

Judge
United States District Court

FILED

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

DEC 4 1990

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

FEDERAL DEPOSIT INSURANCE CORP.,)
in its corporate capacity,)
)
Plaintiff,)
)
vs.)
)
SERVICE STEEL CO., INC., a)
corporation, ROBERT B. MANTON,)
an individual and FIRST METALS,)
INC.,)
)
Defendants.)

Case No. 90-C-558-B

ADMINISTRATIVE CLOSING ORDER

SERVICE STEEL CO., INC.

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

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

IT IS SO ORDERED this 4th day of December, 1990.


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

24

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

F I L E D

DEC. 4 1990

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

SANDRA L. PARKER,)
)
Plaintiff,)
)
vs.)
)
APACHE CORPORATION, et al.,)
)
Defendants.)

No. 90-C-238-E

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that all issues in this action have been resolved. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 4th day of December, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

DEC 4 1990

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

FEDERAL DEPOSIT INSURANCE CORPORATION,
in its corporate capacity,

Plaintiff,

vs.

SERVICE STEEL CO., INC., a
corporation, ROBERT B. MANTON, an
individual, and FIRST METALS, INC.,

Defendant.

Case No. 90-C-558-B

JUDGMENT AGAINST ROBERT MANTON

The above-captioned matter comes on for review of the plaintiff's Motion for Summary Judgment filed herein on October 9, 1990.

After reviewing the Motion for Summary Judgment and being duly advised in the premises, the Court finds as follows:

1. The Court has jurisdiction of the parties and the subject matter.

2. Plaintiff filed a Motion for Summary Judgment against Robert Manton on October 9, 1990.

3. No objection has been filed to plaintiff's Motion for Summary Judgment, and Manton has advised the Court that he has no objection to same.

4. The plaintiff's Motion for Summary Judgment should be sustained.

5. The Promissory Note which is the subject of plaintiff's Sixth Cause Of Action has been assigned to a third

party, and this cause of action should be dismissed without prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff have and recover judgment against the defendant, Robert Manton, as follows:

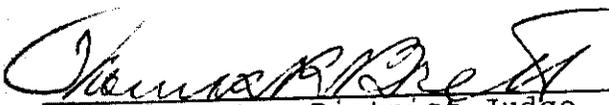
- A) Judgment on the Promissory Note described in plaintiff's First Cause Of Action for the sum of Thirty-Four Thousand Nine Hundred Five and 47/100 Dollars (\$34,905.47), with interest after judgment at the statutory rate of 7.23%;
- B) Judgment on the Promissory Note described in plaintiff's Second Cause Of Action for the sum of Seven Hundred Fifty-Four Thousand Eight Hundred Fourteen and 74/100 Dollars (\$754,814.74), with interest after judgment at the statutory rate of 7.23%;
- C) Judgment on the Promissory Note described in the plaintiff's Third Cause Of Action for the sum of Four Hundred Six Thousand Six Hundred Eighty-Eight and 32/100 Dollars (\$406,688.32), with interest after judgment at the statutory rate of 7.23%.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff have and recover judgment against the defendant, Robert Manton, for its cost of this action in the amount of One Hundred Twenty-Six and No/100 Dollars (\$126.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff have and recover judgment against defendant, Robert Manton, for a reasonable attorney fee in the amount of Five Thousand and No/100 Dollars (\$5,000.00).

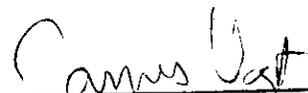
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff's Sixth Cause Of Action is dismissed without prejudice.

DATED this 4th day of December, 1990.


United States District Judge

APPROVED:

REYNOLDS & RIDINGS

By: 
James Vogt - 009243
2808 First National Center
Oklahoma City, OK 73102
(405) 232-8131

Attorneys for Plaintiff

WHITEBOOK, HOLTZ, GADDIS & POWERS

By: 
Lloyd K. Holtz
Expressway Tower, Suite 200
2431 East 51st Street
Tulsa, OK 74105

Attorneys for Defendants,
Service Steel Co. and
Robert B. Manton

v1j0085s/11/20

applicable legal authority no issues of material fact remain and movant's Motion for Summary Judgment should be sustained.

The stipulated facts in the proposed Pretrial Order, a copy of which has previously been submitted to the Court, approved by Plaintiff's counsel and RTC's counsel, are as follows:

- (a) That on September 30, 1988 First Security entered into a Joint Venture Agreement with Cross Roads Financial Services, Inc., a wholly-owned subsidiary of Cross Roads Savings and Loan Association, whereby Cross Roads Savings and Loan Association would fund certain loans, subject to available funds, originated by First Security Mortgage Company ("First Security").
- (b) That two (2) officers, agents or employees of First Security also served on the Board of Directors of Cross Roads Savings and Loan Association until February, 1989.
- (c) Because of the growth experienced by Cross Roads Savings and Loan Association the Federal Home Loan Bank Board requested, by letter dated February 16, 1989 and at a February 23, 1989 meeting, that Cross Roads Savings and Loan Association cease doing business with First Security.
- (d) On April 5, 1989, the supervisory agent of the Federal Home Loan Bank Board orally approved Cross-Roads Savings and Loan Association's funding and acquiring a limited number of loans (including the one involved in this case) originated by First Security. This limited approval was

given to avoid losing a \$300,000 commitment fee previously paid by Cross Roads Savings and Loan Association to reserve loans under certain government bond programs.

- (e) On April 12, 1989, Cross Roads Financial Services, Inc., a wholly-owned subsidiary of Cross Roads Savings and Loan Association and First Security executed a "Release and Settlement Agreement" under which Cross Roads Savings and Loan Association, through its wholly owned subsidiary Cross Roads Financial Services, Inc., agreed to certain conditions, to fund certain bond loans originated by First Security, thereby terminating their Joint Venture.
- (f) That Plaintiff is the previous owner of the real estate which is the subject of this action.
- (g) That on or about April 20, 1989 Plaintiff conveyed the subject real estate to the Defendant, Pete M. Young by warranty deed which was recorded on April 21, 1989 in Book 5179 at Page 460 in the Tulsa County Clerk's Office.
- (h) That the Defendant, First Security Mortgage Company, delivered to Plaintiff a check in the sum of \$30,112.36.
- (i) That said check was issued by First Security and was drawn on its "Loans in Process Account - Sand Springs Branch" which account was maintained at Cross Roads Savings and Loan.
- (j) When Plaintiff presented the check for payment, First Security's account with Cross Roads Savings and Loan

Association lacked sufficient funds to pay the check and the check was returned for lack of sufficient funds.

- (k) That Plaintiff has not received payment on the check.
- (l) That simultaneously with Plaintiffs' execution and delivery of the warranty deed to the Defendant Young, said Defendant executed and delivered to First Security a promissory note for the amount of the purchase price and closing costs, secured by a real estate mortgage covering the subject property.
- (m) That also on about April 21, 1989, First Security delivered and assigned the said note and mortgage to Cross Roads Financial Services, Inc., who in turn assigned the note and mortgage to Cross Roads Savings and Loan Association. The mortgage was recorded on April 21, 1989 at Book 5179, Page 461, in the Tulsa County Clerk's records.
- (n) In consideration for the assignment of a note and mortgage, Cross Roads Savings and Loan Association transferred \$36,064.77 into First Security Mortgage Company's Government National Mortgage Account, maintained at Cross Roads, on April 25, 1989, five days after closing and over the period of a weekend.
- (o) On July 12, 1989, the Federal Home Loan Bank Board declared Cross Roads Savings and Loan Association to be insolvent and appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as Receiver thereof. On

the same date, the new Federal Association, Cross Roads Savings and Loan, F.A., was formed and the FSLIC was appointed as its Conservator. Certain of the assets, including the Note and Mortgage involved herein, held by the Receiver were acquired for value by the new Federal Association in a Purchase and Assumption transaction pursuant to an Acquisition Agreement.

- (p) That also on July 12, 1989, the Federal Home Loan Bank Board declared that the claims of general creditors of the savings and loan were "worthless" pursuant to 12 C.F.R. § 561.42 (1988). The claims asserted by the Plaintiff against the Cross Roads Savings and Loan Association, in Receivership, are general creditor claims.
- (q) With the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") the Resolution Trust Corporation ("RTC") succeeded to the FSLIC, as Receiver of Cross Roads Savings and Loan Association and as Conservator of the Federal Association.
- (r) On or about May 11, 1990, the Federal Association was placed into Receivership by the Office of Thrift Supervision, thereby ending the RTC Conservatorship and the RTC was appointed Receiver of the Federal Association.

Fed.R.Civ.P. 56(e) provides:

". . . When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavit or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. . . ."

In their Response Brief to Defendant RTC's Motion for Summary Judgment, Plaintiffs contend material issues of fact remain as follows:

Officers and Directors of First Security Mortgage Company (Mack Martin and Lindell Shoemake) were also Directors of Cross Roads Savings and Loan and Cross Roads Financial Services, Inc. Such is a fact established by the record but it is also undisputed that Martin and Shoemake resigned from the respective boards on February 23, 1989 at the direction of the Federal Home Loan Bank Board (FHLBB), two months previous to the subject loan transaction herein.

Plaintiff asserts that the April 4, 1989 release and settlement agreement did not terminate the involvement between First Security and Cross Roads Savings and Loan. There is no factual support in the record for this contention.

Plaintiffs' assertion that the check they received and accepted from First Security in the amount of \$30,112.36 was not valid consideration in payment for the subject realty is contrary to law. 12A O.S. § 3-104; 15 O.S. §§ 106, 114, 115; Stillwater Ind. Fund, Inc. v. State ex rel Board of Reg., 541 P.2d 173, 176 (Okla. 1975). The record also reflects that First Security did

receive consideration from Cross Roads Savings and Loan for the assignment of the note and mortgage.

For the purposes of determining the rights of the movant, it is irrelevant that the monies were deposited to First Security's account after the date of closing and after Cross Roads Savings and Loan received the assignment of the note and mortgage. An intervening weekend appears to account for the delay.

While it is a fact that the assignment of First Security to Cross Roads Financial Services, Inc. was not filed of record until May 26, 1989, a month after the closing and a few days after Plaintiffs' case was filed, such is not material because Plaintiffs' vendor lien claim is not based on "priority of record."

Plaintiffs' assertion that Cross Roads Savings and Loan knew the subject check would bounce is based upon the speculative opinion testimony of Gary Hobbs, President of First Security, which is not admissible or probative to create a fact question under Fed.R.Civ.P. 56 to affect the right of the movant, RTC. United States v. Wheeler, 444 F.2d 385 (10th Cir. 1971). The following excerpts of the testimony of Gary Hobbs reflects its speculative character:

"Q. But you had stated that it is your opinion that on April 14 . . . Cross Roads knew that checks had been returned for not sufficient funds; is that correct?

A. That's correct.

Q. What independent knowledge on behalf of yourself do you base that opinion on?

A. Conversations held between myself and Gates Williams (of Cross Roads Savings and Loan), conversations between the law firm of Chapel, Riggs and the law firm of Jones,

Givens with Gates Williams and myself and their relating to those conversations that they were having with the Federal Home Loan Bank Board, just all that process that took place in early April.

(Gary Hobbs Deposition, pp. 400-001).

Q. [I believe you testified] that it was Cross Roads Savings and Loan's intent not to fund loans?

* * *

A. At various times, I think -- as I go through this process, I think different things based upon what I learn or don't learn. On occasion, I have thought -- had questioned whether or not Cross Roads intended to fund these loans. I don't know that I can form an opinion of what their intention was presently, but I have questioned what their intention was.

(Gary Hobbs Deposition, pp. 402-403).

Q. Okay. Other than the checks that were returned for not sufficient funds, are you aware of any documents . . . that would support your opinion that Cross Roads Savings and Loan knew of checks being returned for insufficient funds by April, 1989?

A. Is the question, do I have any evidence that they knew before or on?

Q. Yeah, do you have any evidence or do you know of any evidence, other than the returned checks themselves?

A. I have not reviewed the returned checks themselves. The only evidence I know of are the conversations I've had with Mr. Williams.

Q. Okay. Let me ask you the same question for the Federal Home Loan Bank Board. Do you have or do you know of any evidence that would support your opinion that the Federal Home Loan Bank Board knew that the checks were being returned for not sufficient funds by April, 1989?

A. Here again, I know the conversations that I had with Mr. Williams and that were held leading up to the April 12 agreement with Cross Roads and its counsel in which they made representations about conversations that Cross Roads and Cross Roads' counsel was having with the Federal Home Loan Bank Board. It is my understanding that Cross Roads is the one who returns the checks and that they were returned those checks to the Federal Home Loan Bank

Board. That -- I don't know that to be true, but that's my understanding."

(Gary Hobbs' Deposition, pp. 409-410).

Plaintiffs' assertion that checks had been returned on other First Security accounts previous to the date of the transaction at issue, does not create a material fact concerning the knowledge or notice to Cross Roads Savings and Loan about the specific transaction at issue. Plaintiffs' further assertions that the subject loan was not an "arm's length" transaction, and that Plaintiffs are not general creditors of Cross Roads Savings and Loan are not supported by probative evidence in the record.

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

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical

doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

The undisputed facts in the record before the Court establish that RTC - Cross Roads Savings and Loan, F.A. is a holder in due course of the subject notice and mortgage as a matter of federal law. D'Oench, Duhme & Co. v. F.D.I.C., 315 U.S. 447, 62 S.Ct. 676, 86 L.Ed. 956 (1942). In D'Oench the Supreme Court formulated a rule of federal common law in order to promote the public interest in preserving and protecting the Federal Deposit Insurance Corporation (FDIC), herein RTC, in its corporate capacity from certain claims asserted by borrowers against the FDIC as successor in interest to a failed bank. As the D'Oench doctrine has developed, federal courts have enunciated a federal common law holder in due course status which is applicable to RTC herein. Federal Deposit Ins. Corp. v. Wood, 758 F.2d 156, 161 (6th Cir.) *cert. denied*, 474 U.S. 944, 106 S.Ct. 308, 88 L.Ed.2d 286 (1985); Federal Deposit Ins. Corp. v. Leach, 525 F.Supp. 1379, 1384 (E.D. Mich.), *aff'd in part, vacated in part*, 772 F.2d 1262 (6th Cir. 1985); Matter of CTS Truss, Inc., 857 F.2d 357, 362 (5th Cir. 1988); Firstsouth, F.A. v. Aqua Const., Inc., 858 F.2d 441 (8th Cir. 1988); and Federal Sav. and Loan Ins. Corp. v. Murray, 853 F.2d 1251, 1256 (5th Cir. 1988).

At the summary judgment stage, a defaulting borrower must produce affirmative evidence from which a trier of fact could reasonably find that the RTC was aware of the specific claims and defenses asserted by the borrower against the failed institution.

B. L. Nelson and Associates v. Sunbelt Sav., 733 F.Supp. 1106, 1110 (N.D.Tex. 1990), citing Sunbelt Savings F.S.B. v. Amrecorp Realty Corp., 730 F.Supp. 741 (N.D.Tex. 1990). The RTC is indulged a presumption that it had no knowledge of any defenses to the asset on the date of its appointment as receiver or conservator of the failed institution. Allegations that the RTC had actual knowledge because defenses to the RTC's assets were presented in the original complaint were insufficient to defeat the RTC holder in due course status. Federal Deposit Ins. Corp. v. Caledonia Inv. Corp., 725 F.Supp. 90 (D. Puerto Rico 1989). The RTC is not required to inspect the assets of a failed bank before it agrees to enter into the purchase and assumption agreement and therefore cannot be charged with actual knowledge merely because the information was in the bank files. Federal Deposit Ins. Corp. v. Wood, *supra*, and Gilman v. Federal Deposit Ins. Corp., 660 F.2d 688 (6th Cir. 1981). See also, Federal Deposit Ins. Corp. v. Armstrong, 784 F.2d 741, 745 (6th Cir. 1986); and Federal Deposit Ins. Corp. v. Manatt, 688 F.Supp. 1327, 1331 (E.D.Ark. 1988).

Plaintiffs claim that the D'Oench federal common law doctrine applies to disputes between the RTC and borrowers, not third parties such as the Plaintiffs. In a recent decision the federal Bankruptcy Court for the Eastern District of California held that the D'Oench doctrine is not limited to side agreements or disputes between RTC and the borrowers, but is equally applicable to disputes between RTC and third parties. Ajootian v. Lamont Lions Club, to be reported at 119 B.R. 749 (Bkrtcy. E.D.Cal. 1990). The

Ajootian court stated that to not apply the D'Oench doctrine to third parties would be inconsistent with legislative intent expressed in 12 U.S.C. § 1823(e), which is to allow acquiring corporations such as the RTC to make a determination as to the extent and value of a failed lending institution's assets and to move with great speed in order to preserve the going concern value of the failed institution. Ajootian, *supra*, p. 7. Also see, Langley v. F.D.I.C., 484 U.S. 86, 108 S.Ct. 396, 98 L.Ed.2d 340 (1987). Federal Deposit Ins. Corp. v. The Merchants National 725 F.2d 634, at 640 (11th Cir. 1984), states th knowledge of a bank's transactions possessed by the division of the FDIC, in order to carry out the inten is not imputed to the FDIC's closed banking division.

Substit.

Recent authority has held that the FDIC or RTC need not meet any of the traditional requirements of a holder in due course, Campbell Leasing, Inc. v. FDIC, 901 F.2d 1244 (5th Cir. 1990), and specifically need not acquire an asset without knowledge of any defenses thereto, Sunbelt Savings F.S.B. v. Amrecorp Realty Corp., 730 F.Supp. 741 (N.D.Tex. 1990).

The facts herein reveal that Cross Roads Savings and Loan was declared insolvent and closed by the FHLBB on July 12, 1989, and the FSLIC was appointed receiver. On the same date the new federal association was formed and the FSLIC was appointed conservator. Also on that date, the FSLIC as receiver and the federal association entered into a purchase and assumption transaction in which the federal association through its conservator purchased and

assumed certain assets of Cross Roads Savings and Loan, including the subject note and mortgage. In the meantime, the federal association has been placed in receivership, the conservatorship being terminated, and the RTC appointed as its receiver.

Due to the fact the federal association acquired the subject note and mortgage by way of the purchase and assumption transaction, the federal association is shielded against Plaintiffs' claims or defenses to the note and mortgage by federal common law and by the federal association's presumptive holder in due course status. The undisputed facts reveal Plaintiffs have not overcome such presumption. Courts are compelled to apply these federal common law principles despite the fact they may be harsh and inequitable. Federal Deposit Ins. Corp. v. Kasal, 913 F.2d 487, 492 (8th Cir. 1990)¹

Plaintiffs' vendor's lien claim must fail because 42 O.S. § 28 states that a vendor's lien is applicable against anyone "except a purchaser or encumbrancer in good faith and for value." The record reveals the federal association through RTC is such a purchaser or encumbrancer in good faith and for value.

For the reasons expressed herein, Plaintiffs cannot prevail in an action against Cross Roads Savings and Loan or the federal

¹ The equities in this case tilt to Plaintiffs, but the law and established public policy of D'Oench, *supra*, clearly come down on the side of the RTC. In retrospect, Plaintiffs should have required cash or certified funds, such as a cashier's check at the closing to avoid the harsh realities of D'Oench, *supra*, and its progeny.

association for the foreclosure of the vendor's lien or the cancellation or rescission of the subject real estate sale.

The Motion for Summary Judgment of the Defendant and Cross-Claimant, Resolution Trust Corporation, in its separate capacities as Receiver of Cross Roads Savings and Loan Association and as Receiver of Cross Roads Savings and Loan, F.A., is hereby SUSTAINED. For the reasons stated, Plaintiffs' Motion for Summary Judgment is OVERRULED.

A separate Judgment in keeping with this Order shall be entered this date.

The matter is set for status conference as to the remaining Defendants on the 9th day of January, 1991, at 1:15 o'clock P.M.

DATED this 3rd day of December, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

DEC 8 1990

DOROTHY E. WELLS,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
 I.R.S. REVENUE AGENT)
 STEPHEN L. CARDELL,)

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

No. 90-C-599-B

ORDER

This matter comes on for consideration upon the Motion to Dismiss, pursuant to Fed.R.Civ.P. 12(b), filed by Respondents, United States of America and I.R.S. Agent Stephen L. Cardell.

This *pro se* action was filed by Petitioner, Dorothy E. Wells (Wells), against the United States of America (Government) and Agent Cardell (Cardell) attempting to quash an I.R.S. summons¹ directed to "Cushing Medical Clinic, Inc., Dr. Emil Milo."² (Clinic/Milo).

Wells apparently has or had some employee and/or contractual relationship with the Clinic/Milo during the years covered by the summons, 1985-89. The Government seeks this information relative to Wells' tax liability and offense exposure for the years in question.

¹ Wells' Complaint also addresses an I.R.S. letter to Creek County Health Department employee Sharon Jahromi requesting certain tax related information. Since this does not appear to be a summons, merely a letter request, the Court will not consider the quash issue relative to it.

² The Court will imply the disjunctive "or" between the Clinic and Dr. Milo since each stands in the same relationship to Wells.

The Government moves to dismiss, as to the United States of America, on the ground this Court lacks subject matter jurisdiction because there has been no waiver of sovereign immunity. As to Agent Cardell, the Government moves to dismiss on the ground a suit against a government employee, seeking relief which affects the public purse, is essentially a suit against the United States of America, again implicating sovereign immunity.

The latter issue is readily disposable. Although Wells' Petition to Quash alleges Cardell acted in excess of his delegated authority, the averments against him are all of acts within his scope of employment. Stated otherwise, Wells' allegations against Cardell concern his actions as an I.R.S. agent, not individual actions beyond the confines of his duties. The relief Wells seeks ultimately would affect the public treasury, i.e. the nonpayment of taxes or additional taxes for the years in question. Larson v. Domestic Foreign Commerce Corp., 337 U.S. 682, 688-89 (1949).

The Court concludes Wells' action against Cardell is tantamount to a suit against the sovereign and as such must be so measured. Larson v. Domestic Foreign Commerce Corp., supra. See also, Terrapin Leasing Ltd. v. United States, 449 F.Supp. 7 (W.D. Okla. 1978); Tracy v. United States, 426 F.Supp. 5 (W.D. Okla. 1976); Polmaskiitch v. United States, 436 F.Supp. 527 (W.D. Okla. 1977). The Court further concludes this action as to I.R.S. Agent Cardell should be and the same is hereby DISMISSED.

The Court next turns to the issue of subject matter jurisdiction which, if lacking, must cause the action to be

dismissed. It is black letter law that suits against the United States of America are not maintainable absent a waiver of sovereign immunity. Wells cites three grounds for jurisdiction, 28 U.S.C. §§ 1331 and 1340 and 26 U.S.C. § 7609(h)(1).

Sections 1331 and 1340, while general grants of jurisdiction, do not provide waiver of sovereign immunity. Hillier v. United States, 84-1 U.S.T.C. ¶ 9301 (D.Kan. 1983); Murray v. United States, [82-2 U.S.T.C. ¶ 9607], 686 F.2d 1320 (8th Cir. 1982), *cert.den.* 459 U.S. 1147; Eagle-Picher Industries, Inc. v. U.S., 901 F.2d 1530 (10th Cir. 1990); Thomas v. Pierce, 662 F.Supp. 519.

The Government contends whether 26 U.S.C. § 7609(h)(1) acts to waive sovereign immunity turns upon whether Clinic/Milo is a third-party recordkeeper. Also, Wells would have to be a person entitled to notice and, concomitantly, standing to seek to quash the summons. Rapp v. Commissioner of Internal Revenue, 774 F.2d 932 (9th Cir. 1985); Stinnett v. United States, 84-2 U.S.T.C. ¶ 9568 (N.D. La. 1984); Dawes v. United States, 85-2 U.S.T.C. ¶ 9851 (D. Kan. 1985). If not, Wells would have no right to notice and no standing to petition to quash the summons.

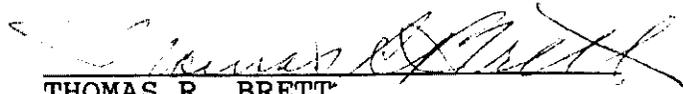
An employer is not a third-party recordkeeper within the statute §7609(a)(3). However, it is not clear whether Clinic/Milo was Wells' employer for the years in issue or stands in *ex contractu* relationship to Wells.

What is clear from the limited record before the Court is that the instruments sought from Clinic/Milo was that entity's records. These records were not maintained for Wells, and do therefore not

entitle Wells to notice (thus, standing) of the summons. Donaldson v. United States, 400 U.S. 517 (1970), and Organtini v. United States, 84-1 U.S.T.C. ¶ 9281 (N.D. Ill. 1984). Section 7609 was specifically enacted to protect the privacy interest of citizens whose personal records are maintained by "third-party recordkeepers," not records compiled by a third party for its own purposes. Donaldson, *supra*; H.R. No. 685, 94th Cong., 2d Sess. 307, reprinted in 1976 U.S. Code Cong. & Admin. News 2897, 3203; S. Rep. No. 938, 94th Cong., 2d Sess., pt. I, at 368, reprinted in 1976 U.S. Code Cong. & Admin. News 3439, 3797.

The Court concludes it lacks subject matter jurisdiction in that Clinic/Milo is not a third-party recordkeeper and Wells was not entitled to notice of the summons which would lend predicate standing to bring the instant suit. The Court further concludes this action as to the United States of America should be and the same is hereby DISMISSED.³

DATED this 3rd day of Dec, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

³ The Government's position as to invalid service [the Attorney General not served as required by Fed.R.Civ.P. 4(d)(4)], while correct is subsumed by the Court's ruling on the Motion to Dismiss.

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

FILED

SEP 11 1990

C. Silver, Clerk
DISTRICT COURT

RUTH H. CREECH,

Plaintiff,

vs.

Case No. 87-C-1012-B

CITY OF FAITH HOSPITAL; CITY
OF FAITH CLINIC; CITY OF
FAITH MEDICAL AND RESEARCH
CENTER; MICHAEL MCGEE, M.D.;
BRENT BENNETT, M.D.; MICHAEL
LAUGHLIN, M.D.; JOHN DOE;
RICHARD DOE; XYZ CORPORATION;
and other unknown and unnamed
entities and individuals

ORDER

This matter comes on for consideration upon the Motion to Reopen filed by Plaintiff, Ruth H. Creech, this case having been administratively closed pending the outcome of a case in the Southern District of Ohio involving the same issues¹ as the instant case. The administrative closing Order provided this action would be deemed dismissed with prejudice if the parties had not reopened the instant case for the purpose of obtaining a final adjudication herein within 60 days from the final adjudication of the Ohio proceedings on appeal to the Sixth Circuit Court of Appeals.

The Sixth Circuit entered its opinion in the Ohio matter on July 13, 1990. Plaintiff moved to reopen on August 13, 1990, well

¹ This action and the Ohio action involve a claim of lack of informed consent to a surgical operation performed upon the Plaintiff at the City of Faith facilities by doctors practicing there.

within the 60 day period. There has been no response to Plaintiff's Motion to Reopen.

The district court proceedings in Ohio narrowed the defendants to Michael McGee (McGee) and the City of Faith Medical and Research Center (Center). The Sixth Circuit determined the Ohio district court's assertion of personal jurisdiction over McGee was improper and that the claim against him must be dismissed. The Circuit further ruled personal jurisdiction did exist as to the Center²but determined the damages issue required retrial because the hospital bills and records of Plaintiff at City of Faith were excluded from the jury. The Court further ruled the Center was entitled to an off-set of the amount of the settlement (unknown) Plaintiff effected with Oral Roberts, Richard Roberts and the Oral Roberts Evangelical Association.

To this Court's knowledge, the damages matter has not been retried in Ohio. Since the possibility exists any award upon retrial may be less than the amount of the settlement, thereby negating any further action in either state, this Court is not inclined to reopen this case at this time.

If, within sixty (60) days of a final adjudication of the Ohio proceedings now pending before the district court for the Southern District of Ohio, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

² The Circuit Court determined the Center's knowing acceptance of the benefits of Oral Roberts Evangelical Association's "Expect a Miracle" telecasts in Ohio created an agency by estoppel and that Plaintiff's cause of action arose from the Center's activities in the forum state.

IT IS SO ORDERED this 3rd day of December, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

DEC -3 1988

BONNIE M. FARRIS,

Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.,
Secretary of Health and
Human Services,

Defendant.

CLERK
U.S. DISTRICT COURT

No. 87-C-742-B

ORDER

Now before the Court is Plaintiff's application for fees and other expenses under the Equal Access to Justice Act (EAJA) pursuant to 28 U.S.C. § 2412(b) and (d), in the amount of \$6,379.02.

Bonnie M. Farris (Claimant) brought an action pursuant to 42 U.S.C. § 405(g) for judicial review of the final decision of the Secretary of Health and Human Services (Secretary) denying her application for disability insurance benefits under §§ 216(i) and 223 of Title II of the Act, 42 U.S.C. §§ 416(i) and 423.

The matter before this Court was whether claimant's onset of disability date was December 7, 1985, as the Administrative Law Judge (ALJ) found, or whether it was March 1, 1984, as claimed by Plaintiff.

After briefing and oral argument, the United States Magistrate recommended a finding of an onset date of March 1, 1984. Upon review, this Court found that the record was undeveloped on the issue of when the onset of disability occurred and remanded the matter to the ALJ. The ALJ then found that the disability onset

date was March 1, 1984.

The issue before the Court is whether Plaintiff's attorney is entitled to fees under EAJA, 28 U.S.C. § 2412(b) and (d). The relevant language of EAJA is:

A court shall award to a prevailing party other than the United States, fees and other expenses ... incurred by that party in any civil action ... brought by or against the United States in any court having jurisdiction of that action, unless the Court finds that the position of the United States was substantially justified

The Supreme Court has recently interpreted "substantially justified" in Pierce v. Underwood, 108 S.Ct. 2541, 2550 (1988) as

" 'justified in substance' ... justified to a degree that could satisfy a reasonable person ... no different from the 'reasonable basis both in law and fact.' "

The medical advisor, Dr. Mancuso identified that Ms. Farris' problems began in 1984. Claimant began taking anti-depressants in 1984. Testimony of claimant's family members indicated a very noticeable change in claimant's personality in 1984. Social Security Ruling 83-20 (SSR 83-20) is insightful in determining the onset of disability, though not conclusive. SSR 83-20 does indicate that medical evidence is to be the primary element in onset determination.

The Secretary did not identify medical evidence in the record that contradicted the March 1, 1984 onset date nor does the Court conclude such exists. The Secretary did point out that the record contained some contradictory evidence of the onset date. However, none of that evidence was from a medical expert.

SSR 83-20 specifically identifies that mentally ill persons may not be capable of determining the onset date, and therefore "development should be undertaken in such cases to ascertain the onset date of the incapacitating impairment." This policy seems particularly appropriate in the case at bar.

Secretary cites Ivy v. Sullivan, 898 F.2d 1045 (5th Cir. 1990). Ivy deals with an individual alleging a prior onset date which was relevant to the date the claimant was last insured. Since the issue of 'date last insured' was not raised here, the Ivy case is not relevant to the case at bar.

Despite certain contradictions, the record did fully address the issue of disability onset date. The evidence in the record, impacted by SSR 83-20, convinces the Court the Secretary was not substantially justified in originally denying the March 1, 1984 onset date. The Court concludes Claimant's counsel is entitled to an award of attorney fees under EAJA.

The EAJA sets out a maximum hourly fee of \$75.00 unless the Court determines an increase in the cost of living is a specific factor. Plaintiff's EAJA application requests an hourly rate of \$113.50 with cost of living increase. Defendant argues that the cost of living rate should increase the hourly fee to only \$94.35. Defendant also states that the usual hourly rate awarded by this Court is \$100.00. per hour.

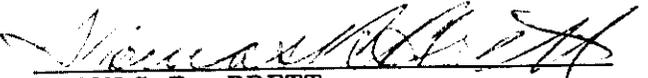
The Court finds that an increase in the cost of living does justify a higher hourly fee than the \$75.00 specified by EAJA. This Court has previously awarded an hourly fee of \$100.00 and does

so now.

Accordingly, Plaintiff's Application for Attorney Fees and Costs under EAJA is granted at the hourly rate of \$100.00, for a total award of \$5,495.00 (for 54.95 hours) for attorneys fees. The Court also grants Plaintiff's request for costs totaling \$142.20. The Court determines Claimant's Application for attorney fees of \$200.00 pursuant to 42 U.S.C. § 406 (b) (1) is subsumed by the Court's award of EAJA attorney fees. There was no showing the hours supporting the \$200.00 award were different hours than the hours covered by the EAJA award.

A Judgment will be entered simultaneously herewith.

IT IS SO ORDERED this 3rd day of December, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

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

FEDERAL DEPOSIT INSURANCE)
CORPORATION, as Manager of the)
FSLIC Resolution Fund,)
successor in interest to the)
FEDERAL SAVINGS AND LOAN)
INSURANCE CORPORATION,)
as Receiver for VICTOR)
SAVINGS AND LOAN ASSOCIATION,)

Plaintiff,)

v.)

Case No. 89-C-872-E

HOWARD L. MILLER and LINDA A.)
MILLER, husband and wife,)
DONALD R. MEINTS and CHERYL RENE)
MEINTS, husband and wife,)
MILLER, MEINTS & DITTRICH, an)
Oklahoma General Partnership;)
GRAND FEDERAL SAVINGS BANK)
OF GROVE, OKLAHOMA, and GAINES S.)
DITTRICH, an individual,)

Defendants.)

JUDGMENT

This matter comes on for consideration this 30th day of November, 1990, before the undersigned Judge of the United States District Court. The Federal Deposit Insurance Corporation as manager for the FSLIC Resolution Fund, successor in interest to the Federal Savings and Loan Insurance Corporation, as receiver for Victor Savings and Loan Association (the "FDIC"), appears by and through its attorneys of record, Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. by R. Mark Petrich. The Defendants Miller, Meints & Dittrich, an Oklahoma general partnership (the

"Partnership"), Donald R. Meints ("D. Meints"), Cheryl Rene Meints ("C. Meints") and Gaines S. Dittrich ("Dittrich") appear by and through their attorneys of record, Holliman, Langholz, Runnels and Dorwart by Micah Sexton. The Defendants Howard L. Miller ("H. Miller") and Linda A. Miller ("L. Miller") appear not. This Court being fully advised in the premises finds as follows:

1. On or about September 5, 1985, H. Miller, D. Meints, Dittrich and the Partnership executed and delivered a promissory note to Victor Federal Savings and Loan Association ("Victor Federal") in the principal sum of \$228,041.14 (the "Note").

2. On October 24, 1986, the Partnership executed and delivered to Victor Federal an extension note in the principal sum of \$227,249.61 (the "Extension Note").

3. The Note and Extension Note are secured by a certain real estate mortgage (the "Mortgage") in and to the following described real property located in Delaware County, Oklahoma, to-wit:

Lots 7, 8, 9 and 10, Block 18, Original Town of Grove, Oklahoma, LESS AND EXCEPT a tract of land in Lot 7, Block 18, Original Town of Grove, more particularly described as follows, to-wit: Beginning at the SE corner of said Lot 7, thence North 52 feet, thence West 17 feet, 3 inches, thence South 5 feet, thence West 7 feet, 9 inches, thence South 47 feet, thence East 25 feet to the point of beginning, Delaware County, Oklahoma.

4. The Partnership has defaulted under the terms and conditions of the Note, Extension Note and Mortgage and there remains a principal amount outstanding of \$221,867.99, plus accrued interest through November 1, 1990, in the sum of \$58,357.12, plus

continuing interest from November 1, 1990, until paid, at the rate of \$76.11 per day.

5. On March 13, 1987, Victor Federal was declared insolvent by the Federal Home Loan Bank Board ("FHLBB") and substantially all its assets were acquired by Victor Savings and Loan Association ("Victor"). On the 28th day of July, 1988, Victor was declared insolvent by the FHLBB and the FSLIC was appointed receiver for Victor and as receiver the FSLIC succeeded to all assets of Victor. On August 9, 1989, pursuant to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73, the FDIC became manager of the FSLIC Resolution Fund and succeeded to all rights, titles and interests of the FSLIC as receiver for Victor.

6. H. Miller and L. Miller are in default herein and this Court has previously granted the FDIC's Motion for Default against said Defendants.

7. The FDIC should be granted judgment in personam and in rem against H. Miller and the Partnership and in rem against D. Meints, C. Meints, Dittrich and L. Miller for the amounts set forth above, together with all costs of this action, accrued and accruing, including a reasonable attorneys' fee as determined by this Court upon application by the FDIC.

8. That the FDIC has a valid first lien on the real property described above, superior to all liens of all Defendants herein, and the FDIC should be granted judgment in rem against all Defendants and parties named herein, foreclosing its superior mortgage in and to the real property described above.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the FDIC have and recover judgment, in personam and in rem, against Defendants Howard L. Miller and Miller, Meints & Dittrich, an Oklahoma general partnership, and judgment in rem against Defendants Donald R. Meints, Cheryl Rene Meints, Gaines S. Dittrich and Linda A. Miller for the principal sum of \$221,867.99, plus accrued interest through November 1, 1990, in the sum of \$58,367.12, plus continuing interest from November 1, 1990, until paid, at the rate of \$76.11 per day, together with all costs of this action including a reasonable attorneys' fee in an amount to be determined by this Court at a later date upon application of the FDIC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the FDIC has a valid first lien on the real property described above, securing the judgment entered herein in the principal sum of \$221,867.99, plus interest, costs and attorneys' fee as set forth above, which is prior to all rights, titles, interests and liens of all Defendants herein and, therefore, the FDIC is entitled to a judgment in rem against all Defendants herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the rights, titles, interests and liens of all parties herein be foreclosed upon the real property described above and that a Special Execution and Order of Sale be issued, directing the sale of the above described real property after proper notice as provided by law.

IT IS FURTHER ORDERED, ADJUSTED AND DECREED by this Court that the order of priority of liens of the parties and the order of distribution of the proceeds from the sale are as follows:

1. First, to the payment of delinquent ad valorem taxes, penalties and interest due the County Treasurer of Delaware County, Oklahoma;
2. Second, to the payment of all costs incurred herein by the FDIC;
3. Third, to the payment of the judgment lien of the FDIC in the sum of \$221,867.99, plus accrued and accruing interest; and
4. Fourth, the balance, if any, to be paid to the Clerk of this Court to await further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that, upon confirmation of the sale of the above described real property, each and every party herein shall be forever barred, foreclosed and enjoined from asserting or claiming any right, title, interest, estate or equity of redemption in and to said premises or any part thereof.

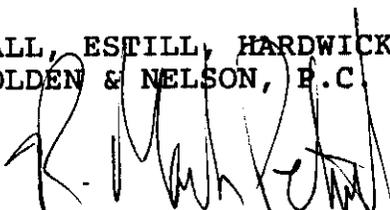
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that, upon confirmation of said sale, the United States Marshal of the Northern District of Oklahoma or the Sheriff of Delaware County, State of Oklahoma, whichever is called upon to conduct said sale, shall execute and deliver a good and sufficient deed to the premises to the purchaser thereof, conveying all right, title, interest estate and equity of redemption of each of the parties herein and each and all parties claiming under them since the filing of the Complaint in this suit, and to the real estate described above, and that upon application of the purchaser, a writ of assistance shall be issued and directed to the United States

Marshal or Sheriff of Delaware County who shall thereupon and forthwith, place said premises in full and complete possession and enjoyment of said purchaser.


United States District Court Judge

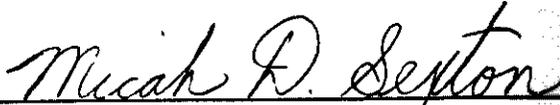
APPROVED AS TO CONTENT AND FORM:

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


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ATTORNEYS FOR DONALD R.
MEINTS, CHERYL RENE MEINTS,
GAINES S. DITTRICH AND MILLER,
MEINTS & DITTRICH, AN OKLAHOMA
GENERAL PARTNERSHIP

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA DEC -3 1969

CLERK
U.S. DISTRICT COURT

BEULAH M. LONGENECKER and)
HOMER I. LONGENECKER,)

Plaintiffs,)

vs.)

No. 89-C-667-B

FIRST SECURITY MORTGAGE)
COMPANY; RESOLUTION TRUST)
CORPORATION as Receiver of)
Cross Roads Savings and Loan,)
a state banking association;)
PETE MARCUS YOUNG; and)
TERRY GARTSIDE REALTORS,)

Defendants,)

and)

CROSS ROADS SAVINGS AND LOAN)
F.A., by and through its)
Conservator, The Resolution)
Trust Corporation,)

Cross-Claimant.)

J U D G M E N T

In keeping with the Order entered this date sustaining the Motion for Summary Judgment of the Defendant and Cross-Claimant, Resolution Trust Corporation in its separate capacities as Receiver of Cross Roads Savings and Loan Association, and as Receiver of Cross Roads Savings and Loan, F.A., Judgment is hereby entered in favor of Resolution Trust Corporation in its separate capacities as Receiver of Cross Roads Savings and Loan Association and as Receiver of Cross Roads Savings and Loan, F.A., and against the Plaintiffs, Beulah M. Longenecker and Homer I. Longenecker, and Plaintiffs' action is hereby dismissed against said prevailing parties. The parties are to pay their own respective costs and

attorneys fees.

DATED this 3rd day of dec, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 3 1990

LARRY REED d/b/a REED ELECTRIC
COMPANY,

Plaintiff,

vs.

HOPPER CONSTRUCTION COMPANY,
INC., et al.,

Defendants.

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

No. 88-C-1328-B

ORDER

This matter has resolved itself to a single pending claim by Tri-State Electric Supply Co., Inc. (Tri-State) against the Federal Deposit Insurance Corporation, as Manager of the Federal Savings and Loan Insurance Corporation Resolution Fund, as Receiver for Home Savings and Loan Association (FDIC-Receiver). By Order entered and filed February 26, 1990, this Court addressed FDIC-Receiver's Motion to Dismiss based upon a mootness theory that it is not prudently, judicially expedient to seek judgment against the receiver of an insolvent, liquidated bank or savings and loan. The predicate is, if totally worthless, the claim presents no case or controversy, in that there will never be assets with which to satisfy the claim. The Court denied the Motion to Dismiss.

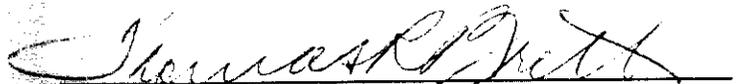
Notwithstanding, Tri-State has taken no action to advance this matter, having failed to attend a status conference set and held August 3, 1990. At such conference Magistrate Wagner recommended the case be dismissed for failure to prosecute and allowed Tri-State ten days to object to such recommendation. There being none, the Court concludes Tri-State is no longer interested in pursuing

its claim.

This case is subject to dismissal without prejudice pursuant to Rule 41(b), Fed.R.Civ.P, as well as in the exercise of the Court's inherent power. Where the record shows a lack of diligence in pursuing the suit, dismissal of the suit is proper. Rohauer v. Eastin-Phelan Corp., 499 F.2d 120 (C.A.8th 1974); See also, Finley v. Rittenhouse, 416 F.2d 1186 (C.A. 9th 1969), and cases cited therein.

The Court finds this matter should be and the same is hereby DISMISSED. Each party is to bear its own attorney fees and costs.

DATED this 3rd day of December, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE