

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

FILED  
MAR 20 1991  
JACK B. SMITH, CLERK  
DISTRICT COURT

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, a corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
EDWARD M. BEHNKEN, et al., )  
 )  
Defendants. )

Case No. 88-C-452-C

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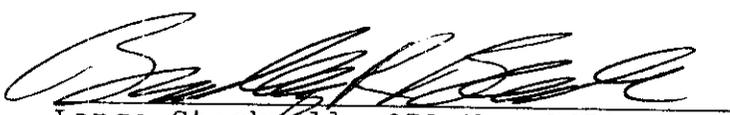
STIPULATION PURSUANT TO RULE 41(a)(1) OF  
DISMISSAL WITH PREJUDICE OF FDIC'S  
CLAIMS AGAINST DEFENDANT EDWARD M. BEHNKEN

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Plaintiff, Federal Deposit Insurance Corporation ("FDIC") and defendant Edward M. Behnken by and through his respective counsel of record and pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, stipulate to the dismissal of FDIC's claims with prejudice as to said defendant. The dismissal with prejudice is effective only as to said defendant and not in respect to any other defendant in this action.

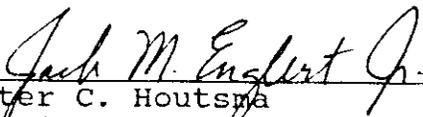
Dated this 20th day of March, 1991.

Respectfully submitted,



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ATTORNEY FOR DEFENDANT  
EDWARD M. BEHNKEN

CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of ~~January~~ <sup>March</sup> 1991, I mailed a true and correct copy of the foregoing by placing a copy thereof in the United States mail, postage prepaid, addressed to the following:

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

MAR 20 1991

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

IN RE:	)	
	)	
JOHN HARRISON STEPHENSON,	)	Bky. No. 89-02532-W
	)	
Debtor.	)	
	)	
FEDERAL DEPOSIT INSURANCE	)	Adversary No. 90-0054-W
CORPORATION,	)	
	)	
Plaintiff/Appellee,	)	
	)	
v.	)	Case No. 90-C-674-E
	)	
JOHN HARRISON STEPHENSON,	)	
	)	
Defendant/Appellant.	)	

ORDER

This order pertains to the appeal of John Harrison Stephenson ("Stephenson") from the final judgment of the Bankruptcy Court for the Northern District of Oklahoma dated July 30, 1990, in which discharge was denied to Stephenson based on the court's finding that he had sworn to a false oath on the schedules filed in the bankruptcy action in violation of 11 U.S.C. § 727(a).<sup>1</sup>

The Bankruptcy court found that in 1971 Stephenson started The Stephenson Advertising Agency, Inc., which was a successful endeavor. However, in the

<sup>1</sup> Title 11 U.S.C. § 727(a) states in pertinent part:

- The court shall grant the debtor a discharge, unless--
- (1) the debtor is not an individual;
  - (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title [11 USCS §§ 101 et seq.], has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed--
    - (A) property of the debtor, within one year before the date of the filing of the petition; or
    - (B) property of the estate, after the date of the filing of the petition; ...
  - (4) the debtor knowingly and fraudulently, in or in connection with the case--
    - (A) made a false oath or account;
    - (B) presented or used a false claim....

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early 1980s Stephenson became involved in several oil and gas production and leasing ventures and borrowed funds from the Bank of Commerce to finance the projects. When oil prices dropped, Stephenson became liable for substantial tax and loan obligations which he could not meet. The Bank of Commerce filed suit against him in 1985 and received a judgment against him in 1988.

Sometime in 1982 Stephenson began giving his pay checks to his wife, so that she could pay all household expenses. In May of 1983, Stephenson conveyed his interest in his homestead to his wife. In May of 1985, he conveyed his one-quarter interest in an office building to her, and in May of 1988 he conveyed his automobile to her, admittedly to protect these assets if judgments were entered against him. In April, 1988 Stephenson shut down his ad agency, and at the same time started a new ad agency, The Stephenson Agency, Inc., to serve the same clients. In June of 1989 he withdrew all the funds in a small operating bank account and on August 23, 1989 withdrew \$5,000.00 from ad agency accounts. Stephenson's actions to divest himself of those assets occurred in large part some time before the filing of Stephenson's Chapter 7 bankruptcy on August 24, 1989.

On September 26, 1989 a § 341 creditors meeting was held and attended by Stephenson, his counsel, the trustee, and counsel for the FDIC, successor to the Bank of Commerce. On January 31, 1990 a Rule 2004 examination of Stephenson was conducted by counsel for FDIC. On February 16, 1990, the FDIC filed a complaint under 11 U.S.C. § 727(a)(2), (4), and (5) objecting to Stephenson's

discharge. A trial was held on July 16, 1990, and the court rendered its decision on July 17, 1990.

The Bankruptcy Court noted:

Usually these type of activities are difficult for the Court to determine, but in this case, through the candidness of Mr. Stephenson, he admits in sworn testimony that the purpose of these conveyances was to divest himself of his assets. From this evidence I know that Mr. Stephenson was well aware that the IRS could take his home, the IRS could take everything including, but not limited to, the clothes on his back. And Mr. Stephenson understood that, and, as Mr. Stainer has pointed out, these conveyances and this ability to divest yourself of any and all assets took place more than one year from the date of the filing of the Bankruptcy Petition and, thus, 727(a)(2)(a) [sic] does not apply by virtue of the fact that you have got a one year statute.... Mr. Stephenson admits the transfers were to defeat various and sundry creditors which, in fact, the conveyances were for the purpose of hindering, delaying, and defrauding creditors. (TR 92-93)

The Bankruptcy Court emphasized that none of the acts to divest Stephenson of assets changed Stephenson's ability to obtain "full and complete access, use and possession of the home, the office building, motor vehicles, and the accounts of the ad agency". (TR 94) The Bankruptcy Court noted that in five years Stephenson's net worth changed approximately four and a quarter million dollars, as he told the court he was worth \$450,000.00 in May of 1984 and by August of 1989 he was indebted in an amount of \$3,800,000.00. (TR 94)

The Bankruptcy Court admitted that Stephenson could protect his homestead, motor vehicle, and salary from his creditors, except the IRS, but "it is critical that any and all of the acts and activities be disclosed". (TR 95) The Bankruptcy Court looked at the facts and concluded that, from 1988 on,

Stephenson had no property of any nature of his own. (TR 95) But the Bankruptcy Court concluded "[i]f we have assets and if we have the beneficial use of the assets, that in fact must be disclosed[,] for omissions suffice for a 727(a)(4) objection to discharge". (TR 95)

The Bankruptcy judge cited Tenth Circuit law finding that the failure to disclose interests constitutes a false oath under 11 U.S.C. § 727(a)(4)(A). In re Calder, 907 F.2d 953 (10th Cir. 1990). The Bankruptcy Court noted that "any type of a false oath, whether predicated on a misstatement or a nonstatement shall suffice for a 727(a)(4) and, accordingly, no proof of actual harm to the particular creditor is an element under 727(a)(4)(a) [sic]". (TR 96-97) The Bankruptcy Court found that the standard of proof in a 727(a)(4)(A) matter is a preponderance of the evidence. (TR 97) Finally, the Bankruptcy Court mentioned that the transfer of property by a debtor to his spouse while insolvent, while retaining the use and enjoyment of the property, is "a classic badge of fraud", as discussed in In re Cadarette, 601 F.2d 648 (2nd Cir. 1979).

The Bankruptcy Court concluded as follows:

Knowingly and fraudulently omitting from a sworn Statement of Affairs or Schedules, constitutes false oaths sufficient to bar a discharge in bankruptcy under 727(a)(4)(a) [sic]. The subject matter of a false oath is material and thus sufficient to bar a discharge in bankruptcy if it bears a relationship to the debtor's business, transaction, or estate, concerns discovery of assets, business dealings or existence or disposition of his property. And, as mentioned, the debtor may not escape the denial of a discharge when making a false oath by asserting that admittedly omitted and falsely stated information concerned the worthless business relationship, or worthless holding, or worthless asset, which would not benefit a particular creditor. And under this

evidence the Court is compelled to deny the discharge of the debtor.

In reviewing a bankruptcy court's denial of a discharge based on the making of a false oath or account in connection with the case, the "clearly erroneous" standard applies. In re Calder, 907 F.2d at 956. The court can only conduct a de novo review if a fraudulent transfer is the ground for denial of discharge under 727(a)(2)(A). In this case the Bankruptcy Court found no fraudulent transfers within twelve months of the bankruptcy filing and the FDIC does not appeal this finding.

Title 11 U.S.C. § 727(a)(4)(A) sets forth the grounds on which the Bankruptcy Court made its decision in this case. It states: "(a) The court shall grant the debtor a discharge, unless-- (4) the debtor knowingly and fraudulently, in or in connection with the case-- (A) made a false oath or account...." 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.

The court has reviewed the bankruptcy schedules in Official Bankruptcy Form One filed by plaintiff on August 24, 1989, which is attached to FDIC's Brief on Appeal. In the Schedule of Current Income and Current Expenditures, Stephenson gave his monthly gross pay as \$3,000.00, his take home pay as \$2,528.00, and his spouse's pay as \$0.00, and listed his family's monthly living expenses, including mortgage payment, utilities, home maintenance, insurance, transportation, education, food, clothing, medical, laundry, and other expenses in the amount of \$3,760.00. In Schedule B-2 Personal Property,

Stephenson listed only \$2,000.00 worth of household goods and \$500.00 in clothing and apparel, and stated he had no other personal property and no equitable and future interest, life estate, and rights or powers exercisable for his benefit.

FDIC argues, and the Bankruptcy Court apparently agreed, that Stephenson falsely omitted the house, automobile, and business as property in which he had an interest, because he had the beneficial use of them. It also claims that the expenses listed were not his expenses, if his wife paid those expenses.

However, 11 U.S.C. § 541 defines assets as "all legal or equitable interests of the debtor in property as of the commencement of the case". Stephenson did not have title to, nor any equitable interest in these properties, despite his permissive use of them. There is no case law that requires a debtor to list property in which he has only permissive "beneficial use" on the schedules.

This court concludes that Stephenson did not make any false oath of account in this case. He admitted at the 341 and 2004 hearings under oath that he had transferred his home, business, and automobile to his wife to keep them out of the reach of creditors. He made no false statements as to material matters on the bankruptcy forms he filed with the court. He disclosed all his assets on the schedules. He had no equitable or future interest, life estate, or right or power exercisable for his benefit which was reportable, and he had no legal interest in property that could be conveyed, sold, or transferred. He

did not fail to list anything that could be defined as an asset. Had he failed to put his household expenses on the schedule, a sham would have been obvious. Instead, he revealed how his income was spent each month. It was irrelevant that his wife, who had no income, actually wrote the checks to pay those expenses.

The Court finds that the Bankruptcy Court's decision here was clearly erroneous. The Court further finds that the Bankruptcy Court should direct the Trustee to move the Court to set aside the conveyances on the basis of fraud. The Bankruptcy Court should then consider whether, under the facts of the case, 28 U.S.C. §544 and the Oklahoma Fraudulent Transfer Act, 24 O.S. §§112 et seq. afford creditors any remedy.

IT IS THEREFORE ORDERED that the Bankruptcy Court's decision is reversed and remanded for further proceedings consistent with this Order.

ORDERED this 18 day of March, 1991.

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

GLH/LAL/lb-ta  
01/31/91

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

RUFUS HOWARD HOLT, and  
LETHA L. HOLT, Plaintiff's Spouse,

Plaintiffs,

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-707-B

AGREED ORDER OF DISMISSAL WITH PREJUDICE  
AS TO DEFENDANT McNEIL CORPORATION

On this day came on to be heard the above-styled and numbered cause, and came Plaintiffs and Defendant, McNeil Corporation, and announced to the Court that all claims by Plaintiffs against Defendant McNeil Corporation have been fully compromised and settled, and that said Plaintiffs have given or will give to McNeil Corporation a final release of all claims and causes of action herein. It is therefore,

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

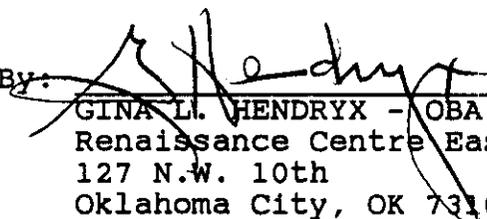
ORDERED, ADJUDGED and DECREED by the Court that each party be taxed its own costs of Court.

SIGNED this 19<sup>th</sup> day of March, 1991.

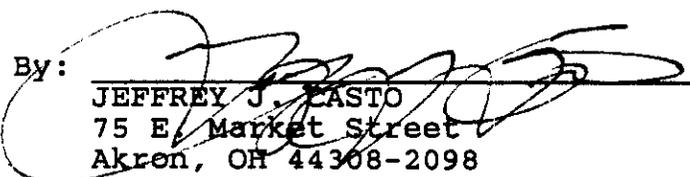
S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

AGREED AND APPROVED:

NORMAN & EDEM, P.C.  
ATTORNEYS FOR PLAINTIFFS

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GOAL-H14A/HOL-A01-2

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

FILED  
MAR 19 1991

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

T.D. WILLIAMSON, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DWANE ODELL LAYMON, and )  
 ELECTRONIC PIGGING SYSTEMS, )  
 INC., an Oklahoma corporation, )  
 ENDURO PIPELINE SERVICES, INC. )  
 an Oklahoma corporation, )  
 MADELINE LAYMON, an individual )  
 and JAMES M. BERRY, an )  
 individual, )  
 )  
 Defendants. )

No. 83-C-84-C

O R D E R

Before the Court for its consideration is plaintiff TDW's motion to dismiss Counts I, II, III and V of its Second Amended Complaint. The Court will also consider here defendants' motion to dismiss Count IV of the same complaint.

TDW's Motion to Dismiss

TDW moves for dismissal without prejudice of the four counts in its Second Amended Complaint which allege causes of action relating to infringement of TDW's patent by the defendants. As a reason for seeking dismissal of its infringement claims, TDW asserts that it did not anticipate the lengthy and expensive jury trial, which TDW perceived after this Court refused to strike defendants' defenses of patent invalidity. Defendants do not oppose TDW's motion; defendants, however, request that the dismissal be with prejudice, arguing that TDW's claims of patent

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infringement by defendants' "external finger" pigging device are groundless.

In considering a motion to dismiss without prejudice, "the important aspect is whether the opposing party will suffer prejudice" in light of the parties' valid interests. Barber v. General Elec. Co., 648 F.2d 1272, 1275 (10th Cir. 1981). Defendants have not shown or even alleged that they will be prejudiced by the dismissal of these four counts relating to patent infringement.

Accordingly, TDW's motion to dismiss Counts I, II, III and V of its Second Amended and Supplemental Complaint without prejudice will be granted.

#### Defendants' Motion to Dismiss

In seeking the dismissal of the four counts relating to its claims of patent infringement by the defendants, TDW has elected to proceed to trial on a cause of action for fraudulent transfer of assets arising under Oklahoma law. Defendants' motion to dismiss is directed toward this remaining cause of action. Defendants assert that, with the dismissal of the patent infringement claims, the Court retains only pendent jurisdiction over the state-law fraudulent transfer cause of action. Defendants' motion suggests that the Court divest itself of that pendent jurisdiction by dismissing the fraudulent transfer cause of action.

In support of their motion, defendants cite United Mine Workers v. Gibbs, 383 U.S. 715 (1966), in which the Supreme Court stated that "if the federal claims are dismissed before trial, the

state claims should be dismissed as well." Id. at 726. However, the Supreme Court has interpreted this statement from its Gibbs decision as not establishing "a mandatory rule to be applied inflexibly in all cases." Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350n.7 (1988). Rather, the Supreme Court has stated that "[t]he statement simply recognizes that in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine - judicial economy, convenience, fairness, and comity - will point toward declining to exercise jurisdiction over the remaining state-law claims." Id.

The time frame of this case is important in considering those factors of judicial economy, convenience, fairness to the litigants and comity mentioned above. One phase or another of this action has been pending in this court since 1983. Trial on the fraudulent transfer cause of action and the now-dismissed patent infringement causes of action is scheduled to be held in a few months. The Court is familiar with the background of the fraudulent transfer cause of action, having rendered the judgment out of which that cause of action is alleged to have arisen. A considerable amount of time and resources have been expended in this forum by the parties and by the Court.

In Enercomp, Inc. v. McCohill Pub., Inc., 873 F.2d 536 (2d Cir. 1989), the district court's submission of pendent state-law claims to the jury after dismissing the federal claims was alleged, on appeal, to be an improper exercise of pendent jurisdiction. The

Second Circuit disagreed.

[I]t would have been a pointless waste of judicial resources to require a state court to invest the time and effort necessary to familiarize itself with a case well-known to the federal presiding judge. It would have been unfair to the plaintiffs to transfer a case scheduled for trial within days in federal courts to a state tribunal where it would have had to wait perhaps months to be heard.

Id. at 546. Here, the trial in federal court is scheduled to take place in a few months, but the wait for a trial if TDW were required to take the fraudulent transfer cause of action to the Oklahoma state courts could take perhaps even years. The Court recognizes that TDW has sought to collect its judgment against defendants Laymon and Electronic Pigging Systems through various enforcement procedures in this Court. Those enforcement procedures would essentially be duplicated in the state courts if TDW were required to bring its action for fraudulent transfer there.

As the Court noted in its Order of May 23, 1990, TDW's fraudulent transfer cause of action is brought under an Oklahoma statute which has had some interpretation by the Oklahoma courts. The issues raised in TDW's claim of fraudulent transfer do not appear to be novel, so that the Court would not be breaking new ground in Oklahoma law in deciding this fraudulent transfer cause of action.

Weighing all these considerations, the Court believes that the better course in the exercise of its discretion is to retain TDW's fraudulent transfer cause of action for resolution in this Court.

However, even if the Court declined to exercise pendent

jurisdiction in this case, it would still have ancillary jurisdiction over TDW's fraudulent transfer claim, through its inherent power to enforce its judgment for damages previously rendered in this case. F.R.Cv.P. 69(a) provides for the application of state law "in proceedings on and in aid of a judgment and in proceedings on and in aid of execution." Atlantic Purchasers, Inc. v. Aircraft Sales, Inc., 101 F.R.D. 779, 781 (W.D.N.C. 1984). In Atlantic Purchasers, the district court held that North Carolina law permitted the plaintiffs there to bring an action alleging fraudulent conveyance of defendants' property in aid of execution of the judgment rendered against the defendants in federal court. Id. at 782. The district court found that it had ancillary jurisdiction over the state-law fraudulent conveyance claim.

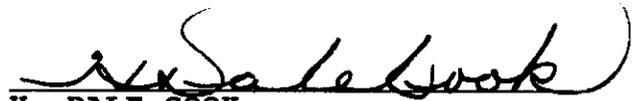
Here, Oklahoma law similarly provides TDW with the right to bring an action alleging a fraudulent conveyance of defendant Dwane Laymon's and Electronic Pigging Systems' property and assets to the other defendants. Since TDW's fraudulent conveyance action is brought in aid of execution of the judgment against the two defendants previously rendered by this Court, the Court may properly exercise ancillary jurisdiction over TDW's fraudulent conveyance cause of action.

Conclusion

Plaintiff's motion to dismiss Counts I, II, III and V of the Second Amended and Supplemental Complaint is hereby **GRANTED**.

Defendants' motion to dismiss is hereby **DENIED**.

IT IS SO ORDERED this 19<sup>th</sup> day of March, 1991.

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

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

FILED

MAR 19 1991

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

ROY LEE DUNN, }  
 }  
 Petitioner, }  
 }  
 vs. }  
 }  
 JACK COWLEY, Warden, }  
 }  
 Respondent. }

No. 90-C-226-C

ORDER

The Court has before it the objections of petitioner Roy Lee Dunn to the Report of Magistrate Jeffrey S. Wolfe recommending that his petition for writ of habeas corpus be denied.

The Court has independently reviewed the record to consider each objection raised by petitioner and concludes that the Magistrate's recommendation is correct and hereby adopted by the Court.

Petitioner Roy Dunn was convicted in Payne County District Court, Case No. CRF-84-7, along with co-defendants Terry Dunn (his younger brother) and Eulantine Mitchell (his girlfriend). The defendants received two life sentences for two counts of murder in the first degree. Defendants filed a direct appeal to the Oklahoma Court of Criminal Appeals. Petitioner Roy Dunn's conviction was affirmed. Co-defendant Terry Dunn's conviction was reversed and remanded for new trial based on improper admission of certain evidence. Thereafter the trial court dismissed the case for

insufficient evidence. Co-defendant Eulantine Mitchell's conviction was reversed with directions to dismiss for insufficient evidence.

From a review of the record, the Court agrees with the Magistrate that the evidence, as to petitioner Roy Dunn, was sufficient for a rational trier of fact to find each of the essential elements of the crime beyond a reasonable doubt, hereby precluding habeas relief.

No other issue raised by the petitioner is substantiated by the record nor demonstrates constitutional error which would permit habeas corpus relief under the applicable standard of review.

Accordingly, the Magistrate's recommendation is affirmed and the report is adopted as the finding and conclusions of this Court.

It is therefore Ordered that petitioner's application for writ of habeas corpus is DENIED.

*IT IS SO ORDERED* this 18<sup>th</sup> day of March, 1991.

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

GLH/LAL/lb  
01/31/91

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

FILED

FEB 1 1991

Jack C. Silver, Clerk

BILLY FRANKLIN WILLIAMS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 EAGLE-PICHER INDUSTRIES, INC., and )  
 OWENS-CORNING FIBERGLAS CORPORATION, )  
 )  
 Defendants. )

No. 88-C-716-B

AGREED ORDER OF DISMISSAL WITH PREJUDICE  
AS TO DEFENDANT McNEIL CORPORATION

On this day came on to be heard the above-styled and numbered cause, and came Plaintiff and Defendant, McNeil Corporation, and announced to the Court that all claims by Plaintiff against Defendant McNeil Corporation have been fully compromised and settled, and that said Plaintiff has given or will give to McNeil Corporation a final release of all claims and causes of action herein. It is therefore,

ORDERED, ADJUDGED and DECREED by the Court that Plaintiff recovers nothing from Defendant, McNeil Corporation by this action and that Plaintiff's claims against McNeil Corporation in the above-styled and numbered cause be, and the same is hereby, DISMISSED WITH PREJUDICE to the refiling of same in any form. It is further,

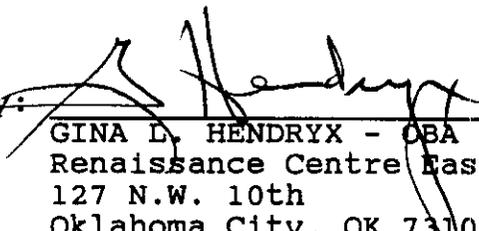
ORDERED, ADJUDGED and DECREED by the Court that each party be taxed its own costs of Court.

SIGNED this 19<sup>th</sup> day of March, 1991.

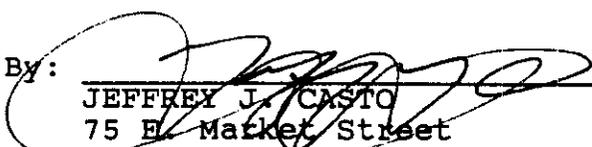
ST. THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

AGREED AND APPROVED:

NORMAN & EDEM, P.C.  
ATTORNEYS FOR PLAINTIFF

By:   
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ATTORNEYS FOR DEFENDANT MCNEIL CORPORATION

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GOAL-W50B/WIL-AO3-4

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

FILED

MAR 19 1991

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

UNITED STATES OF AMERICA, )  
ex rel. THE PRECISION COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
KOCH INDUSTRIES, INC., et al., )  
 )  
Defendants. )

No. 89-C-437-C

ORDER

Before the Court is the motion of the plaintiff to reconsider the Court's Order filed November 27, 1990. In that Order, the Court granted defendants' motion to dismiss. The basis of the dismissal was the Court's factual finding that plaintiff had not provided the information on which the allegations are based to the government before filing an action, as required by 31 U.S.C. §3730(e)(4)(B). The Court chose to disregard an affidavit submitted by plaintiff's president which contradicted his earlier deposition testimony. Plaintiff now asks the Court to reconsider, and submits additional affidavits from other individuals, which plaintiff argues demonstrate that plaintiff has met the statute's "original source" requirement.

It should be unnecessary to state that the Court wishes to render proper rulings on all motions. However, it should also be

unnecessary to state that the parties are expected to fully address all issues initially, so that only a single Order will be necessary. Waiting until the Court issues an Order, and then submitting "better" affidavits addressing a factual issue the Court has found to be insufficiently proven subverts the entire notion of motion practice.

As defendant notes by citation to authority, courts have been reluctant to grant Rule 60(b) relief in such circumstances. See, e.g., Mas Marques v. Digital Equipment Corp, 637 F.2d 24, 29 (1st Cir. 1980). Plaintiff asserts that "[i]t was clear that Magistrate Wolfe wanted a single affidavit from Precision, and did not want to be unnecessarily 'buried' by several affidavits ...." (Plaintiff's Reply Brief at 4-5). No citation to the record supports this statement and, as noted in this Court's November 27 Order, the Magistrate made no factual finding on the issue in question. This Court must rule on the record presented, and did so. Thus, the Court denies the pending motion on the basis that the supplemental affidavits should have been made part of the record during initial briefing.<sup>1</sup>

Even if the Court were to consider the supplemental affidavits, the Court is not persuaded that they sufficiently establish that all of plaintiff's information was submitted to the government prior to the lawsuit's filing. The Court does not

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<sup>1</sup>If anything, the principle is more applicable here, when the motion was referred to the Magistrate, who allowed the parties to make such factual record as they wished.

believe that its reliance upon Franks v. Nimmo, 796 F.2d 1230 (10th Cir. 1986) is erroneous.

It is the Order of the Court that the motion of the plaintiff for reconsideration is hereby denied.

*IT IS SO ORDERED* this 19<sup>th</sup> day of March, 1991.

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

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

FILED  
MAR 19 1991

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

IN RE:	}	
	}	
REPUBLIC FINANCIAL	}	Case No. 84-01460-W
CORPORATION, an Oklahoma	}	(Chapter 11)
corporation,	}	
	}	
Debtor.	}	
	}	
	}	
R. DOBIE LANGENKAMP,	}	
Successor Trustee,	}	
	}	
Plaintiff,	}	
	}	
vs.	}	Adversary No. 86-0446-C
	}	
MAXINE VICKERS, TRUSTEE OF	}	
THE MAXINE VICKERS	}	
REVOCABLE TRUST,	}	No. 91-C-25-C ✓
	}	
Defendant.	}	

ORDER

Before the Court is defendant's motion to withdraw reference in order that she may assert her right to a trial by jury.

Defendant asserts that under Langenkamp v. Culp, 111 S.Ct. 330 (1990) she has a right to a trial by jury because she has not submitted any claims against the bankruptcy estate, Republic Financial Corporation.

Plaintiff objects asserting that defendant has filed a claim and attaches as an exhibit a "Proof of Claim" filed by Maxine C.

Vickers, and asserts, alternatively that her request for trial by jury is untimely and accordingly should be denied.

The Court notes that the defendant therein is "Maxine Vickers, Trustee of the Maxine Vickers Revocable Trust". The "Proof of Claim" filed in the bankruptcy case was signed by "Maxine C. Vickers". Without further inquiry this Court is unable to determine whether the "Proof of Claim" was entered by the trust estate or Ms. Vickers individually.

However, the Court need not reach that issue, since defendant has waived her right to a trial by jury by failure to file a timely jury demand in accordance with Rule 38(b)(d) F.R.Cv.P. and Bank.R. 9015(c) (abrogated Mar. 30, 1987). Both Rules 9015(b) and 38(b) require jury demands be served within ten days after service of the "last pleading directed to such issue". The "last pleading directed to such issue" will generally be an answer or a reply, if appropriate, and is determined on a claim by claim basis. In re Kaiser Steel Corp., 911 F.2d 380, 388 (10th Cir. 1990). Defendant's answer was filed on September 25, 1986. No written jury demand was made until May 12, 1987.

Additionally, at the time defendant filed her request for trial by jury, she failed to simultaneously file her request for transfer to the district court. The Tenth Circuit has directed that "parties seeking a jury trial must combine their request for a jury trial with a request for transfer to the district court." In re Latimer, 918 F.2d 136, 137 (10th Cir. 1990). Failure to do so constitutes waiver of the right to trial by jury.

Defendant Maxine Vickers has waived her right to trial by jury and accordingly her motion to withdraw reference is denied.

*IT IS SO ORDERED* this 19<sup>th</sup> day of March, 1991.



H. DALE COOK

Chief United States District Judge

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

MAR 19 1991

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

JOHN L. ALEXANDER, }  
 }  
 Plaintiff, }  
 }  
 vs. }  
 }  
 DOUG GABBARD and }  
 JAMES THORNLEY, }  
 }  
 Defendants. }

No. 90-C-934-C ✓

ORDER

Before the Court is the objection filed by plaintiff John L. Alexander to the Report and Recommendation entered by Magistrate Jeffrey S. Wolfe.

Plaintiff is an inmate currently incarcerated at the Dick Conner Correctional Center in Hominy, Oklahoma. He brings this habeas action asserting that Atoka County District Judge Doug Gabbard and Assistant District Attorney James Thornley violated his civil rights in the course of his criminal trial.

The Magistrate recommends dismissal based on absolute immunity of judges and prosecutors in performing their official duties.

The Court has independently reviewed the file and finds that the Magistrate's report and recommendation should be and hereby is affirmed and adopted as the findings and conclusions of this Court.

Accordingly, it is the Order of the Court that plaintiff's application for writ of habeas corpus asserting claims against

Judge Doug Gabbard and Assistant District Attorney James Thornley  
is hereby dismissed with prejudice.

*IT IS SO ORDERED* this 19<sup>th</sup> day of March, 1991.

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

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

FILED

MAR 17 1991

MARSHA LEE KENNEDY and STEPHEN MICHAEL )  
KENNEDY, )

Plaintiffs, )

v. )

ROBERT G. FREEMAN, M.D., and ROBERT G. )  
FREEMAN, M.D., P.A., )

Defendants.)

No. 88-C-1466-B

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

ORDER OF DISMISSAL WITH PREJUDICE

For good cause shown and because the claims between the parties have been fully settled, the above-styled action is hereby dismissed with prejudice.

Ordered this 18 day of March, 1991.

S/ THOMAS R. BRETT

\_\_\_\_\_  
Honorable Thomas R. Brett



It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on November 14, 1990; Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on November 14, 1990; and that the Defendant, Judy J. Dennis, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that on November 20, 1990, Judy Jones Dennis, filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-03619-C. On February 25, 1991, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. §362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

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

Lot One (1), Block (1), ROLLING MEADOWS, an Addition to the Town of Glenpool, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on January 28, 1981, the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through the Farmers Home Administration, her mortgage note in the amount of \$36,000.00,

payable in monthly installments, with interest thereon at the rate of 12 percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, a mortgage dated January 28, 1990, covering the above-described property. Said mortgage was recorded on January 28, 1981, in Book 4523, Page 1150, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated March 14, 1981, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated February 26, 1983, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated March 6, 1984, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit

Agreement dated February 19, 1985, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated February 10, 1986, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated February 19, 1987, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated February 18, 1988, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Judy J. Dennis, is indebted to the Plaintiff in the principal sum of \$32,573.59, plus accrued interest in the amount of \$3,222.49 as of January 19, 1990, plus interest accruing thereafter at the rate of \$10.7092 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 \$27,249.88, and the costs of this action.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$389.00, plus penalties and interest, for the year of 1990. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$7.00 which became a lien on the property as of July 2, 1990. Said lien is inferior to the interest of the Plaintiff, United States of America.

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

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Plaintiff have and recover judgment in rem against the Defendant, Judy J. Dennis, in the principal sum of \$32,573.59, plus accrued interest in the amount of \$3,222.49 as of January 19, 1990, plus interest accruing thereafter at the rate of \$10.7092 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 \$27,249.88, plus interest thereafter at the current legal rate of 6.46 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to

be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$389.00, plus penalties and interest, for ad valorem taxes for the year 1990, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$7.00 for personal property taxes for the year of 1989, plus the costs of this action.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Judy J. Dennis, 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 Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$389.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

**Third:**

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

**Fourth:**

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$7.00 for personal property taxes which are currently due and owing.

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

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

(Signed) H. Dale Cook

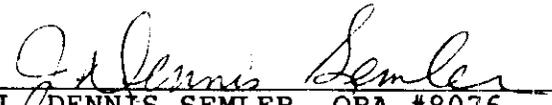
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UNITED STATES DISTRICT JUDGE

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

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

Judgment of Foreclosure  
Civil Action No. 90-C-909-C

PP/esr



The Court further finds that the Defendants, Jimmy R. Ash, Caroline Sue Berryhill f/k/a Caroline Sue Ash, and David Allen Berryhill, were served by publishing notice of this action in the Pawhuska Journal-Capital, a newspaper of general circulation in Osage County, Oklahoma, once a week for six (6) consecutive weeks beginning January 5, 1991, and continuing to February 9, 1991, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Jimmy R. Ash, Caroline Sue Berryhill f/k/a Caroline Sue Ash, and David Allen Berryhill, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Jimmy R. Ash, Caroline Sue Berryhill f/k/a Caroline Sue Ash, and David Allen Berryhill. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of

Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer on March 30, 1990; and that the Defendants, Jimmy R. Ash, Caroline Sue Berryhill f/k/a Caroline Sue Ash, and David Allen Berryhill have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

The North Fifty-five (55) feet of the West Half of the North Half of Block 4, Wa-Sah-She Subdivision to Tulsa, Osage County, State of Oklahoma, according to the recorded Plat thereof, less the West 20 Feet thereof for street purposes.

The Court further finds that on March 16, 1976, the Defendants, Jimmy R. Ash and Caroline Sue Ash, executed and delivered to the United States of America, acting on behalf of

the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$8,000.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Jimmy R. Ash and Caroline Sue Ash, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated March 16, 1976, covering the above-described property. Said mortgage was recorded on March 17, 1976, in Book 460, Page 493, in the records of Osage County, Oklahoma.

The Court further finds that the Defendants, Jimmy R. Ash and Caroline Sue Berryhill f/k/a Caroline Sue Ash, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Jimmy R. Ash and Caroline Sue Berryhill f/k/a Caroline Sue Ash, are indebted to the Plaintiff in the principal sum of \$6,782.04, plus interest at the rate of 9 percent per annum from August 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$257.20 (\$20.00 docket fees, \$229.20 publication fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, County Treasurer, Osage County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal

property taxes for the year of 1988 in the amount of \$6.74; for the year of 1989 in the amount of \$6.26; and for the year of 1990 in the amount of \$7.52, plus penalties and interest. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, David Allen Berryfield, claims no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, Jimmy R. Ash and Caroline Sue Berryhill f/k/a Caroline Sue Ash, in the principal sum of \$6,782.04, plus interest at the rate of 9 percent per annum from August 1, 1988 until judgment, plus interest thereafter at the current legal rate of 6.46 percent per annum until paid, plus the costs of this action in the amount of \$257.20 (\$20.00 docket fees, \$229.20 publication 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 Defendant, County Treasurer, Osage County, Oklahoma, have and recover judgment in the amount of \$6.74 for personal property taxes for the year 1988; \$6.26 for personal property taxes for the year 1989; and \$7.52 for personal property taxes for the year 1990, plus penalties, interest and the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, David Allen Berryhill, has no right, title, or interest in the subject real property.

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

First:

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

Second:

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

Third:

In payment of Defendant, County Treasurer, Osage County, Oklahoma, in the amount of \$20.52 personal property taxes, plus penalties and interest, which are currently due and owing.

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

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

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

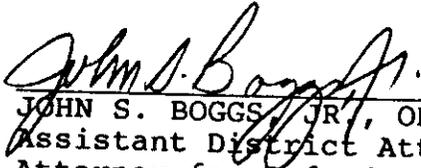
BY THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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



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

Judgment of Foreclosure  
Civil Action No. 90-C-253-B

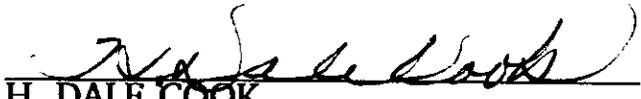
PP/esr



Court concludes that the Magistrate was correct that the subsequent Amended Sentence violated the plea agreement.

It is the Order of the Court that the Report and Recommendation of the United States Magistrate is hereby affirmed. The petition for writ of habeas corpus is hereby granted. The case is remanded to the District court of Ottawa County with directions to vacate its Amended Judgment and Sentence and to sentence in accordance with the plea agreement. In the alternative, petitioner is to be allowed to withdraw his plea of guilty.

*IT IS SO ORDERED* this 18<sup>th</sup> day of March, 1991.

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

FILED

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

MAR 19 1991

John C. Silver, Clerk  
U.S. District Court

DORIS BADLEY HAMILTON,

Plaintiff,

v.

HILTI, INC.,

Defendant.

Case No. 90-C-496-B

ORDER OF DISMISSAL

This cause having come before this Court on the Joint Application for Dismissal with Prejudice of the parties, and this Court being fully advised in the premises, and the parties having stipulated and the Court having found that the parties have reached a private settlement of the individual claims of Plaintiff, and that such claims should be dismissed with prejudice, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the Complaint of Plaintiff, together with any causes of action asserted therein, be and hereby are dismissed with prejudice, with each party to bear its own costs.

So Ordered this 18 day of March, 1991.

S/ THOMAS R. BRETT  
United States District Judge

APPROVED AS TO FORM AND CONTENT:

Patterson Bond  
Attorney for Plaintiff

Mary S Matthews  
Attorney for Defendant

WFS/tmm

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

AETNA CASUALTY & SURETY COMPANY, )  
a Connecticut corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
NATIONAL STEEL ERECTORS )  
CORPORATION, an Oklahoma )  
corporation; ENGINEERING )  
DESIGN SERVICES, INC., an )  
Oklahoma corporation; and )  
TOWER INSPECTION, INC., )  
an Oklahoma corporation, )  
 )  
Defendants. )

**FILED**

MAR 18 1991

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

Case No. 89-C-913B

ORDER

Upon application of the plaintiff, the Court finds that the action of the plaintiff should be and same is hereby dismissed without prejudice.

IT IS SO ORDERED this 18 day of March, 1991.

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

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

FILED

MAR 18 1991

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

DAVID W. COOPLE,

Plaintiff,

vs.

J. R. PEARMAN, et al.,

Defendants.

No. 90-C-755-C

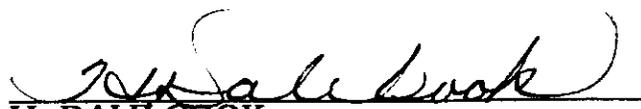
ORDER

The record reflects that no objection or exception has been filed to the Report and Recommendation entered by Magistrate Jeffrey S. Wolfe on December 5, 1990.

The Court has reviewed the case file and finds that the complaint is clearly frivolous. The Court agrees with the Magistrate to the extent of his recommendation that the case be dismissed for failure to state a federal claim against any defendant.

Accordingly, it is the Order of the Court that the case is hereby dismissed with prejudice for failure to state a claim pursuant to Rule 12(b)(6).

IT IS SO ORDERED this 18<sup>th</sup> day of March, 1991.

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

11

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

**F I L E D**

MAR 17 1991

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

ROY LEE MCINTOSH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 90-C-699-B
	)	
MARRIOTT CORPORATION,	)	
	)	
Defendant.	)	

O R D E R

UPON the Joint Stipulation for Dismissal With Prejudice of Plaintiff Roy Lee McIntosh and Defendant Marriott Corporation, it is hereby ordered that the captioned case is dismissed with prejudice to the refileing of any claim which was or could have been asserted by Plaintiff in any way arising out of the events described in Plaintiff's pleadings, each party to bear his or its own costs, expenses, and attorneys' fees.

DATED this 18 day of March, 1991.

**S/ THOMAS R. BRETT**

UNITED STATES DISTRICT JUDGE

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

**FILED**  
MAR 17 1991

Jack C. Silver, Clerk  
District Court

NATIONAL UNION FIRE INSURANCE )  
COMPANY OF PITTSBURGH, )  
PENNSYLVANIA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MEMOREX-TELEX CORPORATION, )  
MARK ALBRIGHT and GEORGE )  
BENNETT, )  
 )  
Defendants. )

No. 90-C-583-B

**ORDER OF DISMISSAL**

Now, on this 18<sup>th</sup> day of March, 1991, the Court has for its consideration the Stipulation for Entry of Order of Dismissal jointly filed in the above styled and numbered cause by plaintiff and defendants. Based upon the representations and requests of the parties set forth in the foregoing stipulation, it is

ORDERED that plaintiff's Complaint for Declaratory Judgment, Amended Complaint for Declaratory Judgment, and defendants' Answer and Counterclaim and Amended Counterclaim, and all claims for relief asserted between the parties, be and the same are hereby dismissed, with prejudice.

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

DATED this 18 day of March, 1991.

S/ THOMAS R. BRETT  
THOMAS R. BRETT  
United States District Judge

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

FILED

MAR 15 1991

ROBERT M. MAURER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SECRETARY OF INTERIOR OF THE )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

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

CASE NO. 89-C-494-E

ORDER ALLOWING DISMISSAL

This matter comes on, upon Plaintiffs application to dismiss. The Court finds that in the interest of Justice that the Plaintiff be and is hereby allowed to dismiss this action with prejudice.

Dated this 15<sup>th</sup> day of March, 1991.

S/ JAMES O. ELLISON

\_\_\_\_\_  
DISTRICT JUDGE

CERTIFICATE OF MAILING

I, Bruce W. Gambill, do hereby certify that on the \_\_\_\_\_ day of March, 1990, I duly mailed a true and correct copy of the foregoing instrument with postage prepaid thereon to:

Kathleen Bliss Adams  
Assistant U.S. Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103

\_\_\_\_\_  
Bruce W. Gambill



Defendant, consistent with his position in prior pleadings, again demonstrates the availability of an administrative procedure (application to the Army Board for Correction of Military Records-ABCMR), sufficiently adequate to address Plaintiff's claim or claims. Plaintiff's position as to administrative efforts is that he has "tried all kinds of administrative approaches to resolve this problem, all of which came to naught, . . . ." including "appealing through his chain of command; complaining to the inspector general; writing his senator; and applying to ARPERCEN."<sup>1</sup> Notably absent from Plaintiff's list of administrative efforts is an application before ABCMR.

The single authority cited by Plaintiff, Marino v. Ragan, 332 U.S. 561 (1947), involved an exhaustion-of-state-remedies factual scenario which the Supreme Court felt displayed a State-Court "merry-go-round of habeas corpus, coram nobis, and writ of error before getting a hearing in a federal court". The Court opined that the "trouble with Illinois is not that it offers no procedure. It is that it offers too many, and makes them so intricate and ineffective that in practical effect they amount to none." The Court concludes such is not the case here.

The primary responsibility for the correction of military records is by the service secretaries acting through correction boards. Kalista v. Secretary, 560 F.Supp. 608 (D.Colo. 1983). This power to correct and change records and thus compel performance by those whose actions are derived therefrom has been judicially

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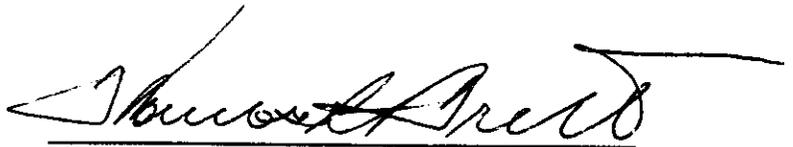
<sup>1</sup> Army Reserve Personnel Center.

recognized. Smith v. McNamara, 395 F.2d 896 (10th Cir. 1968), cert. den. 394 U.S. 934, rehearing denied 394 U.S. 995 (1969); Ashe v. McNamara, 355 F.2d 277 (1st Cir. 1965).

Plaintiff's issue that his military record should reflect medical incapacity for parachute jumping for the period in question is a matter that is properly reviewable and correctable by the ABCMR. See, Declaration of David R. Kinneer, Executive Secretary of the ABCMR. If Plaintiff fails to achieve the relief desired through ABCMR, judicial review of that agency's action is available. Mindes v. Seaman, 453 F.2d 197 (5th Cir. 1971). Review is available where military officials have violated their own regulations, Feliciano v. Laird, 426 F.2d 424 (2nd Cir. 1970); Bluth v. Laird, 435 F.2d 1065 (4th Cir. 1970); Schatten v. United States, 419 F.2d 187 (6th Cir. 1969), or acted outside the scope of their powers. Harmon v. Brucker, 355 U.S. 579, 78 S.Ct. 433, 2 L.Ed2d 503 (1958).

The Court concludes Defendant's Motion to Dismiss, upon the ground of failure to exhaust administrative remedies, should be and the same is hereby GRANTED, without prejudice.

IT IS SO ORDERED this 15<sup>th</sup> day of March, 1991.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED  
MAR 11 1991

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

VERNON O. HOLLAND, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 CITY OF BROKEN ARROW, et al., )  
 )  
 Defendants. )

89-C-145-B

ORDER

Before the Court for decision are the Motions for attorneys' fees of the Plaintiff and of the Defendants City of Broken Arrow, Danny Clymer, Robert Perugino, and Nick Hood, Jr. Plaintiff seeks \$29,760 in fees; Defendant City of Broken Arrow requests \$9,297.20 in fees; and Defendants Clymer, Perugino, and Hood request fees in the amount of \$25,800.

The evidence establishes that the Plaintiff, Vernon O. Holland, permitted a van to be unlawfully parked, locked and unattended on a Broken Arrow, Oklahoma street in front of his home for many weeks. The van license plate and Oklahoma inspection sticker had expired for in excess of three years. On February 11, 1989, the Broken Arrow Police Department impounded the van after it had been placarded numerous times over a period of weeks with unlawful parking warnings. As soon as Holland learned of the vehicle impoundment he demanded return of the van or a prompt hearing. The City of Broken Arrow Police advised Holland that he could have the van upon payment of towing and storage charges, and that a hearing would be set when Holland provided evidence of

ownership or right to the van. Holland had earlier placed the title to the van in a questionable "personal trust" and refused to come forth with any evidence or documentation of ownership or right to possession. About 9 weeks later, the wrecker company defendant that had impounded and stored the van as agent for and upon direction of the Broken Arrow Police Department sold the van in foreclosure in accordance with state law in order to satisfy its \$606.32 storage lien. Shortly after the sale of the van, the wrecker company requested of Holland to come in and pick up the van contents, without charge, but he refused to do so.

Holland's 42 U.S.C. § 1983 action alleged violations of procedural due process, conspiracy, wrongful impoundment of the van and contents, and sought damages for violation of constitutional rights, loss of income, the value of the van and contents, as well as a claim for punitive damages. At the conclusion of the evidence, the Court granted a directed verdict for the Plaintiff in regard to the procedural due process issue. The Court sustained Defendant's motion for partial directed verdict relative to Plaintiff's claim of conspiracy and punitive damages. Before the commencement of trial the Plaintiff withdrew his claim of loss of income. The remaining issues regarding the impoundment of the van and the personalty damages were submitted to the jury against the Defendants City of Broken Arrow and Williams Wrecker Service following a five day trial. The individual Defendants Clymer, Perugino, and Hood--city employees sued only in their official capacities--were dismissed at the conclusion of the evidence.

In essence, in answering the interrogatory verdict form the

jury concluded: (1) the impoundment by the Broken Arrow Police of Plaintiff's locked and unattended van was lawful, as it was parked in violation of city ordinance and law; (2) the van was properly sold in foreclosure by the wrecker company, in keeping with Oklahoma law, to satisfy its \$606.32 towing and storage lien; (3) while the contents of the van were not sold in foreclosure according to law, Plaintiff had waived any rights of claimed damages thereto when he refused to reclaim the contents, without charge, following tender by the wrecker company; (4) Plaintiff was not entitled to recover any money damages relative to the van or contents; and (5) Plaintiff was not entitled to any damage award regarding the denial of his right of procedural due process.

On January 15, 1991, this Court entered a Judgment in favor of the Plaintiff and against the Defendant City of Broken Arrow for the nominal damage sum of One Dollar (\$1.00) in recognition of the procedural due process violation.

The legislative history behind 42 U.S.C. § 1988 refers to the appropriate standard for determining attorney fees as the twelve-factor test set forth in Johnson v. Georgia Highway Express, Inc., 488 F. 2d 714 (5th Cir. 1974).<sup>1</sup> In Hensley v. Eckerhart, 461 U.S.

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<sup>1</sup>The factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill necessary to properly perform the legal service; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

424 (1983), the Supreme Court held that a district court should only award that amount of fees that is reasonable in relation to the results obtained by utilizing a lodestar approach that incorporates the Johnson factors along with the attorney's hourly rate. After determining the lodestar, the district court should consider the results obtained in deciding whether to depart upward or downward in the award of the requested fees.

In City of Riverside v. Rivera, 477 U.S. 561 (1986), the Supreme Court held that the recovery of attorney fees under 42 U.S.C. § 1988 did not depend on obtaining substantial monetary relief and need not be proportionate to an award of money damages; rather, the governing standard should be that counsel would be entitled to compensation for all time reasonably spent on the litigation.

In Nephew v. City of Aurora, 830 F. 2d 1547 (10th Cir. 1987) (en banc), the Tenth Circuit Court of Appeals reconsidered in light of Rivera, *supra*, a divided panel's holding on the issue of the appropriate measure of attorney's fees under 42 U.S.C. § 1988 when the sole recovery to the prevailing party in the underlying action was an award of nominal damages. The Court held that the district court's refusal to depart from the lodestar due to plaintiffs' limited success was not clearly erroneous and was therefore not an abuse of its discretion.

Applying the Johnson factors to determine the reasonable number of hours expended in preparation of the case, the Court notes that the Plaintiff proceeded pro se from the inception of the filing of this suit on February 22, 1989, until his counsel made an

entry of appearance on October 5, 1990. On April 18, 1989, this Court dismissed Plaintiff's Complaint for lack of subject matter jurisdiction, because Plaintiff had failed to exhaust his state administrative remedies; subsequently, on May 17, 1989, this Court denied Plaintiff's Motion to Alter or Amend Judgment. On July 11, 1990, the Tenth Circuit Court of Appeals held that the existence of a remedy in 47 Okla. Stat. § 903A did not preclude Plaintiff's assertion of a due process claim for the removal, retention, and loss of his van, and remanded the case to this Court to resolve the remaining issues between the parties.

Throughout the course of the litigation after the remand, Plaintiff relied on the Court of Appeals Order to urge that it had already ruled in his favor concerning the failure of the post-deprivation procedures to satisfy constitutional requirements of due process. Until the pre-trial conference held on November 21, 1990, Plaintiff continued to insist that individual defendants were named in their individual capacities and not their official capacities. Plaintiff continually sought to recover damages for loss of income arising from his alleged locksmith business, only to dismiss that claim on the day of trial. Plaintiff sought throughout the course of the litigation to recover punitive damages against both the individual defendants and the City of Broken Arrow; the Court declined to submit the issue to the jury, holding that, as a matter of well-established law, punitive damages were not recoverable against a city, and that there was no evidence introduced at trial that would support a finding of the type of wanton, willful, or malicious conduct that would justify an award

of punitive damages.

As the jury failed to award Plaintiff either nominal or actual damages, his "victory" was thus in the directed verdict on the procedural due process issue; the ultimate result of his attorney's litigation efforts was no greater than that which had been secured by the Plaintiff's pro se efforts and the earlier Court of Appeals Order. While the Court does not find evident the type of behavior on the part of Plaintiff's counsel that would subject him to possible Rule 11 sanctions, it nevertheless cannot help but conclude that counsel's services achieved nothing that had not already been telegraphed by the Court of Appeals Order. Time and labor were necessarily expended to try the case and firmly secure success on the procedural due process claim. Yet the number of hours which counsel reasonably spent on the narrow issue on which Plaintiff ultimately prevailed was substantially less than the 248 hours for which he seeks to recover fees. The Court's familiarity with the course of the litigation, review of the Pre-Trial Order and the issues of fact and law listed therein, as well as Plaintiff Counsel's itemization of services lead it to conclude that easily two-thirds (2/3) of Plaintiff counsel's time was spent on the following issues, all of which defendants prevailed upon: validity of the van impoundment, loss of earnings, property damage re the van and its contents, storage fees due, validity of the foreclosure proceedings, alleged conspiracy, and punitive damages. In short, the overwhelming majority of the issues for trial were decided against the Plaintiff, and no greater than one-third (1/3) of the hours billed were spent on the procedural due process issue.

In order for prevailing defendants to recover attorney fees pursuant to 42 U.S.C. § 1988, the Supreme Court has ruled that the suit must have been vexatious, frivolous, or brought to harass or embarrass the defendant. See Hensley v. Eckerhart, 461 U.S. 424 (1983); accord, Melton v. City of Oklahoma City, 879 F. 2d 706 (10th Cir. 1989). Insofar as the Plaintiff in the instant case ultimately prevailed on his procedural due process claim, an award of attorney fees to the Defendants is neither justified nor proper.

Having thus considered the Motions for Attorneys' Fees by the Plaintiff and the Defendants, the Court concludes that the Defendants were not prevailing parties within the meaning of 42 U.S.C. § 1988 and that Plaintiff's attorney's conduct should not subject it to sanctions under Rule 11. Accordingly, Defendants' Motion for Attorneys' Fees is hereby DENIED. Further, the Court finds that the Plaintiff's Motion for Attorney's Fees should be and is hereby GRANTED. Plaintiff is to be awarded attorney's fees of \$ 9960.00, representing a total number of 83 reasonable hours multiplied by a reasonable hourly rate of \$120/ hour. A separate Judgment reflecting this attorney fee award is filed herewith.

Contemporaneously with this Order, the Court has entered a separate Order regarding Defendants' Motion to Retax Costs and Motion for Stay of the Judgment and Order of the District Court.

IT IS SO ORDERED this 15<sup>th</sup> day of March, 1991.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

VERNON O. HOLLAND, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 CITY OF BROKEN ARROW, et al., )  
 )  
 Defendants. )

89-C-145-B ✓

FILED  
MAR 15 1991  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

Before the Court for decision are Defendants' Motion to Retax Costs and Motion for Stay of the Judgment and Order of the District Court, Pending Appeal.

At a hearing held by this Court on March 13, 1991, attorney for the Defendants explained that Defendants seek to recover costs which were disallowed by the Court Clerk of one thousand three hundred ninety-eight dollars and seventy-five cents (\$ 1398.75) incurred in securing a transcript of criminal proceedings involving the Plaintiff. Insofar as the transcript was not utilized in the trial before this Court, the decision of the Court Clerk is hereby AFFIRMED and Defendants' Motion to Retax Costs is DENIED.

The Court concludes that Defendants' Motions for Stay of the Judgment and Order of the District Court pending final resolution of the appeal should be and is hereby SUSTAINED. Accordingly, the Judgment and Orders of Costs and Attorney's Fees are hereby stayed, pending the outcome of the appeals.

IT IS SO ORDERED this 15<sup>th</sup> day of March, 1991.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

VERNON O. HOLLAND, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 CITY OF BROKEN ARROW, et al., )  
 )  
 Defendants. )

89-C-145-B

FILED  
MAR 15 1991  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

J U D G M E N T

In keeping with the Court's Order of March 13, 1991, Plaintiff, Vernon O. Holland, is hereby awarded a judgment as and for attorney fees of Nine Thousand Nine Hundred Sixty and No/100 Dollars (\$9,960.00) against the Defendant, City of Broken Arrow, which is to bear interest at the rate of 6.46% per annum from this date.

DATED this 15th day of March, 1991.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

11/10  
IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA FILED

MAR 15 1991

BENJAMIN FRANKLIN FEDERAL SAVINGS ASSOCIATION  
Plaintiff(s),

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

vs.

No. 89-C-623-C

DENNIS H DUVAL, ET AL  
Defendant(s).

**ORDER**

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

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

In the action herein, notice pursuant to Rule 35A was mailed to counsel of record or to the parties, at their last address of record with the Court, on January 17, 1991. No action has been taken in the case within thirty (30) days of the date of the notice.

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

Dated this 13 day of March,  
19 91.

  
United States District Judge H Dale Cook

**FILED**

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

MAR 14 1991

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

ZELDA M. TUSING, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CENTRAL MORTGAGE CORPORATION, )  
 )  
 Defendant. )

Case No. 90-C-502-B

**JOURNAL ENTRY OF JUDGMENT**

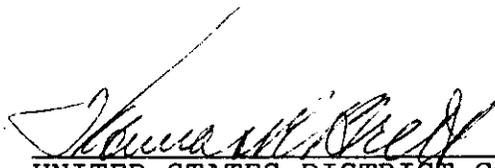
The defendant, Central Mortgage Corporation, has agreed, by and through its attorneys, Biram & Kaiser, by Curtis J. Biram, to have judgment entered against it and in favor of the plaintiff for the amounts prayed for by the plaintiff in its petition. Specifically, the parties have agreed that the defendant owes the plaintiff the sum of \$3168.88 for unpaid overtime wages, and that the plaintiff is entitled to judgment in double this amount, as liquidated damages pursuant to 29 U.S.C. sec. 216(b). The parties have further agreed that plaintiff is entitled to an award of her costs, in the amount of \$141.85, plus an attorney fee in the amount of \$1500.

IT IS THEREFORE ORDERED that the plaintiff, Zelda M. Tusing, have judgment against the defendant Central Mortgage Corporation in the amount of \$6337.96, together with post-judgment interest thereon at the rate of 6.46% per annum from this date forward.

IT IS FURTHER ORDERED that the plaintiff, Zelda M. Tusing, have judgment against the defendant Central Mortgage Corporation in

the amount of \$141.85 for her costs, and in the amount of \$1500 for her attorney fees.

For all of which, let execution issue, this 14<sup>th</sup> day of March, 1991.

  
UNITED STATES DISTRICT COURT  
JUDGE

AGREED:

Richard A. Shallcross  
BREWSTER AND SHALLCROSS  
BY: Richard A. Shallcross  
OBA NO. 10016  
Sooner Federal Building  
Twenty East Fifth Street  
Fifteenth Floor  
Tulsa, OK 74103  
(918) 584-1500

Attorney for Plaintiff

Curtis J. Biram  
BIRAM & KAISER  
BY: Curtis J. Biram  
6th Floor, Pratt Tower  
125 West 15th Street  
Tulsa, OK 74119

Attorneys for Defendant

3:e:\lit\tusing.jej

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

FILED

MAR 14 1991

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

ROYAL MANUFACTURING COMPANY,  
d/b/a TROCO OIL COMPANY, )

Plaintiff, )

vs. )

UNITED STATES FIDELITY AND  
GUARANTY COMPANY, a foreign  
insurance company, TOWNSEND  
CLAIM SERVICE OF MUSKOGEE,  
INC., and JIM SCALET, )

Defendants. )

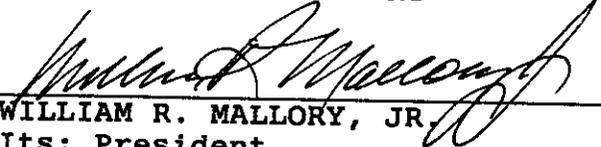
Case No. 91-C-23-B

Tulsa County District  
Court Case No. CJ-90-05156

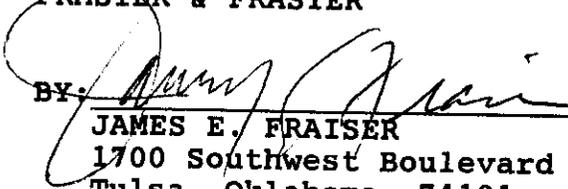
STIPULATION OF DISMISSAL WITH PREJUDICE

The parties to this action stipulate that this case is  
dismissed with prejudice.

ROYAL MANUFACTURING COMPANY, INC  
d/b/a TROCO OIL COMPANY

BY:   
WILLIAM R. MALLORY, JR.  
Its: President

FRASIER & FRASIER

BY:   
JAMES E. FRAISER  
1700 Southwest Boulevard  
Tulsa, Oklahoma 74101

ATTORNEYS FOR PLAINTIFF

ELLER AND DETRICH  
A Professional Corporation

BY: *John Lieber*  
JOHN H. LIEBER, OBA #5421  
2727 East 21st Street, Suite 200  
Tulsa, Oklahoma 74114  
(918) 747-8900

ATTORNEYS FOR DEFENDANT,  
UNITED STATES FIDELITY AND  
GUARANTY COMPANY

RICHARDS, PAUL, RICHARDS & SIEGEL

BY: *John R. Paul*  
JOHN R. PAUL  
9 East 4th Street, Suite 400  
Tulsa, Oklahoma 74103-5118

ATTORNEYS FOR DEFENDANTS,  
TOWNSEND CLAIM SERVICE OF  
MUSKOGEE, INC., and JIM SCALET

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

DEBORAH G. DAVIS; JAMES R.  
PERKINS; COUNTY TREASURER,  
Osage County, Oklahoma; and  
BOARD OF COUNTY COMMISSIONERS,  
Osage County, Oklahoma,

Defendants.

MAR 13 1991<sup>at</sup>

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

CIVIL ACTION NO. 90-C-834-E ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 13<sup>th</sup> day  
of March, 1991. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Osage County, Oklahoma, and  
Board of County Commissioners, Osage County, Oklahoma, appear by  
John S. Boggs, Jr., Assistant District Attorney, Osage County,  
Oklahoma; and the Defendants, Deborah G. Davis and James R.  
Perkins, appear not, but make default.

The Court, being fully advised and having examined the  
court file, finds that the Defendant, Deborah G. Davis,  
acknowledged receipt of Summons and Complaint on October 15,  
1990; that the Defendant, James R. Perkins, acknowledged receipt  
of Summons and Complaint on October 15, 1990; that Defendant,  
County Treasurer, Osage County, Oklahoma, acknowledged receipt of  
Summons and Complaint on October 1, 1990; and that Defendant,  
Board of County Commissioners, Osage County, Oklahoma,  
acknowledged receipt of Summons and Complaint on October 1, 1990.

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer on October 2, 1990; and that the Defendants, Deborah G. Davis and James R. Perkins, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot 2, Block 2, Lombard Heights, a subdivision in Osage County, Oklahoma, according to the recorded Plat thereof.

Subject, however, to all valid outstanding easements, rights of way, mineral leases, mineral reservations, and mineral conveyances of record.

The Court further finds that on September 15, 1988, the Defendant, Deborah G. Davis, executed and delivered to the United States of America, acting through Farmers Home Administration, her promissory note in the amount of \$40,000.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Deborah G. Davis, executed and delivered to the United States of America, acting through Farmers Home Administration, a mortgage dated

September 15, 1988, covering the above-described property. Said mortgage was recorded on September 15, 1988, in Book 741, Page 433, in the records of Osage County, Oklahoma.

The Court further finds that the Defendant, Deborah G. Davis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated September 15, 1988, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Deborah G. Davis, made default under the terms of the aforesaid note, mortgage, and interest credit agreement by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Deborah G. Davis, is indebted to the Plaintiff in the principal sum of \$40,373.23, plus accrued interest in the amount of \$1,761.26 as of June 1, 1990, plus interest accruing thereafter at the rate of 9.5 percent per annum or \$10.5081 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 agreement of \$708.00, 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 Defendant, James R. Perkins, claims no right, title or interest in the property which is the subject matter of this action.

The Court further finds that the Defendant, County Treasurer, Osage County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$232.96, plus penalties and interest, for the year of 1990. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Osage County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$38.75 for the year of 1990. Said lien is inferior to the interest of the Plaintiff, United States of America.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Plaintiff have and recover judgment against the Defendant, Deborah G. Davis, in the principal sum of \$40,373.23, plus accrued interest in the amount of \$1,761.26 as of June 1, 1990, plus interest accruing thereafter at the rate of 9.5 percent per annum or \$10.5081 per day until judgment, plus interest thereafter at the current legal rate of 6.46 percent per annum until paid, and the further sum due and owing under the interest credit agreement of \$708.00 plus interest on that sum at the legal rate from judgment until paid, plus the costs of this action in the amount of \$28.00 (\$20.00 docket fees, \$8.00 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 Defendant, James R. Perkins, has no right, title or interest in the property which is the subject matter of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Osage County, Oklahoma, have and recover judgment in the amount of \$232.96, plus penalties and interest, for ad valorem taxes for the year 1990, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Osage County, Oklahoma, have and recover judgment in the amount of \$38.75 for personal property taxes for the year 1990, plus the costs of this action.

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

**First:**

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

**Second:**

In payment of Defendant, County Treasurer, Osage County, Oklahoma, in the amount of \$232.96, plus penalties and interest, for

ad valorem taxes which are presently due and owing on said real property;

**Third:**

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

**Fourth:**

In payment of Defendant, County Treasurer, Osage County, Oklahoma, in the amount of \$38.75, personal property taxes which are currently due and owing.

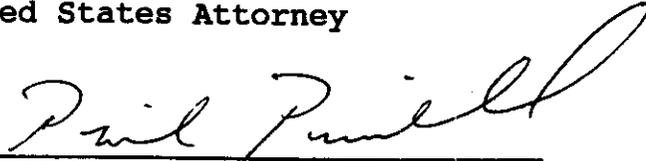
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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

  
UNITED STATES DISTRICT JUDGE

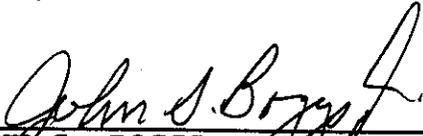
APPROVED:

TONY M. GRAHAM  
United States Attorney



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



---

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

Judgment of Foreclosure  
Civil Action No. 90-C-834-E

PP/esr

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HOWARD A. BOYD a/k/a HOWARD BOYD;  
PHYLLIS A. BOYD a/k/a PHYLLIS BOYD;  
GILCREASE HILLS HOMEOWNERS  
ASSOCIATION; COUNTY TREASURER,  
Osage County, Oklahoma; BOARD OF  
COUNTY COMMISSIONERS, Osage County,  
Oklahoma,

Defendants.

FILED

MAR 13 1991

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

CIVIL ACTION NO. 90-C-489-E

AMENDED JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 13<sup>th</sup> day  
of March, 1991. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendant, Phyllis A. Boyd a/k/a Phyllis Boyd, appears by  
Everett R. Bennett, Jr.; the Defendants, County Treasurer, Osage  
County, Oklahoma, and Board of County Commissioners, Osage  
County, Oklahoma, appear by John S. Boggs, Jr., Assistant  
District Attorney, Osage County, Oklahoma; and the Defendants,  
Howard A. Boyd a/k/a Howard Boyd and Gilcrease Hills Homeowners  
Association, appear not, but make default.

The Court being fully advised and having examined the  
court file finds that the Defendant, Howard A. Boyd a/k/a Howard  
Boyd, acknowledged receipt of Summons and Complaint on July 31,  
1990; that the Defendant, Gilcrease Hills Homeowners Association,  
acknowledged receipt of Summons and Complaint on June 9, 1990;

that Defendant, County Treasurer, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on June 12, 1990; and that Defendant, Board of County Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on June 13, 1990.

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer on June 14, 1990; that the Defendant, Phyllis A. Boyd a/k/a Phyllis Boyd, filed her Answer and Cross-petition on July 5, 1990; and that the Defendants, Howard A. Boyd a/k/a Howard Boyd and Gilcrease Hills Homeowners Association, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on December 28, 1989, Howard Allen Boyd filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 89-04044-W and was discharged on April 25, 1990.

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

Lot Twenty (20), Block One (1), GILCREASE HILLS VILLAGE I, Blocks 1, 2, and 3, a subdivision of Osage County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on May 26, 1982, the Defendants, Howard A. Boyd and Phyllis A. Boyd, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$63,000.00, payable in monthly installments, with interest thereon at the rate of 15.5 percent (15.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Howard A. Boyd and Phyllis A. Boyd, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated May 26, 1982, covering the above-described property. Said mortgage was recorded on May 28, 1982, in Book 617, Page 673, in the records of Osage County, Oklahoma.

The Court further finds that the Defendants, Howard A. Boyd and Phyllis A. Boyd, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Howard A. Boyd a/k/a Howard Boyd and Phyllis A. Boyd a/k/a Phyllis Boyd, are indebted to the Plaintiff in the principal sum of \$61,784.09, plus interest at the rate of 15.5 percent per annum from July 1, 1989 until judgment, plus interest thereafter at the legal rate until fully 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, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$581.72, plus penalties and interest, for the year of 1989, and also those taxes which will be due for the year 1990 in the amount of \$ 0.00. Said liens are superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Gilcrease Hills Homeowners Association, claims no right, title or interest in the subject real property.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Plaintiff have and recover a judgment in rem against the Defendant Howard A. Boyd and a judgment in personam against Phyllis A. Boyd, in the principal sum of \$61,784.09, plus interest at the rate of 15.5 percent per annum from July 1, 1989 until judgment, plus interest thereafter at the current legal rate of 6.46 percent per annum until paid, plus 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 of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer, Osage County, Oklahoma, and the Board of County Commissioners have and recover judgment in the amount of \$581.72, plus penalties and interest, for ad valorem taxes for the year 1989, and the taxes due for 1990 in the amount of \$ 0.00, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Gilcrease Hills Homeowners Association, has no right, title, or interest in the subject real property.

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

**First:**

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

**Second:**

In payment of Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, in the amount of \$581.72, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real

property, and also the taxes due for 1990 in  
the amount of \$0.00;

Third:

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

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

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

S/ JAMES O. ELISON

---

UNITED STATES DISTRICT JUDGE

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

CITY OF JENKS, OKLAHOMA, )  
a municipal corporation, )  
 )  
Plaintiff, )

vs )

No. 90-C-876-C

JOHN KILPATRICK, in his )  
official capacity as )  
Chairman of the OKLAHOMA )  
TURNPIKE AUTHORITY; )

ROBERT S. KERR, JR., in his )  
official capacity as )  
Chairman of the OKLAHOMA )  
WATER RESOURCES BOARD; and )

WALLACE E. SPICKNEY, in his )  
official capacity as )  
Director of the FEDERAL )  
EMERGENCY MANAGEMENT AGENCY, )

Defendants. )

**FILED**  
MAR 13 1991  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL

COMES NOW the Plaintiff herein, the City of Jenks, Oklahoma, and would dismiss the above captioned proceeding pursuant to F. R. C. P. Rule 41(1)(ii) with prejudice as the same relates to the current Creek Turnpike project. The parties hereto have resolved the issues raised herein to their mutual satisfaction. The parties hereto agree that this matter may be dismissed and that each party hereto will bear its own fees and costs incurred herein, as evidenced by their signature of approval hereto.

CITY OF JENKS, OKLAHOMA

by Stephen L. Oakley  
STEPHEN L. OAKLEY  
OBA 6731  
Attorney for Plaintiff  
250 Law Building  
500 West 7 Street  
Tulsa, Oklahoma 74119  
918-587-3147

APPROVED AS TO FORM AND CONTENT:

Charles W. Shipley

CHARLES W. SHIPLEY

Attorney for Defendant John Kilpatrick  
in his official capacity as Chariman of  
the Oklahoma Turnpike Authority

Susan Kantor Bank

SUSAN KANTOR BANK

Attorney for Defendant Wallace E. Spickney  
in his official capacity as Director of  
the Federal Emergency Management Agency

C. Lou Klaver

C. LOU KLAVER

Attorney for Defendant Robert S. Kerr, Jr.  
in his official capacity as Chariman of  
the Oklahoma Water Resources Board

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

FILED

MAR 13 1991

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

THE BURGGRAF CORPORATION, an )  
Oklahoma corporation, and )  
DISCOUNT TIRES OF OKLAHOMA, )  
INC., an Oklahoma corporation )  
by and through LOLA BURGGRAF )  
JERRY BURGGRAF AND LARRY )  
BURGGRAF, shareholders, and )  
LOLA BURGGRAF, JERRY BURGGRAF )  
AND LARRY BURGGRAF, )  
individually, )

Plaintiffs, )

vs. )

Case No. 82-C-1177-B

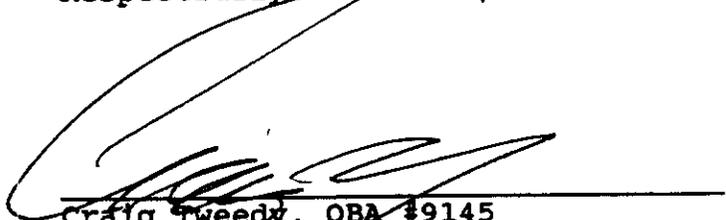
THE GOODYEAR TIRE & RUBBER )  
COMPANY, a corporation, THE )  
LEE TIRE AND RUBBER COMPANY, )  
a corporation, THE KELLY- )  
SPRINGFIELD COMPANY, a )  
corporation, CLARENCE )  
BURGGRAF, SR., SHIRLEY )  
BURGGRAF, L.K. NEWELL, and )  
GEORGE UTTERBACK, )

Defendants. )

**STIPULATION OF DISMISSAL  
WITH PREJUDICE**

COME NOW The Burggraf Corporation, an Oklahoma corporation, and Discount Tires of Oklahoma Inc., an Oklahoma corporation by and through Lola Burggraf, Jerry Burggraf and Larry Burggraf, shareholders, and Lola Burggraf, Jerry Burggraf and Larry Burggraf, individually, Plaintiffs, and The Goodyear Tire & Rubber Company, a corporation, The Lee Tire and Rubber company, a corporation, The Kelly-Springfield Company, a corporation, Clarence Burggraf, Sr., Shirley Burggraf, L.K. Newell, and George Utterback, Defendants, by and through their undersigned attorneys of record and pursuant to Rule 41 (a) (1) (ii) of the Federal Rules of Civil Procedure, dismiss the above captioned action with prejudice.

Respectfully Submitted,



Craig Tweedy, OBA #9145  
202 Wells Building  
Sapulpa, Oklahoma 74066  
(918) 224-2222

Attorney for Plaintiffs

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

BY: 

John T. Schmidt, OBA #11028  
Mary J. Rounds, OBA #2779  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172  
(918) 588-2700

Attorneys for Defendants  
The Goodyear Tire & Rubber Company,  
The Lee Tire and Rubber Company and  
The Kelly-Springfield Tire Company

MOYERS, MARTIN, SANTEE,  
IMEL & TETRICK

BY: 

Jack H. Santee, OBA #7903  
John E. Rooney, Jr., OBA #7745  
320 South Boston, Suite 920  
Tulsa, Oklahoma 74103  
(918) 582-5281

Attorneys for Defendants  
Clarence Burggraf, Sr.,  
Shirley Burggraf, L.K. Newell  
and George Utterback

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

FILED

MAR 12 1991

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

CHAD WELLING,

Plaintiff,

vs.

DEBBIE CAMPBELL, et al.,

Defendants.

Case No. 88-C-658-E

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff, Chad Welling, and Defendants, Advertising, Inc., Johnny Graham, The Tulsa Tribune Company, and Carl Lund, individually and by their counsel of record, hereby state to the Court that these parties have reached a stipulation resolving this entire lawsuit and that the Plaintiff's claims should be dismissed with prejudice.

WITNESSETH

WHEREAS, the Plaintiff has sued Defendants for alleged copyright infringement;  
and

WHEREAS, Defendants have denied all allegations of wrongful conduct; and

WHEREAS, all parties desire to settle the dispute between them without further litigation or expense, it is therefore stipulated as follows:

1. **AGREEMENT:** Defendants will pay to Plaintiff a sum of money which has been mutually agreed upon by the parties and have agreed to further covenants. Plaintiff agrees that in consideration for the foregoing, he shall dismiss with prejudice all claims against all Defendants which had been asserted in the above-styled cause, or which could have or might have been brought in the above-styled cause, or which arise in any way out of the matters alleged in Plaintiff's Complaint and Amended Complaints. Plaintiff has executed on this date a certain Settlement and General Release Agreement which sets forth the specific nature of his covenants to Defendants, and Defendants' covenants to him.

2. **CONFIDENTIALITY AGREEMENT:** Plaintiff has covenanted to keep all terms of this compromise confidential.

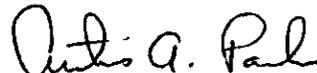
3. **NO ADMISSION OF LIABILITY:** Defendants, by entering into a compromise of Plaintiff's disputed claims, do not in any way admit to any liability, such liability being expressly denied.

4. **ATTORNEY'S FEES AND COSTS:** The parties shall bear their own attorney's fees and costs with respect to the above-captioned litigation.

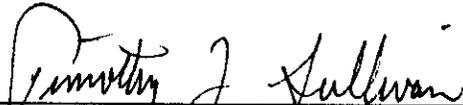
NOW, THEREFORE, having resolved the issues between them pursuant to the above agreement and stipulation, and the Settlement and General Release Agreement executed on this same date, the undersigned parties stipulate to the dismissal of this matter with prejudice.

Dated this 5th day of March, 1991.

  
\_\_\_\_\_  
Chad Welling

  
\_\_\_\_\_  
Curtis Parks  
James Williamson  
PARKS & BEARD  
1736 South Carson Avenue  
Tulsa, Oklahoma 74119

**ATTORNEYS FOR PLAINTIFF**

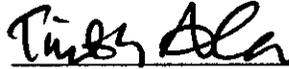
  
\_\_\_\_\_  
Timothy J. Sullivan  
1443 South Norfolk  
Tulsa, Oklahoma 74120

**ATTORNEY FOR ADVERTISING INC. and  
JOHNNY GRAHAM**



J. Edwin Poston  
1515 East 71st, Suite 305  
Tulsa, Oklahoma 74136

**ATTORNEY FOR CARL LUND**



Timothy A. Carney  
GABLE & GOTWALS  
2000 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74119

**ATTORNEYS FOR THE TULSA TRIBUNE  
COMPANY**





acknowledged receipt of Summons and Complaint on October 25, 1990.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer on October 29, 1990; that the Defendants, Wade Kenneth Long, Jr. and M. Diane Long, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Seven (7), Block Two (2), OAKHILL SOUTH, an addition in Creek County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on December 12, 1983, the Defendants, Wade Kenneth Long, Jr. and M. Diane Long, executed and delivered to First Security Mortgage Company their mortgage note in the amount of \$58,000.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Wade Kenneth Long, Jr. and M. Diane Long, executed and delivered to First Security Mortgage Company a mortgage dated December 12, 1983, covering the above-described property. Said mortgage was

recorded on December 21, 1983, in Book 152, Page 634, in the records of Creek County, Oklahoma.

The Court further finds that the Secretary of Veterans Affairs became the owner of the above-described mortgage by an Assignment of Mortgage dated March 10, 1989, and recorded on October 16, 1989, in Book 254, Page 2125 in the records of Creek County, Oklahoma.

The Court further finds that Defendants, Wade Kenneth Long, Jr. and M. Diane Long, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof Defendants, Wade Kenneth Long, Jr. and M. Diane Long, are indebted to the Plaintiff in the principal sum of \$55,222.19, plus interest at the rate of 8.5 percent per annum from March 1, 1989 until judgment, plus interest thereafter at the legal rate until fully 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, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$48.07 which became a lien on the property as of 1989. Said lien is inferior to the interest of the Plaintiff, United States of America.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Plaintiff have and recover judgment against the Defendants,

Wade Kenneth Long, Jr. and M. Diane Long, in the principal sum of \$55,222.19, plus interest at the rate of 8.5 percent per annum from March 1, 1989 until judgment, plus interest thereafter at the current legal rate of 6.46 percent per annum until paid, plus 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 and recover judgment in the amount of \$48.07 for personal property taxes for the year 1989, plus the costs of this action.

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

**First:**

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

**Second:**

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

**Third:**

In payment of Defendants, County Treasurer  
and Board of County Commissioners, Creek  
County, Oklahoma, in the amount of \$48.07,  
personal property taxes which are currently  
due and owing.

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

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

S/ JAMES C. ELISON

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UNITED STATES DISTRICT JUDGE

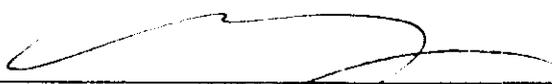
APPROVED:

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-903-E

PP/css

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

FILED

MAR 11 1991

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

Jimmie B. Melton, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 NN Investors Life Insurance, )  
 Inc., an Iowa corporation, )  
 )  
 Defendant. )

No. 90-C-365-B

**STIPULATION OF DISMISSAL WITH PREJUDICE**

COMES NOW plaintiff, Jimmie B. Melton, pursuant to Fed. R. Civ. P. 41(ii), and dismisses his cause of action against the defendant, NN Investors Life Insurance, Inc., with prejudice. This dismissal with prejudice includes all claims regarding the marketing and extent of coverage provided by defendant's insurance policies and operates to discharge the claims of the plaintiff, his heirs, personal representative, successors and assigns against NN Investors Life Insurance Company, Inc., and its successors, assigns, subsidiaries, affiliates, divisions, partners, employees or agents.

DATED this 11 day of March, 1991.

NN INVESTORS LIFE  
INSURANCE COMPANY, INC.

By: Terry S. O'Donnell  
Terry S. O'Donnell  
Crowe & Dunlevy  
Suite 500, 321 S. Boston  
Tulsa Ok. 74103-3313

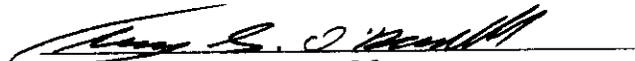
Jimmie B. Melton  
Jimmie B. Melton

Attorneys for NN Investors  
Life Insurance Company, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, this 12 day of March, 1991, to:

David Crutchfield  
2427 E. 26th St.  
Tulsa, OK 74114

  
Terry S. O'Donnell

62.91A.TSO

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

KELLY ROSE, et al.,  
Plaintiffs,

vs.

RESOLUTION TRUST CORPORATION,  
et al.,  
Defendants.

No. 90-C-105-E,  
90-C-107, 90-C-109 thru **E D**  
90-C-123-E, Consol.

MAR 11 1991

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

ADMINISTRATIVE CLOSING ORDER

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

IT IS 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 5th day of March, 1991.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD O. HOUSLEY; MATTIE M.  
HOUSLEY; COUNTY TREASURER,  
Osage County, Oklahoma;  
BOARD OF COUNTY COMMISSIONERS,  
Osage County, Oklahoma,

Defendants.

FILED

MAR 11 1991

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

CIVIL ACTION NO. 90-C-574-B ✓

ORDER

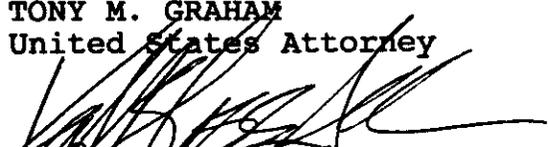
Upon the Motion of the United States of America, acting on behalf of the Secretary of Veterans Affairs, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 11<sup>th</sup> day of March, 1991.

  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM  
United States Attorney

  
KATHLEEN BLISS ADAMS, OBA #13625  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

KBA/esr

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILE  
MAR 17 1991  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

ONE PARCEL OF REAL PROPERTY,  
WITH BUILDINGS, APPURTENANCES,  
AND IMPROVEMENTS, KNOWN AS:  
1206 EAST 50TH STREET NORTH,  
TULSA, TULSA COUNTY, OKLAHOMA,

Defendant.

CIVIL ACTION NO. 90-C-817-B

AMENDED 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 21st day of September, 1990; that the Complaint alleges that the defendant real property, with buildings, appurtenances, and improvements, is subject to forfeiture pursuant to 21 U.S.C. 881(a)(6) and (a)(7), because it was used, or was intended for use, to commit, or to facilitate the commission of, a violation of Title 21 United States Code.

That a Warrant of Arrest In Rem was issued by the Honorable Thomas R. Brett, United States Judge for the Northern District of Oklahoma, on the 26th day of September, 1990, as to the defendant real property, buildings, appurtenances, and improvements.



That the defendant property and all persons and/or 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 Warrant of Arrest In Rem on file herein.

That the United States Marshals Service gave public notice of this action and arrest to all persons and entities by advertisement in the Tulsa Daily Commerce and Legal News on December 13, 20, and 27, 1990; and that Proof of Publication was filed of record on January 18, 1991.

That no other claims, papers, pleadings, or other defenses have been filed by the defendant property or any person and/or entity having an interest therein.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the following-described defendant real property:

Lot Five (5), Block Two (2),  
Buenos Vista Subdivision, an  
Addition to the City of Tulsa,  
Tulsa County, State of Oklahoma,  
according to the Recorded Plat  
thereof, also known as 1206 East  
50th Street North, Tulsa, Oklahoma  
74126,

with buildings, appurtenances, and improvements, and against all persons and/or entities having an interest in such property, and that said defendant real property, its buildings, appurtenances,

and improvements, be, and the same is, 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.

IT IS FURTHER ORDERED by the Court that the proceeds of the sale of the above-described real property, its buildings, appurtenances, and improvements, located at 1206 East 50th Street North, Tulsa, Tulsa County, Oklahoma, shall be distributed in the following priority:

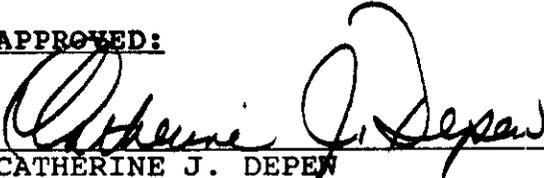
- a) First, for the payment to the United States of all expenses of forfeiture of the defendant real property, including, but not limited to, expenses of seizure, custody, advertising, and sale.
- b) Second, for payment of all real estate taxes owed on the property to date of sale, to the extent that the United States of America is responsible for said taxes.
- c) Third, for payment to the United States of America of all amounts remaining after the above disbursements.

S/ THOMAS R. BRETT

---

THOMAS R. BRETT,  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
\_\_\_\_\_  
CATHERINE J. DEPEW  
Assistant United States Attorney  
for the Northern District of Oklahoma

DEA SEIZURE #87236  
CJD/ch - 01038

IN THE UNITED DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

FEDERAL DEPOSIT INSURANCE CORPORATION, )  
in its corporate capacity, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BILL L. HARRIS AND CAROLYN B. HARRIS, )  
 )  
Defendants. )

MAR 11 1991

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

91-C-140-B

ADMINISTRATIVE CLOSURE ORDER

Upon joint motion of Plaintiff Federal Deposit Insurance Corporation and Defendants Bill Harris and Carolyn Harris, and for good cause therein shown, it is hereby ordered as follows:

A. This action is administratively closed until December 31, 1994, without prejudice to the parties' respective rights to reopen this action on or before that time, in accordance with their settlement agreement; and,

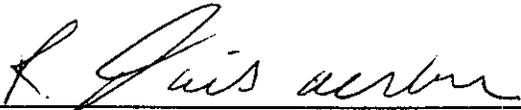
B. If no motion to reopen or motion to extend the Administrative Closure is filed on or before December 31, 1994, then the parties' claims against each other herein are hereby dismissed with prejudice, with each party to bear his or its own attorneys fees or costs and expenses, except as otherwise provided for by the settlement terms.

Dated this 11<sup>th</sup> day of March, 1991.

S/ THOMAS R. BRETT

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

APPROVED AS TO FORM:



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