

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

FILED

MAR 29 1991

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

JOHN W. WHALEN

Plaintiff,

vs.

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

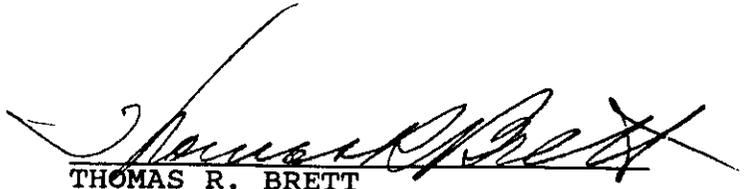
Defendants.

Case No. 88-C-1667-B

J U D G M E N T

In accordance with the Order entered this date Judgment is herewith granted in favor of Plaintiff, John W. Whalen, and against Defendants, Unit Rig, Inc., MRL Acquisition Corp., and Terex Corporation, for attorney fees in the amount of \$66,195.00 for services through the date of Judgment, December 13, 1990, and for expenses recoverable as attorney fees in the amount of \$2,431.00, and for costs in the amount of \$2,207.50.

DATED this 29th day of March, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

SOUTHWESTERN BELL TELEPHONE COMPANY,)
a Missouri corporation,)
)
Plaintiff,)

v.)

No. 90-C-329-E

A & A OIL COMPANY, INC., an)
Oklahoma corporation; BAY-THOM, INC.,)
an Oklahoma corporation; and)
JOHN F. CARLETTI and JANICE D.)
CARLETTI, husband and wife,)
)
Defendants,)

and)

A & A OIL COMPANY, INC., an)
Oklahoma corporation,)
)
Defendant and)
Third-Party Plaintiff,)

v.)

E. T. McDOWELL d/b/a McDOWELL PUMP)
SERVICE,)
)
Third-Party Defendant.)

FILED
MAR 29 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 28th day of March, 1991, it appearing to the Court that this matter has been compromised and settled, this case together with all Cross-Claims and the Third-Party Complaint are herewith dismissed with prejudice to the refiling of a future action.

S/ JAMES O. ELLISON
United States District Judge

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

MAR 29 1991

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

DAN G. MAILATH,)	
)	
Debtor,)	
)	
DAN G. MAILATH,)	Bankruptcy No. 86-01281-C
)	
Appellant,)	Adversary No. 86-0402-C
)	
v.)	
)	District Court No. 90-C-0030-E
ROGER E. SUSI,)	
)	
Appellee.)	

ORDER

This order pertains to Appellant Dan G. Mailath's ("Mailath") Application for Enlargement of Time (Docket #7)¹, which was filed on March 11, 1991. The court also addresses the Motion of Roger E. Susi ("Susi") to Dismiss Appeal, which was filed one day later, on March 12, 1991 (Docket #8). Appellant again asks the court to grant a fifteen-day enlargement for the filing of Appellant's brief from the time the transcripts of hearings held on November 28, 1989, and December 19, 1989, are completed and filed with the United States District Clerk.

On January 2, 1990, a judgment was entered in this case on behalf of Roger E. Susi and against Mailath in the amount of \$814,000.00. Mailath filed a Notice of Appeal on January 16, 1990, and on March 15, 1990, requested an extension of time in which to file his appeal brief. On March 26, 1990, United States Magistrate John Leo Wagner entered

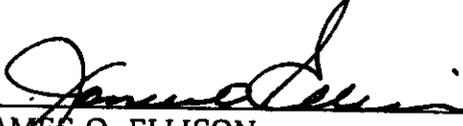
¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and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

an Order granting Mailath an additional fifteen (15) days from the date the transcripts were transcribed and delivered to the Court Clerk in which to file his brief.

Over a year has lapsed since Mailath's first application for enlargement of time was granted. The record of Mailath's appeal shows that the Appellant has still done nothing to complete the assembly and transmission of the record and transcripts for appeal. No appellate brief is proffered with the current application.

The court finds that Mailath's excuse of "oversight" regarding his inaction does not constitute excusable neglect or good cause that might justify allowing a second enlargement of time. The Application for Enlargement of Time is denied, and Susi's Motion to Dismiss is granted.

Dated this 28th 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.)
)
 NATHANIEL B. STEPHENS; SUSAN L.)
 STEPHENS; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

FILED

MAR 29 1991

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

CIVIL ACTION NO. 90-C-929-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 29th 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, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, Nathaniel B. Stephens and Susan L.
Stephens, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, Nathaniel B. Stephens, was
served with Summons and Complaint on January 17, 1991; that the
Defendant, Susan L. Stephens, acknowledged receipt of Summons and
Complaint on November 27, 1990; that Defendant, County Treasurer,
Tulsa County, Oklahoma, acknowledged receipt of Summons and
Complaint on November 5, 1990; and that Defendant, Board of

County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on November 6, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on November 26, 1990; that the Defendants, Nathaniel B. Stephens and Susan L. Stephens, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on October 14, 1987, Susan Lorraine Stephens filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-02869. On February 25, 1988, the United States Bankruptcy Court for the Northern District of Oklahoma entered a Discharge of Debtor releasing the debtor from all dischargeable debts. On May 19, 1988, the subject bankruptcy case was closed.

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:

Lots One (1) and Two (2), Block Eight (8), THE CINNAMON TREE, an Addition in the City of Glenpool, Tulsa County, State of 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 May 3, 1985, the Defendants, Nathaniel B. Stephens and Susan L. Stephens, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$41,500.00, payable in monthly installments, with interest thereon at the rate of 11.875 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Nathaniel B. Stephens and Susan L. Stephens, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated May 3, 1985, covering the above-described property. Said mortgage was recorded on May 3, 1985, in Book 4860, Page 890, in the records of Tulsa County, Oklahoma, and was re-recorded on May 20, 1985, in Book 4863, Page 1531, in the records of Tulsa County, Oklahoma, to correct legal description.

The Court further finds that on July 9, 1985, the Defendants, Nathaniel B. Stephens and Susan L. Stephens, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on July 9, 1986, the Defendants, Nathaniel B. Stephens and Susan L. Stephens, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on July 7, 1987, the Defendants, Nathaniel B. Stephens and Susan L. Stephens, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on March 9, 1989, the Defendants, Nathaniel B. Stephens and Susan L. Stephens, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that Defendants, Nathaniel B. Stephens and Susan L. Stephens, made default under the terms of the aforesaid note, mortgage, and interest credit agreements by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Nathaniel B. Stephens and Susan L. Stephens, are indebted to the Plaintiff in the principal sum of \$43,570.89, plus accrued interest in the amount of \$7,847.36 as of February 2, 1990, plus interest accruing thereafter at the rate of 11.375 percent per annum or \$13.5786 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 \$9,653.33, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$26.60 (\$20.00 docket fees, \$6.60 fees for service of Summons and Complaint).

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 \$575.00, plus penalties and interest, for the year 1990. Said lien is superior to the interest of the Plaintiff, United States of America.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Nathaniel B. Stephens in personam and Susan L. Stephens in rem, in the principal sum of \$43,570.89, plus accrued interest in the amount of \$7,847.36 as of February 2, 1990, plus interest accruing thereafter at the rate of 11.375 percent per annum or \$13.5786 per day until judgment, plus interest thereafter at the current legal rate of 6.46 percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$9,653.33, plus interest on that sum at the current legal rate of 6.46 percent per annum from judgment until paid, plus the costs of this action in the amount of \$26.60 (\$20.00 docket fees, \$6.60 fees for service of Summons and Complaint), 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 \$575.00, 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, 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 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 Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$575.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

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

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

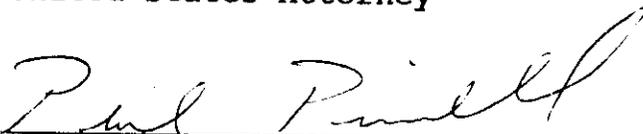
and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



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



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-929-B

PP/css

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

FILED

MAR 29 1991

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

FEDERAL DEPOSIT INSURANCE CORP)
)
)
Plaintiff(s))
)
vs.)
)
EDWARD BEHNKEN, ET AL)
)
)
Defendant(s))

No. 88-C-452-C

ADMINISTRATIVE CLOSING ORDER

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

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

IT IS SO ORDERED this 28 day of March,
19 91.


UNITED STATES DISTRICT JUDGE

117

CLERK

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

KARL OLTMANN
Plaintiff(s),

vs.

No. 90-C-281-C

UNITED STATES OF AMERICA,
Defendant(s).

FILED

MAR 29 1991

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

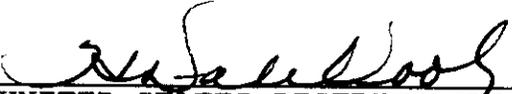
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

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

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

Dated this 28 day of March, 1991.


UNITED STATES DISTRICT JUDGE

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

THE OXFORD FINANCE COMPANIES,
INC.,

Plaintiff,

vs.

RICHARD M. TOOHEY; PINE ISLAND
RESORT SALES COMPANY, a
corporation; RESORT MANAGEMENT,
INC., a corporation; and PINE
ISLAND RV RESORT, INC., a
corporation,

Defendants.

Case No. 90-C-521-C ✓

FILED

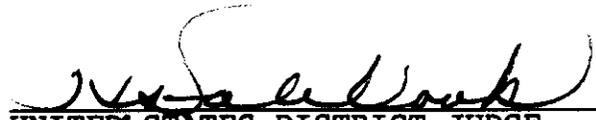
MAR 29 1991

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

ORDER OF DISMISSAL

Based upon the Application For Joint Dismissal With Prejudice
all claims are hereby dismissed with prejudice with each party to
bear its own costs.

Dated this 27th day of March, 1991.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIAM H. BEARD, PATTY JO
BEARD; COUNTY TREASURER,
Tulsa County, Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma;
PITTSBURG STATE UNIVERSITY
NATIONAL DIRECT STUDENT LOAN,

Defendants.

FILED

MAR 29 1991

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

CIVIL ACTION NO. 90-C-484-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28th day
of March, 1991. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Kathleen Bliss Adams, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, Pittsburg State
University National Direct Student Loan, appears by Nancy L.
Ulrich, Assistant Attorney General, and the Defendants, William
H. Beard and Patty Jo Beard, appear not, but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, William H. Beard, was
served with Summons and Amended Complaint on October 12, 1990;
that the Defendant, Patty Jo Beard, was served with Summons and
Amended Complaint on December 10, 1990; that Defendant, Pittsburg
State University National Direct Student Loan, was served with

Summons and Amended Complaint on December 12, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 8, 1990; and that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 11, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed his Answer on June 21, 1990; that the Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on June 21, 1990; that the Defendant, Pittsburg State University National Direct Student Loan, filed its Answer on November 7, 1990; and that the Defendants, William H. Beard and Patty Jo Beard, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Twenty-nine (29), Block Three (3), INDIAN SPRINGS PARK ADDITION, an addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on January 24, 1986, the Defendants, William H. Beard and Patty Jo Beard, 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

\$64,000.00, payable in monthly installments, with interest thereon at the rate of 10.5 percent (10.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, William H. Beard and Patty Jo Beard, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated January 24, 1986, covering the above-described property. Said mortgage was recorded on January 27, 1986, in Book 4921, Page 364, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, William H. Beard and Patty Jo Beard, 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, William H. Beard and Patty Jo Beard, are indebted to the Plaintiff in the principal sum of \$62,929.39, plus interest at the rate of 10.5 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 \$56.20 (\$20.00 docket fees, \$36.20 fees for service of Summons and Complaint).

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 \$4.00 which became a lien on the property as of July 7, 1988. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Pittsburg State University National Direct Student Loan, has a lien on the property which is the subject matter of this action by virtue of a Journal Entry of Judgment, SC-90-1132, filed on April 11, 1990, in the District Court in and for Tulsa County in the amount of \$1,196.19 with interest at the rate of 3% per annum from February 1, 1990 until paid, together with an attorney's fee in the sum of \$119.61 and all the costs of this action. This Judgment was recorded in Book 5247 on Pages 143-44 in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, William H. Beard and Patty Jo Beard, in the principal sum of \$62,929.39, plus interest at the rate of 10.5 percent per annum from March 1, 1989 until judgment, plus interest thereafter at the current legal rate of 6.4% percent per annum until paid, plus the costs of this action in the amount of \$56.20 (\$20.00 docket fees, \$36.20 fees for service of Summons and Complaint). 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 \$4.00 for personal property taxes for the year 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Pittsburg State University National Direct Student Loan, have and recover judgment in the amount of \$1,196.19 with interest at the rate of 3% per annum from February 1, 1990 until paid, together with an attorney's fee in the sum of \$119.61 and all 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 Defendants, William H. Beard and Patty Jo Beard, 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 Defendant, County Treasurer,
County, Oklahoma, in the amount of \$4.00 for
personal property taxes which are currently
due and owing.

Fourth:

In payment of Defendant, Pittsburg State University
National Direct Student Loan, in the amount of
\$1,196.19 with interest at the rate of 3% per annum
from February 1, 1990 until paid, together with an
attorney's fee in the sum of \$119.61 and all costs of
this action.

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

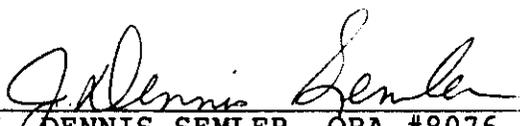
UNITED STATES DISTRICT JUDGE

APPROVED:

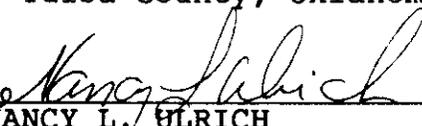
TONY M. GRAHAM
United States Attorney



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



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



NANCY L. ULRICH
Assistant Attorney General
Attorney for Defendant,
Pittsburg State University

Judgment of Foreclosure
Civil Action No. 90-C-484-E

KBA/esr

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

F I L E D

MAR 29 1991

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

STATE FEDERAL SAVINGS ASSOCIATION)
BY AND THROUGH ITS CONSERVATOR,)
RESOLUTION TRUST,)
)
Plaintiff,)
)
v.)
)
ROBERT L. SCHULTZ, et al,)
)
Defendants.)

90-C-666-E

**ORDER AFFIRMING REPORT AND RECOMMENDATION AND
GRANTING DEFAULT JUDGMENT**

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed February 28, 1991 in which the Magistrate Judge recommended that default judgment be granted in favor of Crossclaimant Seneca Oil Company and against Defendants Robert L. Schultz and Marie Susan Schultz as set forth in the Cross-Complaint, and in the amount as set forth in the Affidavit of Wayne Choisnet, pursuant to Rule 55(b) Fed.R.Civ.P.

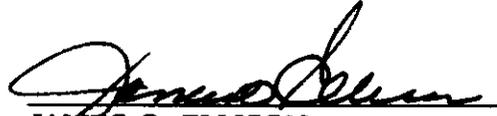
No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is, therefore, Ordered that default judgment is granted in favor of Crossclaimant Seneca Oil Company and against Defendants Robert L. Schultz and Marie Susan Schultz as set forth in the Cross-Complaint, and in the amounts as set forth in the Affidavit of

Wayne Choisnet, pursuant to Rule 55(b) Fed.R.Civ.P.

Dated this 28th day of March, 1991.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 29 1991

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT E. HAILEY; DEBRA L.)
 HAILEY; COUNTY TREASURER,)
 Washington County, Oklahoma;)
 BOARD OF COUNTY COMMISSIONERS,)
 Washington County, Oklahoma;)
 and ACCENT MOVING & STORAGE,)
 INC.,)
)
 Defendants.)

CIVIL ACTION NO. 90-C-655-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28th 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;
 and the Defendants, Robert E. Hailey, Debra L. Hailey, Accent
 Moving & Storage, Inc., and County Treasurer and Board of County
 Commissioners, Washington County, Oklahoma, appear not, but make
 default.

The Court, being fully advised and having examined the
 court file, finds that the Defendant, Robert E. Hailey was served
 with Summons and Amended Complaint on November 19, 1990; that the
 Defendant, Debra L. Hailey, was served with Summons and Amended
 Complaint on November 19, 1990; that the Defendant, Accent Moving
 & Storage, Inc., was served with Summons and Amended Complaint on
 August 27, 1990; that the Defendant, County Treasurer, Washington
 County, Oklahoma, acknowledged receipt of Summons and Complaint

on August 3, 1990; and that the Defendant, Board of County Commissioners, Washington County, Oklahoma, acknowledged receipt of Summons and Complaint on August 3, 1990.

It appears that the Defendants, Robert E. Hailey; Debra L. Hailey; Accent Moving & Storage, Inc.; County Treasurer, Washington County, Oklahoma; and Board of County Commissioners, Washington County, Oklahoma, 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, 1990, Robert Earl Hailey and Debra LaRae Hailey filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-04106-W. 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 Washington County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-Seven (27), Block Ten (10), OAK
PARK VILLAGE, SECTION I, Bartlesville,
Washington County, Oklahoma.

The Court further finds that on May 24, 1982, the Defendants, Robert E. Hailey and Debra L. Hailey, executed and

delivered to United Bankers Mortgage Corporation, their mortgage note in the amount of \$37,500.00, payable in monthly installments, with interest thereon at the rate of 15.50 percent (15.50%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Robert E. Hailey and Debra L. Hailey, executed and delivered to United Bankers Mortgage Corporation, a mortgage dated May 24, 1982, covering the above-described property. Said mortgage was recorded on May 25, 1982, in Book 778, Page 972, in the records of Washington County, Oklahoma.

The Court further finds that United Bankers Mortgage Corporation assigned the real estate mortgage to Firstbank Mortgage Company on August 31, 1984. Said mortgage was recorded on September 14, 1984 in Book 823, Page 416, in the records of Washington County, Oklahoma.

The Court further finds that the Firstbank Mortgage Company assigned the mortgage to the Administrator of Veterans Affairs, now known as the Secretary of Veterans Affairs. Said mortgage was recorded on June 5, 1987 in Book 844, Page 482, in the records of Washington County, Oklahoma.

The Court further finds that a corrected assignment, dated March 17, 1987, was recorded on June 5, 1987 in Book 844, Page 936 in the records of Washington County, Oklahoma.

The Court further finds that another corrected assignment, dated April 30, 1990, was recorded on May 9, 1990 in

Book 857, Page 1559, in the records of Washington County, Oklahoma.

The Court further finds that the Defendants, Robert E. Hailey and Debra L. Hailey, entered into a Modification and Reamortization Agreement with the Administrator of Veterans Affairs on June 22, 1987, which lowered their interest rate to ten percent (10%).

The Court further finds that the Defendants, Robert E. Hailey and Debra L. Hailey, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Robert E. Hailey and Debra L. Hailey, are indebted to the Plaintiff in the principal sum of \$40,250.92, plus interest at the rate of 10 percent per annum from September 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$66.22 (\$20.00 docket fees, \$38.22 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens).

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

The Court further finds that the Defendant, Accent Moving & Storage, Inc., 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, Robert E. Hailey and Debra L. Hailey, in the principal sum of \$40,250.92, plus interest at the rate of 10 percent per annum from September 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 \$66.22 (\$20.00 docket fees, \$38.22 fees for service of Summons and Complaint, \$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, Accent Moving & Storage, Inc., and County Treasurer and Board of County Commissioners, Washington County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

In payment of the costs of this action accrued and accruing incurred by the

Plaintiff, including the costs of sale of
said real property;

Second:

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

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

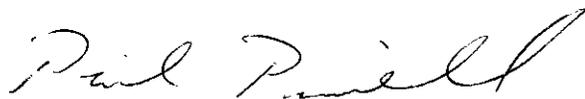
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of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

W. JAMES G. ...

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

Judgment of Foreclosure
Civil Action No. 90-C-655-E

PP/esr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ONE 1986 CHEVROLET PICKUP,)
 False VIN 1GCER14K8HS127754,)
 and)
 ONE 1985 CHEVROLET BLAZER,)
 False VIN 1GCEK18H7CF143027;)
 and)
 ONE 1981 CHEVROLET CAR)
 HAULER,)
 False VIN 1GDHC33WXBB513853,)
)
 Defendant.)

CIVIL ACTION NO.

FILED

MAR 29 1991

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

JUDGMENT OF FORFEITURE

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled, as more fully appears in the written Stipulation For Compromise entered into by and between the Claimant, Stephen Kelly Whitehouse, and plaintiff, United States of America.

And it further appearing that no other claims to the defendant vehicles have been filed since such property was seized, and that no other person(s) has any right, title, or interest in the following-described defendant vehicles:

ONE 1986 CHEVROLET PICKUP,
False VIN 1GCER14K8HS127754,

and

ONE 1985 CHEVROLET BLAZER,
False VIN 1GCEK18H7CF143027,

and

ONE 1981 CHEVROLET CAR
HAULER,
False VIN 1GDHC33WXBB513853,

Now, therefore, on motion of Catherine J. Depew,
Assistant United States Attorney, and with the consent of
Claimant, Stephen Kelly Whitehouse, it is

ORDERED that the claim of Stephen Kelly Whitehouse to
the defendant vehicles be, and the same hereby is, dismissed with
prejudice and without costs, and it is

FURTHER ORDERED, ADJUDGED, AND DECREED that the
defendant vehicles be, and they are hereby, condemned as
forfeited to the United States of America and shall remain in the
custody of the United States Marshal for disposition according
to law.

DATED this 28th day of March, 1991.

ST. JAMES G. NELSON

United States District Judge
Court for the Northern District of
Oklahoma

APPROVED:

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

CJD/ch
01338

FBI SEIZURE NOS.:

1981 Chevrolet Car Hauler - #3580-91F-007
1986 Chevrolet Pickup - #3580-91F-008
1985 Chevrolet Blazer - #3580-91F-009

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

FAITH KOEHN,

Plaintiff,

v.

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

Defendant.

No. 89-C-282-B

FILED

MAR 20 1991

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

JUDGMENT

In accordance with the Court's Order entered this date, judgment is entered in favor of the plaintiff for the benefit of the her counsel, Eric G. Melders, and against the defendant, Louis W. Sullivan, M.D., Secretary of Health and Human Services, in the amount of \$2,950.00 for attorney's fees.

IT IS SO ORDERED, this 29th day of March, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

MAR 29 1991

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

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JULIA F. YOUNG, et al.,

Defendants.

No. 90-C-14-B ✓

O R D E R

Before the Court is the plaintiff's Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment against the defendant, Julia F. Young. The defendant does not oppose the motion, admitting that she is in default of the note in the amount of \$74,000.00 executed and delivered on November 20, 1987 to the United States of America on behalf of the Secretary of Veterans Affairs. The defendant further admits that on the same date she executed and delivered a real estate mortgage to the Secretary securing said note with the following described property, situated in Tulsa County, Oklahoma:

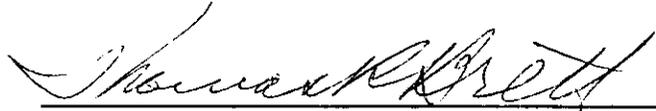
Lot Fourteen (14), Block Two (2), GILCREASE HILLS, ROUNDTREE VILLAGE, Blocks 1 and 2, a subdivision in Osage County, Oklahoma, according to the recorded plat thereof.

It is uncontested that under the terms of the note and mortgage, upon default of payments due, the plaintiff is entitled to declare the balance due and payable in its entirety. It is also uncontested that such balance consists of the principal sum of \$73,629.58, plus interest at the rate of 10.5 percent (%) per annum from January 1, 1989 until judgment, plus post-judgment interest.

The plaintiff seeks foreclosure of the real estate mortgage on the above property and sale of the premises to satisfy the note and mortgage, expenses and costs.

As there exists no genuine issue of material fact, the Court grants the plaintiff's motion for summary judgment, entitling the plaintiff to judgment in the amount of \$73,629.58, plus interest at the rate of 10.5 percent (%) per annum from January 1, 1989 until judgment, plus the statutory rate of interest until such judgment is fully paid. The Court directs the plaintiff to submit to the Court a judgment of foreclosure in accordance with this order.

IT IS SO ORDERED, this 29th day of March, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

It appears that the Defendants, County Treasurer, Delaware County, Oklahoma, and Board of County Commissioners, Delaware County, Oklahoma, filed their Answer on October 31, 1990; that the Defendant, Ruth O. York, filed her Answer on January 24, 1991.

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 Delaware County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 3, Block D, Sailboat Bridge Addition to Grove, a subdivision, according to the recorded plat thereof, Delaware County, Oklahoma.

The Court further finds that on February 25, 1986, the Defendant, Ruth O. York, executed and delivered to the United States of America, acting through the Farmers Home Administration, her mortgage note in the amount of \$35,500.00, payable in monthly installments, with interest thereon at the rate of 10.625 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Ruth O. York, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated February 25, 1986, covering the above-described property. Said mortgage was recorded on February 25, 1986, in Book 499, Page 297, in the records of Delaware County, Oklahoma.

The Court further finds that on February 25, 1986, Ruth O. York executed and delivered to the United States of

America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on December 12, 1986, Ruth York executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on January 13, 1988, Ruth O. York executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on December 6, 1988, Ruth York executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Ruth O. York, made default under the terms of the aforesaid note, mortgage, and interest credit agreements by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Ruth O. York, is indebted to the Plaintiff in the principal sum of \$35,354.99, plus accrued interest in the amount of \$5,101.84 as of November 24, 1989, plus interest accruing thereafter at the rate of 10.625 percent per annum or \$10.2917 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 \$5,446.07, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$85.36 (\$20.00 docket fees, \$57.36 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens).

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendant, Ruth O. York, in the principal sum of \$35,354.99, plus accrued interest in the amount of \$5,101.84 as of November 24, 1989, plus interest accruing thereafter at the rate of 10.625 percent per annum or \$10.2917 per day until judgment, plus interest thereafter at the current legal rate of 6.46 percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$5,446.07, plus interest on that sum at the current legal rate of 6.46 percent per annum from judgment until paid, plus the costs of this action in the amount of \$85.36 (\$20.00 docket fees, \$57.36 fees for service of Summons and Complaint, \$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, Delaware County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

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

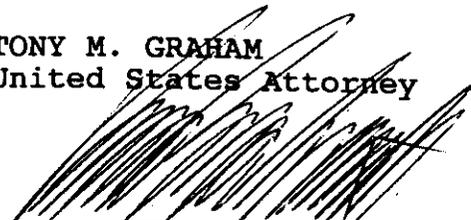
Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook

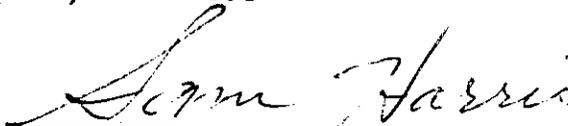
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



SAM HARRIS, OBA #3911
Attorney for Defendant,
Ruth O. York



BEN LORING OBA # 5529 5529
District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Delaware County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-887-C

PB/css

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

F I L E D

MAR 28 1991

AMERICAN TELEPHONE AND TELEGRAPH)
COMPANY,)
)
Plaintiff,)
)
v.)
)
CITGO PETROLEUM CORPORATION,)
)
Defendant.)

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

No. 90-C-778-E

ORDER

The Court having received notice of full settlement and stipulation dismissal hereby finds this action should be dismissed with each party responsible for its own costs.

S/ JAMES O. ELLISON

James O. Ellison
Judge United States District Court

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

FILED
MAR 28 1991
JACK C. GUNNER, CLERK
U.S. DISTRICT COURT

MOBILE VIDEO, INC., an)
Oklahoma corporation,) Bankruptcy Case No. 88-03411-W
Debtor,)
MOBILE VIDEO, INC.,) Adversary Case No. 89-0022-W
Appellant,) District Court Case No. 90-C-829-C
vs.)
AMERICAN BANK AND TRUST)
COMPANY,)
Appellee.)

MUTUAL DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff and Appellee, American Bank and Trust Company, an Oklahoma banking corporation, by and through its attorneys of record, Jones, Givens, Gotcher & Bogan, by Robert S. Erickson, and Defendants and Appellants, David A. Simmons and Cheryl R. Simmons, by and through their attorneys of record, Herrold & Herrold, Inc., by Marlin R. Davis, and hereby mutually dismiss with prejudice all claims and/or causes of action asserted or which could have been asserted in the above and foregoing action as to each other only. The parties shall bear their own costs associated herein, including reasonable attorney's fees.

Respectfully submitted,

JONES, GIVENS, GOTCHER & BOGAN, P.C.

By: Robert S. Erickson
Robert S. Erickson, OBA #11825
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

ATTORNEYS FOR AMERICAN BANK AND
TRUST COMPANY

HERROLD & HERROLD, INC.

By: *M. R. Davis*

Marlin R. Davis, OBA #10777
520 Kensington Galleria Tower I
7130 S. Lewis
Tulsa, Oklahoma 74136-5426

ATTORNEYS FOR DEFENDANTS, DAVID A.
SIMMONS AND CHERYL R. SIMMONS

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of November, 1990, a true and correct copy of the above and foregoing instrument was mailed with proper postage thereon prepaid to Fred Dorwart and/or James Saunders, Holliman, Langholz, Runnels & Dorwart, 700 Holarud Building, 10 East Third Street, Tulsa, Oklahoma 74103.

Robert S. Erickson
Robert S. Erickson

FILED

MAR 23 1991

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

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

LINDSEY L. WILLIAMS and
AMY L. WILLIAMS,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

)
)
)
)
)
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)
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)
)

Case No. 90-C-1-B

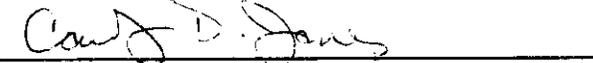
STIPULATION OF DISMISSAL

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

TONY M. GRAHAM
United States Attorney



DAVID K. HOEL
1518 South Cheyenne
Tulsa, Oklahoma 74119
Telephone: (918) 592-2275



CAROLYN D. JONES
Trial Attorney
Office of Special Litigation
Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-6637
(FTS) 368-6637

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

FILED
MAR 28 1991
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

MOBILE VIDEO, INC., an)
Oklahoma corporation,)
Debtor,)
MOBILE VIDEO, INC.,)
Appellant,)
vs.)
AMERICAN BANK AND TRUST)
COMPANY,)
Appellee.)

Bankruptcy Case No. 88-03411-W
Adversary Case No. 89-0022-W
District Court Case No. 90-C-829-C

MUTUAL DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff and Appellee, American Bank and Trust Company, an Oklahoma banking corporation, by and through its attorneys of record, Jones, Givens, Gotcher & Bogan, by Robert S. Erickson, and Defendants and Appellants, David A. Simmons and Cheryl R. Simmons, by and through their attorneys of record, Herrold & Herrold, Inc., by Marlin R. Davis, and hereby mutually dismiss with prejudice all claims and/or causes of action asserted or which could have been asserted in the above and foregoing action as to each other only. The parties shall bear their own costs associated herein, including reasonable attorney's fees.

Respectfully submitted,

JONES, GIVENS, GOTCHER & BOGAN, P.C.

By: Robert S. Erickson
Robert S. Erickson, OBA #11825
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

ATTORNEYS FOR AMERICAN BANK AND TRUST COMPANY

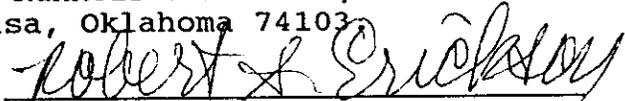
HERROLD & HERROLD, INC.

By: 
Marlin R. Davis, OBA #10777
520 Kensington Galleria Tower I
7130 S. Lewis
Tulsa, Oklahoma 74136-5426

ATTORNEYS FOR DEFENDANTS, DAVID A.
SIMMONS AND CHERYL R. SIMMONS

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of November, 1990, a true and correct copy of the above and foregoing instrument was mailed with proper postage thereon prepaid to Fred Dorwart and/or James Saunders, Holliman, Langholz, Runnels & Dorwart, 700 Holarud Building, 10 East Third Street, Tulsa, Oklahoma 74103.


Robert S. Erickson

and funeral directors. Jim Johnston was employed to perform general office work.

3. John Twolate on one occasion in 1988 placed his hand under plaintiff's skirt while she was talking to some men. Plaintiff told him that if he didn't remove his hand she would break his arm. On another occasion he kissed her on the cheek without her permission.

4. At some time in 1988 Twolate asked plaintiff to write Twolate's name in calligraphy on a card. She told him she would be glad to do so. Twolate came in one day and she asked him "did you bring your thing for me to write on?" and Twolate answered "I always have my thing with me."

5. During the summer of 1988 Jim Johnston grabbed plaintiff and tried to put her on his lap, and she threw water at him.

6. Defendant Darrel Pricer in July of 1987 placed his hands on plaintiff's shoulders and squeezed her shoulders.

7. Pricer on occasion would stand close to plaintiff while she was sitting at her desk.

8. Louis Richardson frequently looked over plaintiff's shoulder as though he were looking down her blouse.

9. On one occasion Richardson tried to kiss plaintiff.

10. On several occasions Richardson sat in front of plaintiff's desk and told her he would sure like to make love with her. In response she would say "Would you like to go to church with me on Sunday?"

11. On September 22, 1988, while plaintiff was on the phone with Joe Moore, Richardson attempted to put his fingers down her

chest. Plaintiff hit Richardson with the telephone and Richardson grabbed her on the left side of her bottom.

Plaintiff brings this action asserting claims for sex discrimination under state and federal law, assault and battery and for intentional infliction of emotional distress. Plaintiff contends that Moore employees Twolate, Johnston, Pricer and Richardson each directed sexual harassment or sexual incidents toward her during the course of her employment. Plaintiff asserts that she complained to management at Moore, but no corrective actions were taken. Plaintiff contends that as a result of the inactions of Moore, she was forced to resign her job in violation of the public policy of the State of Oklahoma on October 17, 1988.

Moore moves for summary judgment on the following bases:

1. Moore is not liable for the acts of its employees Twolate, Johnston, Pricer and Richardson, under Title VII for alleged sexual harassment, or under state law for alleged assault and battery.
2. Plaintiff has failed to establish constructive discharge under Title VII.
3. Plaintiff has failed to state a cause of action under her claim for constructive discharge in violation of the public policy for the State of Oklahoma.
4. The conduct of Moore's employees is not sufficiently extreme and outrageous to satisfy the elements of the tort of intentional infliction of emotional distress.

Liability of Employer under Title VII

Plaintiff has pled an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. In essence, plaintiff alleges that Moore knowingly allowed sexual harassment in the workplace of female employees by male employees thereby creating a hostile work environment. She has alleged repeated offensive sexual flirtations, advances, propositions and physical contact. An employer can be held liable under Title VII for the actions of its male employees if the employer knew or should have known of the offending behavior and failed to take corrective measures. Baker v. Weyerhaeuser Co., 903 F.2d 1342, 1345 (10th Cir. 1990).

This issue is in dispute. Defendant contends that plaintiff never complained to a supervisor about Twolate's or Johnson's offensive conduct. Defendant asserts plaintiff did not complain about Richardson's conduct until he allegedly put his hand down her chest while she was talking on the phone to Joe Moore. Although plaintiff did complain to Tom Laws about Pricer's offensive conduct, she admits that Pricer's sexual harassment stopped thereafter.

Plaintiff contends that even though she did not voice a complaint after each alleged offensive act, all management personnel at Moore had knowledge of the sexual harassment and discrimination which was occurring. Plaintiff contends that Joe Moore is opposed to women joining the union or participating in the funeral proceeding. Plaintiff asserts that when she informed Mr. Moore of Richardson's behavior, his response was that Louis Richardson is a "wolf" and needed to be watched. Mr. Moore assured

plaintiff he would transfer Richardson to another location and when he failed to do so, plaintiff alleges she was forced to resign her job.

Plaintiff asserts that when she spoke to Ms. McClellan (Joe Moore's sister and co-owner of the business) about the harassment, Ms. McClellan said that plaintiff should have expected to be treated this way since she was working around men.

Plaintiff contends that the sexual harassment occurred openly in the presence of other employees. When she complained and the sexual harassment stopped, the resulting retaliatory hostility was also tolerated by management.

Plaintiff has sufficiently controverted defendant's statement of facts to overcome defendant's motion for summary judgment as to this issue.

Employer liability under State Law

Plaintiff asserts that she was subjected to unsolicited sexual advances amounting to assault and battery under state law by Moore employees Twolate, Johnston, Richardson and Pricer. Moore moves for summary judgment on this claim asserting that it cannot be held liable for the alleged tortious conduct of its employees committed in the course of employment.

As a general rule, to hold an employer liable under the doctrine of respondeat superior for the tortious acts of one employee toward another, it must be established that a relationship of principal and agent existed between the two at the time the tort was committed and in respect to the very transaction out of which the injury arose. Furthermore, the tortious act must have been

committed in furtherance of the agent's employment. Tulsa General Drivers, Warehousemen and Helpers Union v. Conley, 288 P.2d 750 (Okla. 1955) and Thompson v Madison Machinery Co., 684 P.2d 565 (Okla.App. 1984).

However, an employer is directly liable (that is, independent of respondeat superior) for tortious acts committed by one employee against another if the employer could have prevented the tortious conduct by using reasonable care in hiring, supervising or firing the tortfeasor. Baker v. Weyerhauser Co., 903 F.2d at 1346. Recovery is based on negligence rendering the employer liable for any injury proximately caused by its failure to exercise reasonable care. Liability attaches whether or not the tort was committed in furtherance of the employer's business. Accordingly, an employer who has reason to know that female employees are being sexually assaulted by male co-workers and does nothing about it, is blameworthy. Id.

Plaintiff's factual allegations render summary judgment inappropriate as to her claim for assault and battery.

Public Policy Exception

Plaintiff has asserted that she was constructively discharged by Moore in violation of the clear mandate of public policy for the State of Oklahoma, asserting a claim under Burk v. K-Mart, 770 P.2d 24 (Okla. 1989). The Court will permit plaintiff to offer evidence of her alleged constructive discharge under federal and state civil rights laws. However, this Court has repeatedly held that where the law provides a remedy, there is no need for an implied-in-law parallel remedy.

Summary judgment is available to defendant Moore as to plaintiff's claim for constructive discharge in violation of public policy.

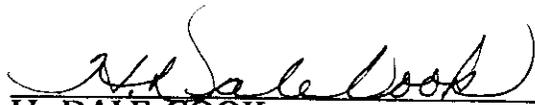
Liability for Intentional Infliction of Emotional Distress

Moore asserts that the conduct of the individual employees Twolate, Johnston, Richardson and Pricer was not sufficiently extreme and outrageous to satisfy the requirements for the tort of intentional infliction of emotional distress.

The Court will leave to the jury the issue of whether plaintiff has established the essential elements of this cause of action. The Tenth Circuit has recognized in sex discrimination cases that an employer can be held liable for the intentional infliction of emotional distress or outrageous conduct based upon the employer's failure to take corrective action against a male employee for the sexual harassment of a female employee. Baker v. Weyerhaeuser Co., 903 F.2d at 1348.

It is therefore the Order of the Court that the motion of defendant Moore Funeral Home, Inc., as to plaintiff's claim for constructive discharge in violation of public policy is hereby granted, and denied as to all other issues raised by defendant in its motion.

IT IS SO ORDERED this 25th day of March, 1991.



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

Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 4, 1991.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed his Answer on February 25, 1991; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on February 25, 1991; and that the Defendants, Dennis Robert Baker and Vernetta Leeann Baker a/k/a Vernetta Lee Ann Baker, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that Defendants, Dennis Robert Baker and Vernetta Lee Ann Baker, filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Eastern District of Texas, Case No. 88-41650, and were discharged on December 29, 1988.

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 10, VANDEVER WEST, an Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on April 2, 1987, the Defendants, Dennis Robert Baker and Vernetta Leeann Baker, 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 \$52,001.00, payable in monthly installments, with interest thereon at the rate of 8.5 percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Dennis Robert Baker and Vernetta Leeann Baker, 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 April 2, 1987, covering the above-described property. Said mortgage was recorded on April 2, 1987, in Book 5012, Page 1760, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Dennis Robert Baker and Vernetta Leeann Baker a/k/a Vernetta Lee Ann Baker, 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, Dennis Robert Baker and Vernetta Leeann Baker a/k/a Vernetta Lee Ann Baker, are indebted to the Plaintiff in the principal sum of \$51,841.26, plus interest at the rate of 8.5 percent per annum from September 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, Dennis Robert Baker and Vernetta Leeann Baker a/k/a Vernetta Lee Ann Baker, in the principal sum of \$51,841.26, plus interest at the rate of 8.5 percent per annum from September 1, 1987 until judgment, 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 Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

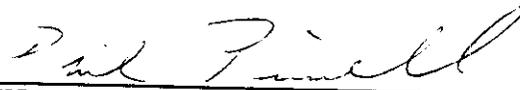
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON

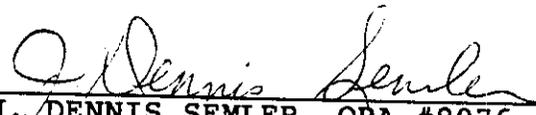
UNITED STATES DISTRICT JUDGE

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. 91-C-66-E
PP/esr

FILED

MAR 27 1991

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

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

US WEST FINANCIAL SERVICES,)
INC., a Colorado corporation,)
)
Plaintiff,)
)
vs.)
)
MOORAD MANAGEMENT, INC., an)
Oklahoma corporation, et al.,)
)
Defendants.)

Case No. 88-C-1075-B

ORDER OF DISMISSAL WITHOUT PREJUDICE

There comes before the Court on this 27th day of March, 1991, the Joint Stipulation of Dismissal Without Prejudice, filed herein by Paul F. Park, M.D., ("Park") and McCall Management, Inc. ("McCall Management"), seeking dismissal of all Cross-Claims asserted by Park against McCall Management. It appearing to the Court that the Joint Stipulation of Dismissal Without Prejudice is made upon good cause, the Court finds that the same should be and is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that all Cross-Claims asserted by Park against McCall Management in its Cross-Claim are hereby dismissed, without prejudice to the refileing of the same and without prejudice to any right or remedy which Park may have in the case styled In re: Nicholas E. Moorad, Case No. 90-00037-C (Chapter 7), in the United States Bankruptcy Court for the Northern District of Oklahoma.

S/ THOMAS R. BRETT

United States District Court Judge

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

FILED

MAR 27 1991

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

US WEST FINANCIAL SERVICES,)
INC., a Colorado corporation,)
)
Plaintiff,)
)
vs.)
)
MOORAD MANAGEMENT, INC., an)
Oklahoma corporation, et al.,)
)
Defendants.)

Case No. 88-C-1075-B

ORDER OF DISMISSAL WITHOUT PREJUDICE

There comes before the Court on this 27th day of March, 1991, the Joint Stipulation of Dismissal Without Prejudice, filed herein by Paul F. Park, M.D., ("Park") and Nicholas E. Moorad ("Moorad") and Moorad Management, Inc. ("Moorad Management"), seeking dismissal of all Cross-Claims asserted by Park against Moorad and Moorad Management. It appearing to the Court that the Joint Stipulation of Dismissal Without Prejudice is made upon good cause, the Court finds that the same should be and is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that all Cross-Claims asserted by Park against Moorad and Moorad Management in its Cross-Claim are hereby dismissed, without prejudice to the refiling of the same and without prejudice to any right or remedy which Park may have in the case styled In re: Nicholas E. Moorad, Case No. 90-00037-C (Chapter 7), in the United States Bankruptcy Court for the Northern District of Oklahoma.

S/ THOMAS R. BRETT

United States District Court Judge

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

STATE FEDERAL SAVINGS)
ASSOCIATION, by and through)
its Conservator, Resolution)
Trust Corporation, as successor)
in interest to certain assets)
of State Federal Savings and)
Loan Association,)
Plaintiff,)

vs.)

THE BROWN GROUP, a/k/a THE)
BROWN GROUP, LTD., an Oklahoma)
corporation; MARTIN E. BROWN;)
PATRICIA M. BROWN; JOHN F.)
CANTRELL, COUNTY TREASURER;)
TULSA COUNTY, STATE OF OKLAHOMA;)
BOARD OF COUNTY COMMISSIONERS,)
TULSA COUNTY, STATE OF OKLAHOMA;)
COUNTRY TILE DESIGN, INC., an)
Oklahoma corporation; RENAISSANCE,)
INC., an Oklahoma corporation;)
and HARKEY LANDSCAPE SPRINKLER,)
CO., INC., an Oklahoma)
corporation,)
Defendants.)

FILED

MAR 27 1991

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

Case No. 90-C-781-B

AGREED ORDER AND JUDGMENT

Now before the Court for its consideration is the Application of Plaintiff for Attorney Fees, filed herein on March 6, 1991, pursuant to the Judgment filed herein on February 20, 1991.

The Court has reviewed the Application, Brief, and Affidavit submitted in support of same. It has also noted that counsel for the Defendants The Brown Group, a/k/a The Brown Group, Ltd, and for Martin E. Brown has no objection to the award of fees requested, as signified by counsel's signature hereto. As such, the Court finds the requested fee based upon Plaintiff's counsel's hourly rate is

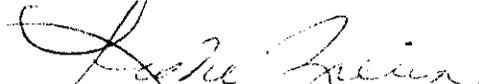
reasonable, and that the Application should be and hereby is granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment be hereby entered in favor of Plaintiff State Federal Savings Association, by and through its Conservator, Resolution Trust Corporation, as successor in interest to certain assets of State Federal Savings and Loan Association and against Defendants The Brown Group, a/k/a The Brown Group, Ltd, and Martin E. Brown in the total sum of \$2,970.00, with post-judgment interest thereon accruing at the rate of 6.46% per annum until paid in full.

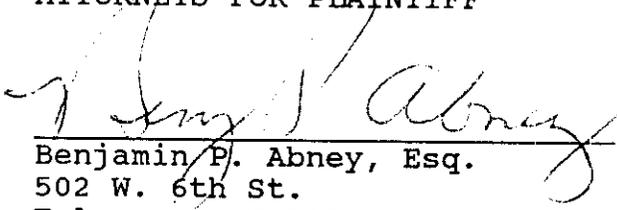
S/ THOMAS R. BRETT

Thomas R. Brett
U. S. District Judge

APPROVED AS TO FORM AND CONTENT:


Leslie Zieren, OBA No. 9999
Of BOESCHE MCDERMOTT & ESKRIDGE
800 Oneok Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
(918) 583-1777

ATTORNEYS FOR PLAINTIFF


Benjamin P. Abney, Esq.
502 W. 6th St.
Tulsa, OK 74119
ATTORNEYS FOR DEFENDANTS THE BROWN
GROUP AND MARTIN E. BROWN

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

F I L E D

MAR 26 1991

KWAKU AHATSI,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION
SERVICES,

Respondent.

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

No. 90-C-296-B
Petition No. 4889

J U D G M E N T

In accordance with the Findings of Fact, Conclusions of Law and Order entered this date, Judgment is hereby entered as follows: The petition for naturalization of Kwaku Ahatsi is DENIED and the motions of the Immigration and Naturalization Service for summary judgment and to vacate and set aside the Order and Judgment of Naturalization dated October 17, 1985, List No. 510, insofar as said order relates to Kwaku Ahatsi, who is noted on page 3, line 82 of said list, are hereby GRANTED.

DATED this 26th 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 26 1991

ORVILLE W. CAVINS,)
 Plaintiff,)
 v.)
 UNITED STATES OF AMERICA)
 Defendant and)
 Counterclaim)
 Plaintiff,)
 v.)
 OAK SENVAR, a/k/a OAKTAY)
 SENVARDARLI)
 Additional Defendant)
 on the Counterclaim.)

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

Case No. 90-C-294-B

NOTICE OF VOLUNTARY DISMISSAL

Defendant and counterclaim plaintiff, the United States of America, and plaintiff Orville W. Cavins, by and through the undersigned counsel, pursuant to Rules 41(a)(1)(ii) and (c) of the Federal Rules of Civil Procedure, hereby stipulate to the voluntary dismissal, without prejudice, of the United States' counterclaim against plaintiff, Orville W. Cavins.

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT
Assistant U.S. Attorney
3600 United States Courthouse
333 West 4th Street
Tulsa, Oklahoma 74103



 JAMES J. LONG
 Trial Attorney, Tax Division
 U.S. Department of Justice
 P.O. Box 7238
 Washington, D.C. 20044
 Tel. (202) 514-6563
 Tel. FTS 368-6563

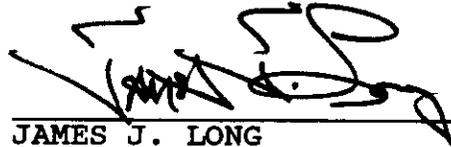


 CLIFFORD N. RIBNER
 2121 South Columbia, Suite 500
 Tulsa, Oklahoma 74114
 Tel. (918) 747-8808

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 25, 1991, a true and accurate copy of the above and foregoing NOTICE OF VOLUNTARY DISMISSAL was served by mail, postage prepaid, to:

Clifford N. Ribner, Esquire
2121 South Columbia, Suite 500
Tulsa, Oklahoma 74114



JAMES J. LONG
Trial Attorney, Tax Division
Office of Special Litigation
U.S. Department of Justice
P.O. Box 7238
Washington, D.C. 20044
Tel. (202) 514-6563
Tel. FTS 368-6563

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

F I L E D

MAR 26 1991

KWAKU AHATSI,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION
SERVICES,

Respondent.

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

No. 90-C-296-B
Petition No. 4889

#90-c-297-B ✓

J U D G M E N T

In accordance with the Findings of Fact, Conclusions of Law and Order entered this date, Judgment is hereby entered as follows: The petition for naturalization of Kwaku Ahatsi is DENIED and the motions of the Immigration and Naturalization Service for summary judgment and to vacate and set aside the Order and Judgment of Naturalization dated October 17, 1985, List No. 510, insofar as said order relates to Kwaku Ahatsi, who is noted on page 3, line 82 of said list, are hereby GRANTED.

DATED this 26th day of March, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Handwritten initials

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

FILED
MAR 20 1991

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

KWAKU AHATSI,)
)
 Petitioner,)
)
 vs.)
)
 IMMIGRATION AND NATURALIZATION)
 SERVICES,)
)
 Respondent.)

No. 90-C-296-B
Petition No. 4889

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This case has been consolidated with In the Matter of the Petition of Kwaku Ahatsi - Petition No. 4889 - which was previously before Chief Judge H. Dale Cook of this Court. The Court has before it for decision the issue presented by the Respondent's previously filed motion pursuant to 804(i) of the Immigration and Naturalization Act [8 U.S.C. § 1451(i)] in conjunction with Fed.R.Civ.P. 60(b), and Chief Judge H. Dale Cook's order thereon of September 29, 1986, as well as the Motion for Summary Judgment of the Respondent in the captioned matter. The issues presented have previously been consolidated because common issues of fact and law and common parties are involved. The parties have previously agreed the Court may consider the entire evidentiary record presented in the captioned matter, except for Government's Exhibit 22 which remains in dispute. Relative to Government's Exhibit 22 the Court concludes it is admissible in evidence under Fed.R.Evid. 804(b)(4) and 803(19).

FINDINGS OF FACT

1. The Petitioner is a sixty year old male, native and citizen of Ghana, who entered the United States as a temporary

AA

visitor on October 20, 1979.

2. On January 13, 1981, the Petitioner married United States citizen Virginia Louise Crosby. On April 27, 1982 an I-130 immediate relative immigrant visa petition and accompanying I-485 application for adjustment of status to lawful permanent resident were filed on behalf of the Petitioner by his spouse. On the I-485 the Petitioner stated under oath that he had no previous marriages and only one child which was the product of his marriage to Virginia Louise Crosby (Government Exhibit 1).

3. On July 12, 1982, the Petitioner's status was adjusted to lawful permanent resident (Government Exhibit 2).

4. On May 1, 1985, the Petitioner filed an N-400 application to file petition for naturalization (Government Exhibit 3). He was interviewed with respect to this application on September 18, 1985 and he claimed under oath at that time to have had only one marriage to his United States citizen spouse and that he only had the one child born of that marriage. The Petitioner also stated under oath that he had never given false testimony to obtain an immigration benefit (Government Exhibit 3, No. 26). Petitioner's N-405 petition for naturalization was filed with this Court on the same date (Government Exhibit 4).

5. Thereafter, on October 17, 1985, the Petitioner was admitted to citizenship (Government Exhibit 5).

6. On January 17, 1986, the Petitioner filed I-130 immediate relative immigrant visa petitions on behalf of his children in Ghana. These children had never been mentioned previously in any

of Petitioner's prior applications (Forms I-130 for Joy Dela Ahatsi, Government Exhibit 6; Michael C. Ahatsi, Government Exhibit 7; Joshua Kwaku Ahatsi, Government Exhibit 8; and Annie G. Ahatsi, Government Exhibit 9). In support of these visa petitions the Petitioner submitted the birth certificates of his children (Government Exhibits 10-13, respectively). Each of the birth certificates listed the Petitioner as the father and one Georgina Saba, a native and citizen of Ghana, as the mother.

7. On July 25, 1986, in support of the above visa petitions, Petitioner submitted a sworn affidavit stating that he was married in 1963 in Accra, Ghana, West Africa to Georgina Saba (Government Exhibit 14). The Petitioner stated therein that the four children resulted from his marriage to Georgina Saba. The Petitioner stated that he was divorced from Georgina Saba in 1971, although no documentary evidence is offered in support of the divorce. Also submitted in connection with the visa petitions for the Petitioner's children was a maintenance agreement (Government's Exhibit 15), wherein Petitioner agreed to pay Georgina Saba as well as their four children sums of money for past maintenance payments, and future maintenance for the children until they reached the age of their majority, and also provided for a sum of money in future maintenance payments to Georgina Sabba[h] (sic). The maintenance agreement contained an addendum for future adjustments for cost of living increases.

8. On September 26, 1986 the Respondent, Immigration and Naturalization Service (INS), filed a Motion to Reopen the

Petitioner's Order and Judgment of Naturalization pursuant to § 340(j) (now § 340(i)) of the Immigration and Nationality Act [8 U.S.C. § 1451(j)] and Fed.R.Civ.P. 60(b)(2) based on his previous false representations in obtaining immigration benefits on his prior applications. (Government's Exhibit 16). The INS contended the misrepresentations included the failure to identify Petitioner's prior marriage, the failure to provide evidence of legal termination of his first marriage, resulting in the void nature of his second marriage to his United States citizen spouse through whom he obtained permanent residence and ultimately the United States citizenship, and also Petitioner's lack of good moral character pursuant to § 101(f)(6) of the Immigration and Nationality Act (INA) [8 U.S.C. § 1101(f)(6)]. The Respondent's Motion to Reopen was granted by order of Chief Judge H. Dale Cook of this Court on September 29, 1986 (Government's Exhibit 17) and the Petitioner's prior order of naturalization was reopened and held in abeyance pending a further determination of the merits of Petitioner's qualifications for naturalization, subject to being vacated if in fact the Petitioner was later found to be ineligible for citizenship.

9. The Petitioner was subsequently indicted on October 9, 1986, for violating 18 U.S.C. § 1015 by falsely swearing on immigration applications that he had never been married prior to entering the United States and had no children other than the child from his present marriage to Virginia Crosby (Government's Exhibit 18). A superseding indictment was later filed on February 5, 1987

charging that the Petitioner had falsely claimed under oath that he had been previously married in Ghana, and that he had four children from this marriage, which children he was seeking to have admitted to the United States as his immediate relatives under an immigrant preference classification (Government's Exhibit 19). The superseding indictment was brought after the Petitioner changed his story and stated that the four children in Ghana were actually the children of his deceased brother who thereafter by Ghana law became his obligation to support. On April 2, 1987 the Petitioner was convicted upon his plea of guilty to the superseding indictment of violating 18 U.S.C. §1015, a felony, and sentenced to one year probation (Government's Exhibit 20).

10. The authenticity of the Petitioner's new version regarding his adoption of his deceased brother's children became questionable, however, by a verification dated September 4, 1987 from the Registrar of Births and Deaths in Accra, Ghana, stating that the birth certificates of the Ghanaian children listing the Petitioner, not his deceased brother, as the children's biological father, were in fact genuine (Government's Exhibit 21).

11. On July 18, 1988 the Petitioner filed a second set of visa petitions for the four children plus an additional child named Comfort Amy Ahatsi, again asserting that he was their "adoptive father" based on the death of his brother. The visa petitions were denied on an independent statutory basis on September 29, 1989 for the reason that the Petitioner was no longer a United States citizen and hence could not confer "immediate relative status"

pursuant to INA § 201(b) [8 U.S.C. § 1151] (Government Exhibit 24).

12. The Petitioner's Freedom of Information Act (FOIA) request was received by the INS on October 13, 1989, to which the INS responded by letter dated April 9, 1990. By way of response, the INS included 70 of the 92 requested pages, explaining that the 22 excluded pages were exempt from disclosure under 5 U.S.C. §552 (b)(5) and (b)(7).

13. On April 4, 1990 the Petitioner, through counsel, filed two lawsuits in this Court, the first brought under the Freedom of Information Act (FOIA) seeking injunctive relief restraining the Respondent from withholding certain material that Petitioner had requested under an FOIA request. Petitioner, through counsel, also brought an action for a declaratory judgment that the Petitioner is a United States citizen and that his petition no longer be held in abeyance. It is the instant declaratory judgment action that has been consolidated with the Respondent's Motion to Reopen and the order issued pursuant to § 340(i) of the Immigration and Nationality Act [8 U.S.C. § 1451(i)] in conjunction with Fed.R.Civ.P. 60(b) as aforesaid.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the subject matter and the parties under 28 U.S.C. § 1331(a) and 8 U.S.C. § 1503.

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

3. The INS when proceeding by motion under § 340(i) of the

INA [8 U.S.C. § 1451(i)] (previously § 340(j)) and Fed.R.Civ.P. 60(b) must establish: (1) that the alleged newly discovered evidence was discovered since the "trial"; (2) facts from which the Court may infer reasonable diligence on the part of the INS; (3) that the evidence is not merely cumulative or impeaching; and (4) that the evidence is of such a character that on a new trial it will probably produce a different result. Petition of Cardines, 366 F.Supp. 700, 707 (D. Guam 1973). The Court concludes that the evidence before the Court establishes that the INS has met the four point test above stated under Rule 60(b).

In Petition of Cardines, 366 F.Supp. 700 (1973), the Court at page 707 stated:

"A motion under this rule [Fed.R.Civ.P. 60(b)] does not affect the finality of a judgment. If the motion is granted, the petition for naturalization is simply restored to the court calendar as a pending petition, and is governed by the same procedures as are applicable to other pending petitions. This means that the petitioner, not the INS, bears the burden of proof to show that he meets all requirements for naturalization [In re Campbell's Petition, supra, 326 F.2d at 102] and contrasted with the burden applicable to revocation proceedings, the Government does not carry the onus of showing that the petitioner is disqualified from naturalization. Where the petition for naturalization is restored to its pending status, the petitioner is placed in the original position where he was and the burden then falls upon him, and not upon the Government, to show his eligibility for citizenship in every respect since at that moment he is the moving party, affirmatively asking the Government to endow him with all the advantages of citizenship. Doubts should be resolved in favor of the United States and against the petitioner [Berenyi v. District Director, 385 U.S. 630, 87 S.Ct. 666, 17

L.Ed.2d 656 (1967); *United States v. Macintosh*, 283 U.S. 605, 626, 51 S.Ct. 570, 75 L.Ed. 1302; *In re Petition of Haniatakis*, 376 F.2d 728 at 731, 3 Cir., 1967]. In naturalization proceedings, having asked a question which it deems significant to determine the qualification of one seeking citizenship, the Government is entitled to full disclosure. [*Berenyi v. District Director*, *supra*, 385 U.S. at 638, 87 S.Ct. 666, 17 L.Ed.2d 656; *United States at Montalbano*, 236 F.2d 757, 759-760, 3 Cir., 1956, cert. denied, sub nom., *Genovese v. United States*, 352 U.S. 952, 77 S.Ct. 327, 1 L.Ed.2d 244 (1956), involving revocation of citizenship]."

See also, *Petition of Campbell*, 326 F.2d 101 (2nd Cir. 1964); *Petition of Tabilos*, 637 F.Supp. 969 (N.D. Cal. 1986), and *Petition of Bashan*, 530 F.Supp. 115 (S.D. N.Y. 1982).¹

4. Motions under § 340(i) permit the Court to reopen its naturalization judgments by way of summary procedure. *Petition of Tabilós*, *supra*; and *In re Petition of Cardines*, *supra*. It is well settled that motions for relief under Rule 60(b) are addressed to the sound discretion of the court. *England v. Doyle*, 281 F.2d 304 (9th Cir. 1960); *Petition of Tabilos*, *supra*, at 971.

5. Petitioner claims that his plea of guilty to the felony offense of falsifying the representations that he had previously been married to Georgina Saba (Government's Exhibit 14) and had

¹This Court is uncomfortable with the incongruity of the finality of the judgment being unaffected under Fed.R.Civ.P. 60(b), while at the same time the petition is restored to the court calendar as a pending petition, if reopened by order under § 340(i). The cited authority, however, seems undisturbed by this obvious incongruity.

fathered four children in the marriage (Government's Exhibit 6-13) precludes this Court from denying the reopened petition for naturalization. Contrary to Petitioner's claim, said misrepresentations as well as Petitioner's felony conviction bear on his lack of good moral character. Immigration and Naturalization Act 101(f)(6) [8 U.S.C. § 1101(f)(6)].

6. Due to the aforesaid material misrepresentations and Petitioner's want of moral qualifications, Petitioner has failed to sustain his burden to establish his eligibility for United States citizenship. As has been stated in Berenyi v. District Director, 385 U.S. 630 (1967), doubts "should be resolved in favor of the United States and against the claimant." See also, In re Petition of Haniatakis, 376 F.2d 728 (3rd Cir. 1967); United States v. Sheshtawy, 714 F.2d 1038 (10th Cir. 1983). The Petitioner's false statements were made on Government applications under oath and therefore involve moral turpitude rendering the Petitioner without the requisite good moral character in the five year period prior to the petition for naturalization. Kungys v. United States, 485 U.S. 759 (1988); Hirsch v. INS, 308 F.2d 562 (9th Cir. 1962); Kabongo v. INS, 837 F.2d 753 (6th Cir. 1988); and Burr v. INS, 350 F.2d 87 (9th Cir. 1965), *cert. denied*, 383 U.S. 915 (1966).

7. The INS acted with due diligence in complying with Petitioner's FOIA request. The excluded Library of Congress opinion falls within the FOIA exemption at 5 U.S.C. §552 (b)(5) as a predecisional memo concerning the I-130 petitions filed by the Petitioner on behalf of "his children." Furthermore, if the

Petitioner wished to contest the INS classification of the Library of Congress opinion, the Petitioner could have appealed within thirty days of receipt of the letter.

In light of the foregoing, a separate Judgment shall be entered contemporaneous herewith stating the petition for naturalization is DENIED, 8 U.S.C. § 1430(a), § 1447(a), and the motions of the Immigration and Naturalization Service for summary judgment and to vacate and set aside the Order and Judgment of Naturalization dated October 17, 1985, List No. 510, insofar as said order relates to Kwaku Ahatsi, who is noted on page 3, line 82 of said list, are hereby GRANTED, 8 U.S.C. § 1451(i), Fed.R.Civ.P. 60(b).

DATED this 26th 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 26 1991

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

BIRDIE L. CLARK, et al.,)
)
Plaintiffs,)
vs.)
)
STATE OF OKLAHOMA,)
EX REL. DEPARTMENT OF)
HUMAN SERVICES,)
)
Defendant.)

Case No. 90-C-493-E

STIPULATION OF DISMISSAL WITH PREJUDICE

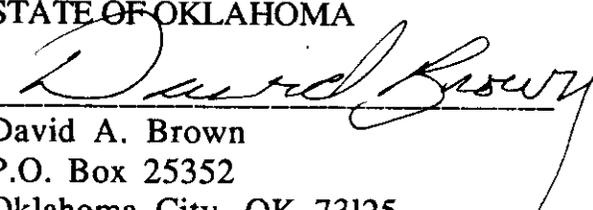
COME NOW Plaintiffs Birdie L. Clark, Carolyn Y. Mason, Helen Hughes, Beverly Rose, and Billie Mayberry, and Defendant, State of Oklahoma, Ex Rel Department of Human Services, and stipulate to the dismissal of the above styled and numbered cause with prejudice.

FRASIER & FRASIER

BY: 

Steven R. Hickman, OBA #4172
1700 Southwest Blvd., Suite 100
P.O. Box 799
Tulsa, OK 74101-0799
918/584-4724
Attorney for Plaintiffs

STATE OF OKLAHOMA

BY: 

David A. Brown
P.O. Box 25352
Oklahoma City, OK 73125
405/521-3638
Attorney for Defendant

FILED

MAR 25 1991

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

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

LYNN CRAIG,

.....Plaintiff,

v.

MAC TOOLS, INC., an
Ohio corporation,

.....Defendant.

No. 90-C-430-B

ORDER

NOW, on this 25 day of March, 1991, this matter comes on before this Court upon the parties' Joint Motion to Dismiss, and the Court, being fully advised in the premises, finds that such Motion should be sustained, and pursuant thereto,

IT IS THEREFORE ORDERED by the Court that Plaintiff's Complaint and Defendant's Counterclaims in the above-styled and numbered action be, and they are hereby, dismissed with prejudice as to refileing, and each party shall bear their own fees, costs and expenses herein.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GENE L. SMITH; ARNOLD D.
BURLESON and KATHERINE M.
BURLESON, husband and wife;
STATE OF OKLAHOMA ex rel.
OKLAHOMA TAX COMMISSION;
COUNTY TREASURER and BOARD OF
COUNTY COMMISSIONERS OF TULSA
COUNTY, OKLAHOMA; CRYSTAL MOTEL,
INC., a suspended Oklahoma
corporation,

Defendants.

FILED

MAR 25 1991

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

CIVIL ACTION NO. 89-C-997-C

DEFICIENCY JUDGMENT

This matter comes on for consideration this 25th day
of March, 1991, upon the Motion of the Plaintiff, United
States of America, acting on behalf of the Small Business
Administration, for leave to enter a Deficiency Judgment. The
Plaintiff appears by Tony M. Graham, United States Attorney for
the Northern District of Oklahoma, through Phil Pinnell,
Assistant United States Attorney, and the Defendant, Gene L.
Smith, appears neither in person nor by counsel.

The Court being fully advised and having examined the
court file finds that a copy of Plaintiff's Motion was mailed to
Gene L. Smith, 3440 Hickory Stick Road, Oklahoma City, Oklahoma
73120, and all counsel and parties of record.

The Court further finds that the amount of the Judgment
rendered on August 23, 1990, in favor of the Plaintiff United

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

States of America, and against the Defendant, Gene L. Smith, with interest and costs to date of sale is \$633,458.95.

The Court further finds that the appraised value of the real property at the time of sale was \$130,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered August 23, 1990, for the sum of \$131,000.00 which is more than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 11th day of July, 1991.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Gene L. Smith, as follows:

Principal Balance as of 8/23/90	\$392,419.49
Interest	240,507.76
Abstracting	94.00
Evidentiary Affidavit	100.00
Service By Publication Fees	<u>337.70</u>
TOTAL	\$633,458.95
Less Credit of Sale Proceeds	- <u>131,000.00</u>
DEFICIENCY	\$502,458.95

plus interest on said deficiency judgment at the legal rate of 6.46 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the sale proceeds of the property herein.

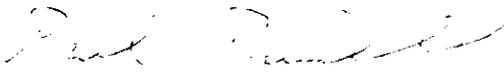
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, Gene L. Smith, a deficiency judgment in the amount of \$502,458.95, plus interest at the legal rate of 6.46 percent per annum on said deficiency judgment from date of judgment until paid.

(Signed) M. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney


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

PP/css

FILED

MAR 25 1991

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OKLAHOMA
Northern District of Oklahoma
Jack C. Silver, Clerk
U.S. DISTRICT COURT

DENNIS DEAN WRIGHT,)
)
Petitioner,)
)
v.)
)
STEPHEN KAISER, et al,)
)
Respondents.)

~~FILED~~
~~MAR 22 1991~~
90-C-855-B
~~Jack C. Silver, Clerk~~
~~U.S. DISTRICT COURT~~

ORDER

Now before the Court for final consideration is Dennis Dean Wright's Petition for Writ of Habeas Corpus. Wright was convicted in Tulsa County District Court (case no. CRF-87-260) for First Degree Murder and Conspiracy to Commit Murder and received sentences of life imprisonment and twenty (20) years imprisonment, respectively. The convictions were affirmed on appeal. *Harjo v. State*, 797 P.2d 338 (Okla. Crim. App. 1990). Respondent agrees that Petitioner has exhausted his state remedies and has not bypassed orderly state procedures. Petitioner now asserts two grounds for federal habeas relief: (1) ineffective assistance of counsel (due to conflict of interest); and (2) improperly admitted trial testimony. Having reviewed the claims of Petitioner, the Court finds that Petitioner is not entitled to habeas corpus relief.

Ineffective Assistance of Counsel

Petitioner alleges he was denied effective assistance of trial counsel because of counsel's purported conflict of interest. Petitioner's counsel, Mr. Ron Wallace and Ms. Denise Johnson, also represented co-defendants Paula Wright, Marty Langly, and Noah

Harjo. On May 6, 1987 Wallace and Johnson sought to withdraw as counsel for Harjo. The motion was denied. (Transcript, May 6, 1987.) At the trial on October 5, 1987, counsel for Wright and the other co-defendants, (now Johnson and Mr. Scott Troy) again moved to withdraw from representing Defendant Harjo, to alleviate a conflict of interest. The motion was again denied. (Transcript, October 5, 1987 at 6-8.) Petitioner now argues that the forced joint representation is a per se Sixth Amendment violation entitling him to habeas corpus relief.

Petitioner relies on *Holloway v. Arkansas*, 98 S.Ct. 1173 (1978). The United States Supreme Court in *Cuyler v. Sullivan*, 100 S.Ct. 1708 (1980) specifically addresses the issue left unresolved in *Holloway*, that is, "whether the mere possibility of a conflict of interest warrants the conclusion that the defendant was deprived his right to counsel". *Cuyler*, 100 S.Ct. at 1716. *Cuyler* holds that the "possibility" of conflict is insufficient to attack a criminal conviction. Rather, to demonstrate a Sixth Amendment violation the criminal defendant "must establish that an actual conflict of interest adversely affected his lawyer's performance". *Id.* at 1719. It must be shown that counsel actively represented the conflicting interests, not just the mere appearance or possibility of doing so. *Id.*

Petitioner goes to great length arguing that he did not make a knowing and intelligent waiver of his right to conflict-free counsel. Yet, Petitioner makes no showing of any actual conflict of interest. Such a showing is absolutely necessary as a predicate to habeas relief. Without the showing, the Petition on this ground must be denied.

Improperly Admitted Testimony

Petitioner alleges that the state trial court committed error in permitting

inadmissible hearsay testimony of a conspiracy. Petitioner argues that the admission of such testimony as error where a conspiracy had not been first proved. This is insufficient for federal habeas relief. "Federal habeas corpus relief does not lie for errors of state law." *Lewis v. Gaffers*, 110 S.Ct. 3092, 3102 (1980).

The Sixth Circuit of Appeals in *Bagby v. Sowders*, 894 F.2d 792, 795 (1990) explained the inappropriateness of raising errors of state law in a federal habeas proceeding. *Bagby* observed, "It would be an extremely rare case in which a federal court could conclude that a state court committed error under state law. Indeed, if the case has been reviewed by the state's highest court it would be impossible to find an error of state law if that court did not." Here, Petitioner's claim of error has been reviewed by Oklahoma's highest court and that court found, after an extensive review of both the law and facts, no error. *Harjo v. State*, 797 P.2d at 343-346. Therefore, Petitioner's second ground affords no basis for federal habeas relief.

Conclusion

It is therefore Ordered that Dennis Dean Wright's Petition for Writ of Habeas Corpus be denied.

SO ORDERED THIS 25th 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

ERWIN D. PHILLIPS,

Plaintiff,

v.

LOY CALHOUN, individually and
in his official capacity as
City Manager of the City of
Sand Springs, Oklahoma, and
THE CITY OF SAND SPRINGS,
OKLAHOMA,

Defendants.

89-C-903-B

FILED
MAY 27 1991
Jack E. Silver, Clerk
U.S. DISTRICT COURT

ORDER

Before the Court for decision are Plaintiff's Motion for Partial Summary Judgment and Defendants' Motion for Summary Judgment. Plaintiff filed his Complaint on October 25, 1989, alleging that the Defendants terminated his employment as City Attorney for the City of Sand Springs, Oklahoma, without cause and in violation of his constitutional rights. Further, Plaintiff alleges that Defendants denied him the right to have a termination hearing; that the termination violated his property interest in continued employment and his liberty interest in and to the preservation of his own good name and professional reputation; and that Defendant Calhoun was motivated by malice.

In his Motion for Partial Summary Judgment, Plaintiff argues that he was a member of the "classified service" of the Defendant City of Sand Springs who thus enjoyed an unlimited property right

in his employment¹ and was entitled to a public hearing before the Personnel Board in conjunction with his termination. Defendants maintain that Plaintiff was an "unclassified employee" who was not entitled to a termination hearing or, in the alternative, if he were a member of the "classified service," he was, nevertheless, one who could be terminated for "the good of service" and who had no property interest in public employment. Defendants also allege that Plaintiff has made no showing that his liberty interest was violated; that Defendant Calhoun is entitled to qualified immunity; and that Plaintiff's claim for punitive damages against Defendant Calhoun is without a factual or legal basis.²

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Where there is an absence of material issues of fact, then the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Widon Third Oil and Gas v. Federal

¹ Plaintiff relies on the case of Bailey v. Kirk, 777 F. 2d 567 (10th Cir. 1985), to support his claim that he had a property interest in continued employment. This Court notes that in that case the parties stipulated that the plaintiff was a member of the classified service who could only be demoted, suspended, or removed for good and sufficient cause; in contrast, in the case at bar, the parties disagree about whether the plaintiff was a member of the classified service.

² The parties have now agreed to the following three points: 1) there is no factual or legal basis for Plaintiff's claim for deprivation of liberty without due process; 2) summary judgment for Defendant Calhoun, named in his individual capacity, is appropriate on the basis of qualified immunity; and 3) there is no factual or legal basis for punitive damages against Defendant Calhoun.

Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986); Commercial Iron & Metal Co. v. Bache & Co., Inc., 478 F.2d 39, 41 (10th Cir. 1973); and Ando v. Great Western Sugar Company, 475 F.2d 531, 535 (10th Cir. 1973).

The law is well-settled in this Circuit that an employee who can be terminated "for the good of the service" does not possess a property right in his employment subject to federal constitutional guarantees. See Graham v. City of Oklahoma City, 859 F. 2d 142 (10th Cir. 1988); Campbell v. Mercer, Slip. Op. (10th Cir., Feb. 26, 1991). Section 8-1 of the City Charter provides, *inter alia*: "removals, demotions, suspensions, and layoffs shall be made solely for the good of the service." Yet, Rule 501 of the City of Sand Springs Personnel Rules states that an employee in the "classified service" may be "removed from position only for good and sufficient cause." Thus, the Personnel Rules confer upon classified employees protections which are not afforded under the City Charter and would seem to afford Plaintiff a property interest in his employment. Under the reasoning of Graham, *supra*, however, this Court should not give effect to the more restrictive language of the Personnel Rules, because it directly conflicts with language in the City Charter and is therefore void. See Brady v. Hubbard, 192 P. 567 (Okla. 1920) (city charter is binding until amended or repealed); Hinz v. Hubbard, 216 P. 440 (Okla. 1923) (city charter is supreme law in purely municipal matters).

The unclassified/classified distinction is only relevant if it would serve to confer upon the Plaintiff a protected property right under state law. As discussed above, since the City Charter

prevails over the Personnel Rules, the distinction may be one without any legal significance regarding a property right in employment. Nevertheless, the Court finds an alternative approach focusing on the dispute between the Plaintiff's classification status ultimately results in the same outcome.

It is clear and uncontested that under the terms of the Sand Springs City Charter, Section 8-3 (2)(b), the city attorney is a member of the unclassified service. The Plaintiff contends, however, that the City Council was empowered to change his classification from unclassified to classified (and, in fact, did so in 1976 by enacting the city ordinance Section 2-617) by virtue of Section 8-3 (4) of the Charter, which provides: "Nothing herein shall prohibit including personnel in the unclassified service in the classification plan."

The law is clear and all parties agree that the City Charter is supreme and prevails over any conflicting city ordinance, regulation, or rule adopted by the City Council. The parties disagree, however, over their interpretation of Section 8-3 (4) of the City Charter and whether it provides for a procedure by which the City Council can change the status of an employee's classification. Ultimately, their dispute centers on the meaning of the term "classification plan."

The Plaintiff maintains that the "classification plan" referred to in Section 8-3 (4) is indistinguishable from the notion of "classified service"; thus, he maintains that the City Council had authorization from within the Charter to change the classification of the city attorney. Plaintiff has not provided

the Court with any evidence or affidavits of persons qualified in matters involving municipal personnel administration in support of the position he urges; instead, he relies on what he believes to be the clear and unambiguous language of the City Charter.

Defendants argue and have submitted to the Court in support of their position affidavits of two experts in personnel matters, Arland Perkins and Odean Helm, that the terms "classification plan" and "classification service" are not synonymous. The experts explain that the classification plan referred to in the City Charter is the division of the entire work force of the municipality into various groups for the purpose of establishing salary and planning a budget; that within a classification plan, employees who have similar tasks are grouped together in order to provide for equitable pay among such employees; and, that within each group, various steps or grades exist, representing a low to high salary range. They explain further that all employees--classified and unclassified alike--are assigned a particular designation in the classification plan, representing their skill level and rate of pay.

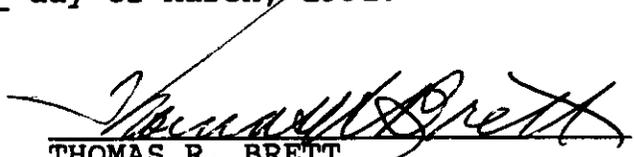
Perkins opines in his affidavit that Section 8-3 (4) simply means that unclassified employees can be included in a classification plan with similar employees, representing similar levels of skill and pay; it does not mean that personnel in the unclassified service can be included in the classified service. The Helm affidavit affirms that at the time Phillips left the employment of the City of Sand Springs, he was designated under the classification plan as a part-time employee, grade U, step F; and

the grade U designation meant that he was an unclassified employee.

The City Charter does not define "classification plan." Insofar as the Defendants have submitted affidavits of experts who maintain that the term "classification plan" as used in City Charter Section 8-3 (4) has a different meaning than "classified service" and Plaintiff has not provided any authoritative rebuttal of that position, the Court concludes that it ought to adopt that distinction, as no material issue of fact remains. *A fortiori*, the City Charter never authorized any change regarding the city attorney position from the unclassified to classified service. As an unclassified employee, the city attorney could be terminated for the "good of the service" and thus enjoyed no property right in his employment sufficient to create a federal due process claim under the Fourteenth Amendment.³

Having considered the Motions and Briefs in support thereof, the Court concludes that Plaintiff's Motion for Partial Summary Judgment should be and is hereby DENIED; and Defendants' Motion for Summary Judgment should be and is hereby GRANTED. Contemporaneously with the filing of this Order, a separate Judgment in favor of the Defendants has been entered by the Court.

IT IS SO ORDERED this 2 day of March, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

³ This Court's conclusion does not foreclose Plaintiff from pursuing any procedural right he may have arising under state or local law. See Campbell v. Mercer, Slip. Op. (10th Cir., Feb. 26, 1991).

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

ERWIN D. PHILLIPS,)
)
) Plaintiff,)
)
) v.)
)
) LOY CALHOUN, individually and)
) in his official capacity as)
) City Manager of the City of)
) Sand Springs, Oklahoma, and)
) THE CITY OF SAND SPRINGS,)
) OKLAHOMA,)
)
) Defendants.)

89-C-903-B ✓

FILED
MAR 22 1991
John C. Suter, Clerk
U.S. District Court
Northern District of Oklahoma

J U D G M E N T

In accord with the Order filed March 22, 1991, granting the Defendants' Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendants, Loy Calhoun and The City of Sand Springs, Oklahoma, and against the Plaintiff, Erwin D. Phillips, on Plaintiff's alleged claim under 42 U.S.C. § 1983. Plaintiff shall take nothing on said claim. Costs are assessed against the Plaintiff and each party is to pay its respective attorney's fees.

Dated this 22nd 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 21 1991

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

FEDERAL DEPOSIT INSURANCE
CORPORATION, AS MANAGER OF THE
FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION
RESOLUTION FUND, AS RECEIVER
FOR PHOENIX FEDERAL SAVINGS
AND LOAN ASSOCIATION,

Plaintiff,

vs.

DAN L. STEFANOFF, et al.,

Defendants.

No. 88-C-1357-B

ORDER OF DISMISSAL WITH PREJUDICE

Upon Application of Defendants and Counterclaimants, Richert Properties, Inc., an Oklahoma Corporation, and Wood Comm. Fund I, an Oklahoma corporation, to dismiss their Counterclaim With Prejudice, the Court finds that since the Plaintiff has no objection to such an Order being entered, the Application should be sustained and the Counterclaim should be dismissed with prejudice.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED by the Court that the Application of Defendants and Counterclaimants, Richert Properties, Inc. and Wood Comm. Fund I, to dismiss their Counterclaim With Prejudice be and the same is hereby sustained.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Counterclaim be and it is hereby dismissed with prejudice.

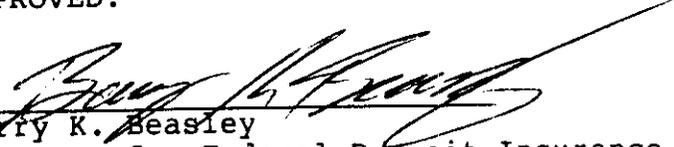
Dated this 21st day of March, 1991.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

SANDERS & CARPENTER

APPROVED:



Barry K. Beasley

Attorney for Federal Deposit Insurance Corporation



David H. Sanders

David H. Sanders,
Attorney for Richert Properties,
Inc. and Wood Comm. Fund I.

FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MAR 21 1991

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

THE FEDERAL DEPOSIT INSURANCE CORPORATION,)

Plaintiff,)

vs.)

JACK B. SELLERS, DWIGHT W. MAULDING, BOB W. JOHNSON, HULDA P. COX, HELEN SIPES COX AND JOHN R. COX,)

Defendants.)

Case No. 90-C-190-B

JUDGMENT

The parties hereto, having settled the above action and having agreed to entry of a Consent Judgment herein; now, therefore, upon the consent of the parties with the approval of the attorneys for the parties hereto, it is:

ORDERED, ADJUDGED AND DECREED;

1. That this Court has jurisdiction over the subject matter of this action and the parties hereto.

2. That the plaintiff Federal Deposit Insurance Corporation be, and hereby is, awarded judgment against defendant Jack B. Sellers on the Second Claim for Relief in the First Amended Complaint in the amount of \$125,756.95, which reflects principal and interest through February 28, 1991. The judgment shall bear interest at the rate of \$34.73 a day after February 28, 1991, as

provided in the promissory note, until paid. The plaintiff agrees to withhold execution on this judgment for six (6) months from the date of entry.

3. That the First Claim for Relief of the First Amended Complaint is dismissed with prejudice as against all defendants.

4. That all counterclaims, and crossclaims are dismissed with prejudice pursuant to the Stipulation for Dismissal filed herein by the parties.

5. That the parties bear their own costs and attorney fees.

6. That the clerk is directed to enter this Consent Judgment immediately as final judgment of this Court, which is not subject to further modification or amendment except pursuant to Rule 59 of the Federal Rules of Civil Procedure.

Signed this 21 day of March, 1991.

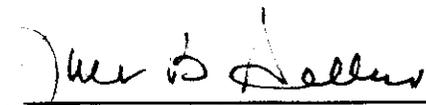
S/ THOMAS R. BRETT

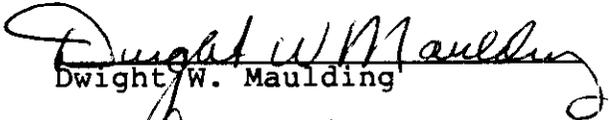
UNITED STATES DISTRICT JUDGE

APPROVED AND AGREED TO:

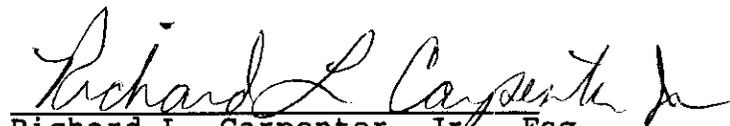


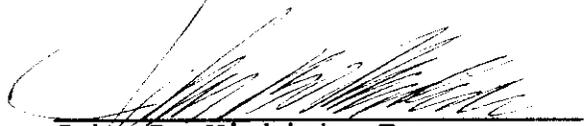
Ronald N. Ricketts, Esq.
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2000 Fourth National Bank Building
15 West Sixth Street
Tulsa, Oklahoma 74119-5447
(918) 582-9201
ATTORNEYS FOR THE FEDERAL
DEPOSIT INSURANCE CORPORATION


Jack B. Sellers


Dwight W. Maulding


Sam T. Allen, III, Esq.
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(918) 224-5302
ATTORNEYS FOR JACK B. SELLERS
AND DWIGHT W. MAULDING


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John B. Wimbish, Esq.
RIDDLE, WIMBISH & CRAIN
5314 South Yale, Suite 200
Tulsa, Oklahoma 74135
(918) 494-3770
ATTORNEYS FOR HULDA P. COX

GROUND TWO

Petitioner's second argument is that the Texas felony conviction was constitutionally invalid and by using it to enhance his punishment, he was denied due process of law. Specifically, he alleges that in the Texas case he did not "**knowingly, voluntarily, and understandingly waive his constitutional right against self-incrimination and to confront his accusers**". However, he cites no evidence to support his claim. It is noted that his counsel did not object to the introduction at trial of the evidence of the Texas felony.

When Petitioner presented the claim to the state courts in his application for post-conviction relief, the state courts clearly and plainly denied relief on the basis of procedural bypass. The Oklahoma Court of Criminal Appeals cited the fact that Petitioner had not raised the issue in his direct appeal, although he could have. Where, as here, there is an adequate and independent finding of procedural bypass federal habeas review is barred under *Harris v. Reed*, 109 S.Ct. 1038, 1043 (1989). Therefore, Petitioner's second claim must also fail.

CONCLUSION

It is hereby Ordered that the Petition for Writ of Habeas Corpus be denied.

SO ORDERED THIS 21 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 21 1991 *psw*

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

KATHLEEN MARS,)
)
 Plaintiff,)
)
 v.)
)
 CONNER & WINTERS, Lawyers,)
 an Oklahoma Partnership; and)
 PHIL RUMLEY, an individual,)
)
 Defendants.)

Case No. 90-C-336-C /

ORDER APPROVING STIPULATION
FOR DISMISSAL WITH PREJUDICE

On this 21st day of March 1991, this matter comes on for consideration by the Court of the Stipulation for Dismissal with Prejudice in the above-captioned action, and the Court, having reviewed the Stipulation and being fully advised, finds the Stipulation should be approved, and the above-captioned action is hereby dismissed with prejudice, each party bearing its own costs.

H. Dale Cook
H. DALE COOK
UNITED STATES DISTRICT JUDGE

18

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

FILED

MAR 21 1991

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

IN RE:)
)
PHILLIP GALE HILL,)
)
Debtor.)
)
GENE MARITAN,)
)
Appellant,)
)
vs.)
)
PHILLIP GALE HILL,)
)
Appellee.)

Case No. 90-C-687-B

ORDER

This matter comes on for consideration upon the Appeal of Gene Maritan, Appellant herein, from the Judgment Order and Memorandum Opinion, entered by the Bankruptcy Court on August 3, 1990, denying Maritan's Motion to file an objection to the discharge of the Debtor, Phillip Gale Hill, after the expiration of the last day for filing objections to the discharge.

Maritan and the Debtor, Hill, were business partners and co-owners in Hill Bending & Mfg. Co. from 1984 to 1988 at which time Hill bought out Maritan's stock, agreeing to pay periodic installments to Maritan. Hill filed a Chapter 11 Bankruptcy reorganization proceeding on November 27, 1989, listing Maritan as a creditor.¹ No address was listed for Maritan although it is

¹ Maritan was listed as having a debt owed him by Hill in the amount of \$115,005.43 out of total listed debts of \$157,138.51.

beyond dispute that Hill knew Maritan lived in Tulsa, Oklahoma, and in fact knew Maritan's address.

On March 19, 1990, Hill filed a Chapter 7 Bankruptcy proceeding again listing Maritan as the largest creditor but omitting any address for Maritan. Notice of the Bankruptcy filing was sent to approximately 21 creditors listed in the schedules, all of whom except Maritan had addresses shown. The Notice also included the date of the first meeting of creditors (April 10, 1990), and the last day to file a complaint objecting to the discharge of the debtor or dischargeability of a debt (June 11, 1990). Neither Maritan nor his counsel were sent this Notice.

Several days after the Chapter 7 Petition was filed Maritan read in the Tulsa Legal News a Notice of the filing. Maritan immediately informed his counsel, Tilly, of this. Tilly dispatched an intern from Tilly's office to the Bankruptcy Court where the intern obtained copies of the schedules confirming that Maritan was indeed listed as a Creditor therein. Tilly mailed the schedules to Maritan and informed him by telephone "that since he had been listed as a creditor he would be receiving a notice in the mail. He would be receiving a notice stating that there would be a meeting of creditors and there would be a date for filing objections and that as soon as he received that notice he should contact me because we would have to act by the date that was established by the Court." Transcript of hearing held July 16, 1990.

Tilly states he had no actual notice of the objection cut-off

date until June 18th², then too late. Tilly filed a Motion for Leave to File Objection to Debtor's Discharge Out-Of-Time on June 26, 1990, which the Court denied. This appeal followed.

The Bankruptcy Court determined there were two lines of authority available to it. One view is that if a creditor has actual knowledge of the bankruptcy proceeding the creditor must file a complaint to determine the dischargeability of a debt, or presumably a complaint to object to the discharge, within the bar date even though no formal notice of the date was received from the bankruptcy court. The Court alluded to several Fifth circuit cases in support of this view.³ The opposing view is that a creditor, who has general knowledge of a debtor's bankruptcy, has no duty to inquire about further court action. This line of authority is predicated upon a creditor's "right to assume" that he will receive all of the notices required by statute before his claim is forever barred.⁴

The Bankruptcy Court held with the view espoused by the Fifth Circuit, ruling that actual notice of the bankruptcy proceedings imposed upon Maritan a duty to search out the files of the bankruptcy case to determine the various bar dates. The Court felt this view coincided with the clear expression of congressional

² An associate of Tilly picked up a copy of the docket sheet from the Bankruptcy Court on June 13th. Tilly did not review the docket sheet until June 18th.

³ Neeley v. Murchison, 815 F.2d 345 (5th Cir. 1987); Matter of Sam, 894 F.2d 778 (5th Cir. 1990); Matter of Compton, 891 F.2d 1180 (5th Cir. 1990).

⁴ City of New York v. New York, New Haven & Hartford Railroad Co., 344 U.S. 293, 73 S.Ct. 299, 97 L.Ed. 333 (1953); South Dakota Cement Plant v. Jimco Ready Mix Co., 57 B.R. 396 (D.S.D. 1986).

intent as set forth in 11 U.S.C. §523(c).

Maritan urges the out-of-time objection he seeks to file is an objection under § 727 going to the actual discharge of Hill, rather than an objection under §523 going to the discharge of a specific debt (Maritan's debt); that the actual notice exception does not apply except within the framework of § 523, citing South Dakota Cement Plant v. Jimco Ready Mix Co. supra.

Reviewing this matter *de novo* as to Appellant's issues of law the Court concludes the Judgment Order of the Bankruptcy Court was not correct.

Maritan's counsel states he had no actual notice of the objection cut-off date until approximately June 18th, seven days past the date. The Bankruptcy Court, in its Opinion, made no finding to the contrary. This Court concludes that, in accord with Tenth Circuit authority, In re Herd, 840 F.2d 757 (10th Cir. 1988), quoting City of New York v. New York, New Haven & Hartford Railroad Co., supra, and Reliable Elec. Co., Inc. v. Olson Const. Co., 726 F.2d 620 (10th Cir. 1984), and In re Green, 876 F.2d 854 (10th Cir. 1989) which is particularly in point, Maritan was entitled to formal notice from the Bankruptcy Court, specifying the objection cut-off date, within reasonable time to file any desired objection.

In Green, both the bankruptcy court and the district court dismissed a creditor's complaint to determine dischargeability as untimely based upon the bankruptcy court's finding that the creditor had actual timely notice of the bankruptcy filing and the bar date. The Bankruptcy Court in the case *sub judice* distinguished

Green because of its "actual notice of the bar date" aspect but found the distinction unimportant because "the Tenth Circuit indicated a clear intent that complaints objecting to the dischargeability of a debt could not be filed late if the creditor had actual knowledge of the filing of the petition in bankruptcy in time to file an objection." The Bankruptcy Court went on to conclude the Tenth Circuit's rationale in regard to the discharge of a particular debt would apply to a discharge of the debtor. This Court is not inclined to agree with the Bankruptcy Court's application of Green without a predicate finding that Maritan's counsel was actually aware of the bar date.

The Court concludes Maritan's Motion For Leave to File Objection to Debtor's Discharge Out-Of-Time should have been granted. The Bankruptcy Court's Judgment Order should be and the same is hereby REVERSED. Maritan's Proposition Number Five, (that the Bankruptcy Court erred in not finding that the Debtor intentionally failed to disclose Maritan's address to the Bankruptcy Court in an effort to insure that Maritan would not receive formal notice of the Debtor's bankruptcy proceeding), is DENIED as now moot. Appellee's, Phillip Gale Hill, Application for Permission to File Brief Out of Time is DENIED as moot.

IT IS SO ORDERED this 21ST day of March, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE