

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

FILED
MAY 31 1991

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

THE UNITED KEETOOWAH BAND OF)
CHEROKEE INDIANS IN OKLAHOMA,)
)
Plaintiff,)
)
vs.)
)
THE SECRETARY OF THE DEPARTMENT)
OF INTERIOR OF THE UNITED STATES)
OF AMERICA,)
)
Defendant.)

No. 90-C-608-B

ORDER REGARDING DEFENDANT'S MOTION TO DISMISS

Before the Court for decision is the Motion to Dismiss the Complaint of Plaintiff United Keetoowah Bank of Cherokee Indians in Oklahoma ("UKB"), pursuant to Fed.R.Civ.P. Rule 12(b)(1)(2)(6) and (7).

The Plaintiff's Complaint alleges four claims for relief essentially as follows:

(1) The Defendant Secretary has arbitrarily failed and refused to carry out his legal responsibility to enter into Indian Self-Determination Act ("ISDA") grants and contracts with the Plaintiff;

(2) Defendant's refusal to provide ISDA grants and contracts to Plaintiff and, additionally, Defendant's advice or direction to other federal agencies to refuse contracts and grants to Plaintiff has adversely affected Plaintiff's rights to such grants and contracts;

(3) The Defendant is in possession and holds title to land of the old Cherokee reservation in Oklahoma for further conveyance to Indians such as the Plaintiff pursuant to the Oklahoma Indian

Welfare Act, 25 U.S.C. § 5001 *et seq.* Plaintiff is entitled to said trust lands and unallotted lands held by the United States and the Defendant has failed and refused to permit the Plaintiff to use and exercise its rights therein;

(4) The Secretary has arbitrarily refused to approve Plaintiff's acquisition request for trust lands in the old Cherokee reservation without the consent of third parties.

In reference to said four claims the Plaintiff seeks injunctive and mandatory relief requiring the Defendant to:

(a) allow the Plaintiff the grants and contracts it is entitled to under the Indian Self-Determination Act and grant the UKB the assistance to which it is entitled under the Act; (b) advise other federal agencies the UKB is eligible for federal funding as a federally recognized Indian tribe, band or nation; (c) convey to the UKB in trust such lands as the Secretary now holds in trust for an "organization of Cherokee Indians organized pursuant to the Oklahoma Indian Welfare Act"; (d) entertain the land applications of the UKB and its members on the same basis as other recognized Indian tribes, bands or nations within their respective reservations.

Plaintiff also seeks an accounting for all funds to which the UKB would have been entitled pursuant to the ISDA, and other programs administered by the Defendant. The Plaintiff seeks in excess of \$10,000,000.00 which has been unlawfully withheld or given to other entities. The Plaintiff also seeks an accounting for all unallotted Cherokee lands and all lands received by the

Secretary to which it is entitled, as well as rents, profits, royalties, bonuses and other payments received to which Plaintiff is entitled. Plaintiff seeks such other relief as law or equity requires.

With respect to Plaintiff's first claim for relief, the Defendant asserts that Plaintiff has failed to exhaust its available administrative remedies.¹ The Defendant admits in its brief that the UKB is eligible to apply directly for ISDA services because it is a recognized Indian organization. The Code of Federal Regulations sets out Department of Interior procedures concerning administrative remedies for ISDA claims. 25 C.F.R. Part 2 and 43 C.F.R. Part 4 provides an appeal process for when a Bureau of Indian Affairs action or decision is protested as a violation of a right or privilege of the appellant. 25 C.F.R. §§ 271.81-82 provide for an appeal process when an ISDA contract application has been declined. 25 C.F.R. §§ 272.51-55 provide an appeal process when ISDA grant applications are declined.

The Plaintiff does not allege in the Complaint that it has exhausted administrative remedies relative to the first claim for relief and the alleged denial of grant and contract benefits. Authority supports the fact that judicial review of such an

¹The Plaintiff in its Brief in Support of its Objection to Defendant's Motion to Dismiss (pages 10-13) mistakenly responds that it is unnecessary to exhaust administrative remedies regarding its third and fourth claims for relief in the Complaint. It is clear from the Defendant's Motion to Dismiss that its exhaustion of administrative remedies assertion applies only to Plaintiff's first claim for relief regarding Defendant's arbitrary failure to enter into ISDA grants and contracts with Plaintiff.

administrative decision is not proper, and the Court is without subject matter jurisdiction, until the Plaintiff exhausts administrative remedies. McKart v. United States, 395 U.S. 185 (1969); FCC v. Schreiber, 381 U.S. 279 (1965); Aircraft & Diesel Equipment Corp. v. Hirsch, 331 U.S. 752 (1947); and National Indian Youth Council v. Morton, 363 F.Supp. 475 (W.D.Okl. 1973).

Because Plaintiff's Complaint in reference to the first claim for relief fails to allege or establish an exhaustion of administrative remedies available for ISDA claims, or allege facts precluding the necessity of exhaustion of administrative remedies, the Defendant's Motion to Dismiss Plaintiff's first claim for relief is hereby SUSTAINED. The Court's dismissal is equally applicable to Plaintiff's second claim for relief because it arises from and is related to Plaintiff's alleged first claim for relief.

In reference to the UKB third and fourth claims for relief regarding its entitlement to use and live upon or acquire trust and unallotted lands of the old Cherokee Nation, as previously stated the Secretary does not assert a failure to exhaust administrative remedies. The UKB also asserts alternatively it should be compensated if said lands have been given to another Indian or Indian entity.

The crux of the dispute concerning the old Cherokee Reservation lands is found in Exhibits A and D attached by the UKB to its opposition brief filed April 9, 1991. Exhibit A (Letter of April 17, 1987 from Acting Assistant Secretary - Indian Affairs - Secretary of Interior to Chief of UKB) states at pages 3-4:

We do not dispute the fact that the United Keetoowah Band is a viable and distinct federally recognized tribal body which has a somewhat undetermined relationship with the Cherokee Nation of Oklahoma. Further, we agree that the Band has the authority to request the Secretary to place lands in trust on its behalf. However, the 1946 Act, while recognizing the United Keetoowahs as a band of Indians within the meaning of the Oklahoma Indian Welfare Act, can in no way be read as authorizing the Band to exercise concurrent jurisdiction over Cherokee lands within the former Cherokee Reservation. Furthermore, because the subject lands fall within the Cherokee Nation's former reservation their consent is required under 25 C.F.R. 151.8. Therefore, we must affirm the Acting Area Director's decision of December 19, 1985 and require the concurrence of the Cherokee Nation of Oklahoma before the Band's request for trust land can properly be evaluated by the Muskogee Area Office.

Exhibit D (Letter dated June 22, 1990 to the Chief of the UKB from the Acting Area Director of the Bureau of Indian Affairs) states:

Insofar as taking land in trust for the Band's use and benefit, our position remains as articulated by the Acting Assistant Secretary - Indian Affairs in his letter of April 17, 1987. As you are familiar, this decision affirmed a previous Area Director's decision, on your appeal. As was set out, the 1946 Act recognizing the United Keetoowahs as a band of Indians within the meaning of the Oklahoma Indian Welfare Act, did not authorize or recognize concurrent jurisdiction over Cherokee lands within the former reservation area. Neither did the legislation create or set aside a reservation for the Band. It was also held that 25 C.F.R. 151.8 requires the concurrence of the Cherokee Nation. The 1987 decision remains in force, and this office is without authority to overturn a decision of the designate of the Secretary of Interior."

This office will be pleased to evaluate a proposal on behalf of the United Keetoowah

Band when submitted in the proper format. Each trust acquisition request, however, must be considered on its own merits. The Band has no right or entitlement to acquire property in a trust status. Statutory acquisition authorities are committed to the discretion of the Secretary of the Interior.

Thus, the Secretary of the Interior, or his designee, has determined that the subject lands of the old Cherokee Reservation are under the jurisdiction of the new Cherokee Nation, not the UKB. We have two competing recognized Cherokee Indian entities asserting rights to the old Cherokee Reservation lands. One of the entities is before the Court in this action, while the other is not a party herein. The Defendant asserts that the new Cherokee Nation of Oklahoma, under Fed.R.Civ.P. 19, is an indispensable party to this action but then further asserts that it cannot be joined herein due to sovereign immunity from suit. If the Secretary's assertion is correct, we are faced with the incongruity of the UKB suffering an alleged denial of rights without a present judicial remedy. As to the old Cherokee Reservation lands, the Secretary has recognized one sovereign (Cherokee Nation of Oklahoma) over another (UKB).

The legal conundrum presented by the competing sovereigns is highlighted by the Plaintiff in its opposition brief of April 9, 1991 at page 15 where it states:

According to the Secretary said Cherokee Nation of Oklahoma may not be joined, and the suit may not proceed without the Cherokee Nation of Oklahoma. Thus if the Secretary reverses his decision on which tribe has a right to live upon the old reservation, the New Cherokee Nation of Oklahoma could not bring suit against him. The Secretary could simply argue that the UKB was an indispensable party and could not be joined. Thus,

according to the Secretary, he could decide each tribe's rights to the old reservation and the aggrieved tribe, ousted from its homeland, could not bring suit against him.

This action does not seek to deprive the new Cherokee Nation of Oklahoma any rights it lawfully has, but to force the Secretary to recognize the rights of all rightful inhabitants of the reservation. If two Cherokee Bands or Tribes, have equal right to live upon the reservation in accordance with the Treaty of August 6, 1846, the Secretary may not unilaterally deny the rights of one Band, Tribe, or Nation while simultaneously blocking their right to lawful action with Rule 19.

25 C.F.R. 151.8 in relevant part states:

An individual Indian or tribe may acquire land in trust status on a reservation other than its own only when the governing body of the tribe having jurisdiction over such reservation consents in writing to the acquisition. . .

Regarding the Defendant's Motion to Dismiss Plaintiff's third and fourth claims for relief under Fed.R.Civ.P. 12(b)(7), failure to join a party under Rule 19, the record points up the following legislative, executive and judicial history: the Acts of March 1, 1901, 31 Stat. 848, the Act of July 1, 1902, 32 Stat. 716 and the Act of April 29, 1906, 34 Stat. 137, provided for all Cherokee tribal lands to be allotted equally to Cherokee members and close the tribal rolls as of December 1, 1905.

Some unallotted Cherokee lands remain today as Cherokee Nation tribal lands in trust or restricted status. Pursuant to ISDA contract, effective October 1, 1989, the Cherokee Nation of Oklahoma assumed most of the Bureau of Indian Affairs' responsibility for administering these approximately 329 unallotted

acres.

In Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970), the Supreme Court held that the ninety-six mile navigable segment of the Arkansas River bed had been granted to the Cherokee, Choctaw and Chickasaw Nations in nineteenth century treaties. The Cherokee portion of the claim of the Arkansas River bed is yet to be precisely determined.

In 1982 the Cherokee, Choctaw and Chickasaw Nations were authorized by statute to sue the United States, for takings of their river bed lands by the Corps of Engineers as the result of the construction of the Arkansas River Navigation System, pursuant to §2 of the Indian Claims Commission Act of 1946, 60 Stat. 1050, 25 U.S.C. § 70a, Pub. L. No. 97-385, 96 Stat. 1944 (1982). The suit filed by the Cherokee Nation pursuant to that statute is presently pending in the Tenth Circuit.

In 1989 the Cherokee Nation sued the United States in the United States Court of Claims for alleged breach of fiduciary duty in the trust management of its river bed lands and management of other lands. The Cherokee Nation of Oklahoma v. The United States of America, No. 218-89-L (Cl.Ct. filed April 21, 1989). The UKB has not sought to intervene in either suit to assert its alleged interest in the subject lands.

The United States Government currently has approximately 61,000 acres of land in trust within the old Cherokee Reservation for the Cherokee Nation. No land is currently being held for the UKB as a recognized tribal entity. The UKB's former request to

acquire trust land located in the boundary of the old Cherokee Reservation was denied by the Acting Assistant Secretary of the Interior on April 7, 1987. The Secretary of the Interior and/or its designate has refused to consider the request of the UKB without the written concurrence of the Cherokee Nation of Oklahoma and points to departmental regulation, 25 C.F.R. 151.8, as its authority.

Fed.R.Civ.P. 19(a) requires the Court find that a party is necessary and Fed.R.Civ.P. 19(b) then requires the Court to determine whether the party is indispensable. Provident Trademens Bank & Trust Co. v. Patterson, 390 U.S. 102 (1968), Wright v. First National Bank of Altus, Oklahoma, 483 F.2d 73, 75 (10th Cir. 1973); *see also*, Manygoats v. Kleppe, 558 F.2d 556, 559-60 (10th Cir. 1977).

Rule 19(a) states that a person or entity who "claims an interest relating to the subject of the action and is so situated that the disposition of the action may . . . as a practical matter impair or impede his ability to protect that interest" shall be joined in the action, if feasible.

Rule 19(b) determines whether a party is indispensable so that the action cannot "in equity and good conscience" proceed in the party's absence. In Provident Trademens Bank & Trust Co. v. Patterson, *supra*, the court identified four interests to be examined in determining indispensability of a party: (1) the plaintiff's interest in having a forum; (2) the defendant's interest in avoiding multiple litigation, or inconsistent relief, or sole responsibility for a liability he shares with another; (3) the

interest of the party alleged to be indispensable; and (4) the interests of the court and the public in complete, consistent, and efficient settlement of controversies. *Id.* at 109-111.

The record before the Court is clear that the Cherokee Nation of Oklahoma has an interest in the subject lands and its interest has long been recognized by the federal government. The Cherokee Nation lays claim to the former Cherokee Reservation as successor in interest to the Cherokee Tribe. The Cherokee Nation Council has enacted a comprehensive law enforcement code over all "Indian Country" within its former reservation. The federal government has long recognized the special interests of the Cherokee Nation in these lands through Indian programs defining the tribal service territory as including the entire former reservation. *See*, 42 U.S.C. § 682(i)(5), Job Training, Department of Health and Human Services; 29 U.S.C. § 750(c), Handicapped Vocational Rehabilitation, Department of Labor; 25 U.S.C. § 1452(d), Indian Financing Act; 42 U.S.C. § 5318(n), Urban Development Action Grants; 33 U.S.C. § 1377, Sewage Treatment Grants, Environmental Protection Agency.

It appears that under the concept of Rule 19(a) important interests of the Cherokee Nation are involved that would not be protected and further that the Defendant would be subjected to a substantial risk of incurring inconsistent obligations by reason of the claimed interests.

Courts have often dismissed actions when a tribe is determined to be an indispensable party under Rule 19(b). McClendon v. United States, 885 F.2d 629 (9th Cir. 1989); Enterprise Management, Inc.

v. United States, 883 F.2d 890, 893-94 (10th Cir. 1989); Wichita and Affiliated Tribes of Oklahoma v. Hodel, 788 F.2d 765, 777 n. 13 (D.C.Cir. 1986); Lomayaktewa v. Hathaway, 520 F.2d 1324, 1326 (9th Cir. 1975), *cert. denied sub nom. Susenkewa v. Kleppe*, 425 U.S. 903 (1976);; Tewa Tesuque v. Morton, 498 F.2d 240, 242 (10th Cir. 1974), *cert. denied*, 420 U.S. 962 (1975).

Recognized Indian tribes have immunity from suit unless the immunity is specifically waived. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978); Puyallup Tribe v. Dept. of Game, 433 U.S. 165, 172-73 (1977); United States v. Testan, 424 U.S. 392, 399 (1976). Even though the plaintiff would be left with no adequate remedy if the action were dismissed, the tribe's sovereign immunity was dispositive under Rule 19(b). Kickapoo Tribe of Oklahoma v. Lujan, 728 F.Supp. 791, 796-797 (D.D.C. 1990). In Sekaquaptewa v. McDonald, 591 F.2d 1289 (9th Cir. 1979), the court observed that absent congressional authorization in the 1974 Navajo-Hopi Settlement Act, 25 U.S.C. § 640d.7, neither tribe in the longstanding land dispute between the Hopi and Navajo Tribes would have been able to maintain the action against the other.

When the factors to be considered under Rule 19(b) are analyzed, the Court concludes that the Cherokee Nation of Oklahoma is an indispensable party.²

² Under the present state of the law, it appears that the UKB's remedy is to convince the Secretary of the Interior to the contrary by political persuasion or seek a congressional enactment permitting UKB to maintain a suit against the sovereign New Cherokee Nation or seek other congressional relief.

Prior case law indicates that neither Congress, the Secretary of the Interior, nor the courts have made a distinction between the Cherokee Nation at the time of Oklahoma statehood and the current Cherokee Nation of Oklahoma. *See, Groundhog v. Keeler*, 442 F.2d 674, 677 (10th Cir. 1971) (Cherokee tribal existence continues by virtue of Section 28, Act of April 26, 1906, 34 Stat. 137, 148); *Wheeler v. U.S. Dept. of Interior*, 811 F.2d 549 (10th Cir. 1987); and *Wheeler v. Swimmer*, 835 F.2d 259 (10th Cir. 1987) (The Cherokee Nation still possesses an inherent right of self-government).

Wherein the UKB is claiming damages based upon its claims for relief or the "taking without just compensation," this court is without subject matter jurisdiction because such exclusive jurisdiction rests with the United States Court of Claims where such claims exceed \$10,000.00. 28 U.S.C. §§ 1346(a)(2), 1491 and 1505. *See also, United States v. Mottaz*, 476 U.S. 834, 850, (1986) wherein a Tucker Act based land suit sought damages equal to just compensation for an already completed taking of the claimant's land.

For the reasons stated above, the Motion to Dismiss of the Defendant, The Secretary of the Department of the Interior, is hereby SUSTAINED and Plaintiff's action is dismissed without prejudice.

DATED this 31st day of May, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 31 1991

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

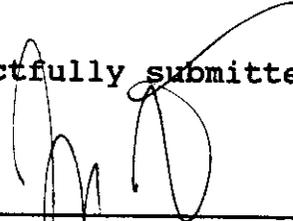
Amalgamated General, Inc.,)
)
Plaintiff,)
)
v.)
)
Spur Cattle Management, Inc.,)
)
Defendant.)

Case No. 90-C-431-B

STIPULATION OF DISMISSAL

COME NOW the parties in the above-referenced matter pursuant to Rule 41 of the Federal Rules of Civil Procedures and hereby stipulate that this matter is dismissed.

Respectfully submitted,



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

FILED

MAY 30 1991

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

THE SAC AND FOX NATION,)
et al.,)
)
Plaintiffs,)
)
vs.)
)
STATE OF OKLAHOMA EX REL)
THE HONORABLE JOSEPH G.)
BREAUNE,)
)
Defendant.)

No. 91-C-154-E

ADMINISTRATIVE CLOSING ORDER

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

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within forty-five (45) days that settlement has not been completed and further litigation is necessary.

ORDERED this 30th day of May, 1991.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

MAY 30 1991

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

IN RE:)	Bky. No. 90-02445-W
)	(Chapter 7)
JANET SMITH,)	
)	
Debtor.)	Adversary No. 90-0251-W
)	
JANET SMITH,)	
)	
Plaintiff,)	
)	
v.)	Case No. 91-C-20-E
)	
RICHARD H. SMITH,)	
)	
Defendant.)	
and)	

IN RE:)	Bky. No. 90-02445-W
)	(Chapter 7)
JANET SMITH,)	
)	
Debtor.)	Adversary No. 90-0251-W
)	
JANET SMITH,)	
)	
Plaintiff,)	
)	
v.)	Case No. 91-C-75-E
)	
RICHARD H. SMITH,)	Consolidated
)	
Defendant.)	

ORDER

This order pertains to defendant's Motion for Leave to Appeal (Docket #2)¹ and plaintiff's Objection to Motion for Leave to Appeal (#3), filed in Case No. 91-C-75-E.

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.

Defendant seeks to appeal the Order on Plaintiff's Motion for Order Approving Sale of Property of the Estate Free and Clear of Lien of Defendant with Lien to Attach to the Proceeds entered by the Bankruptcy Court for the Northern District of Oklahoma on January 29, 1991.

The parties' divorce proceeding concluded with a Decree of Divorce entered by the District Court for Tulsa County on May 21, 1985. The Decree specifically provided for division of the marital estate. Janet Smith, the debtor ("debtor"), was awarded the parties' marital residence, which is the asset involved in this appeal. The award was made subject to an in rem judgment and lien for Richard H. Smith's ("Richard") benefit in the sum of \$45,000.00. Debtor commenced an adversary proceeding, Case No. 91-C-20-E, on August 28, 1990, seeking to avoid Richard's lien pursuant to 11 U.S.C. § 522(f). Richard filed an Answer on August 31, 1990. There have been several hearings in the case and this court granted defendant leave to appeal a stay granted in that case on March 11, 1991.

Soon after the stay was granted, plaintiff received an offer to purchase the property to which defendant's disputed lien is attached. Plaintiff claims the offer of \$109,000.00 exceeded the value of the property, listed on the schedule of assets as \$90,000.00, and thus was favorable to both parties. Plaintiff filed a Motion for Approval of the Sale Free and Clear of Defendant's Lien and the Bankruptcy Court entered the January 29, 1991 Order approving the sale free and clear of defendant's lien and directed that sales proceeds in the amount of \$50,550.00 be deposited into a federally insured interest bearing account to be held subject to defendant's lien pending further court order. Defendant seeks leave to appeal from this order.

Authority for the district court to hear appeals from interlocutory orders is found at 28 U.S.C. § 158, which provides in pertinent part:

(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving; and,

(b) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

Section 158 is silent as to what standard or considerations should be employed by the district court in determining whether leave to appeal should be granted.

Because bankruptcy appeals are to be taken in the same manner as appeals in civil matters, generally the courts have found the statutory provision governing interlocutory appeals from district courts to appellate courts should be applied. 28 U.S.C. § 1292(b). See, In re Johns-Manville Corp., 47 B.R. 957 (S.D.N.Y. 1985). In general, exceptional circumstances must be present to warrant allowing an interlocutory appeal. Coopers & Lybrand v. Livesay, 437 U.S. 463 (1977). 28 U.S.C. § 1292(b) mandates three conditions requisite to an interlocutory appeal: (1) the existence of a controlling question of law; which (2) would entail substantial ground for differences of opinion; and (3) the resolution of which would materially advance the ultimate termination of the litigation.

In In re Den-Col Cartage & Distribution, Inc., 20 B.R. 645 (D.Colo. 1982), the court outlined the standards to determine when "the circumstances are extraordinary enough to warrant an interlocutory appeal." Id. at 648. According to the court, an interlocutory

appeal should be allowed only when:

- (1) the appellant has demonstrated a substantial likelihood that he will eventually prevail on his appeal;
- (2) the appellant has demonstrated that the party he represents will suffer irreparable injury unless the interlocutory appeal is allowed;
- (3) the potential injury to the appellant's client if the appeal is not allowed outweighs the potential injury to other parties if the appeal is allowed; and,
- (4) an interlocutory appeal is not adverse to either the public interest or the orderly administration of the Chapter 11 bankruptcy proceeding. Id.

The defendant has not demonstrated the existence of a controlling question of law in his Motion for Leave to Appeal, although there was a significant question of law in the consolidated case which the Supreme Court recently resolved in Farrey v. Sanderfoot, 1991 WL 83070 (May 23, 1991). The defendant has not shown that he will suffer irreparable injury if this appeal is not allowed -- in fact, the Bankruptcy Court, in directing that part of the sales proceeds be deposited into a federally insured interest bearing account, assured that his rights would be fully protected when the property was sold. Under the circumstances it would be detrimental to both parties to allow an interlocutory appeal that would prevent the sale. This appeal will in no way materially advance the ultimate termination of the litigation on its merits.

Defendant has failed to meet the necessary standard for this court to allow his appeal. Defendant's Motion for Leave to Appeal filed in Case No. 91-C-75-E is denied.

The remaining bankruptcy appeal in Case No. 91-C-20-E is referred to United States Magistrate Judge John Leo Wagner for advisory hearing. At the hearing the parties will be afforded the opportunity to address the merits of the appeal.

Each side will be given fifteen (15) minutes to present its position to the court.
Additional time will be permitted for good cause shown.

The hearing is set on the 22nd day of July, 1991, at 9:30
o'clock a.m.

Dated this 30th day of May, 1991.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 30 1991

ANTHONY RAY JONES, et al.,)
)
 Plaintiff,)
)
 vs.)
)
 THE COUNTY OF TULSA, OK,)
 et al.,)
)
 Defendants.)

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

Case No. 88-C-1448-E

ORDER

NOW on this the 30th day of May, 1991, this matter comes on before me by Motion of the Plaintiff requesting a Partial Default Judgment against Defendant Dan Cisco.

This Court find that Defendant Cisco was properly served on November 20, 1988 and has never responded to proper summons.

WHEREFORE it is Ordered that judgment be taken by Plaintiff against Defendant Cisco as to liability in the aforestylled action with money damages to be determined at a later date.

S/ JAMES O. ELLISON

JUDGE OF THE DISTRICT COURT

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

BUILDERS INSTALLED SALES, INC.,)
)
Plaintiff,)
)
v.)
)
BUILDERS SQUARE, INC.,)
)
Defendant.)

No. 90-C-503-E

FILED

MAY 30 1991

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

DISMISSAL

The Court, having before it the Joint Stipulation for Dismissal with Prejudice submitted by the parties hereto, hereby dismisses this case, with prejudice as to all claims and counterclaims, with each party hereto to bear its own attorney's fees and costs.

IT IS SO ORDERED this 30th day of May, 1991.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 2 1991

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THOMSON MCKINNON SECURITIES INC.,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
TURNER CORPORATION OF OKLAHOMA,)
INC., an Oklahoma corporation,)
)
Defendant.)

Case No. 89-C-502-B

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41 of the Federal Rules of Civil Procedure, plaintiff and defendant hereby dismiss the above-entitled action in its entirety, including but not limited to any and all claims and counterclaims asserted therein or which could have been asserted therein by any of the parties, with prejudice to future filing, each party to bear their own fees and costs incurred in connection therewith.

Dated this 28th day of May, 1991.



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

FILED

MAY 29 1991

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

ADVANTAGE MEDIA GROUP, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
v.)
)
VOSCA CORPORATION, a)
Taiwanese corporation,)
)
Defendant.)

Case No. 91-C-215-E

ENTRY OF DEFAULT JUDGMENT BY CLERK

Upon the Motion for Entry of Default Judgment by Clerk filed herein by Plaintiff, Addvantage Media Group, Inc. ("Addvantage"), on the 29 day of May, 1991, and pursuant to Rule 55(b)(1) of the Federal Rules of Civil Procedure, default judgment is hereby entered in favor of Addvantage and against Defendant Vosca Corporation for the declaratory relief sought in the Complaint filed herein and for the sum certain of \$425,000.00 as appears from the Affidavit of J. David Jorgenson filed herein on May 28, 1991.

Jack C. Silver, dpty

Jack C. Silver
Clerk of the District Court

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

TRADE WINDS MOTOR HOTEL
EAST, INC.,

Plaintiff,

and

SOUTHERN AMERICAN INSURANCE
COMPANY,

Intervenor,

v.

AMERICAN CASUALTY COMPANY
OF READING, PA.,

Defendant.

F I L E D

MAY 29 1991

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

Case No. 89-C-764-B

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON THIS 29 day of May, 1991, upon the written application of the Plaintiff, Trade Winds Motor Hotel East, Inc. and Intervenor, Southern American Insurance Company, for a Dismissal with Prejudice of Plaintiff's and Intervenor's causes of action as to the Defendant and the Court having examined said application, finds that the parties have entered into a compromise settlement covering all claims at issue between said parties, and have requested that the Court dismiss said actions with prejudice. The Court being fully advised in the premises, finds that said settlement is in the best interest of the parties and that Plaintiff's actions against Defendant and

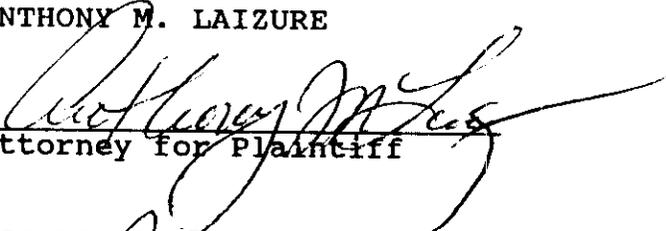
Intervenor should be dismissed with prejudice, pursuant to said application, and Intervenor's action for Declaratory Relief also shall be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Plaintiff's causes of action as to the Defendant and Intervenor Southern American Insurance Company and the Declaratory action filed on behalf of Southern American Insurance Company, are the same hereby dismissed with prejudice as to any further action.

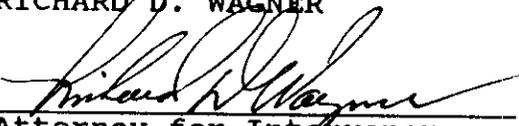
S/ THOMAS R. BRETT
JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

APPROVALS AS TO FORM AND CONTENT:

ANTHONY M. LAIZURE


Anthony M. Laizure
Attorney for Plaintiff

RICHARD D. WAGNER


Richard D. Wagner
Attorney for Intervenor,
Southern American Insurance Co.

JOHN COUCH


John Couch
Attorney for Defendant,
American Casualty Company of
Reading, PA

FILED

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

MAY 29 1991

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

PAUL HERCHMAN,)
)
 Plaintiff,)
)
 vs.)
)
 SUN MEDICAL, INC., et al.,)
)
 Defendants.)

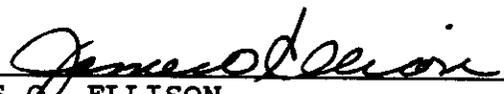
No. 90-C-324-E

ADMINISTRATIVE CLOSING ORDER

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

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

ORDERED this 28th day of May, 1991.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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Inc. was represented by its attorney, Lawrence D. Taylor. Defendants Ronald E. Berry and Dorothy Martin, d/b/a Nittin Nook, appear pro se.

The Court finds that Plaintiff filed its motion for summary judgment on April 11, 1991, and served a copy thereof on all answering defendants, and that said motion is deemed confessed by the failure of any party to file a response thereto within the time permitted under the rules of this Court.

The Court makes the following findings of fact:

1. On July 20, 1989, the Office of the Comptroller of the Currency (the "Comptroller") closed Utica and assumed exclusive custody and control of the property and affairs of Utica pursuant to 12 U.S.C. §191.

2. Thereafter, the Comptroller tendered to Federal Deposit Insurance Corporation appointment as Receiver (the "Receiver") of Utica pursuant to 12 U.S.C. §1821. The Receiver thereby became possessed of all assets, business and property of Utica.

3. Pursuant to 12 U.S.C. §1823(d), and agreements approved in the Record, certain assets of Utica were sold and transferred by the Receiver to Federal Deposit Insurance Corporation in its corporate capacity ("FDIC"). Pursuant to 12 U.S.C. §1823(c)(2)(A), FDIC purchased those certain assets involved in this action, including the Note and the Mortgage. Pursuant thereto, FDIC acquired all right, title and interest of the Bank in and to the Note and Mortgage, and is the holder and owner of same.

4. On April 3, 1985, Defendant Highway 66, Ltd., executed and delivered to Utica Bank & Trust Company a promissory note in the principal amount of \$825,000.00 (the "Note"). The Note was subsequently modified on October 3, 1986, April 3, 1987, August 3, 1987, March 20, 1988, and November 18, 1988. Copies of the Note, with Modifications, were attached to Plaintiff's Complaint herein.

5. As security for the Note, Defendant Highway 66, Ltd., executed and delivered to Utica a Real Estate Mortgage And Security Agreement dated April 3, 1985, (the "Mortgage") covering the following described real property in Rogers County, Oklahoma:

A tract of land in the S/2 of SW/4 of SE/4 of Section 30, Township 20 North, Range 15 East of the I.B. & M., Rogers County, State of Oklahoma, according to the U.S. Government survey thereof, more particularly described as follows, to-wit: Begin at the southeast corner of the SW/4 of SW/4 of SE/4, thence North 16.5 feet to a point; thence East 43.7 feet to a point; thence Northeasterly on a curve to the right having a radius of 5829.6 feet a distance of 300 feet to a point; thence Northeasterly to the point of intersection of the easterly right-of-way to U.S. Highway #66 as now located and the West line of SE/4 of SW/4 of SE/4; thence Southwesterly along the Easterly right-of-way of U.S. Highway #66, a distance of 474.5 feet to the South line of the SW/4 of SW/4 of SE/4; thence East on said South line 264.6 feet to the point of beginning,

and all fixtures and personal property thereon and rents and profits therefrom. The Mortgage was recorded on April 8, 1985 in the records of Rogers County, Oklahoma in Book 700, at Page 814, and re-recorded on November 7, 1988 in Book 745, at Page 127, of said records. A copy of the Mortgage was attached to Plaintiff's Complaint herein.

6. The Note is in default in that Highway 66, Ltd. has failed to make payments thereunder. Under the terms of the Note and Mortgage, upon default the holder is entitled to declare the balance immediately due and payable, and FDIC has elected to declare the balance due and payable. There is now due and owing under the Note, after full credit for payments made, the principal sum of \$819,081.81, plus interest accrued as of November 27, 1989 in the amount of \$88,266.14, plus interest accruing at the rate of 13.5% from November 27, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, costs, and a reasonable attorney's fee.

7. As further security for the Note, on or about April 3, 1985, and as part and parcel of the above transaction, Defendants Michael W. Henry, Cynthia L. Henry, Charles W. Powell, Nancy S. Powell, Toby L. Powell and Beth Powell made, executed, and delivered to Plaintiff's predecessor unconditional, unlimited guaranty agreements. Copies of the guarantees were attached to Plaintiff's Amended Complaint herein.

8. Harvard Cleaners, Inc., Jody's Daylight Donuts, Nittin Nook, State Farm Insurance Agency, and Archery Pro Shop and Sports Center are tenants in the subject property, and claim no right, title, or interest in the property being foreclosed except in their capacity as tenants.

9. The Defendants, County Treasurer, Rogers County, Oklahoma, Board of County Commissioners, Rogers County, Oklahoma, have filed an answer herein asserting that a liability against the subject

property for 1989 real property taxes in the amount of \$6,743.95 and asserting no other interest in the subject property. The State of Oklahoma ex rel. Oklahoma Tax Commission has filed an answer disclaiming any interest in the subject property.

10. Defendants Toby L. Powell, Michael W. Henry, and Charles W. Powell are general partners in Highway 66, Ltd. pursuant to a Partnership Agreement dated February 18, 1985. A copy of the Partnership Agreement was attached to Plaintiff's Complaint herein.

11. The Mortgage as originally filed contains an error in the legal description as a result of scrivener's error. The correct legal description is as follows:

A tract of land in the S/2 of SW/4 of SE/4 of Section 30, Township 20 North, Range 15 East of the I.B. & M., Rogers County, State of Oklahoma, according to the U.S. Government Survey thereof, more particularly described as follows, to-wit: Begin at the Southeast corner of the SW/4 of SW/4 of SE/4, thence North 16.5 feet to a point; thence East 43.7 feet to a point; thence Northeasterly on a curve to the right, having a radius of 5829.6 feet, a distance of 300 feet to a point; thence Northwesterly to the point of intersection of the Easterly right-of-way line of U.S. Highway #66 as now located and the West line of SE/4 of SW/4 of SE/4; thence Southwesterly along the Easterly right-of-way of U.S. Highway #66, a distance of 474.5 feet to the South line of the SW/4 of SW/4 of SE/4; thence East on said South line 264.6 feet to the point of beginning.

The Mortgage was subsequently re-filed to correct the legal description.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

That Plaintiff have and recover judgment in personam against the Defendants, Highway 66, Ltd., Toby L. Powell, Michael W. Henry,

Charles W. Powell, Cynthia L. Henry, Nancy S. Powell, and Beth Powell, jointly and severally, and in rem against all Defendants except County Treasurer of Rogers County, Oklahoma, in the principal amount of \$819,081.81, plus interest accrued as of November 27, 1989 in the amount of \$88,266.14, plus interest accruing at the rate of 13.25 percent per annum from November 27, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, plus any additional sums advanced or to be advanced or expended during this foreclosure action by the Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property, the costs of this action, and attorney's fees to be determined by the Court, all of which amounts are secured by the Mortgage and constitute a good and valid first, prior, and superior lien upon the subject premises, and that the Plaintiff's mortgage lien be and the same is hereby established and adjudged to be prior and superior to the right, title, and interest of the Defendants herein (except for the lien of the Treasurer of Rogers County, Oklahoma for unpaid ad valorem taxes) and each of them and all persons claiming under them since the commencement of this action, for all of which let execution issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Mortgage be reformed to reflect the correct legal description of the mortgaged premises as alleged herein.

Said real property is described as follows:

A tract of land in the S/2 of SW/4 of SE/4 of Section 30, Township 20 North, Range 15 East of the I.B. & M., Rogers County, State of Oklahoma, according to the U.S. Government

Survey thereof, more particularly described as follows, to-wit: Begin at the Southeast corner of the SW/4 of SW/4 of SE/4, thence North 16.5 feet to a point; thence East 43.7 feet to a point; thence Northeasterly on a curve to the right, having a radius of 5829.6 feet, a distance of 300 feet to a point; thence Northwesterly to the point of intersection of the Easterly right-of-way line of U.S. Highway #66 as now located and the West line of SE/4 of SW/4 of SE/4; thence Southwesterly along the Easterly right-of-way of U.S. Highway #66, a distance of 474.5 feet to the South line of the SW/4 of SW/4 of SE/4; thence East on said South line 264.6 feet to the point of beginning.

Said liens, except for any lien of the County Treasurer of Rogers County, Oklahoma, are foreclosed, and an order of sale may issue commanding the Sheriff of Rogers County, Oklahoma, to advertise and sell, subject to any unpaid real estate and ad valorem taxes, as upon execution, the subject property, with appraisalment. The proceeds of said sale are to be applied first to expenses of sale, and next to the reduction of the indebtedness owing to Plaintiff by virtue of the judgment herein, with the balance, if any, to be paid into Court subject to further order of the Court. Defendants herein and all persons claiming under them from and after the filing of this action are thereupon barred, restrained, and enjoined from having or asserting any right, title, or interest (other than rights as a tenant in the subject property) or other right of redemption in and to the subject property. A writ of assistance shall issue upon proper application, by which the purchaser may be placed in full and complete possession and enjoyment of the subject premises.

Entered this 28 day of May, 1991.


UNITED STATES DISTRICT JUDGE

FILED

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

MAY 29 1991

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

WILLIAMS GAS MARKETING CO.,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
FUEL RESOURCES DEVELOPMENT)
CO., a Colorado corporation,)
)
Defendant.)

No. 90-C-416-E

O R D E R

This matter is before the Court on a variety of issues, all of which pertain to the jurisdictional problem which has concerned the Court from the inception of this case. The Court acknowledges that it has put the parties' feet to the fire on the jurisdictional issue; however, it has done so believing that it was in the best interests of all concerned to resolve that crucial issue at the outset.

This case involves a contract dispute. Plaintiff invokes the Court's jurisdiction under 28 U.S.C. §1332 which confers federal court jurisdiction over civil actions only where there is complete diversity of citizenship between the parties. It is undisputed that there is complete diversity between the Plaintiff and the Defendant. It is the disputed status of a third party, TranAm Energy, Inc. ("TranAm"), a nondiverse party, that gives rise to the jurisdictional issue. In its Second Motion to Dismiss, the Defendant argued that TranAm is an indispensable party (Fed.R.Civ.P. Rule 19) the joinder of which would destroy subject-

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matter jurisdiction. Based upon that theory, Defendant has continued to argue that the matter should be dismissed at the federal level and allowed to proceed at the state level, the proper forum for resolution of the disputes among the three parties.¹

In response, Plaintiff has consistently urged that its contractual arrangements with TranAm and with the Defendant respectively, were entirely separate; thus, TranAm is neither a necessary nor indispensable party. More recently, citing Defendant's Third-Party Complaint filed herein which seeks to join TranAm under Rule 14, Plaintiff simply urges that the matter is now moot because Defendant, itself, has made TranAm a party. The Court is aware that Defendant was a reluctant Movant in requesting leave to file the Third-Party Complaint. Moreover, and more to the point, it is settled that the Federal Rules do not confer jurisdiction. Owen Equipment and Erection Co. v. Kroger, 98 S.Ct. 2396, 2400 (1978). Defendant's Rule 14 Motion does not dispose of the problem.

In order to assess and identify the role of TranAm in the contractual arrangement, the Court previously directed the parties to evaluate the application of Rule 19 and Rule 14 to the issue. The Court has reviewed the arguments submitted and the relevant law. The Court first notes that "Rule 14's provision for impleading parties is narrow: the third-party claim must be

¹Defendant assures the Court that it has filed its Petition in Intervention in the State Court case, TranAm Energy, Inc. v. Williams Gas Marketing Company, Case No. C.J. 90-2922; thus, all parties are now before that court.

derivative of the original claim." King Fisher Marine Service v. 21st Phoenix Corp., 893 F.2d 1155, 1158 n. 1 (10th Cir. 1990). Additionally, ancillary jurisdiction over a Rule 14(a) claim is available without regard to whether the third party is diverse only if the court has jurisdiction over the primary claim between the original parties. King Fisher at 1158. In sum, if Rule 19(b) applies to the case at bar - if TranAm is an indispensable party to the primary claim - then TranAm cannot be joined under Rule 14(a). That is the gist of the interface between the two provisions.

The Court now addresses the indicia of a Rule 19 situation. First, under Rule 19(a) the Court must determine whether (1) in TranAm's absence, adequate relief may be rendered to the original parties or (2), given TranAm's role in the primary dispute, its absence may either impede its ability to protect its interests or subject any of the parties to a substantial risk of inconsistent or multiple obligations. Then, the Court must consider whether, after applying the four factors identified in Rule 19(b), the case should be dismissed because TranAm is an indispensable, yet nondiverse, party. The Court notes, parenthetically, that in making a Rule 19 analysis, the Court should adopt a "practical", "a pragmatic", approach. Francis Oil & Gas, Inc. v. Exxon Corp., 661 F.2d 873, 877-878 (10th Cir. 1981). See also, Provident Tradesmen's Bank & Trust Co. v. Patterson, 390 U.S. 102, 88 S.Ct. 733, 19 L.Ed.2d 936 (1968) rejecting an inflexible, technical approach to joinder issues.

However the parties choose to label TranAm's role in the

contractual arrangement at issue, it is clear that TranAm has been involved in that arrangement from the outset. It is also clear that the relationships and claims of the parties are intertwined in a most substantial and intricate manner.² The Court concedes that this case is in its early stages. Undoubtedly the precise label to be appended to TranAm's role will require further development of the factual record. Nevertheless, the Court is satisfied that at this juncture it can be said that the absence of TranAm in this suit may impair its ability to protect its interests and subject the parties to the substantial risk of inconsistent obligations and inadequate relief; therefore the Court finds that Rule 19(a) is applicable; TranAm is a necessary party.

Turning next to consideration of Rule 19(b), the Court finds that judgment by this Court rendered in the absence of TranAm could be prejudicial to it. Gottlieb v. Vaicek, 69 F.R.D. 672 (10th Cir. 1975). The Court finds that there it would be impossible for this Court to minimize or eliminate the precedential impact of its decision in this case. Bloch v. Sun Oil Corporation, 335 F.Supp. 190 (W.D. Okla. 1971). The Court believes that there is a very real possibility that, given the interrelatedness of the

²This case is, therefore, distinguishable from the facts in Francis Oil & Gas, Inc. v. Exxon Corp., supra. And as the Seventh Circuit opined in Evergreen Park Nursing and Convalescent Home, Inc., 417 F.2d 1113 (7th Cir. 1969), the fact that plaintiff can show that the contracts between the parties are technically separate does not, standing alone, resolve the joinder problem. Rather, the court should look to the practical legal effects of joinder/dismissal on the arrangements among the parties. Similarly the fact that TranAm and Defendant may, in one sense, be dubbed joint obligors does not resolve the issue. See, Environ Tech Corp. v. Bethlehem Steel Corp., 98 F.R.D. 250 (S.D.N.Y. 1983).

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

F I L E D

MAY 28 1991

N.F.S. #5,
a California Limited Partnership)
Plaintiff,)
vs.)
PROPERTY ACQUISITION CO.,)
an Oklahoma corporation, and)
MR. TOM RUSKOSKI, an individual)
Defendants.)

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

Case No. 90-C-590-B

JOURNAL ENTRY OF JUDGMENT

NOW on this 28th day of May, 1991, the above-styled cause comes on for consideration before me the undersigned Judge of the United States District Court for the Northern District of Oklahoma upon Plaintiff's Supplemental Motion for Default Judgment as to Defendants Property Acquisition Co. and Tom Ruskoski. The court finds that although Defendants have been served with Summons herein they have wholly failed to file an answer and that the only pleading filed by Defendants has been a motion concerning Plaintiff's application for expedited discovery. Further, the court finds that Defendants have failed to respond to Plaintiff's Supplemental Motion for Default Judgment and are in default.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment against Defendants and each of them in the amount of Ninety-Nine Thousand Two Hundred Fifty Dollars

(\$99,250.00), together with interest in the amount of \$60,037.70 through December 31, 1990, together with additional interest at the rate of thirty-six percent (36%) per annum and the costs of this action including a reasonable attorney's fee.

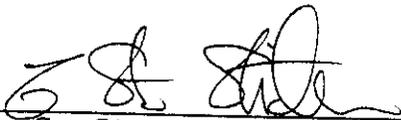
S/ THOMAS R. BRETT

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

APPROVED:

SNEED, LANG, ADAMS,
HAMILTON & BARNETT

By



G. Steven Stidham
Brian S. Gaskill
2300 Williams Center Tower II
Two West Second Street
Tulsa, Oklahoma 74103

Attorneys for Plaintiff

By



Merl A. Whitebook
2431 East 51st Street, Suite 200
Tulsa, Oklahoma 74105

Attorney for Defendants

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

FILED

MAY 28 1991

PEGGY L. JONES,
Plaintiff,

v.

U.S. INDUSTRIES, INC.,
Defendant.

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

Case No. 89-C-968-B

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW ON this 28 day of May, 1991, it appearing to the court that this matter has been compromised and settled, this case is herewith dismissed without prejudice to the refiling of a future action.

S/ THOMAS R. BRETT

United States District Judge

F:PJONES.SFO:cs

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TOM D. SEEVER a/k/a TOM SEEVER;)
 a/k/a TOMMY DEAN SEEVER;)
 JANITA L. SEEVER a/k/a JANITA)
 SEEVER a/k/a JANITA LOLA SEEVER;)
 COUNTY TREASURER, Nowata County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Nowata County,)
 Oklahoma,)
)
 Defendants.)

F I L E D

MAY 28 1991

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

CIVIL ACTION NO. 91-C-0041-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28th day
of May, 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, Tom D. Seever a/k/a Tom Seever a/k/a
Tommy Dean Seever, Janita L. Seever a/k/a Janita Seever a/k/a
Janita Lola Seever, County Treasurer, Nowata County, Oklahoma,
and Board of County Commissioners, Nowata County, Oklahoma,
appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendants, Tom D. Seever a/k/a Tom
Seever a/k/a Tommy Dean Seever and Janita L. Seever a/k/a Janita
Seever a/k/a Janita Lola Seever, acknowledged receipt of Summons
and Complaint on January 26, 1991; that Defendant, County
Treasurer, Nowata County, Oklahoma, acknowledged receipt of
Summons and Complaint on January 23, 1991; and that Defendant,

Board of County Commissioners, Nowata County, Oklahoma, acknowledged receipt of Summons and Complaint on February 12, 1991.

It appears that the Defendants, Tom D. Seever a/k/a Tom Seever a/k/a Tommy Dean Seever, Janita L. Seever a/k/a Janita Seever a/k/a Janita Lola Seever, County Treasurer and Board of County Commissioners, Nowata County, Oklahoma, 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 Nowata County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots 9 and 10, in Block 3, McConkey Addition
to the Town of Lenapah, Oklahoma.

The Court further finds that on May 16, 1980, Tom D. Seever and Janita L. Seever executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$32,000.00, payable in monthly installments, with interest thereon at the rate of eleven percent (11%) per annum.

The Court further finds that as security for the payment of the above-described note, Tom D. Seever and Janita L. Seever executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated May 16, 1980, covering the above-described property. Said mortgage was

recorded on May 22, 1980, in Book 515, Page 213, in the records of Nowata County, Oklahoma.

The Court further finds that on or about May 16, 1980, Tom D. Seever and Janita L. Seever executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on April 21, 1982, Tom Seever and Janita Seever, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on June 16, 1983, Tom D. Seever and Janita L. Seever executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date was made principal.

The Court further finds that on June 16, 1983, Tom D. Seever and Janita L. Seever, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on May 10, 1984, Tom Seever and Janita Seever, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on April 15, 1985, Tom D. Seever and Janita Seever, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on April 24, 1986, Tom Seever and Janita L. Seever, 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 19, 1989, Tom Seever and Janita Seever executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date was made principal.

The Court further finds that on January 20, 1989, Tom Seever and Janita Seever, 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 September 6, 1990, Janita Lola Seever and Tommy Dean Seever filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-02594-C. On November 8, 1990, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C.

§ 362 and directing abandonment of the real property subject to this foreclosure action described above.

The Court further finds that the Defendants, Tom D. Seever a/k/a Tom Seever a/k/a Tommy Dean Seever and Janita L. Seever a/k/a Janita Seever a/k/a Janita Lola Seever, made default under the terms of the aforesaid note, mortgage, reamortization and/or deferral agreements, 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, Tom D. Seever a/k/a Tom Seever a/k/a Tommy Dean Seever and Janita L. Seever a/k/a Janita Seever a/k/a Janita Lola Seever, are indebted to the Plaintiff in the principal sum of \$34,865.99, plus accrued interest in the amount of \$1,613.84 as of June 11, 1990, plus interest accruing thereafter at the rate of 11 percent per annum or \$10.5076 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 \$17,426.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$28.00 (\$20.00 docket fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Nowata County, Oklahoma, are in default and therefore have 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,

Tom D. Seever a/k/a Tom Seever a/k/a Tommy Dean Seever and Janita L. Seever a/k/a Janita Seever a/k/a Janita Lola Seever, in the principal sum of \$34,865.99, plus accrued interest in the amount of \$1,613.84 as of June 11, 1990, plus interest accruing thereafter at the rate of 11 percent per annum or \$10.5076 per day until judgment, plus interest thereafter at the current legal rate of _____ percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$17,426.00, plus interest on that sum at the current legal rate of 6.07 percent per annum from judgment until paid, plus the costs of this action in the amount of \$28.00 (\$20.00 docket fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Nowata 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/ THOMAS R. BRETT

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

Judgment of Foreclosure
Civil Action No. 91-C-0041-B

KBA/css

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

FILED

MAY 24 1991

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

JAN PROVINE,)
)
Plaintiff,)
)
vs.)
)
AMI INSTRUMENTS, INC., a)
corporation, HUGHES)
AIRCRAFT COMPANY, a)
corporation, and MAURICE)
ARNOTT, an individual,)
)
Defendants.)

Case No. 90-C 424-B

JUDGMENT

With respect to the Court's Order dated May 20, 1991 granting defendants' Motion for Summary Judgment in part, and upon the written stipulation of the parties:

The Court expressly determines that there is no just reason for delay and the Court expressly directs the entry of final judgment on the Court's Order filed May 20, 1991 granting, in part, defendants' Motion for Summary Judgment

S/ THOMAS R. BRETT

United States District Judge

Dated this 24th day of May, 1991.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

FILED

MAY 24 1991

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

LOWRANCE ELECTRONICS, INC.,)
a corporation, and LEI EXTRAS,)
INC., a corporation,)
)
Plaintiffs,)
)
vs.)
)
TECHSONIC INDUSTRIES, INC.,)
a corporation, and JIMMY)
HOUSTON, an individual,)
)
Defendants.)

No. 91-C-0083-B ✓

**ORDER SUSTAINING DEFENDANT HOUSTON'S
MOTION TO DISMISS**

Before the Court for decision is the Motion to Dismiss (Fed.R.Civ.P. 12(b)(6)) of Defendant Jimmy Houston ("Houston") to Plaintiffs' alleged five causes of action in the Amended Complaint filed herein on March 4, 1991. A hearing was held on May 9, 1991 and the Court concludes following a review of the issues and applicable law that Houston's motion should be SUSTAINED for the reasons hereafter stated.

Plaintiffs' original Complaint filed February 8, 1991 sought damages against Techsonic Industries, Inc. ("Techsonic") for violations of the Lanham Act, the Oklahoma Deceptive Trade Practices Act, and common law unfair competition for alleged misrepresentations regarding Techsonic's video advertising of its Dimension 3 Sonar Tracking product. Plaintiffs also seek a declaratory judgment that their competing video tape and print media advertisement "The Eagle Challenge" is not in violation of Techsonic's business, trade, or commercial interests. Houston was not a party to Plaintiffs' original Complaint.

On March 1, 1991 Houston filed an action in the District Court in and for Cherokee County, State of Oklahoma, styled Jimmy Houston vs. Lowrance Electronics, Inc., a Delaware corporation, and LEI Extras, Inc., a Delaware corporation, Case No. C-91-94.¹ Therein Houston alleges that he is a well-known commercial fisherman whose name, voice, photograph and reputation have commercial value. Houston alleges he authorized Techsonic to use his name, picture and statements in a Techsonic's product video advertising. No such authorization was granted Lowrance Electronics, Inc. (Lowrance) or LEI Extras, Inc. ("LEI"). Houston further alleges Lowrance and LEI violated his privacy and commercial interests by, without authorization, including Houston's picture, name and voice in approximately a one minute segment of the Lowrance and LEI "The Eagle Challenge" advertising video. In the Oklahoma state court action Houston seeks money damages and an injunction against Lowrance and LEI for use of his name, picture and voice without authorization. Techsonic is not a party to Houston's state court action.

Three days following Houston's filing of the state court action Plaintiffs herein, on March 4, 1991, amended their Complaint adding Houston as a party defendant. In the Amended Complaint Plaintiffs seek damages from Houston in Counts I, II and III for alleged violations of the Lanham Act, Oklahoma Deceptive Trade

¹In the state court action Houston alleges he is a resident of Cherokee County, Oklahoma and that Lowrance and LEI are corporations whose principal place of business is the State of Oklahoma, so diversity is lacking.

Practices Act, and common law unfair competition. Plaintiffs also seek declaratory relief in their fourth and fifth causes of action that they are not liable to nor does the video "The Eagle Challenge" infringe upon any rights of Houston. Plaintiffs' Amended Complaint in Counts IV and V and Houston's Oklahoma state court action present the same issues regarding whether or not Houston's privacy and Houston's commercial interests have been violated. However, it appears Houston won the race to the courthouse by a few days.

Paragraph 10 of the Amended Complaint herein attributes the following statements to Houston as a professional fisherman endorser regarding the alleged Lanham Act, Oklahoma Deceptive Trade Practices Act, and the common law unfair competition violations:²

HOUSTON: "For the first time I can be able to tell really exactly what's under my boat. And that's really important to me.

HOUSTON: "Even in the two dimensional mode, the Dimension 3 Sonar is far advanced to anything we've had before. It is the best picture, the easiest to read, that we've ever had. If they had just done that, everybody would've got excited about it and think, man, this is a great new locator, because even in the two dimensional mode it's just really great."

HOUSTON: "I'll tell you one thing that's going to happen. It's going to take a lot of beginning fishermen and really make them much, much better. It's going to help a lot of people catch a lot more fish ... no matter who you are."

²The underlined portion of the quote is alleged in the Amended Complaint, the remainder is the actual complete statement of Houston from the transcript agreed by the parties.

The question presented is whether these statements of Houston constitute false representations of fact actionable under the Lanham Act, Oklahoma Deceptive Trade Practices Act, or common law unfair competition. It has been recognized that the elements of and relief available under these three theories are essentially similar. Toro Co. v. Textron, Inc., 499 F.Supp. 241, 248, n.17 (Del. 1980).

It is well-established that advertising which merely states in general terms one product is superior is not actionable. Cook, Perkiss & Liehe, Inc. v. Northern Cal. Collection Serv., Inc., 911 F.2d 242, 246 (9th Cir. 1990), and Marcy v. Nissen Corp., 578 F.Supp. 485, 507 (N.D.Ind. 1982), *aff'd sub nom. Marcy v. Marcy Gymnasium Equip. Co.*, 725 F.2d 687 (7th Cir. 1983).

Statements that a product is superior is referred to as "puffing" and not actionable. Marcy, supra; Smith-Victor Corp. v. Sylvania Elec. Prod., Inc., 242 F.Supp. 302, 308 (N.D.Ill. 1965); Lewyt Corp. v. Health-Mor, 84 F.Supp. 189 (N.D.Ill. 1949), *rev'd in part on other grounds*, 181 F.2d 855 (7th Cir. 1950), *cert. denied*, 340 U.S. 823, 71 S.Ct. 57 (1950); and Anheuser-Busch v. Du Bois Brewing Co., 175 F.2d 370 (3rd Cir. 1949), *cert. denied*, 399 U.S. 934, 70 S.Ct. 644 (1950). "Puffing" is to be distinguished from misdescription or misrepresentation of a specific performance characteristic of a product which is actionable as false advertising. Stiffel Co. v. Westwood Lighting Group, 658 F.Supp. 1103, 1115 (D.N.J. 1987), and

Bose Corp. v. Linear Design Labs, Inc., 467 F.2d 304 (2d Cir. 1972).

When the quoted statements of Houston are examined they clearly appear to be opinion or "puffing" regarding the general superiority of the Humminbird Dimension 3 sonar device.

Other statements in the Techsonic's video not attributable to Houston may give rise to a false advertising claim against Techsonic but not against Houston who appears on the video only as a celebrity endorser. Plaintiffs' suggestion that, if permitted to proceed with discovery more actionable statements may be unearthed attributable to Houston, is unavailing if the Amended Complaint is actionless on its face.

In regard to Plaintiffs' alleged first three causes of action, resolving all inferences against Houston, the Court concludes Plaintiffs have not stated a cause of action against Houston and Plaintiffs' Complaint should be dismissed. Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99 (1957), and Hughes v. Rowe, 449 U.S. 5, 101 S.Ct. 173 (1980).

Regarding the fourth and fifth causes of action herein, Plaintiffs seek declaratory relief with regard to the same issues of state law that are raised by Houston in the state court action. If a state court action is pending involving the same issues a federal court should not entertain a subsequently filed declaratory judgment action raising the same issues. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 96 S.Ct. 1236 (1976); Brillhart v. Excess Ins. Co., 316 U.S. 491, 62 S.Ct. 1173

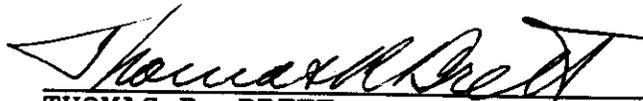
(1942); State Farm Mutual Auto Ins. Co. v. Scholes, 601 F.2d 1151 (10th Cir. 1979); and The Fuller Co. v. Ramon I. Gil, Inc., 782 F.2d 306, 309 n. 3 (1st Cir. 1986).

The decision to decline jurisdiction under the declaratory judgment act (28 U.S.C. § 2201) is within the discretion of the Court. Brillhart v. Excess Ins. Co. of America, 316 U.S. 491 (1942); Duggins v. Hunt, 323 F.2d 746 (10th Cir. 1963); Kunkel v. Continental Cas. Co., 866 F.2d 1269, 1273 (10th Cir. 1989); and Horace Mann Ins. Co. v. Johnson, 758 F.Supp. 1456 (W.D.Okl. 1991).

Houston's state action seeks money damages for invasion of privacy for the unauthorized use of Houston's name, voice and picture in Lowrance's "The Eagle Challenge" video. Plaintiff's alleged fourth and fifth causes of action herein involve the same subject matter. Houston should therefore be permitted to pursue his claims of violation of his rights of privacy and commercial interests against the Plaintiffs herein in the state court. Techsonic Industries, Inc., a Defendant herein, is not a party to the state court action so the issues herein existing exclusively between the Plaintiffs and Techsonic are not before the court in the state court action.

For the reasons expressed above, Plaintiffs' claims against the Defendant Houston in Counts I, II and III of the Amended Complaint are dismissed with prejudice and the allegations in Counts IV and V of the Amended Complaint against Houston are dismissed without prejudice.

DATED this 24th day of May, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

SOONER FEDERAL SAVINGS & LOAN
ASSOC., et al

Plaintiff(s),

vs.

HOME OWNERS WARRANTY CORP. ,
et al

Defendant(s).

No. 90-C-61-B

FILED
MAY 24 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.

IT IS SO ORDERED this 24th day of MAY, 19 91.


United States District Judge
THOMAS R. BRETT

has failed and neglected to account for his stewardship or to maintain books and records from which such an accounting could be made; and it is further

ORDERED, ADJUDGED AND DECREED, that Plaintiff have judgment against Defendant McBride, surcharging him for the amount by which the Trust has been found to be deficient by an accounting conducted by the Magistrate, in the sum of \$410,434.75; and it is further,

ORDERED, ADJUDGED AND DECREED, that Plaintiff have judgment against Defendant McBride on her motion for Attorneys Fees and costs to compel compliance with Court Orders in the sum of \$11,107.99; the total money judgment being \$421,542.74, with interest thereon from December 31, 1990, at the judgment rate of 11.71%; and it is further,

ORDERED, ADJUDGED AND DECREED, Defendant McBride be and he hereby is, removed as Trustee, effective October 22, 1990, all as per the Court's Order of Judgment as to Certain Issues, dated October 22, 1990; and it is further

ORDERED, ADJUDGED AND DECREED, that upon application by Plaintiff, the Clerk shall tax so much of the costs of this action as are presently determinable, the same to be added to this Judgment and made a part thereof by Supplemental Judgment; and it is further

ORDERED, ADJUDGED AND DECREED, that upon application by Plaintiff, the Magistrate shall hear and fix a reasonable attorneys' fee in favor of Plaintiff for the prosecution of this

action, the same to be added to this judgment by Supplemental Judgment.

Pursuant to Rule 54(B), The Court finds and determines that there is no just reason for delay in the entry of judgment on so much of this action as relates to the accounting, conversion and Breach of Duty to Account claims for relief; there being remaining for determination only the issues of fraud and punitive damages, to be determined upon trial by jury.

A handwritten signature in black ink, appearing to read "James A. ...", is written over a horizontal line. The signature is cursive and somewhat stylized.

United States District Judge

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

REKHA PATEL

Plaintiff(s)

vs.

UNITED STATES ENERGY CORP
ET AL

Defendant(s)

No. 89-C-701-C

FILED

MAY 23 1991

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

ADMINISTRATIVE CLOSING ORDER

The Defendant, Donald R. White, having filed it's petition in bankruptcy, all other defendants having default judgment entered against them, 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 22 day of May,
19 91.


UNITED STATES DISTRICT JUDGE

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

18

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

EUNICE MARIE GRAVES and
HARRY WAYNE GRAVES,

Plaintiffs,

vs.

HASKELL H. BASS, JR., M.D.,

Defendant.

No. 91-C-147-C

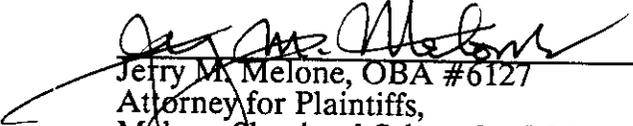
FILED
MAY 23 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COME NOW the Plaintiffs by and through their counsel of record, Melone-Shepherd-Schroeder-Melone, and the Defendant by and through his counsel of record, Best, Sharp, Holden, Sheridan & Stritzke, and by joint stipulation do hereby dismiss the above-styled action without prejudice, reserving Plaintiffs' right to refile said action within one (1) year from the filing of said dismissal pursuant to Rule 41(a)91) of the Federal Rules of Civil Procedure.

DATED this 23rd day of May, 1991.

Respectfully submitted,


Jeffrey M. Melone, OBA #6127
Attorney for Plaintiffs,
Melone-Shepherd-Schroeder-Melone
222 West Eighth Street
Tulsa, Oklahoma 74119
(918) 587-5503
FAX (918) 585-9865

Steven E. Holden, OBA #4289
Attorney for Defendant,
Best, Sharp, Holden, Sheridan
& Stritzke
808 Oneok Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
(918) 582-1234
FAX (918) 585-9447

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

FILED

MAY 23 1991

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

BOBBY MITCHELL MOSLEY,)
)
 Petitioner,)
)
 v.) 90-C-969-E
)
 RON CHAMPION,)
)
 Respondent.)

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed January 8, 1991 in which the Magistrate recommended that pursuant to 28 U.S.C. §2241 and in the best exercise of discretion, this cause should be transferred to the United States District Court for the Western District of Oklahoma for all further proceedings.

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

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

It is, therefore, Ordered that pursuant to 28 U.S.C. §2241 and in the best exercise of discretion, this cause is to be transferred to the United States District Court for the Western District of Oklahoma for all further proceedings.

Dated this 21st day of May, 1991.



JAMES S. ELLISON
UNITED STATES DISTRICT JUDGE

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

DARBY DODSON,
Plaintiff,

vs.

CLETUS MOUSE and DANNY RUSSELL,
Defendants.

§
§
§
§
§
§
§
§

No. 90-C-663-C

FILED
23
MAY 22 1991

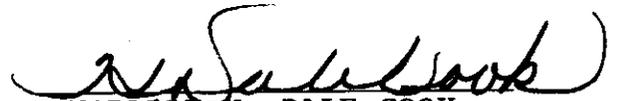
Jack C. Silver, Clerk
U.S. DISTRICT COURT

PROPOSED ORDER

Now on this 23 day of May, 1991, comes on for review and decision the Joint Motion for Dismissal to this Court for an order terminating the above-styled action with prejudice.

Upon review of the pleadings and in consideration of the settlement of this action as stated in the Joint Motion for Dismissal, the Court finds that there is good cause shown to dismiss this action with prejudice.

So Ordered.


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

62

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 SHIRLEY D. MITCHELL; JAMES EMERY)
 MITCHELL; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

FILED

MAY 23 1991

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

CIVIL ACTION NO. 90-C-931-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 21st day of May, 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; and the Defendants, Shirley D. Mitchell and James Emery Mitchell, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendants, Shirley D. Mitchell and James Emery Mitchell, were served with Summons and Complaint on January 17, 1991; 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, Shirley D. Mitchell and James Emery Mitchell, 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-five (25), Block Two (2), HIGHLAND ADDITION to the Town of Red Fork, now an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on March 9, 1987, the Defendants, Shirley D. Mitchell and James Emery Mitchell, 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 \$19,000.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Shirley D. Mitchell and James Emery Mitchell, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated March 9, 1987, covering the above-described

property. Said mortgage was recorded on March 12, 1987, in Book 5007, Page 1824, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Shirley D. Mitchell and James Emery Mitchell, 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, Shirley D. Mitchell and James Emery Mitchell, are indebted to the Plaintiff in the principal sum of \$18,677.93, plus interest at the rate of 9 percent per annum from August 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$28.40 (\$20.00 docket fees, \$8.40 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 \$330.00, 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, Shirley D. Mitchell and James Emery Mitchell, in the principal sum of \$18,677.93, plus interest at the rate of 9 percent per annum from August 1, 1989 until judgment, plus interest

thereafter at the current legal rate of 6.07 percent per annum until paid, plus the costs of this action in the amount of \$28.40 (\$20.00 docket fees, \$8.40 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 \$330.00, 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 upon the failure of said Defendants, Shirley D. Mitchell and James Emery Mitchell, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of

\$330.00, 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.

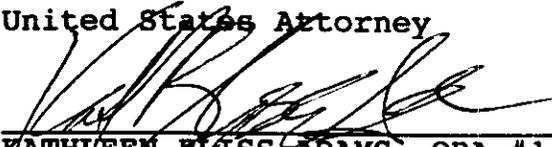
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

BY JAMES O. ELLISON

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

Judgment of Foreclosure
Civil Action No. 90-C-931-E

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 R.C. CARUTHERS a/k/a RICHARD C.)
 CARUTHERS; JUNE M. CARUTHERS;)
 JOHN DOE, Tenant; GULF-WARREN)
 FEDERAL CREDIT UNION; WELLS)
 FARGO CREDIT CORPORATION;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma, RAY K. FACTORY, and)
 CLYDE V. WARNER,)
)
 Defendants.)

FILED

MAY 23 1991

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

CIVIL ACTION NO. 90-C-678-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 21ST day
of May, 1991. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, Ray K. Factory and Clyde V. Warner,
appear by their attorney, Burk E. Bishop; 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, R.C. Caruthers a/k/a Richard C. Caruthers, June
M. Caruthers, John Doe, Tenant, Gulf-Warren Federal Credit Union
and Wells Fargo Credit Corporation, appear not, but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendants, R.C. Caruthers a/k/a
Richard C. Caruthers and June M. Caruthers, were served by
publication as evidenced by the Proof of Publication filed

February 20, 1991; Defendant, John Doe, Tenant, was served with Summons and Amended Complaint on September 26, 1990; Defendant, Gulf-Warren Federal Credit Union, acknowledged receipt of Summons and Complaint on August 17, 1990; Defendant, Wells Fargo Credit Corporation, was served with Summons and Amended Complaint on September 13, 1990; Defendant, Ray K. Factory, acknowledged receipt of Summons and Amended Complaint on August 29, 1990; Defendant, Clyde V. Warner, acknowledged receipt of Summons and Amended Complaint on August 29, 1990; Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 16, 1990; and Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 14, 1990.

The Court further finds that the Defendants, R.C. Caruthers a/k/a Richard C. Caruthers and June M. Caruthers, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning January 10, 1991, and continuing to February 14, 1991, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, R.C. Caruthers a/k/a Richard C. Caruthers and June M. Caruthers, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any

other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, R.C. Caruthers a/k/a Richard C. Caruthers and June M. Caruthers. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on August 29, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on August 29, 1990; that the Defendants, Ray K. Factory and Clyde V. Warner, filed their Answer on September 18, 1990; and that the Defendants, R.C. Caruthers a/k/a Richard C.

Caruthers, June M. Caruthers, John Doe, Tenant, Gulf-Warren Federal Credit Union and Wells Fargo Credit Corporation, 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 Sixty-two (62), Block Two (2), Suburban Acres Third Addition to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on May 19, 1988, Richard C. Caruthers a/k/a R.C. Caruthers f/d/b/a Caruthers Investment, filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-01406-C, was discharged on August 29, 1988, and subject case was closed on June 6, 1989.

The Court further finds that on March 7, 1986, the Defendants, R.C. Caruthers and June M. Caruthers, 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 \$32,000.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, R.C.

Caruthers and June M. Caruthers, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated March 7, 1986, covering the above-described property. Said mortgage was recorded on March 11, 1986, in Book 4929, Page 786, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, R.C. Caruthers a/k/a Richard C. Caruthers and June M. Caruthers, 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, R.C. Caruthers a/k/a Richard C. Caruthers and June M. Caruthers, are indebted to the Plaintiff in the principal sum of \$31,573.43, plus interest at the rate of 10 percent per annum from July 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$360.66 (\$20.00 docket fees, \$10.36 fees for service of Summons and Complaint, \$330.30 publication fees).

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.

The Court further finds that the Defendants, John Doe, Tenant, Gulf-Warren Federal Credit Union and Wells Fargo Credit Corporation, are in default and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, Ray K. Factory and Clyde V. Warner, have a lien on the property which is the subject matter of this action by virtue of an Affidavit of Judgment from the United States District Court for the Northern District of Oklahoma, Case No. 88-01406-C (Chapter 7), M-1544-B, Adv. No. 88-0167-C, and recorded in the records of Tulsa County, Oklahoma in Book 5199 at Page 134, in the amount of \$7,862.50 in favor of Ray K. Factory, and in the amount of \$7,900.00 in favor of Clyde V. Warner. The Order and Judgment were filed in the United States Bankruptcy Court for the Northern District of Oklahoma on December 12, 1988 and filed in the United States District Court for the Northern District of Oklahoma on July 27, 1989 and recorded in the Tulsa County records in Book 5199 at Page 136. Said liens are inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, R.C. Caruthers a/k/a Richard C. Caruthers in rem and against the Defendant, June M. Caruthers in personam, in the principal sum of \$31,573.43, plus interest at the rate of 10 percent per annum from July 1, 1988 until judgment, plus interest thereafter at the current legal rate of 6.07 percent per annum until paid, plus the costs of this action in the amount of \$360.66 (\$20.00 docket fees, \$10.36 fees for service of Summons and Complaint, \$360.66 publication fees), 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 the Defendants, John Doe, Tenant, Gulf-Warren Federal Credit Union and Wells Fargo Credit Corporation, are in default and have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Ray K. Factory, have and recover judgment in the amount of \$7,862.50, and that the Defendant, Clyde V. Warner, have and recover judgment in the amount of \$7,900.00.

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:

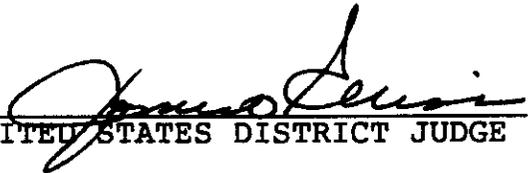
In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the judgment rendered herein in favor of the Defendants, Ray K. Factory and Clyde V. Warner.

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

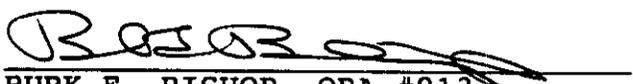
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

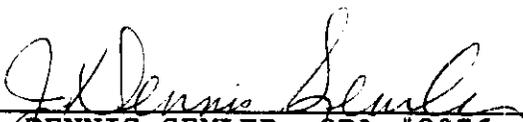

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


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


BURK E. BISHOP, OBA #813
Attorney for Defendants,
Ray K. Factory and Clyde V. Warner


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-678-E
PB/esr

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

F I L E D
MAY 23 1991

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

ROGER BERNARD THOMPSON,)
)
 Petitioner,)
)
 v.)
)
 JACK COWLEY, et al,)
)
 Respondents.)

91-C-107-B ✓

ORDER

Now before the Court is Roger Bernard Thompson's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. Petitioner was convicted in Tulsa County District Court, Case No. CRF 84-3171 of Armed Robbery, After Former Conviction of a Felony and sentenced to two hundred (200) years. On appeal, the Oklahoma Court of Criminal Appeals held that improper prosecutorial remarks were made and modified the sentence from two hundred years to one hundred years. Petitioner argued on post-conviction relief in the state courts that the appellate court was without authority to modify his sentence to a term other than the absolute minimum. Petitioner was denied post-conviction relief. Respondent concedes Petitioner has exhausted his state remedies. Petitioner now brings the same argument to this Court seeking federal habeas relief.

Upon review the Court finds the decision in *Carbray v. Champion*, 905 F.2d 314 (10th Cir. 1990) to be controlling. In *Carbray*, an Oklahoma prisoner was sentenced to one hundred and ninety nine (199) years. On appeal the sentence was reduced (as in the case at bar) because of improper prosecutorial remarks to seventy five (75) years. In

7

clm

seeking federal habeas relief, the Defendant urged the same argument Petitioner brings to this Court. The *Carbray* court upheld the denial of habeas relief on those grounds. Accordingly, this Court will do likewise.

Therefore, the Petition for a Writ of Habeas Corpus is, hereby, **denied**.

SO ORDERED THIS 23rd day of May, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 23 1991

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

KNOWN AS:

778 EAST 42ND PLACE NORTH,
TULSA, TULSA COUNTY, OKLAHOMA,

Defendant.

CIVIL ACTION NO. 90-C-816-E

JUDGMENT OF FORFEITURE

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

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

That a Warrant of Arrest In Rem was issued by the Honorable James O. Ellison, United States Judge for the Northern District of Oklahoma, on the 25th day of September, 1990, as to the defendant real property, buildings, appurtenances, and improvements.

the defendant real property, buildings, appurtenances, and improvements.

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

That the United States Marshals Service served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest and Notice In Rem on Milton Edwards, the actual owner, by serving Stacey Edgar, an employee of Paul Brunton, Attorney for Milton Edwards, on November 9, 1990.

That the United States Marshals Service attempted to serve a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest and Notice In Rem on Frank Freeman, Jr., the record owner of the defendant property, at 161 West 50th Court North, Tulsa, Oklahoma, on November 14, and 26 and on December 19 and 20, 1990, but were unable to make such service. That thereafter, on February 15, 1991, an Alias Summons was issued for service on Frank Freeman, Jr.; that service was obtained on Frank Freeman, Jr. on March 27, 1991, at 4395 Diplomacy Road, Euless, Texas.

That Milton Edwards and Frank Freeman, Jr. are the only persons believed by Plaintiff to have an interest in this matter.

That USMS Forms 285 reflecting the services set forth above are on file herein.

That all persons and/or entities interested in the defendant property, its buildings, appurtenances, and improvements, hereinafter described were required to file their claim(s) herein within ten (10) days after service upon them of the Warrant of Arrest In Rem, publication of the Notice of Arrest and Seizure, or actual notice of this action, whichever occurred first, and were required to file their answer(s) to the Complaint within twenty (20) days after filing their respective claim(s).

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

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

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

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

Lot Ten (10), Block Eight (8),
Suburban Acres Addition to the
City of Tulsa, County of Tulsa,
State of Oklahoma, according to
the Recorded Amended Plat thereof,
also known as 778 East 42nd Place
North, Tulsa, Oklahoma 74106,

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

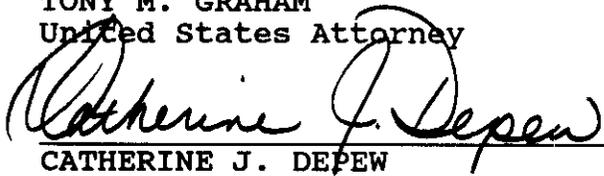
~~S/~~ JAMES O. ELLISON

JAMES O. ELLISON,
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney



CATHERINE J. DEPEW
Assistant United States Attorney

CJD/ch
01030
DEA FILE NO. MG-89-Z004
DEA SEIZURE #87200
OCDETF #SC OKN 015

MCW/vlw

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

FILED

MAY 22 1988

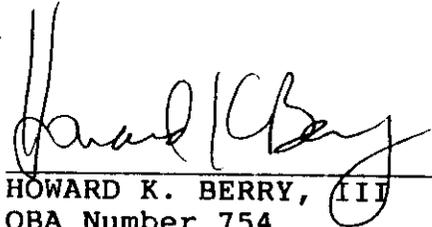
Jack C. Silver, Clerk
U.S. DISTRICT COURT

SAMMY RICE and THERESA RICE,)
)
 Plaintiffs,)
 vs.)
)
 CONTRACT FREIGHTERS, INC.;)
 and JOHN B. DUDEN,)
)
 Defendants.)

No. 91-C-0040-E

STIPULATION OF DISMISSAL

COME NOW the parties and stipulate to the dismissal of the above styled and numbered cause with prejudice as to Contract Freighters, Inc. and John B. Duden.

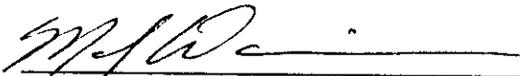


HOWARD K. BERRY, III
OBA Number 754
Berry Law Building
1923 Classen Boulevard
Oklahoma City, Oklahoma 73106
Telephone: 405/524-1040

ATTORNEY FOR PLAINTIFFS

and

SECRET & HILL

By: 
JAMES K. SECREST, II

OBA Number 8049
MELVIN C. WEIMAN
OBA Number 11562
7134 South Yale, Suite 900
Tulsa, Oklahoma 74136
Telephone: 918/494-5905

ATTORNEYS FOR DEFENDANTS

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 BRADLEY NEIL JOHNSON; SABRINA)
 LYNN JOHNSON; STATE OF OKLAHOMA)
 ex rel. OKLAHOMA TAX COMMISSION;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

F I L E D

MAY 22 1991

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

CIVIL ACTION NO. 90-C-935-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22 day
of May, 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; that the Defendant, State of Oklahoma ex rel. Oklahoma
Tax Commission, appears by its attorney Lisa Haws; and the
Defendants, Bradley Neil Johnson and Sabrina Lynn Johnson, appear
not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, State of Oklahoma ex rel.
Oklahoma Tax Commission, acknowledged receipt of Summons and
Complaint on November 5, 1990; that Defendant, County Treasurer,
Tulsa County, Oklahoma, acknowledged receipt of Summons and

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

The Court further finds that the Defendants, Bradley Neil Johnson and Sabrina Lynn Johnson, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning January 14, 1991, and continuing through February 18, 1991, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Bradley Neil Johnson and Sabrina Lynn Johnson, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Bradley Neil Johnson and Sabrina Lynn Johnson. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its

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

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on November 26, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on November 14, 1990; and that the Defendants, Bradley Neil Johnson and Sabrina Lynn Johnson, 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 Thirteen (13), Block Twenty-One (21), ROSE DEW THIRD ADDITION in the County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on August 11, 1989, the Defendants, Bradley Neil Johnson and Sabrina Lynn Johnson, 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 \$39,000.00, payable in monthly installments, with interest thereon at the rate of 7.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Bradley Neil Johnson and Sabrina Lynn Johnson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 11, 1989, covering the above-described property. Said mortgage was recorded on August 14, 1989, in Book 5200, Page 2696, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Bradley Neil Johnson and Sabrina Lynn Johnson, 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, Bradley Neil Johnson and Sabrina Lynn Johnson, are indebted to the Plaintiff in the principal sum of \$38,941.94, plus interest at the rate of 7.5 percent per annum from December 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$329.25 (\$20.00 docket fees, \$309.25 publication fees).

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 \$463.00, 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, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Income Tax Warrant No. ITI8802490600 dated January 9, 1989 in the amount of \$260.18, plus interest and penalty according to law.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Bradley Neil Johnson and Sabrina Lynn Johnson, in the principal sum of \$38,941.94, plus interest at the rate of 7.5 percent per annum from December 1, 1989 until judgment, plus interest thereafter at the current legal rate of 6.07 percent per annum until paid, plus the costs of this action in the amount of \$329.25 (\$20.00 docket fees, \$309.25 publication fees), 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 \$463.00, 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, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$260.18, plus interest and penalty according to law, by virtue of Income Tax Warrant No. ITI8802490600 dated January 9, 1989.

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 \$463.00, plus penalties and interest, for

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

Third:

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

Fourth:

In payment of the judgment rendered herein in favor of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission.

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

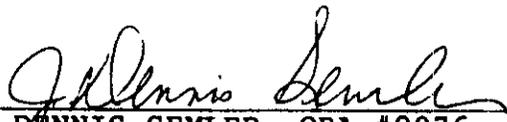
UNITED STATES DISTRICT JUDGE

APPROVED:

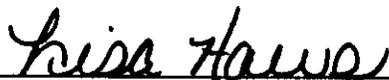
TONY M. GRAHAM
United States Attorney



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



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

Judgment of Foreclosure
Civil Action No. 90-C-935-B

PP/css

CTS/4

FILED

AUG 23 1990

dv

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

DOROTHY A. EVANS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

In re:)
)
Samuel Crosslen and)
Mary Crosslen,)
Debtors,)
)
FRED W. WOODSON, Trustee.)
Plaintiff,)
)
vs.)
)
Samuel Crosslen and)
Mary Crosslen and)
D. E. Shirmer, Trustee of the)
Energy Exchanger Company Profit)
Sharing Plan,)
Defendants.)

Case No. 90-C-373-C ✓

(Chapter 7 No. 89-03581-W;
Adversary No. 90-0077-W)

FILED

MAY 22 1991

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

NOTICE OF PAYMENT OF COMPROMISE AMOUNT

Comes now James A. Hogue, Sr. of James A. Hogue, Sr. and Associates, Inc., on behalf of the Trustee, Fred W. Woodson, Jr., and informs the Court that the Trustee has received \$2,000,00 from the Debtor herein pursuant to the Court approved compromise filed herein on August 6, 1990.

Therefore the Trustee dismisses its Adversary Proceeding filed herein as compromised.

Dated this 23rd day of August, 1990.

James A. Hogue, Sr.

James A. Hogue, Sr. - OBA #4279
James A. Hogue Sr. and Associates, Inc.
P. O. Box 2904
Tulsa, OK 74101-2904
(918) 583-9700

United States Bankruptcy Court)
Northern District of Oklahoma)

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL ON FILE.

Attorney for the Trustee
Fred W. Woodson, Jr.

L. P. ...
Clerk - Deputy Clerk

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

MAY 22 1991

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

CARL E. KELLER,

Plaintiff,

v.

STANLEY GLANZ,

Defendant.

91-C-294-B

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed May 7, 1991 in which the Magistrate Judge recommended that the Petition for Writ of Habeas Corpus be dismissed.

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

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

It is, therefore, Ordered that the Petition for Writ of Habeas Corpus is dismissed.

Dated this 22nd day of May, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MAY 22 1991

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

HUNTER LEASING, INC.,)
)
Plaintiff,)
)
vs.)
)
FEDERATED MUTUAL INSURANCE)
COMPANY,)
)
Defendant.)

Case No. 90-C-578-E

ORDER OF DISMISSAL WITH PREJUDICE

Upon consideration of the Stipulation For Dismissal With Prejudice filed by the parties

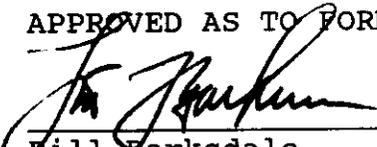
It is Ordered that this case is dismissed with prejudice and that each party will bear and be responsible for its own costs.

May 22, 1991.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Judge

APPROVED AS TO FORM AND CONTENTS:



Bill Barksdale
Attorney for Plaintiff



Paul T. Boudreaux
Attorney for Defendant

RAINEY AND BARKSDALE
ATTORNEYS AT LAW
310 EAST SEVENTH STREET
P. O. BOX 1366
OKMULGEE, OKLAHOMA 74447
(918) 756-0900

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHAD F. STITES; CHADCO, INC.;
PIONEER SAVINGS AND TRUST
COMPANY; ROY L. THIGPEN
PROPERTIES, INC.; PROPERTY
VENTURES OF LOUISIANA, INC.;
UNITED FIRST MORTGAGE
CORPORATION; COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

MAY 22 1991

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

CIVIL ACTION NO. 89-C-613-B

DEFICIENCY JUDGMENT

This matter comes on for consideration this 22nd day
of May, 1991, upon the Motion of the Plaintiff, United
States of America, acting on behalf of the Secretary of Veterans
Affairs, for leave to enter a Deficiency Judgment. The Plaintiff
appears by Tony M. Graham, United States Attorney for the
Northern District of Oklahoma, through Kathleen Bliss Adams,
Assistant United States Attorney, and the Defendant, Chad F.
Stites, 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
Chad F. Stites, 1313 East 46th Street, Tulsa, Oklahoma 74105, and
all counsel and parties of record.

The Court further finds that the amount of the Judgment
rendered on February 1, 1990, in favor of the Plaintiff United

States of America, and against the Defendant, Chad F. Stites, with interest and costs to date of sale is \$8,780.45.

The Court further finds that the appraised value of the real property at the time of sale was \$2,400.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered February 1, 1990, for the sum of \$4,000.00 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 6th day of May, 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, Chad F. Stites, as follows:

Principal Balance as of 2-1-90	\$8,748.57
Interest	1,790.03
Late Charges to Date of Judgment	74.12
Appraisal by Agency	425.10
Management Broker Fees to Date of Sale	291.90
Abstracting	600.00
1988 Taxes	218.00
1989 Taxes	233.00
Publication Fees of Notice of Sale	174.73
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$12,780.45
Less Credit of Sale Proceeds	- <u>4,000.00</u>
DEFICIENCY	\$8,780.45

plus interest on said deficiency judgment at the legal rate of _____ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the sales 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, Chad F. Stites, a deficiency judgment in the amount of \$8,780.45, plus interest at the legal rate of 6.07 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney


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

KBA/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JULIA F. YOUNG; GILCREASE
HILLS HOMEOWNERS ASSOCIATION;
COUNTY TREASURER, Osage County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Osage County,
Oklahoma,

Defendants.

FILED

MAY 22 1991

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

CIVIL ACTION NO. 90-C-0014-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22nd day
of May, 1991. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Osage County,
Oklahoma, and Board of County Commissioners, Osage County,
Oklahoma, appear by John S. Boggs, Jr., Assistant District
Attorney, Osage County, Oklahoma; the Defendant, Julia F. Young,
appears by her attorney Steven W. Vincent; and the Defendant,
Gilcrease Hills Homeowners Association, appears not, but makes
default.

The Court being fully advised and having examined the
court file finds that the Defendant, Gilcrease Hills Homeowners
Association, acknowledged receipt of Summons and Complaint on
January 9, 1990; that Defendant, County Treasurer, Osage County,
Oklahoma, acknowledged receipt of Summons and Complaint on
January 10, 1990; and that Defendant, Board of County

Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on January 9, 1990.

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer on January 17, 1990; that the Defendant, Julia F. Young, filed her Answer on January 30, 1990; and that the Defendant, Gilcrease Hills Homeowners Association, has failed to answer and its default has therefore been entered by the Clerk of this Court.

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

Lot 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.

The Court further finds that on November 20, 1987, the Defendant, Julia F. Young, 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, her mortgage note in the amount of \$74,000.00, payable in monthly installments, with interest thereon at the rate of ten and one-half percent (10.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Julia F. Young, 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 November 20, 1987, covering the above-described property. Said mortgage was recorded on November 24, 1987, in Book 725, Page 780, in the records of Osage County, Oklahoma.

The Court further finds that the Defendant, Julia F. Young, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Julia F. Young, is indebted to the Plaintiff in 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 interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$28.00 (\$20.00 docket fees and \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$19.44 which became a lien on the property as of 1989. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Gilcrease Hills Homeowners Association, is in default and therefore has 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, Julia F. Young, in 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 interest thereafter at the current legal rate of 6-07 percent per annum until paid, plus the costs of this action in the amount of \$28.00 (\$20.00 docket fees and \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have and recover judgment in the amount of \$19.44 for personal property taxes for the year 1989, plus the costs of this action.

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

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

First:

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

Second:

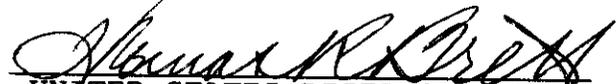
In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, in the amount of \$19.44, personal property taxes which are currently due and owing.

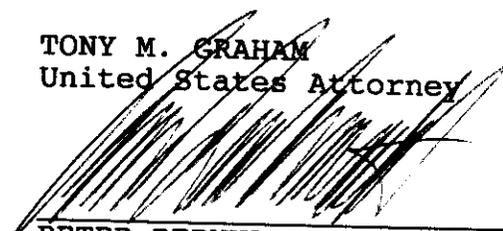
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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

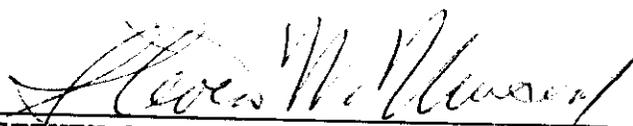

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



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



STEVEN W. VINCENT, OBA #9137
Attorney for Defendant,
Julia F. Young



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

Judgment of Foreclosure
Civil Action No. 90-C-0014-B

PB/css

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

FILED

MAY 21 1991

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

MERCEDES-BENZ CREDIT)
CORPORATION, formerly known)
as Freightliner Credit)
Corporation, a Delaware)
corporation,)

Plaintiff,)

v.)

KROBLIN REFRIGERATED)
XPRESS, INC,)
an Iowa Corporation,)

Defendant.)

No. 90-C-334-E

JUDGMENT

Plaintiff Mercedes-Benz Credit Corporation ("Mercedes-Benz") and defendant Kroblin Refrigerated Xpress, Inc. ("Kroblin") have represented to the Court, pursuant to a stipulation, that this judgment may be entered in this case. By the parties' consent and pursuant to the Stipulation:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Mercedes-Benz have judgment against Kroblin in the amount of \$144,761.78, plus interest thereon as provided in the Agreement Amending and Consolidating Retail Installment Contracts and Security Agreements dated June 30, 1988 ("Agreement"), said interest to accrue from April 22, 1991, until this Judgment is paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Mercedes-Benz have judgment and possession of its collateral under

the Agreement, and the Court hereby orders the disposition and sale of the collateral. A list of the vehicle identification numbers of the various items of collateral is attached hereto and made a part hereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Mercedes-Benz is entitled to recover its reasonable costs and attorney fees to be set by a further order of this Court or by agreement of the parties.

Made and entered this 21st day of MAY, 1991.


James O. Ellison
United States District Judge

LIST OF VEHICLE IDENTIFICATION NUMBERS
FOR FREIGHTLINER TRACTORS

<u>Number</u>	<u>Vehicle Identification Number</u>
1.	1FUEYBYB6CM213640
2.	1FUEYBYB7CM213646
3.	1FUEYBYB0CM213651
4.	1FUEYBYBXXCM213656
5.	1FUEYBYB3CM213658
6.	1FUEYBYB1CM213660
7.	1FUEYBYB5CM213662
8.	1FUEYBYB6CM213671
9.	1FUEYBYB3CM213675
10.	1FUEYBYB7CM213680
11.	1FUEYBYB9CM213681
12.	1FUEYBYB2CM213683
13.	1FUEYBYB4CM213684
14.	1FUEYBYBXXCM213687
15.	1FUEYBYBXXCM213690
16.	1FUEYBYB1CM213691
17.	1FUEYBYB0CM213696
18.	1FUEYBYB2CM213697
19.	1FUEYBYB4CM213698
20.	1FUEYBYB9CM213700
21.	1FUEYBYB8CM213705
22.	1FUEYBYBXFP248121 ^X
23.	1FUEYBYB1FP248122

AUG 15 1978

EXHIBIT A

entered

FILED

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

MAY 21 1991

UNITED SIDING SUPPLY, INC.,
an Oklahoma Corporation,

Plaintiff,

vs.

GRADY BROTHERS, INC., a Missouri
Corporation; JACK HOKE; and
RANDY GRADY,

Defendants.

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

CASE NO.-90-C-594 C

ORDER DISMISSING DEFENDANT GRADY BROTHERS, INC., COUNTERCLAIM
FOR SPECIFIC PERFORMANCE

NOW on this 20th day of March, 1991, a Scheduling Conference for the above styled matter was held. That this court has previously ordered a summary judgment on the plaintiff's action on account in favor of the plaintiff and against Grady Brothers, Inc..

The honorable United States Magistrate, this date, orders the dismissal of the defendant's Grady Brothers, Inc., equitable counterclaim for Specific Performance against the plaintiff as the same is an unavailable defense and moot for the reason that this court has previously determined that Grady Brothers breached the agreement by failing to continue to make payments after the plaintiff sued said defendant on said account.

It is therefore ordered that the defendant's Grady Brothers, Inc., counterclaim for Specific Performance is hereby

dismissed as set forth above.

Done this 21 day of May, 1991.

/S/ JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

John Leo Wagner
United States Magistrate

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

FILED

MAY 21 1991

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

JERRY ROYAL ROBINSON,)
)
 Plaintiff,)
)
 vs.)
)
 RON CHAMPION, WARDEN,)
)
 Defendant.)

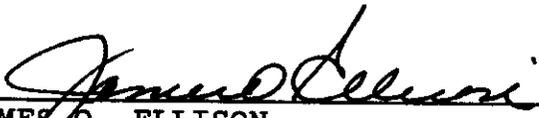
No. 90-C-405-E

JUDGMENT

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

IT IS THEREFORE ORDERED that the Plaintiff Jerry Royal Robinson take nothing from the Defendant Ron Champion, and that the action be dismissed on the merits.

ORDERED this 21ST day of May, 1991.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

MAY 21 1991

RESOLUTION TRUST CORPORATION,)
as Receiver of Sooner Federal)
Savings Association)
)
Plaintiff,)
)
vs.)
)
THE QUARLES AGENCY, INC.,)
)
Defendant.)

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

Case No. 90-C-902-C

ORDER

COMES NOW for consideration the Motion for Administrative Closure filed by the Resolution Trust Corporation as Receiver of Sooner Federal Savings Association, with the agreement of the Defendant, The Quarles Agency, Inc., and for good cause shown, the Court FINDS AND ORDERS that this matter is placed in administrative closure until July 16, 1991 and that all deadlines set in the scheduling order are hereby stricken, except for the settlement conference. The parties are to advise the Court on or before June 26, 1991 if the settlement conference should be stricken. Either party has the right to reopen this case upon application to the Court and request that the case be set for a scheduling conference. If no application to reopen the case is filed on or before July 16, 1991, this case shall be deemed dismissed with prejudice, with each party to bear its own costs and attorney's fees.

DATED this 20 day of May, 1991.

(Signed) **H. Dale Cook**

UNITED STATES DISTRICT JUDGE

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

FILED

MAY 21 1991

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

NAVISTAR FINANCIAL CORP.,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN BOWEN d/b/a J.D.S.)
 TRUCKING,)
)
 Defendant.)

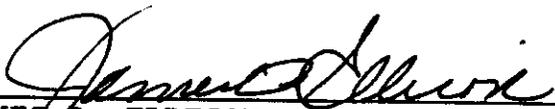
No. 90-C-726-E

ADMINISTRATIVE CLOSING ORDER

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

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

ORDERED this 21st day of May, 1991.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

MAY 21 1991

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

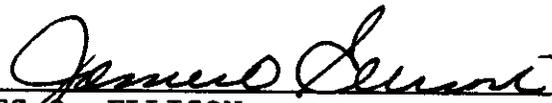
ANJA T. GHADIALI,)
)
 Plaintiff,)
)
 vs.) No. 90-C-1013-E
)
 LOCAL AMERICA BANK, et al.,)
)
 Defendants.)

ADMINISTRATIVE CLOSING ORDER

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

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

ORDERED this 21st day of May, 1991.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 21 1991

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

NAVISTAR FINANCIAL)
CORPORATION,)
)
Plaintiff,)
)
vs.)
)
JOHN BOWEN, d/b/a J.D.S.)
TRUCKING,)
)
Defendant.)

No. 90-C-726-E

PARTIAL JOURNAL ENTRY OF JUDGMENT

NOW, on this 11th day of April, 1991, the above-styled and numbered cause comes on pursuant to the motion for summary judgment filed herein by plaintiff, Navistar Financial Corporation, against the defendant, John Bowen, d/b/a J.D.S. Trucking. Plaintiff appears by and through its attorneys of record, Kivell, Rayment and Francis by Brian J. Rayment. Defendant, John Bowen, d/b/a J.D.S. Trucking, appears by and through his attorneys of record, Huffman, Arrington, Kihle, Gaberino & Dunn, by William T. Walker.

The Court, upon reviewing the file and pleadings, including the affidavits filed herein, finds that there is no issue of any material fact, and that the defendant, John Bowen, d/b/a J.D.S. Trucking, is indebted to plaintiff in the principal sum of \$52,106.85, plus interest at a rate of 9.5% per annum from August 22, 1990, on plaintiff's first cause of action, and \$49,813.73 plus interest at a rate of 9.5% from August 22, 1990, on plaintiff's second cause of action.

The Court further finds that the liability of John Bowen, d/b/a J.D.S. Trucking, is joint and several with the defendant, John's Diesel Service, Inc.

The Court further finds that it is not necessary to determine at this time whether the retail instalment contracts at issue herein were executed by John Bowen, individually, or John's Diesel Service, Inc., and, therefore, the Court reserves a ruling on that issue.

The Court further finds that plaintiff is not compelled to proceed against the collateral pledged to secure the indebtedness at issue herein prior to obtaining judgment against John Bowen, or executing thereon.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that plaintiff, Navistar Financial Corporation, have and recover judgment against the defendant, John Bowen, d/b/a J.D.S. Trucking, in the principal sum of \$52,106.85, plus interest at a rate of 9.5% per annum from August 22, 1990, on plaintiff's first cause of action, and \$49,813.73, plus interest at a rate of 9.5% per annum from August 22, 1990, on plaintiff's second cause of action, costs of this action, accrued and accruing, including a reasonable attorney's fee to be later set by this Court.

IT IS FURTHER ORDERED that plaintiff's lien in and to the collateral pledged to secure the indebtedness to plaintiff shall remain in full force and effect, despite the entry of judgment herein, or any execution thereon, against John Bowen, individually.

IT IS FURTHER ORDERED that, pursuant to Rule 54(b), there is no reason for delaying the entry of final judgment against the defendant, John Bowen, individually, and, therefore, this judgment shall be final as to the

defendant, John Bowen's liability to the plaintiff.

IT IS SO ORDERED.

ST. JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVAL AS TO FORM AND CONTENT:


Brian J. Rayment, OBA #7441
KIVELL, RAYMENT AND FRANCIS
7666 E. 61st, #240
Tulsa, OK 74133
(918) 254-0626
ATTORNEYS FOR PLAINTIFF


William T. Walker
HUFFMAN, ARRINGTON, KIHLE,
GABERINO & DUNN
1000 Oneok Plaza
Tulsa, OK 74103
(918) 585-8141
ATTORNEYS FOR DEFENDANT

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

FILED

MAY 21 1991

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

NICHOLAS J. ANGELO and
RAYMA L. ANGELO,

Plaintiffs

v.

ARMSTRONG WORLD INDUSTRIES,
GAF CORPORATION, KEENE
CORPORATION, OWENS-ILLINOIS,
INC., OWENS-CORNING FIBERGLAS
CORPORATION, FLEXITALLIC
GASKET, CO., INC., JOHN-CRANE
HOUDAILLE, INC., and ANCHOR
PACKING COMPANY,

Defendants

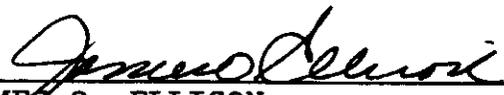
No. 89-C-910-E

AMENDED JUDGMENT

This action came on for jury trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict,

IT IS THEREFORE ORDERED that the Plaintiffs Nicholas J. Angelo and Rayma L. Angelo take nothing from the Defendants, that the action be dismissed on the merits, and that the Defendants recover of Plaintiffs Nicholas J. Angelo and Rayma L. Angelo their costs of action.

ORDERED this 21st day of May, 1991.



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