

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA APR 9 1992

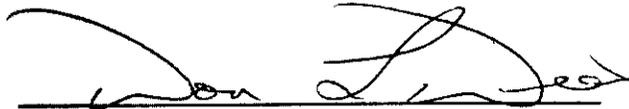
ELIZABETH DUNCAN and O.M. JOE DUNCAN,)
)
 Plaintiffs,)
)
 vs.)
)
 WAL-MART STORES, INC.,)
)
 Defendant.)

Richard I. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 91-C-280-CE

JOINT STIPULATION OF DISMISSAL

COME NOW the parties, Elizabeth Duncan and O.M. Joe Duncan, Plaintiffs, and Wal-Mart Stores, Inc., Defendant and hereby make known to this Court that they have entered into a stipulation for dismissal of the above-captioned cause with prejudice, based upon settlement of all claims involved in this action, each party to bear its own costs.



Don L. Dees
Attorney for Plaintiffs



Steven E. Holden
Attorney for Defendant

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

FIRST FEDERAL SAVINGS & LOAN
ASSOCIATION OF COFFEYVILLE,

Plaintiff(s),

vs.

No. 89-C-648-B ✓

JAMES D. HOLMAN, BARBARA L.
HOLMAN, HENRY W. (Hank) THOMPSON,
and VIRGINIA A. THOMPSON,

Defendant(s).

FILED
APR 08 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

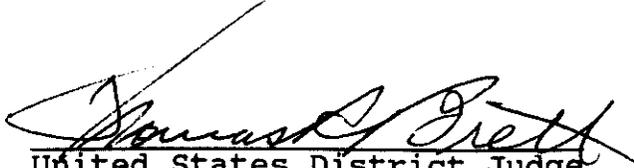
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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 5th day of April, 1992.


United States District Judge
THOMAS R. BRETT

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

FILED

APR 08 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JACK R. DOUGLASS, an individual,)
)
Plaintiff,)
)
vs.)
)
MESA GRANDE RESOURCES, INC., an)
Oklahoma corporation, and)
E. ALEX PHILLIPS, an individual,)
)
Defendants.)

Case No. 91-C-952-B

ATTORNEY LIEN CLAIMED

JOURNAL ENTRY OF JUDGMENT

NOW on this 8 day of April, 1992, the above-entitled cause comes on for hearing. The Plaintiff, Jack R. Douglass ("Douglass"), appears by and through his attorney, Michael T. Keester of Jones, Givens, Gotcher & Bogan, P.C. The Defendants Mesa Grande Resources, Inc. ("Mesa Grande") and E. Alex Phillips ("Phillips") appear by and through their attorney, Richard L. Harris of Short, Harris, Turner, Daniel & McMahan. The Defendants have announced that they have no defense to the said action and consent and agree that judgment may be entered against them in accordance with the prayers of the Plaintiff's Complaint. The Court, upon review of the pleadings on file in this case, upon the evidence presented by Plaintiff in support of his Complaint, and upon consideration of the positions of the parties, finds that good cause has been shown and that judgment should be so entered in favor of the Plaintiff and against these Defendants. The Court,

being fully advised in the premises, and for good cause shown, makes the following **FINDINGS AND ORDERS**, to-wit:

1. **THE COURT FINDS AND THE PARTIES AGREE** that all of the allegations contained in the Plaintiff's Complaint are true; that the Plaintiff is a citizen of the State of Nevada; that the Defendant Mesa Grande is an Oklahoma corporation with its principal place of business and offices in Tulsa County, Oklahoma; that the Defendant Phillips is a citizen and resident of Tulsa County, Oklahoma; that the Defendants were sellers of securities under federal and state securities laws; that the wrongful acts complained of and committed by the Defendants were committed by the means and instrumentalities of interstate commerce including the United States mails and interstate telephone communications; that the Defendants committed actions and conduct in this judicial district which supports this Court's personal jurisdiction over these Defendants; that this Court has subject matter jurisdiction of these claims pursuant to 28 U.S.C. §1332, 28 U.S.C. §1331, 15 U.S.C. §77(v)(a), and 15 U.S.C. §78(aa); that this Court has personal jurisdiction over these Defendants by virtue of their conduct and actions in this judicial district and pursuant to 15 U.S.C. §§77(v) and 78(aa); that venue is proper in this district pursuant to 28 U.S.C. §1391(b).

2. **THE COURT FURTHER FINDS AND THE PARTIES FURTHER AGREE** that the Defendants misrepresented material facts, made false statements and misrepresentations of material facts, and failed to disclose material facts to the Plaintiff in connection with the

sale of securities to the Plaintiff. The representations were false and were known by Phillips and Mesa Grande to be false. **THE COURT FURTHER FINDS AND THE PARTIES FURTHER AGREE** that these material misrepresentations and omissions of material fact committed by the Defendants were intentional, were designed to and did deceive the Plaintiff, were in furtherance of the Defendants' fraudulent scheme, and were to fraudulently induce the Plaintiff to sign the oil and gas participation agreement on December 12, 1988 and to buy these oil and gas working interests for the sum of \$277,500.00; that the Plaintiff justifiably relied upon these false statements and misrepresentations of material facts and entered into this agreement and paid Defendants \$277,500.00 to buy these working interests; that the Defendants have refused to honor the terms of the agreement, have refused to drill and produce the wells as provided for in the agreement, have failed and refused to assign the working interests to the Plaintiff as promised, and have refused to return the Plaintiff's money and investment to him as Defendants have otherwise spent the money; that the fraudulent scheme of the Defendants was concealed by Defendants' further misrepresentations of facts and failure to disclose other material facts to Plaintiff; that the Defendants, by their actions have also breached the agreement and contract with the Plaintiff.

3. **THE COURT FURTHER FINDS AND THE PARTIES FURTHER AGREE** that the Plaintiff has properly stated 11 claims for relief as stated and set forth in the Complaint of the Plaintiff herein, that the claims are based in fact and supported by the evidence, and

that the Plaintiff is entitled to a judgment in his favor and against both of the Defendants on each of the 11 claims for relief set forth in the Complaint herein, including as follows: (1) violation of 71 Okla.Stat. §301; (2) violation of 71 Okla.Stat. §408(a)(2); (3) violation of 15 U.S.C. §77(1)(2); (4) violation of 15 U.S.C. §78(j)(b) and S.E.C. RULE 10b-5; (5) common law fraud; (6) violation of 71 Okla.Stat. §408(b); (7) violation of 15 U.S.C. §§77(o) and 78(t); (8) violation of 71 Okla.Stat. §408(a)(1); (9) violation of 15 U.S.C. §78(o); (10) breach of contract; and (11) accounting. Plaintiff is also entitled to interest, costs and reasonable attorneys fees. That Defendant Mesa Grande Resources, Inc. and Defendant E. Alex Phillips are indebted to the Plaintiff in the sum of \$277,500.00, plus interest amounting to \$53,189.23, costs of \$750.00 and reasonable attorneys fees of \$7,000.00, for a total indebtedness of **\$338,439.22**; that this indebtedness represents a debt for money obtained from the Plaintiff by the Defendants through fraud, false pretenses and false representations; that said sum is now due and owing the Plaintiff by the Defendants and that the Plaintiff is entitled to a judgment against said Defendants in that amount.

4. **THE COURT FURTHER FINDS AND THE PARTIES FURTHER AGREE** that the Plaintiff is the prevailing party in this litigation and is entitled to have his costs assessed against the Defendants and that the Plaintiff's reasonable costs in this matter are \$750.00, and that such amount should be added to the judgment granted Plaintiff against the Defendant. The Court further finds and the

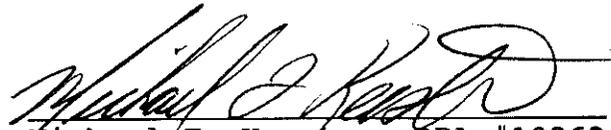
parties further agree that the Plaintiff has incurred attorneys' fees as a result of the Defendants' wrongful and fraudulent activities and breach of contract, and that Plaintiff is entitled to reasonable attorneys' fees in this action, and that the Plaintiff's legal fees in the amount of \$7,000.00 is a reasonable attorney fee in this case and should be added to the judgment amount granted the Plaintiff against the Defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the above and foregoing **FINDINGS** numbered 1 through 4 inclusive are **ORDERED, ADJUDGED AND DECREED** as if hereinafter set out at length, and judgment is rendered and entered accordingly.

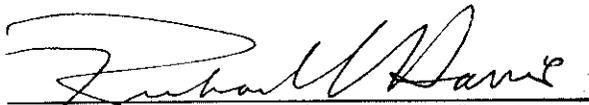
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the Plaintiff have and receive a money judgment against the Defendants Mesa Grande Resources, Inc. and E. Alex Phillips, and that the Defendants are liable to the Plaintiff and owe the Plaintiff the sum of \$330,689.23, for costs in the amount of \$750.00 and for reasonable attorneys' fees in the amount of \$7,000.00, for the total sum of and judgment for \$338,439.23. This sum is immediately due and payable by Defendants Mesa Grande Resources, Inc. and E. Alex Phillips, for all of which let execution issue.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 PAMELA J. HOLLAND, and)
 VERNON O. HOLLAND,)
)
 Defendants.)

No. 90-C-481-B ✓

FILED

APR 08 1992 *OK*

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court are the plaintiff's motions for summary judgment and to strike declaration of Vernon O. Holland, in support of defendants' Rule 56(f) motion, and in support of defendants' partial response to plaintiff's motion for summary judgment, and the motion to deny or, in the alternative, defer consideration of United States' motion for summary judgment to permit discovery under Rule 56(f) filed by the defendants, Vernon O. Holland and Pamela J. Holland.

In their Fed.R.Civ.P. 56(f) motion, the defendants argue that the Court should not consider the merits of plaintiff's summary judgment motion because the defendants need more time to "complete interrogatories, requests for production and admissions, and take necessary deposition(s)" to support their opposition to plaintiff's motion. (Defendant's Rule 56(f) Motion, p.1) In support of this motion defendants attach the Declaration of Vernon O. Holland ("Holland") which plaintiff moves to strike. The Court need not address plaintiff's motion to strike Holland's declaration on the

merits, however, because the Court denies the defendants' Rule 56(f) motion as untimely.

The discovery cut-off date in this action was November 11, 1991. The defendants moved to extend the discovery deadline on October 30, 1991 and to compel discovery of certain documents on December 9, 1991. Magistrate Judge John L. Wagner held a hearing on the motions on January 7, 1992 from which the Order of January 10, 1992 issued. In the Order of January 10, 1992, the Magistrate Judge denied defendants' motion to extend discovery and motion to compel, except to direct the plaintiff to provide the defendants with the summary record of assessment. The defendants did not appeal the Magistrate Judge's Order. Consequently, discovery was complete on November 11, 1991, and the defendants cannot now complain that discovery is insufficient to support their opposition to plaintiff's motion for summary judgment. The Court, therefore, overrules defendants' Rule 56(f) motion and considers the plaintiff's motion for summary judgment on the merits.

The following facts are undisputed:

The defendants, Pamela J. Holland and Vernon O. Holland, filed their joint federal income tax return (Form 1040) for 1980 on June 18, 1981. (Declaration of Deborah Guey ("Guey Declaration"), ¶¶ 2 and 3, Ex. A).

During an Internal Revenue Service ("IRS") audit of the defendants' 1980 federal income tax return, a deficiency of \$29,817.00 was determined and assessed against Pamela J. Holland on June 4, 1984 and the same deficiency of \$29,817.00 was determined

and assessed against Vernon O. Holland on January 21, 1985. (Guey Declaration, ¶¶3 - 15, Ex. B & C).

No credits or payments have been made with respect to the defendants' assessed 1980 income tax liability. (Guey Declaration, ¶3, Ex. B and C).

Holland submitted an unsigned Form 1040 for the 1981 taxable year which could not be processed. (Guey Declaration, ¶16, Ex.E). An IRS audit resulted in the assessment of 1981 income tax and related addition on January 21, 1985 in the amount of \$7,880.51 and on August 31, 1990 in the amount of \$47,309.49 against Holland. (Guey Declaration, ¶¶17-19, Ex. F).

Holland individually petitioned the U.S. Tax Court with respect to the IRS' determinations of his 1980 and 1981 federal income tax liabilities. During that proceeding, the Tax Court sustained the deficiencies determined by the IRS for 1980 and 1981 in the respective amounts of \$29,817.00 and \$55,190.00. The Tax Court also awarded damages to the United States and against Holland in the amount of \$5,000.00 pursuant to 26 U.S.C. §6673, finding that Holland's claims were frivolous and the proceeding was instituted primarily for delay. (Guey Declaration, ¶20, Ex. H).

Holland submitted a Form 1040 for the taxable year 1982 which could not be processed. (Declaration of Al Knight ("Knight Declaration") ¶2, Ex. A). An IRS audit resulted in an assessment of 1982 income tax and related additions against Holland on February 24, 1986 in the amount of \$31,927.00. (Knight Declaration, ¶¶3 and 5, Ex. B and D).

Holland did not file a federal income tax return for taxable year 1983. (Knight Declaration, ¶6). An IRS audit resulted in an assessment of 1983 income tax and related additions against Holland on September 29, 1986 in the amount of \$20,794.00. (Knight Declaration, ¶¶7 and 9, Ex. E and F).

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

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

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

The plaintiff originally brought this action against Pamela J. Holland for the deficiency assessed against her for the taxable year 1980. Plaintiff then amended the complaint joining Vernon O. Holland, also seeking to reduce to judgment the same deficiency, as

assessed against Holland for the 1980 taxable year, as well as the outstanding tax assessments against Holland for tax years 1981, 1982 and 1983.

The plaintiff claims that it is entitled to summary judgment as to the validity of its tax assessments against the defendants Pamela J. Holland and Vernon O. Holland for tax year 1980 and against Vernon O. Holland for tax years 1981 through 1983. The plaintiff argues that it has sustained its burden establishing the defendants' joint and several liability for the assessed amount of \$29,817.00 for 1980, as well as Holland's liability for the assessed amount of \$55,190.00 for 1981, \$31,927.00 for 1982 and \$20,794.00 for 1983 by submitting Certificates of Assessments and Payments, Form 4340, pertaining to the 1980 through 1983 assessments. The plaintiff contends that the defendants have failed to present any evidence establishing that the assessments were erroneous. The plaintiff also argues that the doctrine of *res judicata* prevents defendants from adjudicating the merits of the assessments for the taxable years 1980 and 1981.

Holland argues that he and Pamela J. Holland have substantial deductions for 1980 and he has substantial deductions for the years 1981 through 1983 which are evidenced by the following items attached to defendants' response: a direct reduction loan schedule on a home mortgage, a subscription agreement for an oil well executed on November 19, 1982, statement of net revenue interest for a second oil well purchased in 1983, installment contracts for automobiles which disclose fully deductible finance charges, and excise tax receipts from the Oklahoma Tax Commission for 1982 and

1983. Holland also claims that he is entitled to a credit of \$294.80 in funds and 7.211 bags of silver, value of \$65,620.00, which were allegedly seized by the IRS. Holland further argues that the doctrine of *res judicata* does not bar adjudication of the 1980 and 1981 assessments because the merits of the assessments were not determined by the Tax Court.

The plaintiff replies by moving to strike Holland's declaration in support of the defendants' response to the plaintiff's motion for summary judgment on the basis of lack of foundation and irrelevance of the attached documents. Plaintiff further argues that any deductions pertaining to the 1980 and 1981 assessment should have been litigated in the Tax Court and are therefore barred by the doctrine of *res judicata*.

The Court overrules the plaintiff's motion to strike Holland's declaration¹ and concludes that genuine issues of material fact concerning Holland's tax liability for tax years 1982 and 1983 exist which preclude summary judgment in favor of the plaintiff for the amount of taxes assessed for 1982 and 1983.

The Court, however, finds that the doctrine of *res judicata* bars relitigation of Holland's liability for the 1980 tax assessment of \$29,817.00 and the 1981 tax assessment of \$55,190.00. Defendants' argument that the final decision of the Tax Court does not act as *res judicata* in this case is without merit. Holland's decision to claim

¹ In so doing, the Court is not ruling on the admissibility of evidence at trial.

in his Tax Court petition that his labor as that of a "sovereign citizen of the State of Oklahoma" was not "subject to regulation by the federal government" or the "type of property which can be subjected to tax by the federal government" without alternatively refuting the amount of plaintiff's tax assessments was improvident. The doctrine of *res judicata* provides that

when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

Commissioner v. Sunnen, 333 U.S. 591, 597 (1948) (quoting Cromwell v. County of Sac, 94 U.S. 351, 352 (1876)). Because Holland failed to attack the validity of the 1980 and 1981 tax assessments before the Tax Court, he is barred from doing so in this action. United States v. Annis, 634 F.2d 1270, 1272 (10th Cir. 1980); United States v. Lewis, 90-2 USTC ¶50,371 (N.D.Ga. 1990).

Res judicata, however, does not bar defendant Pamela J. Holland from litigating the 1980 tax assessment against her. Although pursuant to 26 U.S.C. §6013(d)(3) Pamela J. Holland is jointly and severally liable for the amount of tax payable for 1980 upon subscribing her name to the joint 1980 income tax return, a "determination for a particular year against a husband who filed a joint return with his wife is not *res judicata* against the wife for the same year." Rodney v. Commissioner, 53 T.C. 287, 307 (1969). This "long-recognized legal principle that a husband and wife are

separate and distinct taxpayers even where they have filed a joint Federal income tax return," *id.*, was adopted by the Tenth Circuit Court of Appeals in Tavery v. United States, 897 F.2d 1032, 1034 (10th. Cir. 1990):²

[C]laims against joint obligors are generally regarded as separate and distinct for res judicata purposes. See generally *Restatement (Second) of Judgments* §49 & comment a (1982). The same is true with respect to the joint and several obligation of spouses filing a joint income tax return.

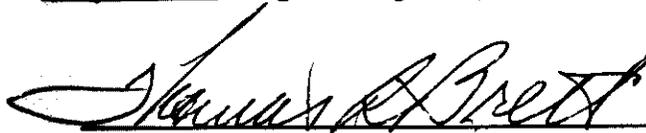
Id. at 1033.

The Court, therefore, grants summary judgment in favor of the plaintiff and against Vernon O. Holland for the amounts of the 1980 tax assessment of \$29,817.00, and for the 1981 tax assessment of \$55,190.00, plus statutory additions, penalties and interest. The Court, however, concludes that genuine issues of material fact remain concerning the liability of Pamela J. Holland for the tax assessed against her for the 1980 taxable year.

In accord with the above, the Court OVERRULES in part and SUSTAINS in part plaintiff's motion for summary judgment. The Court also OVERRULES plaintiff's motion to strike the declaration of Vernon O. Holland in support of his opposition to plaintiff's motion for summary judgment. In addition, the Court OVERRULES defendants' motion to deny or defer consideration of United States' motion for summary judgment to permit discovery under Rule 56(f).

² The briefing has been so poor in this case that neither party has provided the court with this applicable Tenth Circuit authority.

IT IS SO ORDERED, this 8th day of April, 1992.

A handwritten signature in cursive script, reading "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

F I L E D
APR 8 1992
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

SHIRLEY LUCAS,)
)
Plaintiff,)
)
v.)
)
DIECO MANUFACTURING, INC.,)
)
Defendant.)

91-C-541-B

ORDER

This order pertains to Defendant's Motion for Summary Judgment (Docket #9)¹ and Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment (#11). A hearing was held on April 6, 1992 and oral arguments were heard.

Plaintiff alleges that defendant has wrongfully refused to pay certain health benefits under the Dieco Employee Health Benefits Plan ("the Plan"). Defendant asserts it denied plaintiff's claim for benefits because she did not pay the premium for continuation coverage mandated by the Consolidated Omnibus Budget Reconciliation Act ("COBRA") amendments to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, et seq., after her husband was terminated from his employment with defendant. Defendant contends that its actions were neither arbitrary nor capricious, and the court must therefore uphold its determination to deny plaintiff's claim for benefits.

"[T]he plain language of Rule 56(c) [Fed.R.Civ.P.] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's

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.

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case, and on which that party will bear the burden of proof at trial." Celotex Corp v. Catrett, 477 U.S. 317, 322 (1986). If there is a complete failure of proof concerning an essential element of the non-movant's case, there can be no genuine issue of material fact because all other facts are necessarily rendered immaterial. Id at 323.

A party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must affirmatively prove specific facts showing that there is a genuine issue of material fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The Court stated that "the mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Id. at 252.

The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts". Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

The record must be construed liberally in favor of the party opposing the summary judgment, but "conclusory allegations by the party opposing ... are not sufficient to establish an issue of fact and defeat the motion." McKibben v. Chubb, 840 F.2d 1525, 1528 (10th Cir. 1988). The Tenth Circuit requires "more than pure speculation to defeat a motion for summary judgment" under the standards set by Celotex and Anderson. Setliff v. Memorial Hosp. of Sheridan County, 850 F.2d 1384 (10th Cir. 1988).

The material facts are not disputed. Defendant Dieco Manufacturing, Inc. ("Dieco") was the Plan Administrator, and certain billing, administrative and claims functions for the Plan were delegated by Dieco to American Administrative Services Inc. ("ASSI"), which

acted as the Plan Coordinator. Both Dieco and ASSI were fiduciaries. (Affidavit of Helen Buchanan, Ex. A to Brief in Support of Defendant's Motion for Summary Judgment). Ray Lucas ("Ray") was hired by defendant on May 3, 1990. Ray and Shirley Lucas ("Shirley"), his wife, became eligible for benefits under the Plan on July 1, 1990. Both were given copies of the Dieco summary plan description. On September 4, 1990, Shirley experienced a heart attack. She was hospitalized and incurred medical charges during the month of September, 1990, which were paid by defendant pursuant to the terms of the Plan. Her additional medical charges in October 1990 were not paid on behalf of the Plan, because the plan fiduciaries determined that Ray was ineligible for benefits in October since his last day of work was September 28, 1990 and a COBRA continuation premium was never paid by Ray or Shirley.

Ray signed a COBRA continuation election form on November 30, 1990, electing the COBRA continuation coverage. The COBRA election form signed by Ray stated that regular benefits under the Plan terminated on September 30, 1990, that the amount of premium due to Dieco to continue coverage under COBRA was \$278.83, and that Ray would have to pay the premium within forty-five days of the date the form was signed. (Ex. D of Brief in Support of Defendant's Motion for Summary Judgment). Plaintiff admits that the premium was never paid.

In Firestone Tire and Rubber Co. v. Burch, 489 U.S. 101 (1989), it was established that a court reviewing denial of benefits claims under ERISA is to apply the arbitrary and capricious standard of review if the benefit plan gives the administrator or fiduciary discretionary authority to determine the eligibility for benefits or to construe the terms of

the Plan. In this case the Plan gave the plan coordinator discretion to determine eligibility of claimants for benefits:

The Plan coordinator shall have only such duties and powers as the Plan administrator deems to be necessary to discharge named duties, including, but not limited to, the following:

a) To construe and interpret the Plan as set forth by the administrator, decide all questions of eligibility and determine the amount of any benefits hereunder;

* * *

The Fiduciaries of the Plan and the Trust, and the Responsible Party for all aspects of the administration are the Board of Directors for the Employer. Final interpretation, compliance, and negotiation powers rest with the fiduciaries....

(Ex. B of Brief in Support of Defendant's Motion for Summary Judgment, pgs. 29 and 30).

Because the Plan specifically and expressly gave the coordinator discretion in reviewing claims and determining the eligibility of claimants for benefits and gave the employer final power of interpretation of the Plan, defendant's actions with regard to the plaintiff's claim for benefits must be judged under the arbitrary and capricious standard of review.

The Treasurer of the defendant company stated at paragraphs 12 and 13 of her sworn affidavit that no Dieco employee had ever before elected COBRA continuation coverage and the Dieco Plan had never continued benefits or paid benefits for any employee who was allegedly temporarily laid off. (Ex. A of Brief in Support of Defendant's Motion for Summary Judgment).

While defendant made a contribution payment to the Fund for Ray and Shirley under its Group Medical Plan on October 15, 1990, that contribution, which was not accompanied by the required contribution by plaintiff, was refunded in November 1990.

(Response to Plaintiff's Interrog. #6, Attachment to Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment). Under the Plan provisions dealing with termination of coverage, the employer had the discretionary capability of continuing coverage for employees that were temporarily laid off.² However, to do this the employer must act "in accordance with rules precluding individual selection" and pay "the required contributions". Defendant elected not to extend plaintiff's benefits under this proviso because it had not done so for other employees. Under these circumstances, where plaintiff's spouse could and did elect to proceed under COBRA to extend benefits, such decision on the part of the fiduciary employer is not arbitrary or capricious.

Shirley testified in her deposition on November 6, 1991, that she would have had her heart surgery even if she had not thought she was covered by insurance. (Ex. E of Brief in Support of Defendant's Motion for Summary Judgment, pg. 39). Ray testified in his deposition on the same date that he believed his layoff was temporary:

²

The Plan provided:

ELIGIBLE STATUS. You are eligible if you are 18 years of age or older and a full-time employee of Dieco Manufacturing, Inc. and/or its subsidiaries. A full-time employee, for the purpose of this plan, is an employee who, at a location other than his residence, is actively working a full scheduled work week of not less than 30 hours in the conduct of the business of the Employer.

* * *

TERMINATION OF YOUR COVERAGE. Your benefits will automatically terminate on the earliest of the following dates:

- a) the date the Plan Document terminates,
- b) the first of the month following the date on which the last contribution payment is made by the Employer on account of your benefit; except Life and AD&D coverage will terminate upon the day employment terminates.
- c) the date on which you enter full-time military, naval, or air service, or
- d) the date you cease to be in an eligible status under the Plan Document.

If employment is a condition determining eligible status under the Plan Document, cessation of active work will terminate your eligible status; provided, however, if the cessation of active work is due to temporary layoff or approved leave of absence the Employer, by acting in accordance with rules precluding individual selection and by paying the required contributions, may, while the policy is in force, continue your benefits during the period of temporary layoff or approved leave of absence, but not for longer than three months.

Well, I came to work and just got started, I just opened my tool box and got started and Joe asked me to come in the office. This is the supervisor on days, superintendent, I might say.

And he said, Ray, I have a little bad news. He said, we are waiting for a contract from Unit Rig and we just don't have no work right now, that I'm going to have to lay you off for a while until we can get this contract straight with Unit Rig. And he said you know, I'd rather do anything in the world than lay a man off, you know.

He said, I don't mind firing somebody because generally you have a reason when you fire somebody but the fact that you don't have work, he doesn't like to lay people off temporarily for any extended time or whatever, you know, so he said basically what we're looking at is maybe a week, maybe 10 days.

(Attachment to Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment, pg. 24).

Plaintiffs cannot rely on these oral representations that defendant would be rehired quickly. The Tenth Circuit found in Straub v. Western Union Telegraph Co., 851 F.2d 1262 (10th Cir. 1988), that no liability existed under ERISA for alleged oral modifications of the terms of an employee benefit plan not reduced to writing. The court refused to apply the doctrine of estoppel to alter this result, finding that ERISA's express requirement that the written terms of a benefit plan govern its enforcement foreclosed the argument that Congress intended for ERISA to incorporate state law notions of promissory estoppel.³

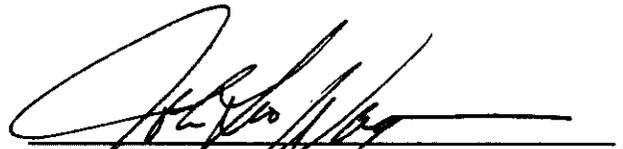
Defendant's Motion for Summary Judgment is granted. The arbitrary and capricious standard applies. The evidence in the record shows that no other medical claims were paid by defendant for temporarily laid off employees. The written agreement between the

³ The court notes that this ruling was criticized by the 7th Circuit in Black v. TIC Investment Corp., 900 F.2d 112 (7th Cir. 1990), where the judges found that the trend among courts was to allow the use of estoppel in pension cases, and only the 4th, 10th, and 11th Circuits had recently held to the contrary.

parties governs. That agreement permits, but does not require the extension of medical benefits without a COBRA election and payment of a COBRA premium. Although the layoff was initially considered temporary, it nonetheless became permanent, and it was not arbitrary and capricious for the company to deny payment of claims incurred after the layoff when no premium was paid by plaintiff's spouse under COBRA.

There is no evidence on which to base a claim of estoppel. No reliance occurred. Ray was told he would be covered, but this was not inconsistent with the company's actions, since benefits would have been paid if COBRA premiums had been paid. The record contains nothing in writing to show the fiduciary's decision to continue benefits, except plaintiff's COBRA election form. Regular employee benefits were terminated as of September 30, 1990, and Ray signed the form showing his intention to proceed under COBRA. What the parties did in writing is determinative under the law of this circuit. See Straub v. Western Union Telegraph Co., id.

Dated this 27 day of April, 1992.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

45

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR - 7 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD CO.,)
)
Plaintiff,)
)
vs.)
)
AMERICAN AIRLINES, INC.,)
et al.,)
)
Defendants.)
AND OTHER CONSOLIDATED ACTIONS)

Case No.'s 89-C-868-~~eb~~
89-C-869-~~eb~~
90-C-859-~~eb~~

VACUUM & PRESSURE TANK TRUCK)
SERVICES,)
)
Defendant and Third Party)
Plaintiff,)
)
vs.)
)
AMERIGAS, INC.;)
ATLAS TRUCKING CO., INC.; AYCOCK)
LEASING a/k/a AYCOCK INVESTMENT)
COMPANY; B & D TRUCK SERVICE;)
BALDOR ELECTRIC COMPANY; BALDWIN)
PIANO & ORGAN CO.; BALL BROS)
TRUCKING CO.; BAVARIAN MOTORS,)
INC.; BROWN & ROOT, INC.;)
CHICKASHA MANUFACTURING CO., INC.;)
CONMACK, INC.; CONOCO, INC.;)
CONTINENTAL BAKING COMPANY; GREY-)
HOUND LINES, INC.; CRAIN)
INDUSTRIES, INC.; AMERICAN CAN)
COMPANY d/b/a DIXIE CUPS;)
DESOTO, INC.; ENVIRO-CHEM)
CORPORATION; ERNIE MILLER PONTIAC)
GMC, INC.; ;)
EXXON CORPORATION; FACET ENTER-)
PRISES, INC. a/k/a PURALATOR)
PRODUCTS CO.; FEST IMPORTS, INC.;)
FINE TRUCK LINE, INC.; FORSGREN,)
INC.; FRANKS & SONS, INC.; GEAR)
PRODUCTS, INC.; GRIEF BROS)
CORPORATION; HACKNEY BROTHERS)
BODY COMPANY; HALLETT CONSTRUCTION)
COMPANY; HEEKIN CAN, INC.; JOHN)
HENSHAL; HUDSON OIL COMPANY;)
J R WOODS TRANSPORT SERVICES,)

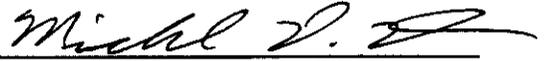
INC.; JONES TRUCK LINES, INC.;)
 LITTLE ROCK ROAD MACHINERY;)
 MASONITE CORPORATION; MOLL TOOL &)
 PLASTIC; BAXTER HEALTH CARE)
 CORPORATION; OKLAHOMA SOLVENTS)
 & CHEMICAL COMPANY; P M F, INC.;)
 PETROLEUM MARKETING CO.; STANDARD)
 BRANDS, INC. d/b/a PLANTERS)
 PEANUTS; PORCHE RACING; REID)
 SUPPLY COMPANY; RENTAL UNIFORM)
 SERVICES, INC. a/k/a T&G LEASING,)
 INC.; ROLLINS TRUCK RENTAL;)
 SCREW CORPORATION DIVISION VSI;)
 SUPERWRENCH, INC.; SYNTEX AGRI)
 BUSINESS INC. a/k/a SYNTEX)
 CORPORATION; T D WILLIAMSON, INC.;)
 TEXAS INSTRUMENTS, INC.)
 TIMEX CORPORATION;)
 TRANSMISSION SPECIALISTS COMPANY;)
 TULSA TRAILER & BODY, INC.;)
 U S POLLUTION CONTROL, INC.;)
 UNION CARBIDE CHEMICALS AND)
 PLASTIC COMPANY, INC.; VALMONT)
 OILFIELD PRODUCTS COMPANY; WASTE)
 MANAGEMENT OF TULSA, INC.;)
 YATES IMPLEMENT CO., INC.;)
 COMMERCIAL CARTAGE; OLYMPIC OIL)
 COMPANY; RUTHERFORD/PACIFIC, INC.;)
)
 Third Party Defendants.)

**NOTICE OF DISMISSAL OF
THIRD PARTY DEFENDANT, JONES TRUCK LINES, INC.**

COMES NOW the Defendant/**Third Party** Plaintiff Vacuum & Pressure Tank Truck
 Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil
 Procedure, and hereby dismisses its **Third Party** Complaint in relation to the Third Party
 Defendant, Jones Truck Lines, Inc.

Respectfully Submitted,

DOYLE & HARRIS



Steven M. Harris, OBA #3913
Michael D. Davis, OBA #11282
2431 East 61st Street
Suite 260
Tulsa, OK 74136
(918) 743-1276

CERTIFICATE OF MAILING

I do hereby certify that on the ^{7th}~~3rd~~ day of ^{April}~~March~~, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

Larry Gutteridge
SIDELY & AUSTIN
2049 Century Park East
Suite 3500
Los Angeles, CA 90067

William Anderson
DOERNER, STUART, et al.
1000 Atlas Life Building
415 S. Boston
Tulsa, OK 74103



Steven M. Harris
Michael D. Davis

610-1.7/rawp

entered

FILED

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

APR 7 1992

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

jm

DONALD L. BOSHEARS,
Plaintiff,

vs.

HOMESTEAD PRODUCTS, INC.,
a Michigan Corporation;
BERNARD L. ROBINSON and
RUTH ANN ROBINSON,
Defendants.

}
}
}
}
}
}
}
}
}
}
}

No. 91-C-230-C ✓

ORDER

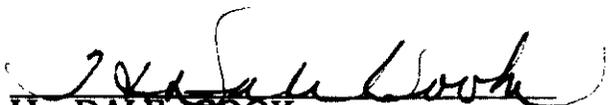
Before the Court is the motion of the plaintiff to reconsider. By Order filed on July 31, 1991, the Court granted defendants' motion to stay this action and compel arbitration pursuant to the Federal Arbitration Act. Thereafter, plaintiff filed a motion to clarify and the court, by Order filed on January 8, 1992, expressed the view that only defendant Homestead Products, Inc. was a party to the contract containing the arbitration clause, but that the entire action remained stayed because "the outcome of the arbitration is a condition precedent to any liability on the Robinsons' part".

Plaintiff's latest motion takes issue with the quoted statement. Plaintiff argues that the guarantee which the Robinsons executed is "unconditional" under Oklahoma law and that therefore

an action against the guarantors may proceed despite arbitration. The fallacy of plaintiff's position is that even an unconditional guarantee is only actionable upon "default". To allow a separate court action to proceed against guarantors while an arbitration action pends involving the alleged defaulting party would be to weaken the salutary purposes of arbitration. This Court agrees with the analysis to this effect in Morrie & Shirlee Mages Foundation v. Thrifty Corp., 916 F.2d 402 (7th Cir. 1990). While the Second Circuit does not hold that a non-party to the agreement is entitled to a stay, it has stated that a district court has inherent power to grant such a stay. See Citrus Marketing Bd. of Israel v. J. Lauritzen A/S, 943 F.2d 220 (2d Cir. 1991). Under either theory, the Court affirms its previous ruling. This action is stayed as to all parties pending the resolution of arbitration.

It is the Order of the Court that the motion of the plaintiff to reconsider is hereby denied.

IT IS SO ORDERED this 7th day of April, 1992.


H. DALE COOK
United States District Judge

FILED

APR -7 1992 *Jem*

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

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

ARVLE E. MEDLIN, }
 }
 Plaintiff, }
 }
 vs. }
 }
 UNITED STATES OF AMERICA, }
 }
 Defendant. }

No. 91-C-910-C ✓

JUDGMENT

This matter came on for consideration of the defendant's motion for summary judgment. The issues having been duly presented and a decision having been duly rendered in accordance with the Order filed simultaneously herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be entered on behalf of the defendant United States of America and against the plaintiff Arvle E. Medlin.

IT IS SO ORDERED this 7th day of April, 1992.

H. Dale Cook
H. DALE COOK
United States District Judge

FILED

APR -7 1992 *rm*

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

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

ARVLE E. MEDLIN, }
 }
 Plaintiff, }
 }
 vs. }
 }
 UNITED STATES OF AMERICA, }
 }
 Defendant. }

No. 91-C-910-C ✓

ORDER

Before the Court is the motion of the defendant for summary judgment. The motion was filed on February 28, 1992 and no response has been filed. Pursuant to Rule 15 of the Local Rules, the motion is deemed confessed. Nevertheless, the Court has independently reviewed the record.

Plaintiff brings this action for malicious prosecution, arising out of a criminal proceeding against him within this district. As set forth in defendant's motion, and undisputed by plaintiff, the facts of the prior proceeding are that a search warrant was executed against plaintiff's residence on July 24, 1984. Illegal firearms listed on the warrant were seized; however, many items not listed on the warrant were also seized. Plaintiff was indicted by a federal grand jury for receipt of firearm by a

convicted felon and possession of unregistered firearms in Case No. 84-CR-74-E in this judicial district. Plaintiff entered a conditional plea of guilty while contesting the propriety of the search. Ultimately, the evidence was suppressed and the indictment was dismissed with prejudice. Plaintiff now brings the present action, alleging that the prosecution was "wholly unfounded and without just cause" and was conducted because of malice.

Under 28 U.S.C. §1346(b), the elements of a cause of action under the Federal Tort Claims Act are determined by state law. From the Court's review of the record, the Court agrees with defendant that plaintiff has presented no evidence demonstrating lack of probable cause, which is an essential element for establishing malicious prosecution under Oklahoma law. See Lindsey v. Dayton-Hudson Corp., 592 F.2d 1118, 1124 (10th Cir.), cert. denied, 444 U.S. 856 (1979). When a duly constituted grand jury returns an indictment that is valid on its face, it conclusively determines the existence of probable cause. Martinez v. Winner, 548 F.Supp. 278, 320 (D. Colo. 1982). Further, the decision whether or not to prosecute a given individual is a discretionary function for which the United States is immune from liability. Wright v. United States, 719 F.2d 1032, 1035 (9th Cir. 1983). Based upon the record, summary judgment is appropriate.

It is the Order of the Court that the motion of the defendant for summary judgment is hereby granted.

IT IS SO ORDERED this 7th day of April, 1992.


H. DALE COOK
United States District Judge

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

FILED
APR 6 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
Case No. 87MA-977-E

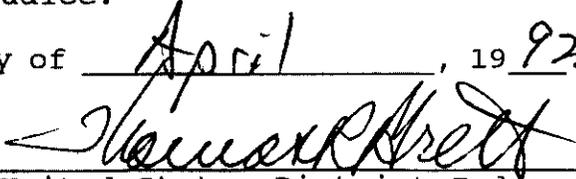
CUNNINGHAM, CHARLES EDWARD, ET AL)
)
Plaintiffs,)
)
v.)
)
Owens Corning Fiberglas Corp., et al)
)
Defendants.)

ADMINISTRATIVE CLOSING ORDER

The defendants, H. K. Porter Co., Inc., Eagle-Picher Industries, Inc., Celotex Corporation, and Raymark Industries, Inc. having filed their petitions in bankruptcy and these proceedings being stayed thereby, and settlement or dismissal having been attained as to the remaining defendants, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

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

IT IS SO ORDERED this 10th day of April, 1992.


United States District Judge
for Joe

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

FILED

APR 6 1992

BALLENGER, LEONARD, ET AL,
Plaintiffs,
v.
Fibreboard Corporation, et al,
Defendants.

) Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

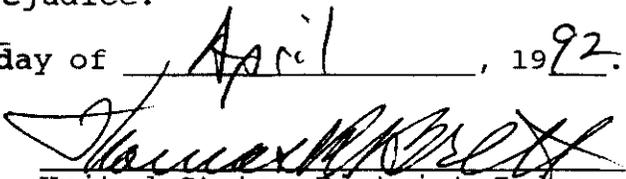
Case No. 88-C-209-E

ADMINISTRATIVE CLOSING ORDER

The defendants, H. K. Porter Co., Inc., Eagle-Picher Industries, Inc., Celotex Corporation, and Raymark Industries, Inc. having filed their petitions in bankruptcy and these proceedings being stayed thereby, and settlement or dismissal having been attained as to the remaining defendants, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

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

IT IS SO ORDERED this 6th day of April, 1992.


United States District Judge

Joe Joe

FILED

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

APR 6 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

COLE, BONNIE JEAN, ET AL)	
)	
Plaintiffs,)	
)	
v.)	Case No. 88-C-641-E
)	
Fibreboard Corporation, et al,)	
)	
Defendants.)	

ADMINISTRATIVE CLOSING ORDER

The defendants, H. K. Porter Co., Inc., Eagle-Picher Industries, Inc., Celotex Corporation, and Raymark Industries, Inc. having filed their petitions in bankruptcy and these proceedings being stayed thereby, and settlement or dismissal having been attained as to the remaining defendants, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

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

IT IS SO ORDERED this 6th day of April, 1992.

Thomas R. Breaux

United States District Judge
Joe Joe

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

FILED

APR - 6 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

WTG-WEST, INC.,

Plaintiff(s),

vs.

No. 90-C-661-B

ATLAS-GEST CORP.,

Defendant(s).

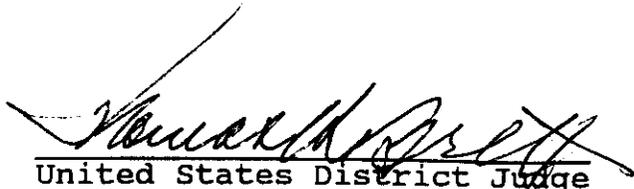
**JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT**

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 6th day of April, 1992.


United States District Judge
THOMAS R. BRETT

87

FILED
IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA APR 6 1992

Richard M. Lawrence, Clerk
 U. S. DISTRICT COURT
 NORTHERN DISTRICT OF OKLAHOMA

STOCKTON, DON AUSTIN, ET AL)
)
)
)
 v.)
)
 Fibreboard Corporation, et al,)
)
)
)

Case No. 88-C-108-E

ADMINISTRATIVE CLOSING ORDER

The defendants, H. K. Porter Co., Inc., Eagle-Picher Industries, Inc., Celotex Corporation, and Raymark Industries, Inc. having filed their petitions in bankruptcy and these proceedings being stayed thereby, and settlement or dismissal having been attained as to the remaining defendants, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

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

IT IS SO ORDERED this 6th day of April, 1992.

Stewart B. ...
 United States District Judge
Jan / Joe

FILED

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

APR 6 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

RAMSEY, IVA, ET AL)
)
 Plaintiffs,)
)
 v.)
)
 Fibreboard Corporation, et al,)
)
 Defendants.)

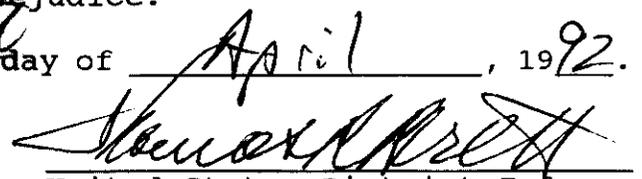
Case No. 88-C-106-E

ADMINISTRATIVE CLOSING ORDER

The defendants, H. K. Porter Co., Inc., Eagle-Picher Industries, Inc., Celotex Corporation, and Raymark Industries, Inc. having filed their petitions in bankruptcy and these proceedings being stayed thereby, and settlement or dismissal having been attained as to the remaining defendants, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

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

IT IS SO ORDERED this 6th day of April, 1992.


United States District Judge
For Joe

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

FILED
APR 6 1992
THOMAS M. LAWRENCE, CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

OSBORN, CHESTER, ET AL)
)
 Plaintiffs,)
)
 v.)
)
 Fibreboard Corporation, et al,)
)
 Defendants.)

Case No. 88-C-105-E

ADMINISTRATIVE CLOSING ORDER

The defendants, H. K. Porter Co., Inc., Eagle-Picher Industries, Inc., Celotex Corporation, and Raymark Industries, Inc. having filed their petitions in bankruptcy and these proceedings being stayed thereby, and settlement or dismissal having been attained as to the remaining defendants, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

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

IT IS SO ORDERED this 6th day of April, 1992.

Thomas M. Lawrence
United States District Judge
for Joe

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DELMAR MACK; SHERRY MACK;
SECURITY PACIFIC FINANCE CORP.
OF IOWA, an Iowa Corporation;
STATE OF OKLAHOMA ex rel.
OKLAHOMA TAX COMMISSION;
LONGVIEW LAKE ASSOCIATION, INC.;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

APR 1992
CIVIL ACTION NO. 91-C-687-B

CIVIL ACTION NO. 91-C-687-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2nd day
of April, 1992. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Wyn Dee Baker, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, State of
Oklahoma ex rel. Oklahoma Tax Commission, appears not, having
previously filed its Disclaimer; the Defendant, Longview Lake
Association, Inc., appears by its attorney Mark G. Robb; and the
Defendants, Delmar Mack, Sherry Mack, and Security Pacific
Finance Corp. of Iowa, an Iowa Corporation, appear not, but make
default.

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

The Court being fully advised and having examined the court file finds that the Defendant, Sherry Mack, acknowledged receipt of Summons and Complaint on September 17, 1991; that the Defendant, Security Pacific Finance Corp. of Iowa, an Iowa Corporation, acknowledged receipt of Summons and Complaint on October 21, 1991; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on September 5, 1991; that the Defendant, Longview Lake Association, Inc., acknowledged receipt of Summons and Complaint on September 6, 1991; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on September 6, 1991; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on September 5, 1991.

The Court further finds that the Defendant, Delmar Mack, was 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 December 12, 1991, and continuing through January 16, 1992, 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 Defendant, Delmar Mack, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant 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 address of the Defendant, Delmar Mack. 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 Wyn Dee Baker, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his present or last known place of residence and/or mailing address. 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 Defendant 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 September 25, 1991; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Disclaimer on September 25, 1991; that the Defendant, Longview Lake Association, Inc., filed its Answer on October 2, 1991; and that the Defendants, Delmar Mack, Sherry Mack, and Security Pacific Finance Corp. of Iowa, an Iowa 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 TWENTY-SIX (26), BLOCK SIX (6), LONGVIEW LAKE ESTATES BLOCKS 1 THRU 14 INCLUSIVE, AN ADDITION IN TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

The Court further finds that on May 6, 1986, the Defendants, Delmar Mack and Sherry Mack, executed and delivered to FirstTier Mortgage Co. their mortgage note in the amount of \$64,600.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Delmar Mack and Sherry Mack, executed and delivered to FirstTier Mortgage Co. a real estate mortgage dated May 6, 1986. Said mortgage was recorded on May 8, 1986, in Book 4941, Page 676, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 31, 1987, FirstTier Mortgage Co. assigned the above-described mortgage to Leader Federal Savings & Loan Association by Assignment of Mortgage/Deed of Trust, recorded on September 22, 1987, in Book 5053, Page 461 in the records of Tulsa County, Oklahoma. On August 16, 1990, Leader Federal Savings & Loan Association

assigned its interest in the subject property to the Secretary of Veterans Affairs by Assignment of Mortgage of Real Estate, recorded on August 21, 1990, in Book 5272, Page 163 in the records of Tulsa County, Oklahoma, and also by Assignment of Real Estate Mortgage dated January 25, 1990, and recorded on January 24, 1991, in Book 5300, Page 1343 in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Delmar Mack and Sherry Mack, 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, Delmar Mack and Sherry Mack, are indebted to the Plaintiff in the principal sum of \$62,517.79, plus interest at the rate of 9.5 percent per annum from October 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$293.90 (\$20.00 docket fees, \$273.90 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 Defendant, Security Pacific Finance Corp. of Iowa, an Iowa Corporation, is in default and has no right, title or interest in the subject real property.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, disclaims any right, title or interest in the subject real property.

The Court further finds that the Defendant, Longview Lake Association, Inc., has a lien on the property which is the subject matter of this action in the amount of \$234.00 by virtue of a Statement of Lien, dated September 6, 1990, and recorded on September 6, 1990, in Book 5275, Page 516 in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Delmar Mack in rem and Sherry Mack in personam, in the principal sum of \$62,517.79, plus interest at the rate of 9.5 percent per annum from October 1, 1990 until judgment, plus interest thereafter at the current legal rate of 4.58 percent per annum until paid, plus the costs of this action in the amount of \$293.90 (\$20.00 docket fees, \$273.90 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, Longview Lake Association, Inc., have and recover judgment in the amount of \$234.00 by virtue of a Statement of Lien, dated September 6, 1990, and recorded on September 6, 1990, in Book 5275, Page 516 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Security Pacific Finance Corp. of Iowa, an Iowa Corporation; State of Oklahoma ex rel. Oklahoma Tax Commission; County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Delmar Mack and Sherry Mack, to satisfy the in rem and in personam 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 according to Plaintiff's election with or without 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 Defendant, Longview Lake Association, Inc.

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

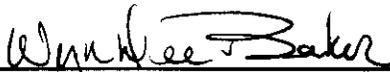
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

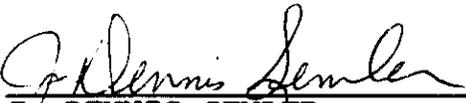
S/ THOMAS R. BRETT.

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


WYN DEE BAKER, OBA #465
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


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


MARK G. ROBB, OBA #11489
Attorney for Defendant,
Longview Lake Association, Inc.

Judgment of Foreclosure
Civil Action No. 91-C-687-B

WDB/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REBA MOSES; GENERAL MOTORS
ACCEPTANCE CORPORATION;
MOUNTAIN STATES FINANCIAL
RESOURCES CORPORATION; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

APR 01 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 90-C-869-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2nd day
of April, 1992. 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; the Defendant, General Motors Acceptance Corporation,
appears by its attorney Brian J. Rayment; and the Defendants,
Reba Moses and Mountain States Financial Resources Corporation,
appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, Reba Moses, was served with
Summons and Amended Complaint on September 16, 1991; that the
Defendant, Mountain States Financial Resources Corporation,
acknowledged receipt of Summons and Amended Complaint on
August 19, 1991; that Defendant, County Treasurer, Tulsa County,

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Oklahoma, acknowledged receipt of Summons and Complaint on October 16, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 15, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on November 1, 1990; that the Defendant, General Motors Acceptance Corporation, filed its Answer, Counter-Claim and Cross-Claim on September 23, 1991; and that the Defendants, Reba Moses and Mountain States Financial Resources 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 Thirty (30), Block Forty-one (41), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat, less the easterly 26 feet thereof.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of Clifford Moses a/k/a Clifford W. Moses and of judicially terminating joint tenancy of Clifford Moses a/k/a Clifford W. Moses and Reba Moses.

The Court further finds that Clifford Moses a/k/a Clifford W. Moses (hereinafter referred to by either of these names) and Reba Moses became the record owners of the real

property involved in this action by virtue of that certain Warranty Deed dated September 23, 1977, from Max Cleland as Administrator of Veterans Affairs, to Clifford Moses and Reba Moses, husband and wife, as joint tenants, and not as tenants in common, with full right of survivorship, the whole estate to vest in the survivor in the event of the death of either, which Warranty Deed was filed of record on September 26, 1977, in Book 4285, Page 1631, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that on September 24, 1977, Clifford Moses and Reba Moses 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 \$14,950.00, payable in monthly installments, with interest thereon at the rate of eight and one-half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Clifford Moses and Reba Moses 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 September 24, 1977, covering the above-described property. Said mortgage was recorded on September 26, 1977, in Book 4285, Page 1659, in the records of Tulsa County, Oklahoma.

The Court further finds that Clifford W. Moses died on July 18, 1984. Upon the death of Clifford W. Moses, the subject property vested in his surviving joint tenant, Reba Moses, by operation of law.

The Court further finds that the Defendant, Reba Moses, 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, Reba Moses, is indebted to the Plaintiff in the principal sum of \$12,890.02, plus interest at the rate of 8.5 percent per annum from March 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$30.32 (\$20.00 docket fees, \$10.32 fees for service of Summons and Complaint).

The Court further finds that Plaintiff is entitled to a judicial determination of the death of Clifford W. Moses and to a judicial termination of the joint tenancy of Clifford Moses and Reba Moses.

The Court further finds that the Defendant, General Motors Acceptance Corporation, has a lien on the property which is the subject matter of this action in the amount of \$5,125.72 with interest thereon at the statutory rate per annum from the date of judgment, costs accrued and accruing, and an attorney's fee by virtue of a Journal Entry of Judgment entered February 9, 1990 in the District Court in and for Tulsa County, State of Oklahoma, and filed of record with the County Clerk of Tulsa County on February 9, 1990, in Book 5236, Page 567. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Mountain States Financial Resources Corporation, is in default and therefore has no right, title or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the death of Clifford W. Moses be and the same is hereby judicially determined to have occurred on July 18, 1984, in the City of Tulsa, County of Tulsa, State of Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the joint tenancy of Clifford Moses and Reba Moses in the above-described real property be and the same is hereby judicially terminated as of the date of the death of Clifford W. Moses on July 18, 1984.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Reba Moses, in the principal sum of \$12,890.12, plus interest at the rate of 8.5 percent per annum from March 1, 1989 until judgment, plus interest thereafter at the current legal rate of 4.58 percent per annum until paid, plus the costs of this action in the amount of \$30.32 (\$20.00 docket fees, \$10.32 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, General Motors Acceptance Corporation, have and recover judgment in the amount of \$5,125.72 with interest thereon at the statutory rate per annum from the date of judgment, costs accrued and accruing, and an attorney's fee by virtue of a

Journal Entry of Judgment entered February 9, 1990 in the District Court in and for Tulsa County, State of Oklahoma, and filed of record with the County Clerk of Tulsa County on February 9, 1990, in Book 5236, Page 567.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Reba Moses, 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 according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

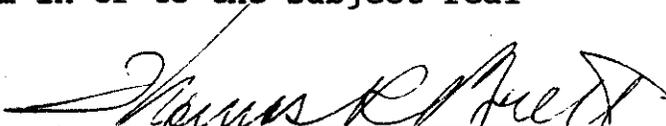
In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the judgment rendered herein in favor of the Defendant, General Motors Acceptance Corporation.

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


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


BRIAN J. RAYMENT, OBA #7441
Attorney for Defendant,
General Motors Acceptance Corporation

Judgment of Foreclosure
Civil Action No. 90-C-869-B

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT J. HOKIT a/k/a ROBERT)
 JOE HOKIT; CHERI DAWN HOKIT;)
 UNION MORTGAGE COMPANY, INC.;)
 COUNTY TREASURER, Mayes)
 County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Mayes County, Oklahoma,)
)
 Defendants.)

FILED
APR 2 1992
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-083-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2nd day of April, 1992. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney; and the Defendants, Robert J. Hokit a/k/a Robert Joe Hokit, Cheri Dawn Hokit, Union Mortgage Company, Inc., County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Robert J. Hokit a/k/a Robert Joe Hokit, acknowledged receipt of Summons and Complaint on February 5, 1992; that the Defendant, Cheri Dawn Hokit, acknowledged receipt of Summons and Complaint on February 5, 1992; that the Defendant, Union Mortgage Company, Inc., acknowledged receipt of Summons and Complaint on February 4, 1992; that Defendant, County Treasurer, Mayes County, Oklahoma,

NOTE: THIS DOCUMENT IS TO BE MAILED BY THE CLERK OF COURT AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

acknowledged receipt of Summons and Complaint on March 2, 1992; and that Defendant, Board of County Commissioners, Mayes County, Oklahoma, acknowledged receipt of Summons and Complaint on February 25, 1992.

It appears that the Defendants, Robert J. Hokit a/k/a Robert Joe Hokit, Cheri Dawn Hokit, Union Mortgage Company, Inc., County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on April 16, 1991, Robert Joe Hokit and Cheri Dawn Hokit filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 91-01271-W, and the debtors were discharged on August 6, 1991, and the case was closed on September 26, 1991.

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

The South Thirty (30) feet of Lot Numbered Fourteen (14) and the North Fifty (50) feet of Lot Numbered Fifteen (15) in Block Numbered Two (2) of the Gore Addition No. 1, to the Town of Chouteau, Mayes County, State of Oklahoma, according to the official survey and plat thereof.

The Court further finds that on June 13, 1989, the Defendants, Robert J. Hokit and Cheri Dawn Hokit, 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 \$30,000.00, payable in monthly installments, with interest thereon at the rate of 10 percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Robert J. Hokit and Cheri Dawn Hokit, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated June 13, 1989, covering the above-described property. Said mortgage was recorded on June 13, 1989, in Book 702, Page 169, in the records of Mayes County, Oklahoma.

The Court further finds that the Defendants, Robert J. Hokit a/k/a Robert Joe Hokit and Cheri Dawn Hokit, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Robert J. Hokit a/k/a Robert Joe Hokit and Cheri Dawn Hokit, are indebted to the Plaintiff in the principal sum of \$29,758.74, plus interest at the rate of 10 percent per annum from December 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$28.00 (\$20.00 docket fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, Robert J. Hokit a/k/a Robert Joe Hokit, Cheri Dawn Hokit, Union Mortgage

Company, Inc., County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, are in default and 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, Robert J. Hokit a/k/a Robert Joe Hokit and Cheri Dawn Hokit, in the principal sum of \$29,758.74, plus interest at the rate of 10 percent per annum from December 1, 1990 until judgment, plus interest thereafter at the current legal rate of 4.58 percent per annum until paid, plus the costs of this action in the amount of \$28.00 (\$20.00 docket fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Robert J. Hokit a/k/a Robert Joe Hokit, Cheri Dawn Hokit, Union Mortgage Company, Inc., County Treasurer and Board of County Commissioners, Mayes 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, according to Plaintiff's election with or without appraisal, the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

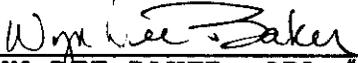
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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

ST. THOMAS R. PRETT

UNITED STATES DISTRICT JUDGE

APPROVED:
TONY M. GRAHAM
United States Attorney


WYN DEE BAKER, OBA #465
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Judgment of Foreclosure
Civil Action No. 92-C-083-B
WDB/esr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 01 1992

Richard E. Jones, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DEROYS DORSEY, JR.; COUNTY
TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 92-C-177-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2nd day
of April, 1992. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendant, Department of Human Services, Child Support
Division, appear not, having previously filed its Disclaimer; the
Defendants, County Treasurer, Tulsa County, Oklahoma, and Board
of County Commissioners, Tulsa County, Oklahoma, appear not,
having previously filed Answers disclaiming any right, title or
interest in the subject property; and the Defendant, Deroys
Dorsey, Jr., appears not, but makes default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Deroys Dorsey, Jr.,
acknowledged receipt of Summons and Complaint on March 2, 1992;
the Defendant, Department of Human Services, Child Support
Division, acknowledged receipt of Summons and Complaint on
March 12, 1992; that Defendant, County Treasurer, Tulsa County,
Oklahoma, acknowledged receipt of Summons and Complaint on

NOTE: THIS DOCUMENT IS FILED
BY THE CLERK OF COURT. PLEASE
PROSE LITIGANTS IMMEDIATELY
UPON RECEIPT.

March 5, 1992; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 3, 1992.

It appears that the Defendant, Department of Human Services, Child Support Division, filed its Disclaimer on March 26, 1992; that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on March 23, 1992; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on March 23, 1992; and that the Defendant, Deroys Dorsey, Jr., has failed to answer and his default has therefore been entered by the Clerk of this Court.

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

Lot Twenty-seven (27), Block Fifty-six (56), VALLEY VIEW ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on September 8, 1982, the Defendant, Deroys Dorsey, Jr., executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$33,000.00, payable in monthly installments, with interest thereon at the rate of 14 percent (14%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Deroys Dorsey, Jr., executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated September 8, 1982, covering the above-described property. Said mortgage was recorded on September 8, 1982, in Book 4636, Page 1889, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Deroys Dorsey, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Deroys Dorsey, Jr., is indebted to the Plaintiff in the principal sum of \$32,974.43, plus interest at the rate of 14 percent per annum from November 1, 1987, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, Department of Human Services, Child Support Division, 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 Defendant, Deroys Dorsey, Jr., is in default and 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 the Defendant, Deroys

Dorsey, Jr., in the principal sum of \$32,974.43, plus interest at the rate of 14 percent per annum from November 1, 1987 until judgment, plus interest thereafter at the current legal rate of 4.58 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Deroys Dorsey, Jr., Department of Human Services, Child Support Division, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Deroys Dorsey, Jr., to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisalment, the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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

ST THOMAS R. DALTY

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


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

Judgment of Foreclosure
Civil Action No. 92-C-177-B

PP/esr

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

THE ABL CORP., a Delaware
corporation,

Plaintiff,

vs.

ADTEL HOSPITALITY SERVICES,
INC., an Oklahoma corporation,
and JAMES ECKHART,

Defendants.

Case No. 91-C-500-B

FILED

Richard M. ... Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

AGREED JUDGMENT

Defendants, Adtel Hospitality Services, Inc. ("Adtel") and James Eckhart, hereby agree to judgment against them, jointly and severally, and in favor of Plaintiff, The ABL Corp. ("ABL"), in the amount of \$205,058.16 plus interest from and after July 3, 1991 on the unpaid principal balance of \$170,105.08 at the rate provided in the Secured Promissory Note attached hereto as Exhibit A, plus ABL's reasonable attorneys' fees and costs incurred herein which amount to \$6,971.67 as of March 24, 1992.

S/...

UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM AND CONTENT:

ADTEL HOSPITALITY SERVICES, INC.

By: *James Eckhart*
President

JAMES ECKHART

James Eckhart
Individually

THE ABL CORP.

By: *John A. Bugg*
John A. Bugg
CONNER & WINTERS,
A Professional Corporation
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiff,
THE ABL CORP.

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

F I L E D

UTICA MUTUAL INSURANCE COMPANY,)
INC.,)
)
Plaintiff,)
)
v.)
)
GATEWAY INSURANCE AGENCY, INC.,)
an Oklahoma corporation; TRI-STATE)
INSURANCE COMPANY, an Oklahoma)
corporation; SILVEY COMPANIES,)
an Oklahoma corporation; JERRY)
WAYNE ROSS; and JUDY ROSS,)
)
Defendants.)

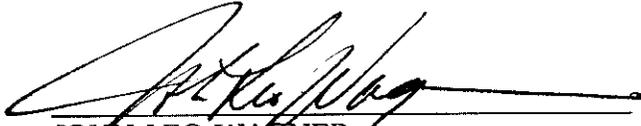
APR - 2 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 91-C-410-B

JUDGMENT

Judgment is hereby entered in favor of Plaintiff and Counter-Claim Defendant, Utica Mutual Insurance Co., Inc., and against Defendant and Counter-Claim Plaintiff Gateway Insurance Agency, Inc., and Defendants Tri-State Insurance Company, Silvey Companies, Jerry Wayne Ross, and Judy Ross, pursuant to the Order filed herein on March 18, 1992. All parties are to bear their own costs and attorney fees.

Dated this 22nd day of April, 1992.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

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

DAVID BRYAN AND MARY JUDITH EAKIN,)
individually and as husband and wife,)
)
Plaintiffs,)

vs.)

BLUE CROSS AND BLUE SHIELD)
OF OKLAHOMA, an Oklahoma)
corporation, individually and)
as Administrators of Health)
Insurance Coverage for)
TEFCO LITHOGRAPHERS, INC.,)
)
Defendant.)

APR 1 1992

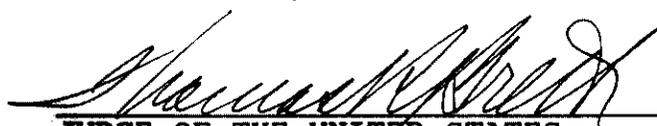
Case No. 90-C-552-B

ORDER DISMISSING ACTION WITH PREDJUDICE

This cause having come on before this Court upon application by Plaintiffs, David Bryan and Mary Judith Eakin, individually and as husband and wife, and Defendant, Blue Cross and Blue Shield of Oklahoma, an Oklahoma corporation, individually and as Administrators of Health Insurance Coverage for Tefco Lithographers, Inc., to dismiss this action with prejudice, due to settlement, and it appearing to the Court that such application should be granted, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the claims and causes of action of Plaintiffs are dismissed with prejudice as to Defendant, Blue Cross and Blue Shield of Oklahoma, an Oklahoma corporation, individually and as Administrators of Health Insurance Coverage for Tefco Lithographers, Inc., with each party bearing its own cost.

So ordered this 1st day of Apr., 1992.



JUDGE OF THE UNITED STATES
DISTRICT COURT

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

MAR -1 1992

BONNEVILLE LIFE INSURANCE COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 GERALD J. ECOFF, Individually, and)
 INVESTORS LIFE INSURANCE COMPANY)
 OF NEBRASKA,)
)
 Defendants.)

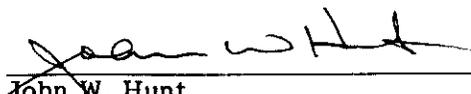
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

Case No. 91-C-179-B

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

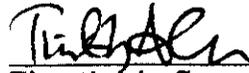
Plaintiff, Bonneville Life Insurance Company ("Bonneville") and Defendants, Investors Life Insurance Company of Nebraska ("Investors") and Gerald Ecoff ("Ecoff"), by and through their respective attorneys, pursuant to Federal Rule of Civil Procedure 41(a)(1), jointly stipulate for the Dismissal with Prejudice of all claims asserted by Bonneville against Investors or Ecoff in this litigation, or which Bonneville could have asserted in this litigation.

This Dismissal with Prejudice is in consideration for, and made by reason of, a settlement and the execution of certain General Release and Indemnification Agreement entered into by Bonneville, Investors and Ecoff, which specifically sets forth the respective covenants of the parties. As part of the Release, Bonneville shall bear its own attorney fees, expenses and costs incurred in connection with this action.



John W. Hunt
HOWARD & WIDDOWS
2021 S. Lewis, Suite 570
Tulsa, Oklahoma 74104

ATTORNEYS FOR PLAINTIFF,
BONNEVILLE LIFE INSURANCE
COMPANY



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

ATTORNEYS FOR DEFENDANT,
INVESTORS LIFE INSURANCE
COMPANY OF NEBRASKA



Lynn A. Mundell
GULLEKSON & DANIELS
111 W. 5th Street, Suite 430
Tulsa, Oklahoma 74103

ATTORNEYS FOR DEFENDANT,
GERALD ECOFF

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

FILED

APR 1 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STEVEN LEE GAGHINS,)
)
Petitioner,)
)
v.)
)
L. L. YOUNG and THE)
ATTORNEY GENERAL OF THE)
STATE OF OKLAHOMA,)
)
Respondents.)

92-C-239-B

ORDER

The Court having examined petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 finds as follows:

(1) That the petitioner is presently a prisoner in the custody of the respondents at John Lilley Correctional Center, Boley, Okfuskee County, Oklahoma, which is located within the territorial jurisdiction of the Eastern District of Oklahoma.

(2) That the petitioner demands his release from such custody and as grounds therefore alleges he is being deprived of his liberty in violation of rights under the Constitution of the United States.

(3) In the furtherance of justice this case should be transferred to the United States District Court for the Eastern District of Oklahoma.

IT IS THEREFORE ORDERED:

(1) Pursuant to the authority contained in 28 U.S.C. § 2241(d) and in the exercise of discretion allocated to the Court, this cause is hereby transferred to the United States District Court for the Eastern District of Oklahoma for all further proceedings.

(2) The Clerk of this Court shall mail a copy of this Order to the petitioner.

Dated this 1st day of April, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE