

ENTERED ON DOCKET

DATE 5-20-92

F I L E D

MAY 20 1992

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

JBS/MLP

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

JEAN F. TRIGALET, PERSONAL REPRESENTATIVE OF)
THE ESTATE OF MARTHA ANNETTE TRIGALET,)
PLAINTIFF,)

VS.)

CITY OF TULSA, OKLAHOMA, A MUNICIPAL)
CORPORATION, ET AL., DEFENDANTS.)

CASE No. 92-C-369-E

DISMISSAL OF ADDITIONAL DEFENDANTS GROUP II

PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE, RULE 41,
PLAINTIFF DISMISSES ADDITIONAL DEFENDANTS GROUP II, THE CITY COMMISSION
OR COUNCIL MEMBERS OF THE CITY OF TULSA FOR YEARS 1985 THROUGH 1990,

NAMELY:

DIST. 1 - B.S. ROBERTS

DIST. 2 - DARLA HALL

DIST. 3 - DOROTHY DEWITTY

DIST. 4 - GARY WATTS

DIST. 5 - ROBERT NELSON

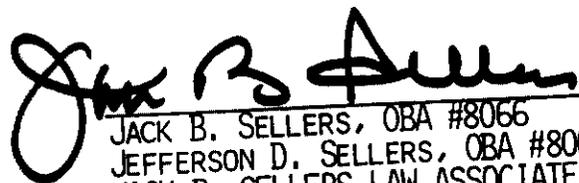
DIST. 6 - JAMES HOGUE, SR.

DIST. 7 - JOHN BENJAMIN

DIST. 8 - RICHARD POLISHUK

DIST. 9 - DEWEY BARTLETT, JR.

DATED MAY 20, 1992.



JACK B. SELLERS, OBA #8066
JEFFERSON D. SELLERS, OBA #8068
JACK B. SELLERS LAW ASSOCIATES, INC.
P.O. Box 730
SAPULPA, OKLAHOMA 74067-0730
(918) 224-9070

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE

I CERTIFY THAT ON THIS MAY 20, 1992, I MAILED COPY OF THE ABOVE AND FOREGOING DISMISSAL TO:

DAVID PAULING
ASSISTANT CITY ATTORNEY
316 CITY HALL
200 CIVIC CENTER
TULSA, OK 74103

MR. MERL A. WHITEBOOK
ATTORNEY FOR JAMES HOGUE, SR.
AND RICHARD POLISHUK
2431 EAST 51ST STREET
TULSA, OK 74105

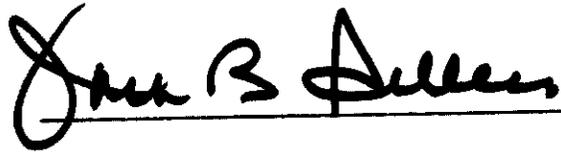
B.S. ROBERTS
541 E. LATIMER PL.
TULSA, OK 74106

DOROTHY DEWITTY
2415 N. WHEELING
TULSA, OK 74110

GARY WATTS
1564 S. GILLETTE
TULSA, OK 74104

JOHN BENJAMIN
6030 S. LAKEWOOD
TULSA, OK 74135

DEWEY BARTLETT, JR.
1208 E. 26TH ST.
TULSA, OK 74114



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

FILED

MAY 19 1992

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

RONALD E. HENDERSON,)
)
Plaintiff,)
)
vs.)
)
INTER-CHEM COAL CO., INC.)
)
Defendant.)

Case No. 91-C-513-E
(Consolidated Case)

ENTERED ON DOCKET

DATE 5-20-92

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

RONALD E. HENDERSON,)
)
Plaintiff,)
)
vs.)
)
NATIONWIDE MINING, INC.,)
et al.,)
Defendants.)

Case No. 91-C-825-E

ORDER AND JUDGMENT

On this 8th day of May, 1992, came on before this Court, during the normal setting for the Pre-trial Conference, Defendants' Motion for Summary Judgment.

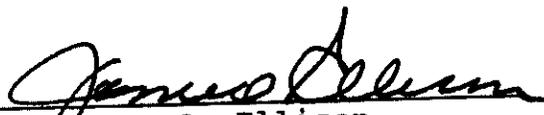
Upon reviewing the Motion, Response, Reply, Briefs, attached exhibits, and all other material on file, and after hearing oral argument from both counsel, and being fully advised in the premises, this Court finds as follows:

1. Defendants met the burden established under Celotex Corp v. Catrett, 477 U.S. 317, 91 L.Ed. 2d 265, 106 S.G. 2548 (1986) and accordingly, Defendants' Motion For Summary judgment is sustained.

2. Plaintiff is an independent contractor as defined by the criteria set forth in Doty vs. Elias, 733 F.2d 20 (10th Cir. 1984), inasmuch as the undisputed material facts support such a finding.

3. Summary Judgment should be granted in favor of all Defendants against Plaintiff on all causes of action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Motion for Summary Judgment of all Defendants be, and hereby is, granted in all respects as to all causes of action.



Judge James O. Ellison
United States District Judge

APPROVED AS TO FORM AND CONTENT:



David W. Mills P.C. OBA #11678
46 East 16th Street
Tulsa, Oklahoma 74119
(918) 583-4484

Attorney for Defendants

Stephen R. Hickman
1700 Southwest Boulevard
Suite 100
P.O. Box 799
Tulsa, Oklahoma 74101

Attorney for Plaintiff

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

FILED

MAY 19 1992 *HL*

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

ROBERT E. COTNER, et al.,)
)
Plaintiffs,)
)
vs.)
)
LARRY FUGATE, et al.,)
)
Defendants.)

No. 92-C-64-E

ORDER AND JUDGMENT

Comes now before the Court for its consideration Lantz McClain's, District Attorney for the 24th Judicial District of the State of Oklahoma, Creek and Okfuskee Counties motion to dismiss Plaintiff's complaint pursuant to Rule 12(b) F.R.C.P.

After review of the pleadings and for good cause shown the Court finds Defendant's motion should be granted.

In granting said motion the Court relies on F.R.C.P. Rule 4(c)(2)(a) which provides:

A summons and complaint shall, except as provided in subparagraphs (B) and (C) of this paragraph, be served by any person who is not a party and is not less than 18 years of age.

Accordingly, Plaintiff Cotner's hand-delivered service on Max Cook and Larry Fugate was insufficient under F.R.C.P. Rule 4(c)(2)(a).

IT IS THEREFORE ORDERED that Defendant's motion to dismiss Plaintiff's complaint is hereby granted.

So ORDERED this 19th day of May, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

FILED

MAY 19 1992

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

ROBERT E. COTNER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 LARRY FUGATE, et al.,)
)
 Defendants.)

No. 92-C-64-E

ORDER AND JUDGMENT

Comes now before the Court for its consideration and through a special appearance on behalf of Governor David Walters and the State of Oklahoma, the Attorney General of the State of Oklahoma's objection to the service of process rendered in this case on the grounds that the service of process was insufficient.

Fed.R.Civ.P. 4(d)(6) provides that service shall be made:

Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

The law of the State of Oklahoma provides, in 12 O.S. 1991, §2004(C)(1)(c)(5), that service shall be made:

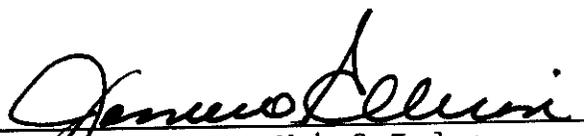
Upon a state, county, school district, public trust or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the petition to the officer or individual designated by specific statute; however, if there is no statute, then upon the chief

executive officer or a clerk, secretary, or other official whose duty it is to maintain the official records of the organization.

The Court finds that all three summons, addressed to the State of Oklahoma and for "unknown persons" to the Attorney General's office, were mailed without a complaint; hence, insufficient service under Fed.R.Civ.P. 4(d)(6) and 12 O.S. 1991, §2004(C)(1)(c)(5).

IT IS THEREFORE ORDERED that Defendant's motion to dismiss on behalf of Defendant Walters and the State of Oklahoma is hereby granted.

So ORDERED this 19th day of May, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

DATE 5-20-92

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

FILED

MAY 19 1992

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

ANITA SUE WHITETURKEY,

Plaintiff,

vs.

Case No. 91-C-871-E

PHILLIPS PETROLEUM COMPANY
LONG-TERM DISABILITY PLAN
NO. 507,

Defendant.

DISMISSAL WITH PREJUDICE

Upon the stipulation of all the parties, the above-styled
action is dismissed with prejudice.


United States District Judge

David B. McKinney
Of BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
(918) 583-1777

ATTORNEYS FOR DEFENDANT

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

FILED
MAY 19 1992

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

RONALD E. HENDERSON,)
)
Plaintiff,)
)
vs.)
)
INTER-CHEM COAL CO., INC.)
)
Defendant.)

Case No. 91-C-513-E
(Consolidated Case)

ENTERED ON DOCKET
DATE 5-20-92

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

RONALD E. HENDERSON,)
)
Plaintiff,)
)
vs.)
)
NATIONWIDE MINING, INC.,)
et al.,)
Defendants.)

Case No. 91-C-825-E ✓

ORDER AND JUDGMENT

On this 8th day of May, 1992, came on before this Court, during the normal setting for the Pre-trial Conference, Defendants' Motion for Summary Judgment.

Upon reviewing the Motion, Response, Reply, Briefs, attached exhibits, and all other material on file, and after hearing oral argument from both counsel, and being fully advised in the premises, this Court finds as follows:

1. Defendants met the burden established under Celotex Corp v. Catrett, 477 U.S. 317, 91 L.Ed. 2d 265, 106 S.G. 2548 (1986) and accordingly, Defendants' Motion For Summary judgment is sustained.

2. Plaintiff is an independent contractor as defined by the criteria set forth in Doty vs. Elias, 733 F.2d 20 (10th Cir. 1984), inasmuch as the undisputed material facts support such a finding.

3. Summary Judgment should be granted in favor of all Defendants against Plaintiff on all causes of action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Motion for Summary Judgment of all Defendants be, and hereby is, granted in all respects as to all causes of action.



Judge James O. Ellison
United States District Judge

APPROVED AS TO FORM AND CONTENT:



David W. Mills P.C. OBA #11678
46 East 16th Street
Tulsa, Oklahoma 74119
(918) 583-4484

Attorney for Defendants

Stephen R. Hickman
1700 Southwest Boulevard
Suite 100
P.O. Box 799
Tulsa, Oklahoma 74101

Attorney for Plaintiff

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

CHARLES A. WILKINS,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF TULSA, OKLAHOMA,)
 a municipal corporation,)
 acting by and through the)
 TULSA AREA COUNCIL ON AGING, and)
 TULSA AREA AGENCY ON AGING, and)
 OSAGE COUNTY, OKLAHOMA, acting)
 through the OSAGE COUNTY BOARD OF)
 COMMISSIONERS,)
)
 Defendants.)

91-C-766-B ✓

FILED

MAY 19 1992

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

ORDER

This order pertains to the Motion to Dismiss Submitted on Behalf of Defendant City of Tulsa, Oklahoma, A Municipal Corporation (#7)¹, addressed to Plaintiff's Amended Complaint (Docket #4), and Plaintiff's Brief in Opposition to Defendant City of Tulsa's Motion to Dismiss and Request to Consider the Motion to Dismiss As and For Summary Judgment (#11).

Plaintiff is the former Title III project director of United Community Action Program, Inc. ("UCAP") in Osage County, Oklahoma. UCAP unsuccessfully bid to continue to provide Title III senior citizen contract services in Osage County for the fiscal year 1990-1991. Plaintiff claims UCAP's bid failure resulted from wrongful

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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conduct by defendants, involving a waiver of "substantial provisions of bidding procedures mandated by the Older Americans Act...." Plaintiff contends that defendants acted solely to interfere with his right to continued employment as project director and therefore violated his 5th and 14th Amendment rights. The Osage County Commissioners were awarded the contract on a shared cost and expanded services proposal with Creek County.

UCAP, on its own behalf, administratively appealed defendants' failure to award UCAP the Title III services contract for the fiscal year 1990-1991, and the appeal to the Appeals Unit of the Department of Human Services was denied on June 17, 1991. (See Defendants' Exhibit B). UCAP's second stage administrative appeal to the Director of the Oklahoma Department of Human Services ("DHS") was denied by the Director on September 16, 1991. (See Defendants' Exhibit D). UCAP appealed to the Pawnee County District Court in Case No. CS-91-157 and the court sustained the DHS's Motion to Dismiss on the grounds that there was no judicial review provided for in the Older Americans Act, 42 U.S.C. § 3001 et seq., or Oklahoma statutes.

Defendant City of Tulsa ("Defendant") contends that Plaintiff has no standing to assert a civil rights claim against it, because Plaintiff does not allege that the City was a party to his employment contract or claim that defendants' conduct towards his former employer violated any personal right held by him. Defendant submits that Plaintiff's property interest in continued employment, if any, was governed by his contract with UCAP, and defendant's

conduct toward UCAP had no connection with this private contract. Defendant also argues that the issues raised by Plaintiff have been administratively adjudicated adversely to UCAP, and Plaintiff's lawsuit is barred by the doctrine of issue preclusion.

The court finds that the Motion to Dismiss Submitted on Behalf of Defendant City of Tulsa, Oklahoma, A Municipal Corporation (#7) should be converted to a Motion for Summary Judgment, as matters outside the pleadings must be considered to rule on the issues presented. It appears to the Court that Plaintiff has had ample opportunity and notice to respond to City's Motion To Dismiss or alternatively as a Motion For Summary Judgment.²

"[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 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

² See docket entry #11. Also see minute order entered March 9, 1992, by Magistrate Judge Wagner, indicating parties plan to resolve matter by summary judgment.

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).

Standing is a constitutional doctrine derived from the requirement in Article III of the U. S. Constitution that federal courts decide only actual cases or controversies. Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 37-38 (1976). It limits a court's jurisdiction to cases in which the Plaintiff alleges that he has suffered a particularized injury. In Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464 (1982), the Supreme Court found that "at an irreducible minimum" this equates to an "actual

or threatened injury as a result of the putatively illegal conduct of the defendant' ... 'fairly ... trace[able] to the challenged action' and ... 'likely ... redress[able] by a favorable decision.'" Id. at 472 (citations omitted). Thus injury without traceability and redressability does not satisfy Article III. Also, Plaintiff's complaint must fall within "'the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'" Id. at 475 (citations omitted).

The standing question "is whether the Plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." Warth v. Seldin, 422 U.S. 490, 498-99 (1975) (citation omitted). In cases where the Plaintiff is not the subject of the contested action, the test denies a right of review if his interests are so marginally related to, or inconsistent with, the purposes implicit in the relevant statute that it cannot be assumed the suit is permitted. Clarke v. Securities Indus. Ass'n., 479 U.S. 388, 399 (1987).

"Article III still requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court." Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. at 41-42. "[U]nadorned speculation will not suffice to invoke the federal judicial power." Id. at 44. Plaintiff cannot rely on the remote possibility that

his situation might have been better had defendants acted otherwise. Id. at 44-45. Indirectness of injury, while not necessarily fatal to standing, may make it much more difficult to establish that an injury was the consequence of defendants' actions or that prospective relief will remove the harm. Id.

In Appalachian Agency for Senior Citizens v. Bland, 775 F.Supp. 191 (W.D.Vir. 1991), several non-profit agencies authorized as recipients of funds under Title III of the Older Americans Act ("OAA"), 42 U.S.C. § 3001 et seq., brought suit seeking to enjoin the use of a certain formula for distribution of those funds in Virginia. The standing of several of the agencies was challenged. The court examined the Act and stated:

The OAA of 1965, as amended, was enacted to promote the well-being of all older Americans by providing services and programs designed to help them live independently in their homes and communities. The centerpiece of the OAA is a comprehensive funding system for state and community programs and services established under Title III of the OAA. Under Title III, each state is allotted funds based upon its proportion of the total population in the United States age sixty or older. 42 U.S.C. § 3024(a)(1). Each state designates a state agency ... responsible for developing and administering a two to four year plan implementing the Act's objectives.... The state agency distributes the funds to an area agency on aging ('AAA') in each planning and service area within the state which, in turn, awards subgrants and contracts with local providers for services.

Id. at 193.

The Appalachian Agency court concluded that, since the Act specifically provides that an AAA is to "serve as an advocate and focal point for the elderly within the community" under 42 U.S.C. § 3026(a)(6)(D), an AAA is within the zone of interests protected

by the Act and direct standing is conferred on it. Id. at 195. The Tulsa Area Council on Aging is such an AAA for planning and services for Creek, Osage, and Tulsa Counties in Oklahoma. (See Conclusions of Law #2, Defendant's Exhibit B, Decision of the Appeals Committee Entered June 17, 1991). It had proper standing to bring an action like the one at bar. The Act did not confer standing on an agency providing contractual services to an AAA or an employee of such an agency.

Other courts have considered the question of standing in cases involving loss of jobs when an agency ceases to function. In Pac. Legal Found. v. State Energy Resources, Etc., 659 F.2d 903 (9th Cir. 1981), cert. den. 457 U.S. 1133 (1982), a nuclear power project had been canceled, resulting in the loss of the nuclear engineer's job. The engineer filed suit, alleging that a California statute that was not valid forced the cancellation of the project. He was found to lack standing to challenge the statutory scheme, because there was not "a substantial likelihood" that the nuclear power project would be reinstated even if the statute were found invalid. Id. at 913. The evidence showed the project was not financially feasible. Id. The court concluded: "[I]t is purely speculative whether the remedy [plaintiff] seeks would lead to the redress of his injury." Id.

In addition, the court in Pac. Legal Found. stated: "Although [plaintiff's] affidavit states that the cancellation of Sundesert caused him to lose his job, he had not even alleged, much less proved, that he might get his job back if the Sundesert project

were revived. Only [the operator of the project] could restore Thornberry to his job, and [it] is not a party to this action." Id. Because the solution to Plaintiff's problem depended on decisions by third parties not before the court who could not be the subject of a decree directing that Thornberry be rehired, the court found that Thornberry had no standing. Id. The court noted that if Thornberry had been promised his job back in the event the project was revived, he might have been able to show a substantial likelihood of redress. Id. at 913-914.

In Andrade v. Lauer, 729 F.2d 1475 (D.C.Cir. 1984), former employees brought an action challenging the manner in which a reduction in force of a government agency was accomplished. The court determined that the employees' loss of their jobs constituted a sufficiently direct, concrete, particularized injury to provide them with a personal stake in the outcome of the case and gave them standing to sue. In addition, the court found that the claimed injury was the direct result of the manner in which the government had acted against them and that, if the employees were granted the declaration and injunction sought, their injury would be redressed by reinstatement in their jobs.

Plaintiff does not have standing to assert this civil rights claim against the defendant City of Tulsa. He has no standing under the Older Americans Act. It is purely speculative whether he will be restored to his job by a decision of this court that the bidding procedures that occurred were improper. His employment interest is only marginally related to the bidding procedures

contested. Only UCAP could restore him to his job and UCAP is not a party to this action and would not be the subject of any court order directing a new bidding process to occur. There is no certainty that UCAP would be awarded the contract to provide the senior citizens services for 1990-1991 if the bidding process were redone. Plaintiff is in reality asserting the rights of UCAP in this lawsuit; his injury is only indirectly related to defendant's alleged conduct.

In United States v. Utah Construction & Mining Co., 384 U.S. 394, 422 (1966), the Supreme Court found that "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." Utah Construction was subsequently approved in Kremer v. Chemical Construction Co., 456 U.S. 461, 484-85, n.26 (1982).

The Supreme Court commented on these decisions in University of Tennessee v. Elliott, 478 U.S. 788, 798 (1986), saying they taught "that giving preclusive effect to administrative factfinding serves the value underlying general principles of collateral estoppel: enforcing repose. This value, which encompasses both the parties' interest in avoiding the cost and vexation of repetitive litigation and the public's interest in conserving judicial resources ... is equally implicated whether factfinding is done by a federal or state agency." (citations omitted). The Court concluded that when parties had an adequate opportunity to litigate

disputed issues of fact before a state agency acting in a judicial capacity, "federal courts must give the agency's factfinding the same preclusive effect to which it would be entitled in the State's courts." Id. at 799.

Under Oklahoma law, an administrative adjudication is given preclusive effect unless pursuit of a related claim in another tribunal will not disturb the "scheme of remedies" afforded by the administrative tribunal. Bostwick v. Atlas Iron Masters, Inc., 780 P.2d 1184, 1186 (Okla.Ct.App. 1988) (citing Dority v. Green Country Castings Corporation, 727 P.2d 1355, 1360 (Okla. 1986)).

The court finds that the protections of procedures provided by state law were sufficient to protect Plaintiff's constitutional rights. UCAP had an adequate opportunity to litigate the issues involved here before the State Department of Human Resources Appeals Unit acting in a judicial capacity. This decision was reviewed by the Director of the Oklahoma DHS. This court must give the decision of the Appeals Unit the same preclusive effect to which it would be entitled in the State's courts. The Pawnee County District Court has refused to review the administrative decision. Under Oklahoma law, pursuit of this federal claim is precluded since the equitable relief sought would disturb the "scheme of remedies" afforded by the administrative procedures and appeals regulations adopted by the Oklahoma DHS. No federal juridical review has been provided for in the Older Americans Act.

The Motion to Dismiss Submitted on Behalf of Defendant City of Tulsa, Oklahoma, A Municipal Corporation (#7), is converted to a

Motion for Summary Judgment. Defendant City of Tulsa's Motion for Summary Judgment should be and the same is hereby GRANTED.

It appears to the Court the arguments as to the standing to sue of Plaintiff would be arguably applicable to the remaining Defendant, Board of County Commissioners of Osage County. The Court will defer entry of Judgment for and or behalf of the City of Tulsa until final Judgment herein.

The parties are ordered to adhere to the following schedule:

(May 28, 1992)	EXCHANGE THE NAMES AND ADDRESSES OF ALL WITNESSES, INCLUDING EXPERTS, IN WRITING, ALONG WITH A BRIEF STATEMENT REGARDING EACH WITNESS' EXPECTED TESTIMONY (NOT NECESSARY IF WITNESS' DEPOSITION TAKEN)
(June 12, 1992)	COMPLETE ALL DISCOVERY
(June 15, 1992)	FILE ANY DISPOSITIVE MOTIONS
(August 3, 1992)	FILE AN AGREED PRETRIAL ORDER AND EXCHANGE ALL PRENUMBERED EXHIBITS
(August 10, 1992)	FILE REQUESTED VOIR DIRE, REQUESTED INSTRUCTIONS AND ANY TRIAL BRIEFS
(August 17, 1992)	JURY TRIAL AT 9:30 A.M.

IT IS SO ORDERED this 19 day of May, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE MAY 20 1992

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

FILED

ALFRED TAYLOR,)
)
 Plaintiff,)
)
 v.)
)
 THE HARVEST LIFE INSURANCE)
 COMPANY, an Ohio corporation,)
)
 Defendant.)

MAY 20 1992

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

Case No. 91-C-796C

ORDER GRANTING DISMISSAL WITH PREJUDICE

Upon stipulation and motion of the parties, it is hereby ordered, adjudged and decreed that this case is dismissed with prejudice to the bringing of another action pursuant to Federal Rule of Civil Procedure 41(a), with each party to bear its own costs.

ORDERED this 20 day of May, 1992.

s/H. DALE COOK
UNITED STATES DISTRICT JUDGE

RECEIVED BY DOCKET
MAY 20 1992

FILED

MAY 20 1992

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

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

DON GIBSON, d/b/a SUPERIOR
BUILDING MAINTENANCE,

Plaintiffs,

vs.

FIRST GIBRALTAR BANK, F.S.B.
San Antonio, incorporated under
the laws of the United States,
d/b/a SOONER FEDERAL, a division
of First Gibraltar Bank, F.S.B.
San Antonio,

Defendants,

and

RESOLUTION TRUST CORPORATION
as receiver of Sooner Federal
Savings and Loan Association,

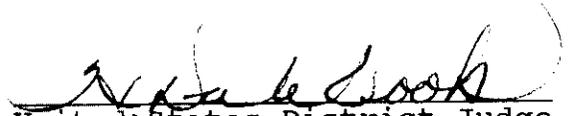
Additional Party Defendant.

Case No. 91-C-441-C

ORDER

Based on the Joint Stipulation for Dismissal With Prejudice
filed by the parties to this action, this case is hereby dismissed
with prejudice, each party to bear its own costs.

Dated this 20 day of May, 1992.


United States District Judge

ENTERED ON DOCKET

DATE 5-20-92

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

FILED

MAY 20 1992

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

RANDY EUGENE MAXVILLE and
MARY ELAINE MAXVILLE,
individually and as husband
and wife,

Plaintiffs,

vs.

Case No. 91-C-278-E

CARROL BALL TRUCKING COMPANY,
a Kansas Company; EDWARD J.
HAINEN, an individual; and,
CLARENDON NATIONAL INSURANCE
COMPANY, a Maryland Company,

Defendants.

ORDER

Before the Court is Plaintiffs' request for dismissal with prejudice. This matter was settled between the parties on March 13, 1992 and the Plaintiffs' request is granted and the case is dismissed with prejudice to the refiling of same.

SO ORDERED.

May 20, 1992.

James O. Ellison
~~JOHN LEO WAGNER~~, United States
Magistrate Judge

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

FILED

MAY 19 1992 *HL*

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

ROBERT E. COTNER, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 LARRY FUGATE, et al.,)
)
 Defendants.)

No. 92-C-64-E

ORDER AND JUDGMENT

Comes now before the Court for its consideration Defendant Bruce Duncan's motion to dismiss Plaintiff's complaint pursuant to Rule 12(b)(6) F.R.C.P. After review of Plaintiff's complaint and defendant's motion, the Court finds Defendant's motion to dismiss should be granted.

The Court finds that Plaintiff's complaint does not meet the requirements of specificity for each cause of action brought against Defendants.

The Plaintiff purports to bring several causes of action:

- (1) 42 U.S.C. §1983 cause of action;
- (2) RICO violations, citing 18 U.S.C. §1961 through 1968;
- (3) 42 U.S.C. §1985 and §1986; and
- (4) 42 U.S.C. §1981.

The above-stated causes of action all require specific pleading requirements. Moreover, Plaintiff's complaint fails to meet the requisite level of specificity required for each cause of action.

IT IS THEREFORE ORDERED that Defendant's motion to dismiss is

hereby granted without prejudice; Plaintiff is allowed an additional twenty (20) days to amend his complaint to meet the specificity requirements under each cause of action.

So ORDERED this 19th day of May, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

FILED

MAY 19 1992

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

LEE TAYLOR,)
)
 Plaintiff,)
)
 vs.)
)
 LARRY ROLLERSON and LINDAL)
 TOWNLEY,)
)
 Defendants.)

No. 92-C-19-E

ORDER

Comes now before the court for its consideration, Defendants' motion to dismiss Plaintiff's complaint. After review of the record, the Court finds that Defendants' motion to dismiss should be granted.

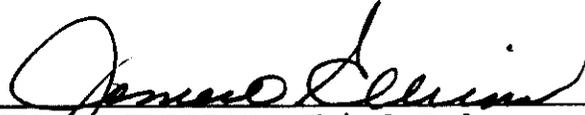
The Court finds that no §1983 cause of action has been stated against said Defendants. Moreover, the record and special report filed with this Court, supports Defendants' assertion that every reasonable effort on the part of Defendants was made to protect Plaintiff. There is no evidence presented by Plaintiff that Defendants acted in bad faith; rather, the evidence shows that when it became clear that further confrontations would occur should the Plaintiff and inmate Simon continue to cell together, they were separated.

The Court finds Plaintiff was not denied due process in his disciplinary hearing. Plaintiff had notice of said hearing and an opportunity to be heard. Plaintiff also had an opportunity to appeal the results of said hearing within the institutional and

departmental processes. Accordingly, procedural due process for Plaintiff was available. Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974).

IT IS THEREFORE ORDERED that Defendants' motion to dismiss is hereby granted pursuant to Fed.R.Civ.P. 12(b)6 and 28 U.S.C. §1915(d).

ORDERED this 15th day of May, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

DATE 5/19/92

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

JOE E. TROUT, JR.)
)
 Plaintiff,)
)
 vs.)
)
 CITY OF BROKEN ARROW, a)
 Municipal Corporation,)
 et at.,)
)
 Defendants.)

Case No. 91 C 0077-B

FILED

MAY 19 1992

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

ORDER

NOW on this 19th day of May, 1992, comes on before me the undersigned Judge of the above entitle Court the Application for Order of Dismissal with Prejudice. The Court having reviewed the pleading filed herein and being fully advised the premises finds that said application should be sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above styled cause should be dismissed with prejudice as to all Defendants.

S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT

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

FILED
MAY 15 1992

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

WILMA M. TURNER,)
)
)
 Plaintiff,)
)
)
 v.)
)
)
 SECRETARY OF HEALTH, EDUCATION)
 AND WELFARE,)
)
)
 Defendant.)

90-C-644-B

ORDER

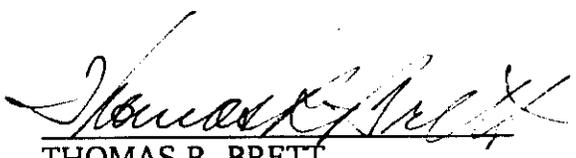
The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed April 16, 1992 in which the Magistrate Judge recommended that the case be dismissed without prejudice.

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

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

It is, therefore, Ordered that the case is dismissed without prejudice.

Dated this 15th day of May, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE MAY 19 1992

FILED
MAY 19 1992

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

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

RODNEY TERRENCE FISHER,)
)
 Petitioner,)
)
 v.)
)
 JACK COWLEY, J.H.C.C.,)
)
 Respondent.)

91-C-986-B

ORDER

This order pertains to petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Docket #1)¹ and respondent's Response (#3). Petitioner was convicted in Tulsa County District Court, Case No. CRF-86-4138, of robbery by force after former conviction of two or more felonies, and sentenced to thirty-two (32) years imprisonment. The conviction was affirmed on appeal to the Oklahoma Court of Criminal Appeals. Petitioner did not file an application for relief under the Oklahoma Post-Conviction Procedure Act, 22 O.S. § 1080 et seq.

Petitioner seeks federal habeas relief on the alleged grounds that: 1) the identification at his trial was tainted by an impermissibly suggestive lineup and should have been suppressed, 2) the trial court abused its discretion in refusing to give the petitioner's requested cautionary instruction regarding the identification by the victim, and 3) the merits of these two claims were not resolved in an adequate factfinding procedure by the Oklahoma Court of Criminal Appeals.

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.

In his first ground, petitioner alleges that the trial court's failure to suppress the victim's in-court and lineup identifications of petitioner was a constitutional violation, in that the participants in the lineup were dissimilar to the petitioner in all having facial hair so the petitioner stood out.

In Stovall v. Denno, 388 U.S. 293 (1967), the Supreme Court stated that a claimed violation of due process of law in the conduct of a lineup depends on the totality of the circumstances surrounding it. In Thompson v. State, 438 P.2d 287, 289 (Okla.Cr.App. 1968), the court set out the standards for pretrial lineups, saying that the "[o]ther people participating in the lineup should be of the same general weight, height, age, color and race, whenever possible, and the suspect should not be clothed in such a manner as to attract special attention or make him stand out from the other persons in the lineup."

In this case both the trial court and the Oklahoma Court of Criminal Appeals concluded that the pretrial lineup was not so suggestive as to taint the in-court identification by the victim of the robbery.² This court is to show deference to these

² During a recess granted at trial for defense counsel to present his motion to suppress the in-court identification of the victim, based on the claim that the lineup was overly suggestive, the following dialogue occurred:

MR. TROY: Your Honor, we have a motion on file to suppress in-court identification as far as Miss Gladys O'Connor is concerned. We would assert to the Court that the lineup that was held in this matter was overly suggestive. This lady described her assailant in exceedingly general terms and described him as having no facial hair. I believe photos of the lineup will show there were several people in that lineup that did have facial hair. We think that any identification in court would be meaningless at this point and would not comport with proper case law, Manson v. Braithwaite, and so forth.

I ask the Court to look at the photographs and make a determination as to whether the lineup was fair and comports with proper procedure.

THE COURT: In what regard, Counselor? There's many different reasons you can object to the photographs. What is your specific --

MR. TROY: My specific objection, Judge, is that too much attention in those photographs was drawn to Rodney Fisher. I do not think it was adequate from the standpoint of having somebody of the same general physique, shape of face and as far as facial hair goes, height. There was a great differentiation in height also.

I ask the Court to look at those and rule as to whether or not the lineup was acceptable.

findings that the pretrial identification procedures were proper. Sumner v. Mata, 449 U.S. 539, 547 (1981).

The court has examined the photographs of petitioner in the lineup and is led to the same conclusion that the trial was not tainted. All five men in the lineup were dressed similarly, were of similar complexion, were of similar build, and had similar hair coloring.

Even if the lineup had been suggestive, the identification of the petitioner by the state's witness, the woman who was robbed, was independently reliable. It has been held that even where the pretrial identification procedures are unduly suggestive, the in-court identification is still proper if the identification is shown to be independently reliable. Manson v. Brathwaite, 432 U.S. 98, 114 (1977); Simmons v. United States, 390 U.S. 377, 384 (1968).

THE COURT: Very well. Does State's counsel have the photographs?

MS. PRIORE: Yes, Judge, I do.

THE COURT: Very well. I will have a look.

Well, for the purpose of the record, I am looking at these photographs at this time; and I have been in court for the last day and a half; and to tell you the truth, I am having a hard time figuring out which one is the defendant myself which would indicate to me this is a fair and impartial lineup.

Which one is the defendant?

MS. PRIORE: He is number two in the photographs -- number two from the left.

THE COURT: Very well. I think this is one of the most fair lineups I have seen in a long time. I will allow defense counsel an exception, but these are all young males -- black males and apparently the same age and the same features as far as I am concerned. I certainly will overrule the objection of defense counsel at this time. (TR 20-22)(emphasis added).

The Oklahoma Court of Criminal Appeals also considered this issue on appeal and concluded in its order of January 6, 1989 as follows:

In his first assignment of error, the appellant asserts that the trial court erred in overruling his motion to suppress the victim's in-court identification of him. Specifically, the appellant claims that the identification was tainted by an impermissibly suggestive pre-trial lineup. We disagree.

Initially, we note that the six participants in the lineup at issue were all black males of the same general age, weight and height, and wearing substantially identical clothing. Therefore, we find that the lineup complied with the physical characteristics criteria enunciated in Thompson v. State, 438 P.2d 287, 289 (Okl.Cr.1968).

In Manson, 432 U.S. at 114, the Court listed the criteria to be examined in evaluating this issue: "reliability is the linchpin in determining the admissibility of identification testimony.... The factors to be considered ... include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the length of time between the crime and the confrontation". (See also, Neil v. Biggers, 409 U.S. 188, 199-200 (1972)).

The transcript of the trial held on March 3, 4, and 18, 1987 ("TR") reveals that the identification was independently reliable. The victim had an excellent opportunity to view the petitioner as he got out of his car and approached her and then as they discussed directions to various streets. It was broad daylight, petitioner wore no disguise or mask, and he was very close to the victim for some length of time (TR 26-30).

The level of certainty of the victim at trial when she identified the petitioner was high. The victim stated in court that petitioner committed the robbery (TR 36-37). There is no evidence that the witness was the least bit uncertain in her identification at trial or in the lineup (TR 35-37).

Finally, the length of time between the crime and the confrontation was not out of the ordinary. The crime occurred on October 24, 1986 and the lineup took place a few days later (TR 35). This is not an extraordinary length of time. The Supreme Court upheld an identification following a seven-month interlude in Neil v. Biggers, 409 U.S. at 200. Weighing all the factors and considering the totality of the circumstances, there is no substantial likelihood of misidentification and petitioner's first ground has no merit.

In his second ground, petitioner claims that the trial court abused its discretion in refusing to give his requested cautionary instruction regarding the identification by the victim. Habeas corpus relief is not available to set aside a conviction on the basis of erroneous jury instructions unless the error has such an effect on the trial that it is rendered fundamentally unfair. Brinlee v. Crisp, 608 F.2d 839, 850 (10th Cir. 1979), cert. denied, 444 U.S. 1047 (1980). In United States v. Frady, 456 U.S. 152, 164 (1982), the Supreme Court determined that before obtaining habeas corpus relief based on a challenged jury instruction, a petitioner must show that the "instruction by itself so infected the entire trial that the resulting conviction violates due process,' not merely whether 'the instruction is undesirable, erroneous, or even universally condemned.'" (citing Henderson v. Kibbe, 431 U.S. 145, 154 (1977)).

The Oklahoma Court of Appeals has held in several cases that a cautionary instruction is not necessary if certain conditions are met: 1) there is a good opportunity for positive identification, 2) the witness is positive in the identification, 3) the identification is not weakened by prior failure to identify, and 4) the witness remains positive as to the identification even after cross-examination. Renfro v. State, 734 P.2d 286, 288 (Okla.Crim.App. 1987); Pisano v. State, 636 P.2d 358 (Okla.Crim.App. 1981), cert. denied, 456 U.S. 963 (1982).

As already discussed, it is clear that the victim in this case had a good opportunity to make a positive identification when she viewed the robber for several minutes in broad daylight and carried on an unobstructed face-to-face conversation with him. She was positive in her identification, identified him in the earlier lineup, and remained positive

about the identification throughout her testimony. The petitioner has failed to show that the failure to give a cautionary instruction regarding the victim's identification rendered the trial fundamentally unfair. His second claim has no merit.

Finally, petitioner claims that the Oklahoma Court of Criminal Appeals did not perform an adequate factfinding procedure to resolve his claims on his direct appeal. Generally, errors occurring in state post-conviction proceedings are not sufficient to raise a federally cognizable issue as to the underlying state criminal conviction. Such claims represent an attack on a proceeding that is collateral to the detention of the prisoner and not on the detention itself. Hopkinson v. Shillinger, 866 F.2d 1185 (10th Cir. 1989); Williams v. Missouri, 640 F.2d 140, 144 (8th Cir.), cert. denied, 451 U.S. 990 (1981).

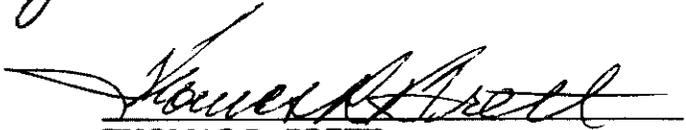
However, in Evitts v. Lucey, 469 U.S. 387, 393 (1985), the Supreme Court held that the Sixth Amendment right to the effective assistance of counsel attaches to criminal appeals in which a criminal defendant has a constitutional right to counsel and the procedures used in deciding such appeals must comport with due process and equal protection requirements. The Court earlier found the right to counsel on first appeal is fundamental. Ross v. Moffitt, 417 U.S. 600 (1974).

Petitioner claims that the merits of his "factual dispute raised in his direct appeal brief" were not "adequately resolved in an adequate determination to afford him due process of law by a factfinding procedure employed by the state courts to afford him a full and fair determination of the merits of his factual issue." (Petitioner's Petition for a Writ of Habeas Corpus, pg. 10). He has not shown how the "factfinding procedure" used by the Oklahoma Court of Criminal Appeals was "inadequate". This court can perceive no

inadequacies in the discussion of fact and law contained in the final opinion of the Court of Criminal Appeals regarding petitioner's appeal issued on January 6, 1989.³ There is no merit to petitioner's third ground.

Petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 is denied.

Dated this 19th day of May, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

³ Even if the state court did not make an "adequate determination", petitioner has presented to this court the same claims of violation of his constitutional rights which he presented on appeal, and this court has considered their merits and found petitioner is not entitled to habeas corpus relief.

FILED

MAY 19 1992

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

IN THE UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF OKLAHOMA

JEFF EMERY,

PLAINTIFF

vs.

No. 90-C-⁶³⁶~~363~~-E

BARTO SHELLEY, personally and
in his official capacity; TOM
PRICE, DEPUTY SHERIFF, DELAWARE
COUNTY, OKLAHOMA, personally and
in his official capacity; and
CONNIE ANDERSON,

DEFENDANTS

ORDER

Now, on this 18th day of May, 1992, comes on to be heard the
Motion to Dismiss With Prejudice of Plaintiff, Jeff Emery.

Upon good cause shown, the Court grants Plaintiff's Motion
and such cause of action is dismissed with prejudice.

IT IS SO ORDERED.

S/ JAMES O. ELLISON

Honorable James O. Ellison, Judge

Copies to:

Ronald G. Woodruff
P. O. Drawer 1866
Fayetteville, AR 72702

Winston Conner
P. O. Box 528
Jay, OK 74346

Rex Earl Starr
P. O. Box 918
Stillwell, OK 74960

IT IS SO ORDERED this 18th day of May, 1992.

S/ JAMES O. ELLISON

United States Judge



Peter Bernhardt *CRAS-500*
Assistant U.S. Attorney
Northern District of Oklahoma
3900 U.S. Courthouse
Tulsa, Oklahoma 74103



Mark E. Buchner, OBA #1279
3726 South Peoria
Suite 26
Tulsa, Oklahoma 74105
(918) 744-5006

FILED

MAY 19 1988

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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-§
89-C-869-C
90-C-859-C

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, MASONITE CORPORATION**

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, Masonite Corporation.

Respectfully Submitted,

DOYLE & HARRIS

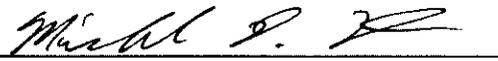

Steven M. Harris, OBA #3913
Michael D. Davis, OBA #11282
2431 East 61st Street
Suite 260
Tulsa, OK 74136
(918) 743-1276

CERTIFICATE OF MAILING

I do hereby certify that on the 8th day of May, 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

610-1.34/rawp

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

5/19/92

FILED

MAY 18 1992

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

KAY L. PRICE; COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

CIVIL ACTION NO. 91-C-413-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18 day
of May, 1992. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Kathleen Bliss Adams, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendant, Kay L.
Price, appears not, but makes default.

The Court being fully advised and having examined the
court file finds that Defendant, County Treasurer, Tulsa County,
Oklahoma, acknowledged receipt of Summons and Complaint on
June 18, 1991; and that Defendant, Board of County Commissioners,
Tulsa County, Oklahoma, acknowledged receipt of Summons and
Complaint on June 18, 1991.

The Court further finds that the Defendant, Kay L.
Price, 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 March 2, 1992, and continuing through April 6, 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, Kay L. Price, 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 abstractor filed herein with respect to the last known address of the Defendant, Kay L. Price. 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 Farmers Home Administration, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her 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 Defendant, County Treasurer, Tulsa County, Oklahoma, filed its Answer on July 1, 1991; and the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on July 8, 1991; that the Defendant, Kay L. Price, has failed to answer and her 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 promissory note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eight (8), Block Three (3), ROLLING MEADOWS, an Addition to the Town of Glenpool, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on June 2, 1982, the Defendant, Kay L. Price, executed and delivered to the United States of America, acting through the Farmers Home Administration, her promissory note in the amount of \$43,000.00, payable in monthly installments, with interest thereon at the rate of 13.25 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Kay L. Price, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated June 2, 1982, covering the above-described property. Said mortgage was

recorded on June 2, 1982, in Book 4617, Page 299, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 2, 1982, the Defendant, Kay L. Price, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on July 17, 1984, the Defendant, Kay L. Price, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on August 3, 1985, the Defendant, Kay L. Price, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on July 23, 1986, the Defendant, Kay L. Price, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on July 26, 1987, the Defendant, Kay L. Price, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Kay L. Price, made default under the terms of the aforesaid note, mortgage, and interest credit agreements by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Kay L. Price, is indebted to the Plaintiff in the principal sum of \$39,356.79, plus accrued interest in the amount of \$12,419.70 as of January 29, 1991, plus interest accruing thereafter at the rate of 13.25 percent per annum or \$14.2871 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$25,309.57, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$292.65 (\$20.00 docket fees, \$272.65 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.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Kay L. Price, in the principal sum of \$39,356.79, plus accrued interest in the amount of \$12,419.70 as of January 29, 1991, plus interest accruing thereafter at the rate of 13.25 percent per annum or \$14.2871 per day until judgment, plus interest thereafter at the current legal rate of 4.40% ~~percent~~ per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$25,309.57, plus interest on that sum at the current

legal rate of 4.40% ~~percent~~ per annum from judgment until paid, plus the costs of this action in the amount of \$292.65 (\$20.00 docket fees, \$272.65 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Kay L. Price, 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.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
333 West 4th Street
Tulsa, Oklahoma 74103
(918) 581-7463



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 91-C-413-B

KBA/css

U.S. DISTRICT COURT
DATE 5/19/92

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA **FILED**

MAY 18 1992

BILL C. SCHWERIN and SANDRA A.)
SCHWERIN, husband and wife,)

Plaintiffs,)

v.)

SPENCER BROWN, M.D. and SAINT)
SAINT FRANCIS HOSPITAL, INC.,)
an Okla. Corporation,)

Defendants.)

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

Case No. 91-C-680-B

ORDER OF DISMISSAL

NOW on this 18 day of May, 1992, upon the Joint
Stipulation of Dismissal filed herein and for good cause shown
therefor,

IT IS THEREFORE ORDERED that the above-styled cause is hereby
dismissed without prejudice as to the refiling of same.

S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT

ENTERED ON DOCKET
DATE 5-19-92

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

FILED

MAY 18 1992

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

CHARLES F. BARNETT,

Plaintiff,

v.

RON CHAMPION,

Defendant.

92-C-397-B

ORDER TO TRANSFER CAUSE

The Court having examined the Petition for Writ of Habeas Corpus which the Petitioner has filed finds as follows:

(1) That the Petitioner was convicted in LeFlore County, which is located within the territorial jurisdiction of the Eastern District of Oklahoma.

(2) That the Petitioner demands 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.

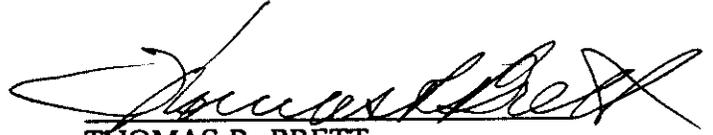
IT IS THEREFORE ORDERED:

(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.¹

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

Dated this 18 day of May, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹ 28 U.S.C. §2241(d) states: "Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such application is filed in the exercise of discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination."

ENTERED ON DOCKET

DATE 5/19/92

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

FILED

MAY 15 1992

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

ADAMS AFFILIATES, INC.,)
)
 Plaintiff,)
)
 v.)
)
 DAMIEN J. GRECO,)
)
 Defendant.)

91-C-783-B

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed April 20, 1992 in which the Magistrate Judge recommended that the case be dismissed without prejudice for failure to serve process within the statutory time.

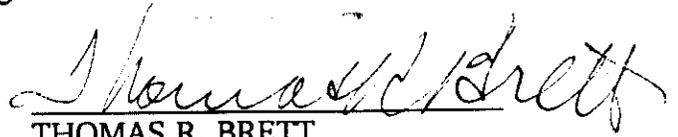
No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is, therefore, Ordered that the case is dismissed without prejudice for failure to serve process within the statutory time.

h

Dated this 15 day of May, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 15 1992

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

MARTY WILLIAMS,)
)
 Plaintiff,)
)
 v.)
)
 STEPHEN KAISER, et al.)
)
 Defendants.)

92-C-384-E

ORDER TO TRANSFER CAUSE

The Court having examined the Petition for Writ of Habeas Corpus which the
Petitioner has filed finds as follows:

- (1) That the Petitioner was convicted in Oklahoma County, which is located
within the territorial jurisdiction of the Western District of Oklahoma.
- (2) That the Petitioner demands release from such custody and as grounds
therefore alleges he 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 Western 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 Western District of Oklahoma for all further proceedings.¹

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

Dated this 14th day of May, 1992.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

¹ 28 U.S.C. §2241(d) states: "Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such application is filed in the exercise of discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination."

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

FILED

MAY 15 1992

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

STEVEN N. DAVIS,

Plaintiff(s),

vs.

No. 91-C-0508-B

NORMAN'S RED BUD, INC.,
NORMAN'S RED BUD, INC.
PROFIT SHARING PLAN AND TRUST,
JOHN SPOON, AS ADMIN.

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 15th day of May, 1992.

Thomas B. Price
United States District Judge

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

WILLIE JEMISON,)
)
 Plaintiff,)
)
 v.)
)
 STEPHEN KAISER, et al,)
)
 Defendants.)

92-C-393-E /

FILED
MAY 15 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER TO TRANSFER CAUSE

The Court having examined the Petition for Writ of Habeas Corpus which the
Petitioner has filed finds as follows:

- (1) That the Petitioner was convicted in Oklahoma County, which is located within the territorial jurisdiction of the Western District of Oklahoma.
- (2) That the Petitioner demands release from such custody and as grounds therefore alleges he 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 Western 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

3

District Court for the Western District of Oklahoma for all further proceedings.¹

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

Dated this 15th day of May, 1989.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

¹ 28 U.S.C. §2241(d) states: "Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such application is filed in the exercise of discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination."

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

FILED

MAY 15 1992

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

ROBERT G. TILTON,
an individual,

Plaintiff,

vs.

GARY L. RICHARDSON, OLE ANTHONY,
HARRY GUETZLAFF, C. TONY WRIGHT
DAVID BURROWS, and GEORGE A.
OTSTOTT,

Defendants,

Case No. 92-C-424 E

ENTERED ON DOCKET

DATE 5-18-92

**ORDER DENYING PLAINTIFF'S APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

This matter came on for hearing May 14, 1992, on Plaintiff's Application for a Temporary Restraining Order. The Court finds that upon evidence presented in open court and after hearing statements of counsel, that the application for temporary restraining order should be and hereby is denied; however, the Court also finds that the allegations raised in Plaintiff's Verified Complaint raise serious and substantial questions touching upon an individual's First Amendment rights to both freedom of religion and freedom of speech; and

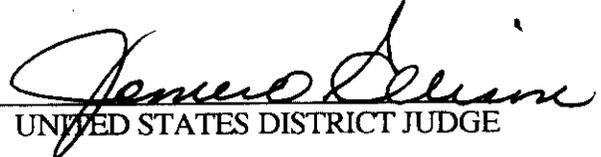
The Court further finds that since the allegations in Plaintiff's Verified Complaint raise factual issues regarding the possibility of a conspiracy among the Defendants to deprive Plaintiff of his First Amendment constitutional rights and because of the seriousness of these allegations raised and the Court's decision not to impose a prior restraint the Defendants' constitutional right

5

of freedom of speech and expression at this time, these facts must be established as soon as possible.

The Court further finds that this matter should be accelerated and placed on a "fast-track" schedule for final determination of Plaintiff's claims and that this case is hereby set for ^{NON} jury trial on August 3, 1992 for all issues except the issue of the amount of damages to be awarded in the event the Plaintiff prevails. The action is therefore bifurcated, the issue of damages being reserved for a later jury trial if Plaintiff prevails in the trial on August 3, 1992.

IT IS THEREFORE ORDERED by the Court that Plaintiff's Application for a Temporary Restraining Order is denied and that this matter is hereby set for ^{NON} jury trial on August 3, 1992 on all issues except the issue as to the amount of damages to be awarded in the event Plaintiff prevails, such damages being reserved for a later jury trial, if necessary, and this matter is further set for a status and scheduling conference on May 26, 1992 at 9:00 a.m..


UNITED STATES DISTRICT JUDGE

J.C. Joyce
JOYCE and POLLARD
515 S. Main Mall, #300
Tulsa, OK 74103
918/585-2751

GAH/CW.LIG-O.1ORDER

DATE 5-18-92

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

FILED

MAY 15 1992

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

EDDIE OWENS, JR.,)
)
Petitioner,)
)
v.)
)
RON CHAMPION,)
)
Respondent.)

92-C-392-B ✓

ORDER

Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is now before the court for initial consideration. Petitioner was convicted in Tulsa County District Court, Case No. CRF-81-2730, of robbery and possession of a stolen vehicle, and sentenced to fifteen (15) years imprisonment. The conviction was not appealed to the Oklahoma Court of Criminal Appeals, and petitioner filed an application for relief under the Oklahoma Post-Conviction Procedure Act, 22 O.S. § 1080 et seq., which was denied on January 6, 1992. The denial is presently on appeal to the Oklahoma Court of Criminal Appeals.

Title 28 U.S.C. § 2254 provides in part:

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

A federal habeas petitioner must have fairly presented to the state courts the substance of his federal claim. *Anderson v. Harless*, 459 U.S. 4, 8 (1982). In *Anderson*, the Supreme Court reversed the granting of a federal habeas petition:

... 28 U.S.C. § 2254 [28 U.S.C.S. § 2254] requires a federal habeas petitioner to provide the state courts with a 'fair opportunity' to apply controlling legal principles to the facts bearing upon his constitutional claim. It is not enough that all the facts necessary to support the federal claim were before the state courts ... or that a somewhat similar state-law claim was made. In addition, the habeas petitioner must have 'fairly presented' to the state courts the 'substance' of his federal habeas corpus claim.

(citations omitted) (emphasis added). See also, *Mabry v. Klimas*, 448 U.S. 444 (1980) (state must be given initial opportunity to pass upon and correct alleged violations of federal rights); *Jones v. Hess*, 681 F.2d 688 (10th Cir. 1982).

The Tenth Circuit has noted that a "rigorously enforced" exhaustion policy is necessary to serve the end of protecting and promoting the State's role in resolving the constitutional issues raised in federal habeas petitions. *Naranjo v. Ricketts*, 696 F.2d 83, 87 (10th Cir. 1982).

Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 should be and is denied. Petitioner has an available state remedy for these claims under the Post-Conviction Procedure Act, and he has not exhausted his appeal to the Oklahoma Court of Criminal Appeals.

Dated this 15 day of May, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE MAY 18 1992 **FILED**

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

MAY 15 1992

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

MICHAEL J. EDWARDS,
Plaintiff,

vs.

DAVIS, HOCKENBERG, WINE,
BROWN, KOEHN AND SHORS,
a partnership, and DAVIS,
HOCKENBERG, WINE, BROWN,
KOEHN AND SHORS, P.C.,

Defendants.

Case No. 91-C-596-B

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes before the Court on the Joint Stipulation of Dismissal with Prejudice by the parties. The parties represent to the Court they have entered into a Settlement Agreement and Agreement for Order of Dismissal.

IT IS THEREFORE ORDERED that this matter is dismissed with prejudice. Each party shall bear its own attorney's fees and costs.



HONORABLE THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE 5-18-92 H

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

FILED

MAY 15 1992

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

EDWIN D. DAVIS,)
)
 Plaintiff,)
)
 vs.)
)
 COMMERCIAL ROOFING, INC.,)
)
 Defendant.)

No. 91-C-971-E

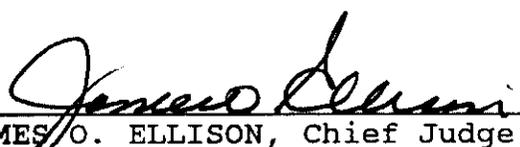
CLOSED

ORDER

Comes now before the Court for consideration Defendant's motion to dismiss Plaintiff's complaint. After review of the pleadings and for good cause shown, the Court finds that Defendant's motion to dismiss should be granted without attorney's fees.

IT IS THEREFORE ORDERED that Defendant's motion to dismiss is hereby granted without attorney fees.

ORDERED this 15th day of May, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

FILED

MAY 15 1992

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

BUCHBINDER & ELEGANT, P.A.,)
RECEIVER OF AIKENDALE)
ASSOCIATES, et al.,)
)
Plaintiffs,)
)
vs.)
)
SOONER FEDERAL SAVINGS AND)
LOAN ASSOCIATION, et al.,)
)
Defendants.)

No. 89-C-843-E

ORDER

Comes now before the Court for its consideration Defendant Deloitte's motion to dismiss Plaintiff's amended complaint. After review of the pleadings, and for good cause shown, the Court finds Defendant Deloitte's motion to dismiss without prejudice should be granted.

The Court bases its ruling on Plaintiff's failure to comply with Rule 9(b) of the Federal Rules of Civil Procedure. Moreover, Plaintiff's amended complaint fails to plead the claims with specificity required by Rule 9(b).

IT IS THEREFORE ORDERED that Defendant Deloitte's motion to dismiss is granted without prejudice.

ORDERED this 15th day of May, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE MAY 18 1992

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

MAY 15 1992

RICHARD M. BRADSHAW
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

FEDERAL DEPOSIT INSURANCE)
CORPORATION, as Receiver of)
VICTOR SAVINGS AND LOAN)
ASSOCIATION OF MUSKOGEE,)
OKLAHOMA,)
Plaintiff,)
v.)
LAWRENCE A. HUBERT, a single)
person, et al.,)
Defendants.)

Case No. 91 C-571-B

STIPULATION OF DISMISSAL

COME NOW the Defendant, Linda L. Grotheer, formerly Linda L. Hubert, by and through her attorneys of record, Robinson, Lewis, Orbison, Smith & Coyle, by Scott E. Coulson, and the Defendant, Lawrence A. Hubert, by and through his attorney of record, Robert E. Martin, and hereby stipulate to the dismissal without prejudice of the Cross-Complaint filed herein by the Defendant, Linda L. Grotheer, formerly Linda L. Hubert, against the Defendant, Lawrence A. Hubert.

DATED this 13th day of May, 1992.

BY: Scott E. Coulson
Scott E. Coulson, #12522
ROBINSON, LEWIS, ORBISON,
SMITH & COYLE
P. O. Box 1046
Tulsa, Oklahoma 74101
(918) 583-1232
Attorneys for Linda L. Grotheer,
formerly Linda L. Hubert

BY: Robert E. Martin
Robert E. Martin
717 South Houston, Suite 401
Tulsa, Oklahoma 74127
Attorney for Defendant,
Lawrence A. Hubert

CERTIFICATE OF MAILING

I hereby certify that on the 14~~th~~ day of May, 1992, a true and correct copy of the above and foregoing document was mailed, with good and sufficient postage affixed thereon, to:

Richard H. Ruth
P. O. Box 26208
Oklahoma City, Oklahoma 73126
Attorney for Plaintiff, FDIC

Tom H. Bruner
Leslie Shelton
406 South Boulder, Suite 610
Tulsa, Oklahoma 74102
Attorneys for Defendants,
Jimmy L. Reagan and Mildred S. Reagan

Gene Haynes
District Attorney
219 South Missouri, Room 1-111
Claremore, Oklahoma 74017
Attorney for Defendant,
Board of Commissioners of Rogers County, OK
and the County Treasurer of Rogers County, OK

James P. Tanner
P. O. Box 1246
Claremore, Oklahoma 74018
Attorney for Defendants,
Lauren and Vicky Pauls O. Box 12



Scott E. Coulson

DATE MAY 18 1992

APS-46

FILED

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

MAY 15 1992

TAMMYE SUE MAY,
Plaintiff,

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

vs.

No. 91-C-354-B

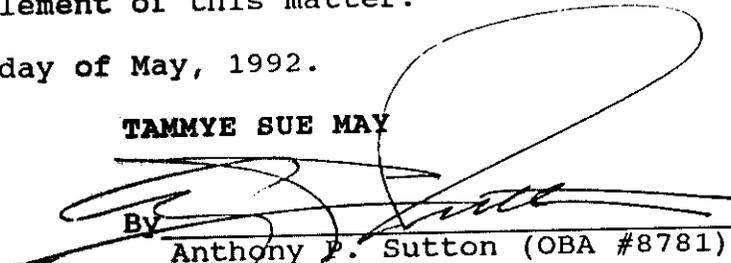
CONTINENTAL CASUALTY COMPANY,
a corporation,
Defendant.

STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff, Tammye Sue May; and the Defendant, Continental Casualty Company, by and through their respective counsel of record, pursuant to Rule 41(a)(1)(ii), and they each hereby dismiss their claims against the other with prejudice to the refiling for the reasons and upon the grounds that the parties have reached a compromised settlement of this matter.

Dated this 12 day of May, 1992.

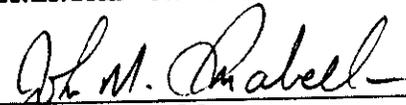
TAMMYE SUE MAY

By 

Anthony P. Sutton (OBA #8781)
MARSH & SUTTON, P.C.
525 South Main, Suite 201
Tulsa, Oklahoma 74103
(918) 587-0141

Attorneys for Plaintiff

CONTINENTAL CASUALTY COMPANY

By 

John Insabella
INSABELLA & SCHWEBKE
2745 E. Skelly Drive, Suite 101
Tulsa, OK 74105

Attorneys for Defendant

DATE 5-18-92

FILED

MAY 15 1992

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

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

LINEAR FILMS, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 MIDWEST FORAGE PRODUCTS,)
 INC., et al.,)
)
 Defendants.)

No. 91-C-943-E

ORDER

Comes now before the Court for its consideration Defendant Gerber's motion to dismiss Plaintiff's complaint for lack of personal jurisdiction. After review of the pleadings the Court finds that Defendant Gerber's motion to dismiss should be granted; however, the Court will allow Plaintiff twenty (20) days to amend its complaint.

IT IS THEREFORE ORDERED that Defendant Gerber's motion to dismiss for lack of personal jurisdiction is hereby granted; Plaintiff is allowed twenty (20) days from this Order to amend its complaint.

ORDERED this 15th day of May, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

25

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

FILED

MAY 15 1992 H

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

RUDOLPH F. REYNOLDS,)
)
 Plaintiff,)
)
 vs.)
)
 LOUIS W. SULLIVAN, M.D.,)
 SECRETARY OF HEALTH AND HUMAN)
 SERVICES,)
)
 Defendant.)

No. 91-C-219-E /

ORDER

Comes now before the Court for its consideration Plaintiff's objection to the report and recommendation of the United States Magistrate Judge. After a review of the record, the Court finds that the Magistrate Judge's ruling should be affirmed.

In affirming the Magistrate Judge's ruling, the Court finds substantial evidence to support the administrative law judge's ruling and the Magistrate Judge's ruling.

Here, the evidence does establish Plaintiff's employment as a dishwasher and child attendant constitutes "past relevant work." Jozefowicz v. Heckler, 811 F.2d 1352, 1355 (10th Cir. 1987).

The Court also finds no err by the administrative law judge in not considering Plaintiff's age as discussed in 20 C.F.R. §404.1563(d).

IT IS THEREFORE ORDERED that the finding of the administrative law judge and the report and recommendation of the Magistrate Judge are hereby affirmed.

ORDERED this 15th day of May, 1992.



JAMES B. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

DATE 5-15-92

FILED
MAY 14 1992

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

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

JOHN SPITZER,)
)
Petitioner,)
)
v.)
)
BOBBY BOONE and THE)
ATTORNEY GENERAL OF THE)
STATE OF OKLAHOMA,)
)
Respondents.)

92-C-378-B

ORDER

Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is now before the court for initial consideration. Petitioner was convicted in Tulsa County District Court, Case No. CRF-90-1695, of D.U.I., second offense, and sentenced to five (5) years imprisonment. The conviction was not appealed to the Oklahoma Court of Criminal Appeals, and petitioner did not file an application for relief under the Oklahoma Post-Conviction Procedure Act, 22 O.S. § 1080 et seq. Instead, he instituted a mandamus proceeding in the District Court of Atoka County, which was denied. He has filed an application for a writ of habeas corpus in the District Court of Tulsa County, which is pending.

Title 28 U.S.C. § 2254 provides in part:

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this

section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

A federal habeas petitioner must have fairly presented to the state courts the substance of his federal claim. *Anderson v. Harless*, 459 U.S. 4, 8 (1982). In *Anderson*, the Supreme Court reversed the granting of a federal habeas petition:

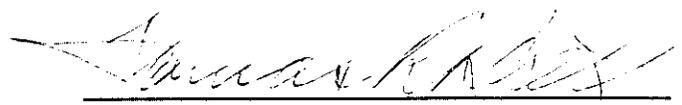
... 28 U.S.C. § 2254 [28 U.S.C.S. § 2254] requires a federal habeas petitioner to provide the state courts with a 'fair opportunity' to apply controlling legal principles to the facts bearing upon his constitutional claim. It is not enough that all the facts necessary to support the federal claim were before the state courts ... or that a somewhat similar state-law claim was made. In addition, the habeas petitioner must have 'fairly presented' to the state courts the 'substance' of his federal habeas corpus claim.

(citations omitted) (emphasis added). See also, *Mabry v. Klimas*, 448 U.S. 444 (1980) (state must be given initial opportunity to pass upon and correct alleged violations of federal rights); *Jones v. Hess*, 681 F.2d 688 (10th Cir. 1982).

The Tenth Circuit has noted that a "rigorously enforced" exhaustion policy is necessary to serve the end of protecting and promoting the State's role in resolving the constitutional issues raised in federal habeas petitions. *Naranjo v. Ricketts*, 696 F.2d 83, 87 (10th Cir. 1982).

Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 should be and is denied. Petitioner has an available state remedy for these claims under Oklahoma's Post-Conviction Procedure Act.

Dated this 14 day of May, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

MAY 14 1992

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

THRIFTY RENT-A-CAR SYSTEM, INC.)
an Oklahoma corporation,)
)
Plaintiff,)
)
v.)
)
DILLON ENGINEERING CORPORATION,)
an Oklahoma corporation,)
)
Defendant.)

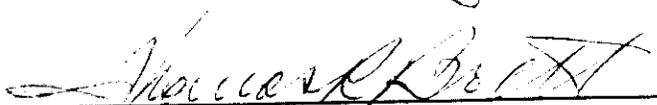
Case No. 91-C-916-B

ADMINISTRATIVE CLOSING ORDER

Thrifty Rent-A-Car System, Inc. and Dillon Engineering Corporation have settled this action pursuant to the terms of a Settlement Agreement dated as of May 4, 1992 (the "Settlement Agreement").

IT IS HEREBY ORDERED THAT the Clerk administratively terminate this action in his records and that to the extent the Court has jurisdiction over the subject matter of this case and the parties to this action, the Court retain such jurisdiction. Once all payments have been made as provided in the Settlement Agreement, the parties shall execute and file a Stipulation of Dismissal with Prejudice.

IT IS SO ORDERED THIS 14 day of May, 1992.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:



Dana L. Rasure, OBA #7421
Victor E. Morgan, OBA #12419
BAKER & HOSTER
800 Kennedy Building
Tulsa, OK 74103
(918) 592-5555

Randall J. Holder, OBA #04292
THRIFTY RENT-A-CAR SYSTEM, INC.
5330 East 31st Street
Tulsa, OK 74153

Attorneys for Plaintiff
Thrifty Rent-A-Car System, Inc.



Mark Kachigian
Scott Zingerman
HEAD & JOHNSON
228 West 17th Place
Tulsa, OK 74119

Attorneys for Defendant
Dillon Engineering Corporation

ENTERED ON DOCKET
DATE MAY 15 1992

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JEANNIE E. HORTON a/k/a)
ERMA JEAN HORTON; STATE OF)
OKLAHOMA ex rel. OKLAHOMA)
TAX COMMISSION; COUNTY)
TREASURER, Osage County,)
Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Osage County,)
Oklahoma,)
Defendants.)

FILED

MAY 13 1992

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

CIVIL ACTION NO. 91-C-975-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 12th day
of May, 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, Osage County,
Oklahoma, and Board of County Commissioners, Osage County,
Oklahoma, appear by John S. Boggs, Jr., Assistant District
Attorney, Osage County, Oklahoma; the Defendant, State of
Oklahoma ex rel. Oklahoma Tax Commission, appears not, having
previously filed its Disclaimer; and the Defendant, Jeannie E.
Horton a/k/a Erma Jean Horton, appears not, but makes default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Jeannie E. Horton a/k/a
Erma Jean Horton, acknowledged receipt of Summons and Complaint
on January 9, 1992; that Defendant, State of Oklahoma ex rel.
Oklahoma Tax Commission, acknowledged receipt of Summons and
Complaint on December 23, 1991; that Defendant, County Treasurer,

NOTE: THE PLAINTIFFS AND DEFENDANTS
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on December 23, 1991; and that Defendant, Board of County Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on December 23, 1991.

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer on December 24, 1991; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Disclaimer on January 6, 1992; and that the Defendant, Jeannie E. Horton a/k/a Erma Jean Horton, has failed to answer and her default has therefore been entered by the Clerk of this Court.

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

Lots 13, 14, 15 and North 5 feet of Lot 16,
Block 2, Colley Addition to Hominy, Osage
County, Oklahoma, according to the recorded
Plat thereof.

The Court further finds that on May 23, 1984, James E. Horton and Jeannie E. Horton executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$43,500.00, payable in monthly installments, with interest thereon at the rate of 10.75 percent (10.75%) per annum.

The Court further finds that as security for the payment of the above-described note, James E. Horton and Jeannie E. Horton, executed and delivered to the United States of America, acting through Farmers Home Administration, a mortgage dated May 23, 1984, covering the above-described property. Said mortgage was recorded on May 23, 1984, in Book 656, Page 606, in the records of Osage County, Oklahoma.

The Court further finds that on May 23, 1984, James E. Horton and Jeannie E. Horton executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on August 3, 1984, James E. Horton and Jeannie E. Horton executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on June 24, 1985, James E. Horton and Jeannie E. Horton executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on January 13, 1986, Jeannie Horton executed and delivered to the United States of

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

The Court further finds that on October 20, 1986, Jeannie Horton executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on November 11, 1987, Jeannie Horton executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on July 15, 1991, Farmers Home Administration released James E. Horton from personal liability to the Government for the indebtedness and obligation of said note and security agreements.

The Court further finds that the Defendant, Jeannie E. Horton a/k/a Erma Jean Horton, made default under the terms of the aforesaid note, mortgage, and interest credit agreements by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Jeannie E. Horton a/k/a Erma Jean Horton, is indebted to the Plaintiff in the principal sum of \$42,130.37, plus accrued interest in the amount of \$10,642.63 as of May 31, 1991, plus interest accruing thereafter at the rate of 10.75 percent per annum or \$12.4083 per day until judgment, plus

interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$15,815.20, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$28.00 (\$20.00 docket fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, County Treasurer, Osage County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$256.55, plus penalties and interest, for the year of 1991. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Osage County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$26.76 for the year 1991, which became a lien on the property. Said lien is inferior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendant, Jeannie E. Horton a/k/a Erma Jean Horton, 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, Jeannie E. Horton a/k/a Erma Jean Horton, in the principal sum of

\$42,130.37, plus accrued interest in the amount of \$10,642.63 as of May 31, 1991, plus interest accruing thereafter at the rate of 10.75 percent per annum or \$12.4083 per day until judgment, plus interest thereafter at the current legal rate of 4.40 percent per annum until paid, and the further sum due and owing under the interest credit agreements of \$15,815.20, plus interest on that sum at the legal rate from judgment until paid, plus the costs of this action in the amount of \$28.00 (\$20.00 docket fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have and recover judgment in the amount of \$256.55, plus penalties and interest, for ad valorem taxes for the year 1991, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have and recover judgment in the amount of \$26.76 for personal property taxes for the year 1991, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, disclaims any right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Jeannie E. Horton a/k/a Erma Jean Horton, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Jeannie E. Horton a/k/a Erma Jean Horton, 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 Defendant, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, in the amount of \$256.55, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, in the amount of \$26.76, personal property taxes which are currently due and owing.

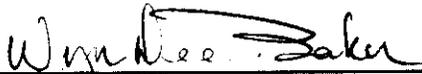
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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

S/ 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



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

Judgment of Foreclosure
Civil Action No. 91-C-975-B

WDB/esr

DATE 5-15-92

MAY 14 1992

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

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

JAMES WESLEY HILL,
Plaintiff,
v.
RON CHAMPION,
Defendants.

91-C-376-B

ORDER

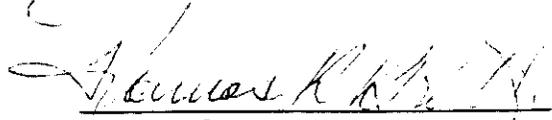
The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed October 21, 1991 in which the Magistrate Judge recommended that Petitioner be permitted to amend his Petition alleging only those grounds on which he has exhausted his state remedies, and same should be then considered herein. If Petitioner wishes to amend his Petition by dropping the unexhausted claims he should be allowed to do so within fifteen (15) days of the Court's order affirming this report and recommendation, if same be affirmed, filing within that time his Amended Petition.

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

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

It is, therefore, Ordered that the recommendations of the Magistrate Judge are hereby adopted as set forth above.

Dated this 12 day of May, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 5-15-92

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

FILED

MAY 15 1992

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

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity,

Plaintiff,

v.

No. 90-C-89-E ✓

ROBERT J. MORRISON, JR., et al.,

Defendant and Third Party Plaintiffs,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver for First National Bank and Trust Company of Oklahoma City, Oklahoma,

Third Party Defendant.

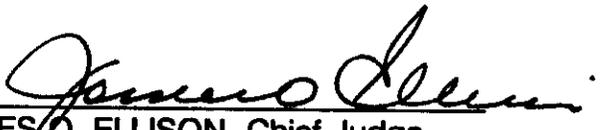
STIPULATED ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW, the Joint Motion of Substitute Party Plaintiff and Defendants comes on for consideration before the Honorable James O. Ellison, Chief Judge of the United States District Court for the Northern District of Oklahoma. After examining said Joint Motion, the Court finds that for good cause shown the Motion should be sustained.

25

IT IS THEREFORE ORDERED that the Joint Motion for Order of Dismissal be and is hereby sustained and this action is hereby ordered dismissed without prejudice to refiling.

So ORDERED this 14th, day of May, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE 5-15-92 H

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

FILED

MELVIN E. WHITE,)
)
Plaintiff,)
)
v.)
)
STANLEY GLANZ, et al,)
)
Defendants.)

91-C-927-E

MAY 15 1992

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

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed April 20, 1992 in which the Magistrate Judge recommended that the case be dismissed.

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

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

It is, therefore, Ordered that the case is dismissed

Dated this 14th day of May, 1992.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

13

DATE ~~8-15-92~~ 5-15-92

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

MAY 15 1992

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

MONTELLO, INC., an
Oklahoma corporation,

Plaintiff,

vs.

THE TRAVELERS INSURANCE
COMPANY and THE TRAVELERS
INDEMNITY COMPANY,

Defendants.

Case No. 90-C-814-E

ORDER OF DISMISSAL

NOW, on this 14th day of May, 1992, the Court being advised that a compromise settlement having been reached between the Plaintiff and the named Defendants, and those parties stipulating to a dismissal with prejudice, the Court orders that the captioned case be dismissed with prejudice.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

DATE 5-15-92

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

FILED

MAY 15 1992

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

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its)
corporate capacity,)

Plaintiff,)

v.)

No. 90-C-89-E

ROBERT J. MORRISON, JR.,)
et al.,)

Defendant and)
Third Party Plaintiffs,)

v.)

FEDERAL DEPOSIT INSURANCE)
CORPORATION, as receiver for)
First National Bank and Trust)
Company of Oklahoma City,)
Oklahoma,)

Third Party Defendant.)

ORDER

NOW the Emergency Joint Motion of Substitute Party Plaintiff and Defendants comes on for consideration before the Honorable James O. Ellison, Chief Judge of the United States District Court for the Northern District of Oklahoma. After examining said Joint Motion to Set Aside Order and Judgment and being advised that Third Party Defendant has no objection to said Joint Motion, the Court finds that for good cause shown, the Joint Motion to Set Aside the Order and Judgment of this Court dated March 6, 1992, should be sustained.

24

IT IS THEREFORE ORDERED that the Joint Motion to Set Aside Order and Judgment, filed by Substitute Party Plaintiff and Defendants, be and is hereby granted and the Order and Judgment of this Court, dated and filed in this action on the 6th day of March, 1992, is hereby set aside and held for naught insofar and only insofar as said Order and Judgment grants judgment to Plaintiff on the Promissory Note sued upon and foreclosing the stated Mortgage.

So ORDERED this 14th day of May, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

W92-65

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

FILED
MAY 13 1992

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

MILLARD KNOX,)	
)	
Plaintiff,)	
)	
v.)	92-C-385-B
)	
STEPHEN KAISER, et al,)	
)	
Defendants.)	

ORDER TO TRANSFER CAUSE

The Court having examined the Petition for Writ of Habeas Corpus which the Petitioner has filed finds as follows:

- (1) That the Petitioner was convicted in Oklahoma County , which is located within the territorial jurisdiction of the Western District of Oklahoma.
- (2) That the Petitioner demands 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 Western District of Oklahoma.

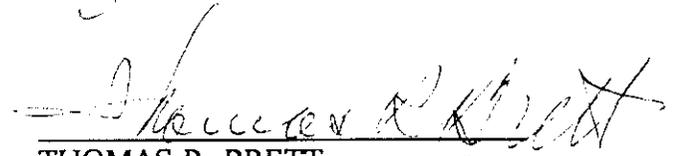
IT IS THEREFORE ORDERED:

- (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 Western District of Oklahoma for all further proceedings.

4

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

Dated this 13 day of May, 1989.

A handwritten signature in cursive script, appearing to read "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

FILED
MAY 14 1992

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

URE CO., a Texas corporation,)
)
Plaintiff,)
)
vs.)
)
PORT CITY PROPERTIES, INC.,)
d/b/a HODGES WAREHOUSE; and)
SHEL TILKIN, Individually;)
TULSA PROPERTIES, INC., an)
Oklahoma corporation,)
)
Defendants.)

Case No. 90-C-0073-B

ORDER OF DISMISSAL WITH PREJUDICE

This matter having come before this Court pursuant to the Stipulation of Dismissal With Prejudice filed by plaintiff and defendants.

IT HEREBY IS ORDERED that plaintiff, Ure Co.'s cause of action against all defendants in this action be, and it hereby is, dismissed on the merits, and with prejudice to the filing of any future action, with each party to bear its own costs, expenses, and attorneys' fees.

IT IS FURTHER ORDERED that defendants' Port City Properties, Inc., d/b/a Hodges Warehouse, and Shel Tilkin, individually, cause of action as to their cross-claims against Tulsa Properties, Inc., and as as to their counter-claims against Ure Co., are hereby dismissed on the merits, and with prejudice to the filing of any future action, with each party to bear its own costs, expenses, and attorneys' fees.

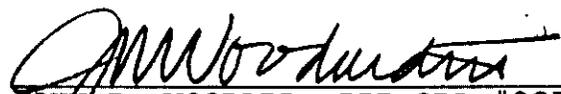
DATED this 14 day of May, 1992.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AND AGREED TO
THIS 7th DAY OF
May, 1992.


BRIAN J. RAYMENT OBA #7441
7666 East 61st, Suite 240
Tulsa, OK 74133
(918) 254-0626
ATTORNEY FOR PLAINTIFF


ROBERT T. GOOLSBY #12676
1510 North Klein
Oklahoma City, OK 73106
(405) 524-2400
ATTORNEY FOR TULSA PROPERTIES,
INC.


JOHN R. WOODARD, III OBA #9853
525 S. Main, Suite 1400
Tulsa, OK 74103-4409
(918) 583-7129

and


KENNETH L. BRUNE OBA #1249
700 Sinclair Bldg.
6th East 5th
Tulsa, OK 74103

ATTORNEYS FOR PORT CITY
PROPERTIES AND SHEL TILKIN

ENTERED ON DOCKET
DATE MAY 14 1992

FILED

MAY 13 1992

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

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

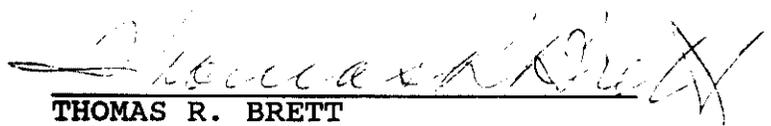
MARCUS R. MILLER,)
)
 Plaintiff,)
)
 v.)
)
 TULSA COUNTY JAIL, STANLEY)
 GLANZ, SHERIFF, et al,)
)
 Defendants.)

Case No. 90-C-526-B

AMENDED JUDGMENT

In accord with the Order filed May 6, 1992, sustaining Defendants' Motion For Summary Judgment, the Court hereby enters Judgment in favor of Defendants Sheriff Stanley Glanz, Captain Dan Cherry, Deputy Sheriff Bob Bates, Deputy Sheriff Jerry Bagby, Deputy Sheriff Lance Ramsey and Johnny F. Dirck and against the Plaintiff Marcus R. Miller.

DATED this 12th day of May, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

14

FILED

MAY 13 1992

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

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

WESLEY R. BUTLER,)
)
 Plaintiff,)
)
 vs.)
)
 CLEAR CHANNEL COMMUNICATIONS,)
 INC., and CLEAR CHANNEL)
 TELEVISION, INC., and KOKI)
 TULSA,)
)
 Defendants.)

Case No. 91-C-670-E

ENTERED ON DOCKET

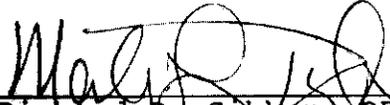
DATE 5-14-92

STIPULATION OF DISMISSAL WITH PREJUDICE
OF DEFAMATION CAUSE OF ACTION

Pursuant to FRCP Rule 41(a)(1)(ii), the Plaintiff, Wesley R. Butler, and the Defendants stipulate to the dismissal with prejudice of Plaintiff's cause of action alleging defamation. Each side is to bear its own costs.

Dated this 12th day of May, 1992.

RICHARD D. GIBBON & ASSOCIATES

By: 
Richard D. Gibbon, OBA # 3340
Merle L. Tyler, OBA # 13537
1611 S. Harvard
Tulsa, Oklahoma 74112
(918) 745-0687

ATTORNEYS FOR PLAINTIFF

FELDMAN, HALL, FRANDEN,
WOODARD & FARRIS

BY: 
JOHN R. WOODARD, III, OBA # 9853
JACQUELINE O'NEIL HAGLUND, OBA # 6786
525 S. MAIN, SUITE 1400
TULSA, OKLAHOMA 74103-4409
(918) 583-7129

ATTORNEYS FOR DEFENDANTS

DATE ~~MAY 14 1992~~

FILED

MAY 13 1992

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

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

DENNIS CAVENAH, individually, and
as Administrator of the Estate of
Jane Cavenah, Deceased,

Plaintiff,

vs.

Case No. 91-C-313-B

EMPLOYEE BENEFIT PLANS, INC., a
Minnesota Corporation,

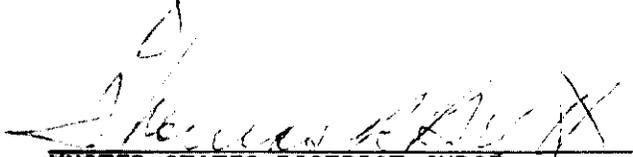
Defendant,

ORDER OF DISMISSING CASE WITH PREJUDICE

The Court, being fully advised, and having reviewed the Stipulation of Dismissal and Dismissal with Prejudice signed by all parties to this action, ORDERS, ADJUDGES AND DECREES as follows:

The above-styled case is dismissed with prejudice as to all parties.

ENTERED this 12 day of May, 1992.


UNITED STATES DISTRICT JUDGE

39

DANIEL B. MCDEVITT,
Plaintiff,
v.
UNITED STATES OF AMERICA,
Defendant and
Counterclaim Plaintiff,
v.
WALTER H. MCKENZIE, et al.,
Counterclaim Defendants.

Civil No. 89-C-576-C

FILED

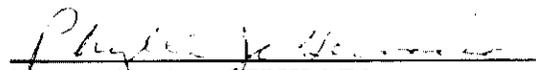
MAY 14 1992

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

OF
STIPULATION ~~AND~~ DISMISSAL

It is hereby stipulated and agreed that the counterclaim in the above-entitled case filed against Troy Eutsler be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees.


TROY EUTSLER
Route 1, Box 226
Dewey, Oklahoma 74029


PHYLLIS JO GERVASIO
Trial Attorney
Tax Division
U.S. Department of Justice
P.O. Box 7238
Washington, D.C. 20044
Telephone: (202) 514-6539

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

FILED
MAY 14 1992

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

MAXINE ADRIANCE and
THEODORE ADRIANCE,

Plaintiffs,

vs.

MARC ABEL, TRIAD EYE MEDICAL
CLINIC AND CATARACT INSTITUTE,
INC., OSTEOPATHIC HOSPITAL
FOUNDERS ASSOCIATION, TULSA
REGIONAL MEDICAL CENTER, INC.,
OKLAHOMA OSTEOPATHIC HOSPITAL,
PETER SHRIVER, and Various Jane
Does and John Does,

Defendants.

Case No. 91-C-209-C

VB

**STIPULATION OF ALL PARTIES
OF DISMISSAL WITH PREJUDICE
OF DEFENDANT, PETER SHRIVER, D.O.**

COME NOW the Plaintiffs, Maxine Adriance and Theodore Adriance, by and through their attorneys of record, and herewith dismiss Defendant, Peter Shriver, D.O., from this action pursuant to Rule 41(A)(1)(ii) of the Federal Rules of Civil Procedure.

All parties to this action stipulate to the dismissal of Peter Shriver, D.O. with prejudice in this action.



Chris Knight, OBA No. 11390

Mary Lynn Tate

Hill & Knight

717 South Houston

Tulsa, Oklahoma 74127

(918) 584-2889

ATTORNEYS FOR PLAINTIFFS

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Dan A. Rogers, OBA No. 7717 (BY *F. Will DeMier*)

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MEDICAL CLINIC AND CATARACT

INSTITUTE, INC.

F. Will DeMier

Stephen J. Rodolf, OBA No. 7702

F. Will DeMier, OBA No. 13224

Barkley, Rodolf & McCarthy

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ATTORNEYS FOR DEFENDANTS,

TULSA REGIONAL MEDICAL CENTER

and PETER SHRIVER, D.O.

F I L E I D

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

MAY 13 1992

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

CLAXTON NAILS,
Plaintiff,
vs.
TULSA CITY-COUNTY HEALTH
DEPARTMENT, a political
entity, et al.,
Defendants.

Case No. 91-C-528-E FILED ON DOCKET

DATE 5-13-92

DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, Claxton Nails, by and through his attorney of record, Hubert H. Bryant and Henry W. Floyd, and the Defendants, Tulsa City-County Health Department, Frederick I. Cohen, Robert H. Featherston, James O. Goodwin, George H. Kamp, Dan E. Brannin, Stephen J. Adelson, Ralph W. Richter, Jerry Cleveland, Glyn Caldwell, and Gary Cox, by and through their attorney of record, Susan Stidham Brandon of Doerner, Stuart, Saunders, Daniel & Anderson, and hereby agree to Dismiss With Prejudice the above-entitled cause of action against all Defendants.

Respectfully submitted,

CLAXTON NAILS, PLAINTIFF

By: Hubert H. Bryant
Hubert H. Bryant, OBA #1256
Attorney for Plaintiff
2623 North Peoria
Tulsa, Oklahoma 74106
(918) 428-6665

and

Henry W. Floyd, OBA #13563
Attorney for Plaintiff
608 N.W. 8th Street
Oklahoma City, Oklahoma 73102
(405) 236-1254

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By: *Susan Stidham Brandon*
Lynn Paul Mattson
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Susan Stidham Brandon
OBA NO. 12501
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Attorneys for Defendants
Tulsa City-County Health
Department, Frederick I. Cohen,
Robert H. Featherston, James
O. Goodwin, George H. Kamp,
Dan E. Brannin, Stephen J.
Adelson, Ralph W. Richter, Jerry
Cleveland, Glyn Caldwell, and
Gary Cox

ENTERED ON DOCKET

DATE MAY 12 1992

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 JESSIE M. RAPER; COUNTY)
 TREASURER, Delaware County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Delaware County,)
 Oklahoma,)
)
 Defendants.)

FILED

MAY 11 1992

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

CIVIL ACTION NO. 91-C-272-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 6th day
of May, 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, Delaware County, Oklahoma, and
Board of County Commissioners, Delaware County, Oklahoma, appear
by Wes E. Combs, Assistant District Attorney, Delaware County,
Oklahoma; and the Defendant, Jessie M. Raper, appears by her
attorney Kenneth L. Stainer.

The Court being fully advised and having examined the
court file finds that the Defendant, Jessie M. Raper,
acknowledged receipt of Summons and Complaint on May 16, 1991;
that Defendant, County Treasurer, Delaware County, Oklahoma,
acknowledged receipt of Summons and Complaint on April 29, 1991;
and that Defendant, Board of County Commissioners, Delaware
County, Oklahoma, acknowledged receipt of Summons and Complaint
on April 30, 1991.

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

It appears that the Defendants, County Treasurer, Delaware County, Oklahoma, and Board of County Commissioners, Delaware County, Oklahoma, filed their Answer on May 7, 1991.

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

SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, Township 23 North, Range 22 East, Delaware County.

The Court further finds that this is a suit brought for the further purpose of foreclosure of security agreements on personal property located within the Northern District of Oklahoma.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of George Raper, Jr. a/k/a George G. Raper, Jr. (hereinafter referred to by either of these names) and of judicially terminating joint tenancy of George Raper, Jr. and Jessie M. Raper.

The Court further finds that George Raper, Jr. became the record owner of the real property involved in this action by virtue of that certain Deed dated January 3, 1972, from Sequoyah Tanner, a single man, to George Raper, Jr., which Deed was filed of record on February 21, 1973, in Book 310, Page 110, in the records of the County Clerk of Delaware County, Oklahoma.

The Court further finds that on December 21, 1973, George Raper, Jr. and Jessie M. Raper, husband and wife, executed a Warranty Deed conveying to George Raper, Jr. and Jessie M. Raper, husband and wife, the real property involved in this action as joint tenants and not as tenants in common, with the right of survivorship, the whole estate to vest in the survivor in event of the death of either, which Warranty Deed was filed of record on December 21, 1973, in Book 323, Page 503, in the records of the County Clerk of Delaware County, Oklahoma.

The Court further finds that George Raper, Jr., now deceased, and Jessie M. Raper executed and delivered to the United States of America, acting through the Farmers Home Administration, the following promissory notes.

<u>Loan Number</u>	<u>Original Amount</u>	<u>Date</u>	<u>Interest Rate</u>
29-02	\$16,030.00	12/29/78	8.50%
43-07	\$29,542.52	11/16/83	5.00%
(43-07 was rescheduled from promissory note dated 04/09/81 in the amount of \$31,000.00)			
43-06	\$17,500.00	11/16/83	12.50%

The Court further finds that as security for the payment of the above-described notes, George Raper, Jr., now deceased, and Jessie M. Raper executed and delivered to the United States of America, acting through the Farmers Home Administration, the following described real estate mortgages:

<u>Instrument</u>	<u>Dated</u>	<u>Filed</u>	<u>County</u>	<u>Book</u>	<u>Page</u>
Mortgage	06/26/80	07/15/80	Delaware	403	880
Mortgage	12/29/78	12/29/78	Delaware	382	381
Mortgage	11/16/83	11/16/83	Delaware	457	10

These mortgages cover the following described property, situated in the State of Oklahoma, Delaware County:

SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, Township 23 North,
Range 22 East, Delaware County.

The Court further finds that as collateral security for the payment of the above-described notes, George Raper, Jr., now deceased, and Jessie M. Raper, executed and delivered to the United States of America, acting through the Farmers Home Administration, the following financing statements and security agreements thereby creating in favor of Farmers Home Administration a security interest in certain crops, livestock, and farm machinery described therein.

<u>Instrument</u>	<u>Dated</u>	<u>Filed</u>	<u>County</u>	<u>File Number</u>
Financing Stmt.	08/08/78	08/08/78	Delaware	6498
Continuation Stmt.	03/15/83	03/15/83	Delaware	2953
Continuation Stmt.	04/27/88	04/27/88	Delaware	1626
Financing Stmt.	08/10/78	08/10/78	Oklahoma	249520
Continuation Stmt.	03/16/83	03/16/83	Oklahoma	023635
Continuation Stmt.	04/27/88	04/27/88	Oklahoma	025331
Security Agreement	04/27/82			
Security Agreement	02/16/83			
Security Agreement	07/15/83			

The Court further finds that on May 17, 1984, George Raper, Jr. d/b/a Cherokee Homes d/b/a Raper Construction Co. filed his voluntary petition in bankruptcy in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 84-00748. On December 12, 1985, a Discharge of Debtor was entered releasing debtor from all dischargeable debts. On October 30, 1990, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action described above.

The Court further finds that on December 31, 1985, Jessie Marie Raper filed her voluntary petition in bankruptcy in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 85-02447. On June 5, 1986, a Discharge of Debtor was entered releasing debtor from all dischargeable debts. On December 16, 1988, Bankruptcy Case No. 85-02447 was closed.

The Court further finds that George G. Raper, Jr. a/k/a George Raper, Jr. died on July 26, 1990. Upon the death of George G. Raper, Jr. a/k/a George Raper, Jr., the subject property vested in his surviving joint tenant, Jessie M. Raper, by operation of law. Certificate of Death No. 17082 issued by the Oklahoma State Department of Health certifies George G. Raper, Jr.'s death.

The Court further finds that the Defendants, George Raper, Jr., now deceased, and Jessie M. Raper, made default under the terms of the aforesaid notes, mortgages, and security agreements by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Jessie M. Raper, is indebted to the Plaintiff in the principal sum of \$59,241.40, plus accrued interest in the amount of \$24,597.39 as of December 26, 1989, plus interest accruing thereafter at the rate of \$12.8791 per day, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$28.00 (\$20.00 docket fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, disclaim any right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the death of George Raper, Jr. a/k/a George G. Raper, Jr. be and the same hereby is judicially determined to have occurred on July 26, 1990, in the City of Tulsa, Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the joint tenancy of George Raper, Jr. and Jessie M. Raper in the above-described real property be and the same hereby is judicially terminated as of the date of the death of George Raper, Jr. a/k/a George G. Raper, Jr. on July 26, 1990.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Jessie M. Raper, in the principal sum of \$59,241.40, plus accrued interest in the amount of \$24,597.39 as of December 26, 1989, plus interest accruing thereafter at the rate of \$12.8791 per day, until judgment, plus interest thereafter at the current legal rate of 4.40 percent per annum until paid, plus the costs of this action in the amount of \$28.00 (\$20.00 docket fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Jessie M. Raper, to satisfy the

in rem 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 and personal 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 and personal 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 and personal property or any part thereof.

(Signed) H. Dale Cook

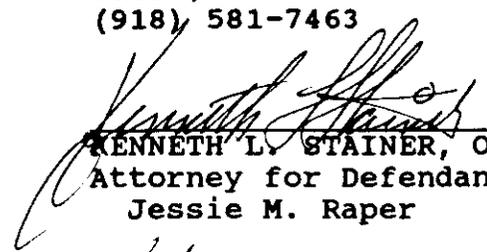
UNITED STATES DISTRICT JUDGE

APPROVED:

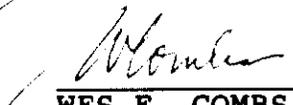
TONY M. GRAHAM
United States Attorney



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



KENNETH L. STAINER, OBA # 8536
Attorney for Defendant,
Jessie M. Raper



WES E. COMBS, OBA #13026
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Delaware County, Oklahoma

Judgment of Foreclosure
Civil Action No. 91-C-272-C

PP/css

ENTERED ON DOCKET
DATE 5-12-92

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

~~FILED~~
MAY 6 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

OTASCO, INC.,)
)
 Plaintiff,)
)
 v.)
)
 THE MOHAWK RUBBER COMPANY, et al,)
)
 Defendants.)

89-C-832-E

~~FILED~~
MAY 11 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Now before this Court is Mohawk's appeal of an August 31, 1989 Bankruptcy Court Order. The issue in this case is whether the Bankruptcy Court erred by deciding that Mohawk is collaterally estopped from bringing a counterclaim and third-party complaint against the Defendants. For the reasons discussed below, the decision of the Bankruptcy Court should be **AFFIRMED**.

I. Facts/Procedural History

Prior to May of 1987, Mohawk Rubber Company ("Mohawk") sold tires to Otasco, Inc. ("Otasco"). Otasco then sold the tires to its customers. On May 1, 1987, the pertinent facts of this case began when Otasco, Mohawk and Ameritrust Company ("Ameritrust") signed a security agreement ("Security Agreement") concerning the sale of Mohawk tires to Otasco. A further negotiation concerning the tires took place on May 8, 1987 when Otasco executed a \$1.3 million promissory note ("note") to Mohawk.

On December 20, 1987, Otasco paid \$600,000 of the principal plus interest toward the Note. *See June 1, 1989 Order in Case # 88-C-1611-B.* However, before Otasco's debt to

Mohawk could be paid off, Otasco filed Chapter 11 bankruptcy on November 6, 1988.¹

Mohawk -- in an effort to recoup what Otasco owed -- filed a motion for relief from stay and abandonment of property. Mohawk asserted that the Security Agreement granted it a senior security interest in the Mohawk tires at Otasco. Mohawk also argued that the Security Agreement contained a "future advances" clause.

The Bankruptcy Court rejected Mohawk's claim. Instead, on December 9, 1988, the court found that Mohawk had a "senior secured lien limited in amount to \$712,655.54 in Mohawk-brand tires (except light truck tires), which amount includes principal and interest at the rate of 8.75% per annum through December 15, 1988." *See Exhibit G of Brief of Mohawk Rubber Company.* The Bankruptcy Court ordered Otasco to allow Mohawk to take back possession of \$712,655.54 worth of Mohawk tires.² But the court found the balance of Mohawk claim to be unsecured, ruling the Security Agreement contained no "future advances clause." Mohawk did not seek any type of stay from the Bankruptcy Court's decision.

Mohawk appealed ("Mohawk's first appeal") to this Court. On June 1, 1989, this Court affirmed the Bankruptcy Court decision. Part of that Order read:

The Court has reviewed the Agreement and finds no future advances clause in it. Any ambiguity in this regard stems from the fact there is no specific mention of future advances or language to that effect by the parties. The Court finds that the Bankruptcy Judge was correct in finding that under Illinois law such a clause has to be clear and unambiguous to be created, and thus no such clause can be implied. See June 1, 1989 Order, Exhibit A of

¹ Prior to the bankruptcy filing, Otasco owed Mohawk some \$1.75 million, which included an \$1,005,000 open account obligation and a \$705,000 balance on the short-term note. See June 1, 1989 Order at page 4.

² Mohawk eventually picked up the tires from various Otasco warehouses. See docket #1 in Case No. 89-0163. Also, see Brief Of Appellee Ameritrust Company, page 6 (docket #10).

Mohawk Brief.

Mohawk subsequently appealed to the Tenth Circuit. While that appeal was pending, Otasco sold the tires as allowed by the Bankruptcy Court's order. Otasco also filed a Complaint, claiming that Mohawk repossessed more tires than the Bankruptcy Court's December 12, 1988 Order allowed. Mohawk countered, filing a Third-Party Complaint that accused Otasco and Ameritrust of conversion.³

On July 27, 1989 -- while the Tenth Circuit appeal was still pending -- Ameritrust moved to dismiss the Third-Party Complaint, claiming that Mohawk was attempting to "relitigate the very issue" decided by the Bankruptcy Court on December 12, 1988 and affirmed by this Court on June 1, 1989. On August 31, 1989, the Bankruptcy Court dismissed the complaint and counterclaim. In an August 11, 1989 hearing, the judge said:

This Complaint is exactly what the Court has ruled on previously. That the Complaint is without merit, that it assumes and presumes, obviously, things which this Court does not deem will come about. It is a relitigation of what I have already heard after substantial consideration of the positions of the parties as more fully reflected by the transcript of the proceedings, as well as the Court's Order of December 9th...⁴

On October 5, 1989, Mohawk again appealed ("Mohawk's second appeal") to this Court. A stay was then granted until the Tenth Circuit reached a decision concerning Mohawk's first appeal -- the one challenging the June 1, 1989 Order.

Nearly two years later, on May 31, 1991, the Tenth Circuit dismissed the case due

³ In its first counterclaim, Mohawk alleged that Otasco owed it more than \$16,000 because Otasco violated the December 9, 1988 Bankruptcy Court order. In the second counterclaim and third-party complaint, Mohawk alleged that "Otasco and Ameritrust have knowingly and wrongfully taken and sold Mohawk-brand tires (having a value of \$786, 271.58) in which Mohawk held a properly perfected security interest. Answer and Counterclaim.

⁴ See August 11, 1989 Transcript at page 6.

to mootness. In a 10-page opinion, the appellate court concluded that the tires, which were the subject of Mohawk's security interest, had been sold pursuant to a lawfully entered bankruptcy court order. As a result, the Tenth Circuit concluded that "there is no longer any property in the debtor's estate in which Mohawk has a secured claim." It added:

Even if this court were to reverse the district court and find that Mohawk had a secured claim to the balance of the tires, no relief would be forthcoming to Mohawk because its security interest, by virtue of the terms of the security agreement did not extend to the proceeds from the sale of those items.⁵

Once the Tenth Circuit issued its decision, the stay on Mohawk's second appeal) was lifted. Then, on April 2, 1992, the parties argued the second appeal before the United States Magistrate Judge.⁶ The initial issue was whether Mohawk should be collaterally estopped in its second appeal.

II. A Brief Overview of Collateral Estoppel

Under collateral estoppel or issue preclusion, "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980). The reasons for collateral estoppel are obvious:

⁵ The Tenth Circuit also noted that Mohawk should have applied for a stay of the bankruptcy court's action in order to preserve its collateral pending the appeal. See *Order and Judgment*, page 7. The court wrote that the "Defendants do not contest Mohawk's right to appeal the judgment of the bankruptcy court; it correctly argues, however, that Mohawk should have applied for a stay of the bankruptcy court's action in order to preserve its collateral pending the appeal." *Id.* at 9-10.

⁶ On April 16, 1992, this Court requested that Otasco supplement the record. On April 21, 1992, Otasco did so and also filed a Supplement To Brief In Opposition To Appeal From Order Of Bankruptcy Court.

Res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication. *Northern Natural Gas Co. v. Grounds*, 931 F.2d 678, 681 (10th Cir. 1991).

The elements of collateral estoppel are: 1) the issue is identical to the issue litigated in the prior proceeding; 2) there was a final judgment on the merits in the prior proceeding; 3) the party against whom preclusion is asserted was a party; and 4) the party to be precluded had a fair and full opportunity to litigate the issue. *Coffey v. Dean Witter Reynolds, Inc.*, No. 91-1020 (10th Cir. April 14, 1992).⁷ If those elements are met, courts may look to see if other special circumstances warrant an exception to the normal rules of preclusion. See *Montana v. United States*, 440 U.S. 147, 155, 99 S.Ct. 970, 974, 59 L.Ed.2d 210 (1979). In addition, some courts examine additional elements.⁸

III. Legal Analysis: Is Mohawk Collaterally Estopped?

Mohawk's argument -- when stripped down to its bare bones -- asks this Court to overrule its June 1, 1989 Order. The argument is camouflaged by a claim that the Tenth Circuit's action in dismissing Mohawk's appeal as moot nullifies the collateral estoppel doctrine. The following facts dilute Mohawk's position.

In its appeal of the Bankruptcy Court's December 9, 1988 Order, Mohawk listed the following issues in its brief: 1) Whether the Bankruptcy Court erred in failing to find the security and subordination agreement clearly and unambiguously secures the open account

⁷ Accord *Matter of McWhorter*, 887 F.2d 1564, 1566 (11th Cir. 1989).

⁸ The elements of collateral estoppel are: 1) the same issue is involved in both actions; 2) the issue was "actually litigated" in the first action to get to judgment; 3) there was a full and fair opportunity to litigate the issue; 4) the issue was actually decided in the first action in a final, valid disposition on the merits; 5) it was necessary to decide the issue to arrive at the disposition in the first action; 6) the later litigation is between the same parties or involves parties bound by the disposition; and 7) there are no special considerations that warrant deviation from the rule. 18 Wright, Miller and Cooper, *Federal Practice and Procedure*, §4416 at 138-139 (1981).

obligation of Otasco to Mohawk; 2) If the Bankruptcy Court found the security and subordination agreement to be ambiguous, and, therefore, unenforceable, the Bankruptcy Court erred in its legal conclusion; 3) The Bankruptcy Court erred in permitting Ameritrust to introduce extrinsic evidence to establish the intent of the parties while excluding all attempts of Mohawk to prove the intent of the parties; 4) The Bankruptcy Court's finding was erroneous even on the basis of the one-sided admission of evidence; and 5) The Bankruptcy Court erred in finding that "light truck tires" are not within the meaning of the security and subordination agreement.

As discussed above, this Court analyzed those issues and affirmed the Bankruptcy Court's order on June 1, 1989. Below is Mohawk's Statement of Issues Presented For Review in this case:

(1) Does the security interest of Mohawk in Mohawk brand automotive tires clearly and unambiguously secure the open account obligation of Otasco arising out of the ongoing purchase of Mohawk tires by Otasco?

(2) If not, does Illinois law require a future advances "clause" that is "clear and unambiguous" in order to create a security interest securing future credit?

The issues are nearly identical.⁹ First, the issues presented by the current litigation focuses on whether Mohawk has a security interest on the open account obligation and whether the Security Agreement includes a "future advances clause" under Illinois law.

Second, there was a final judgment on the merits. Third, Mohawk, as the party

⁹ *The elements discussed in Wright and Miller also are clearly met here. The issue here is the same issue already litigated by this Court: whether there was a future advances clause in the Security Agreement under Illinois law. The Bankruptcy Court and this Court ruled no such clause existed, and now Mohawk wants to revisit that same legal question. Also, as discussed above, the parties actually litigated the issue. All parties had a full and fair opportunity to litigate the issue. This Court's prior decision was a final and valid disposition on the merits. The future advances clause issue was necessary to decide the issue to arrive at the disposition in the first case. This litigation is between the same parties and involves parties that are bound by the disposition.*

against whom preclusion is asserted, was a party in the first case. The only substantial question may be whether Mohawk had a fair and full opportunity to litigate the issue. Mohawk argues that it did not because the Tenth Circuit's action in dismissing the appeal as moot.

The undersigned believes that *United States v. Munsingwear, Inc.*, 340 U.S. 36, 71 S.Ct. 104 (1950) governs here. The Court stated that the "established practice" in dealing with a civil case from a court in the federal system which has become moot... "is to reverse or vacate the judgment below and remand with a direction to dismiss." *Id. at 106*. Such a procedure, the Court noted, would preserve the rights of all parties.

In *Munsingwear*, the United States had filed a complaint, alleging that Munsingwear had violated maximum price regulations. The district court dismissed the complaint, and the United States appealed to the Eighth Circuit. The case was then dismissed by the appellate court because it was moot.¹⁰ The United States attempted to raise the same issue in district court, but the court dismissed due to res judicata. The Supreme Court wrote:

The United States made no motion to vacate the judgment. It acquiesced in the dismissal. It did not avail itself of the remedy it had to preserve its rights...The case is therefore one where the United States, having slept on its rights, now asks us to do what orderly procedure it could have done by itself. The case illustrates not the hardship of res judicata but the need for it in providing terminal points for litigation. *Id. at 107.*

In this case, Mohawk argues that it had no way of preserving its right to appeal. The facts indicate otherwise. Mohawk could have filed a motion to vacate; it chose not

¹⁰ While the appeal was pending, the commodity involved in the lawsuit was decontrolled.

to. The tire company could have filed a motion to stay pursuant to Bankruptcy Rule 8005; it did not.¹¹ Therefore, this Court finds that Mohawk "slept on its rights" and that is why it was prevented from obtaining appellate review.

III. Conclusion

In this appeal, Mohawk attempts to re-litigate the same issue that already were decided by this Court on June 1, 1989. Such re-litigation should not be permitted. Mohawk had an opportunity to preserve its rights by either staying the initial Bankruptcy Court Order or taking other procedural protection. It chose not to. Consequently, this Court holds that Mohawk is collaterally estopped on the issues here. The Bankruptcy Court's decision is AFFIRMED.

SO ORDERED THIS 5th day of May, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹¹ Mohawk could have, and should have, pursuant to Bankruptcy Rule 8005, filed a motion for a stay pending the appeal to the Tenth Circuit. It did not. See, generally, *In Re Charlton*, 708 F.2d 1449, 155 (9th Cir. 1983) (where the court held that since Charlton did comply with Bankruptcy Rule 805 (now 8005), he could not challenge the validity of the sale of his property pursuant to a lawful order by the bankruptcy court. Cf. *Ringsby Truck Lines, Inc. v. Western Conference of Teamsters*, 686 F.2d 720 (9th Cir. 1982) (dismissal of suit may result in unfairness to prevailing party) and *United States v. Gardo*, 848 F.2d 1307 (D.C. Cir. 1988) (While vacating a lower court decision underlying a moot appeal is the general practice, exceptions exist to avoid unfairness to prevailing parties); *Karcher v. May*, 108 S.Ct. 388, 395 (1988) (where *Munsingwear* was held to be inapplicable because the losing party declined to pursue its appeal).

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

F I L E D

MAY 11 1992

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

UNITED STATES OF AMERICA, }
 }
 Respondent, }
 }
 vs. }
 }
 LEONARD DEWAIN WHITE, }
 }
 Petitioner. }

No. 90-CR-22-C

No. 92-C-25-C

ORDER

Before the Court is the motion of petitioner pursuant to 28 U.S.C. §2255. Petitioner was indicted of two counts of violating 18 U.S.C. §511(a) and 2. He entered a conditional plea to Count Two and was sentenced to imprisonment of 25 months and supervised release of three years. Restitution was also ordered in the amounts of \$1,850 to Home Insurance Company and \$1,875 to David Joe Moydell. It is undisputed that these restitution amounts relate to the crime charged in Count One, which was dismissed at the time of sentencing. Petitioner appealed solely as to the Court's ruling denying his motion to suppress. The Tenth Circuit affirmed this Court. Petitioner has filed the present motion, raising two separate grounds. First, he attacks the restitution award and second, he argues that his sentence was illegal.

Approximately one month before sentencing, the Supreme Court ruled in Hughey v. United States, 495 U.S. 411 (1990) that an award of restitution under the Victim and Witness Protection Act of 1982 may only be made for the loss caused by the specific conduct that is the basis for the offense of conviction. The Government concedes that the Court should not have imposed a restitution award for Count One.

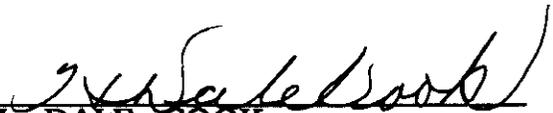
Petitioner did not raise this issue prior to sentencing or in his direct appeal. Arguably, the present motion should be required to satisfy the "cause and prejudice" test of United States v. Frady, 456 U.S. 152 (1982). However, a showing of cause and prejudice is not jurisdictional and the Government may waive the issue. See United States v. Kennigott, 840 F.2d 375, 379 (7th Cir. 1987). See also United States v. Hall, 843 F.2d 408, 410 (10th Cir. 1988). The Government has clearly waived the issue here. Upon review, the Court will vacate the restitution award.

Petitioner next argues that his sentence was illegal because the actual sentence received, when added to the term of supervised release imposed, exceeded the maximum penalty allowable by statute (in this instance, five years). This argument has been uniformly rejected. See United States v. Jamison, 934 F.2d 371 (D.C. Cir. 1991) and the cases cited therein. The cases upon which petitioner relies are instances in which the sentencing court utterly failed to inform the defendant regarding a term of supervised release.

The transcript reflects that such is not the case here. This aspect of the motion is therefore denied.

It is the Order of the Court that the motion of the petitioner pursuant to 28 U.S.C. §2255 is hereby granted in part and denied in part. That portion of the Judgment and Sentence imposing an award of restitution is hereby vacated. In all other respects, the sentence is unchanged.

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


H. DALE COOK
United States District Judge

ENTERED ON DOCKET

DATE 5-12-92

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

DANNY L. MITTS,

Plaintiff,

v.

WAL-MART STORES, INC.,
a foreign corporation,
PRESCOLITE, INC.,
a foreign corporation,

and

METALUX LIGHTING, a
Division of Cooper Lighting
Group, a Division of Cooper
Industries, Inc.,

Defendants.

No. 91-C-469-E

FILED

MAY 11 1992

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

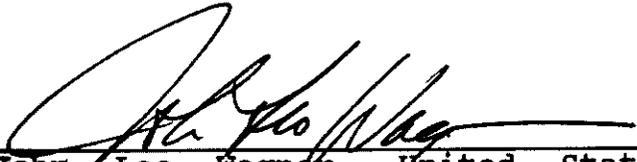
JOURNAL ENTRY OF JUDGMENT

The above styled and numbered cause of action comes on for hearing the Motion of the Defendant, Metalux Lighting, a Division of Cooper Lighting Group, a Division of Cooper Industries, Inc., to dismiss the Plaintiff's Amended Complaint filed herein. The parties were represented by counsel.

The Court having reviewed the file including the briefs in support of and in opposition to the Motion to Dismiss of Metalux Lighting and having heard argument of counsel, finds that the Motion should be and it is hereby granted.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Motion of the Defendant, Metalux Lighting, a Division of Cooper Lighting Group, a Division of Cooper Industries, Inc., to dismiss the Plaintiff's Amended Complaint as against the Defendant Metalux is hereby granted.

To all adverse rulings the parties are granted their respective exceptions.


John Leo Wagner, United States
Magistrate Judge

Authority:

Granted pursuant to 28 U.S.C. § 636(c).

APPROVED AS TO FORM AND CONTENT


One of the Attorneys for the Plaintiff


One of the Attorneys for the Defendant
Metalux Lighting, a Division of Cooper
Lighting Group, a Division of Cooper
Industries, Inc.

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

WILLIAM A. MAY,)
)
 Plaintiff,)
)
 v.)
)
 RON CHAMPION,)
)
 Defendants.)

92-C-362-B

FILED
Richard M. [unclear] Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER TO TRANSFER CAUSE

The Court having examined the Petition for Writ of Habeas Corpus which the Petitioner has filed finds as follows:

(1) That the Petitioner was convicted in Oklahoma County which is located within the territorial jurisdiction of the Western District of Oklahoma.

(2) That the Petitioner demands 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 Western District of Oklahoma.

IT IS THEREFORE ORDERED:

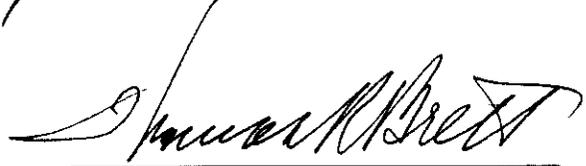
(1) Pursuant to the authority contained in 28 U.S.C. §2241(d) and in the exercise of discretion allocated to the Court, this cause is hereby transferred to the United States

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District Court for the Western 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 8 day of May, 1992.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett". The signature is written in dark ink and is positioned above a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE MAY 11 1992

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

GREGORY C. ROBINSON, and
Others Similarly Situated,

Plaintiffs,

v.

STATE OF OKLAHOMA, IN THE
NAME OF THE GOVERNOR'S OFFICE
OF THE STATE OF OKLAHOMA,
DAVID WALTERS, GOVERNOR,

Defendants.

Case No. 91-C-468-B

FILED
MAY 8 1992
Richard M. Lovvorn, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter comes on for consideration of Motion To Intervene filed on behalf of proposed Plaintiff-intervenors, registered voters in Tulsa and Oklahoma counties. Also for consideration is Defendant's objection to the Magistrate Judge's Report and Recommendation denying Defendant's Motion To Administratively Close Case.

The original plaintiff, Gregory Robinson, a resident of Tulsa County, filed an action on behalf of African American voters challenging the method of electing district and associate district judges in the State of Oklahoma. Plaintiff amended his complaint to challenge the method of electing district judges in Tulsa, Oklahoma, Comanche, Muskogee and Okmulgee counties.

Although the plaintiff alleged a class action in his complaint, class certification was never sought, and this case has never been certified as such.

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Proposed plaintiff-intervenors, registered voters in Tulsa and Oklahoma counties, seek to intervene in this action pursuant to Rule 24(a) or (b) of the Federal Rules of Civil Procedure in order to protect African American voters in Tulsa and Oklahoma counties whose interests may be prejudiced by disposition of this action and who are not adequately represented by the original plaintiff.

The Plaintiff does not oppose the proposed intervenors' intervention in this case. The Attorney General of Oklahoma, on behalf of the Governor, has no objection to the intervention of these parties as plaintiffs. The Complaint in Intervention also adds the State Election Board and its secretary Lance Ward as Defendants. Because the Attorney General believes that these entities may be necessary parties under Rule 19 of the Federal Rules of Civil Procedure, she has no objection to their joinder as Defendants.

The Court concludes proposed Plaintiff-intervenors Motion To Intervene should be and the same is hereby GRANTED.

Defendant seeks administrative closing of this case in light of the facts that the Governor has appointed a task force of high officials to study this issue and no judicial elections will occur in this state until 1994. Defendant views this matter as essentially one for the state legislature. The Magistrate Judge recommended denial of such motion on the ground that the Defendant has not shown a need for a delay and Plaintiff is entitled to an expeditious determination of his claims under the Voting Rights Act of 1965.

The Court concludes the Report and Recommendation of the

Magistrate Judge should be and the same is hereby ADOPTED and AFFIRMED. Defendant's Motion To Administratively Close Case should be and it is hereby DENIED.

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

A handwritten signature in cursive script, reading "Thomas R. Brett".

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

The Stramiello Note was originally made in favor of plaintiff and defendant as tenants in common in the amount of \$200,000.00. In December, 1982, defendant had assigned his interest in the Stramiello Note and Mortgage to Stillwater National Bank (the "Bank") as security for a loan. The facts of the assignment and loan were known to plaintiff at the time of the divorce.

The Agreement also provided that defendant would be responsible for the "Hi-Point Indebtedness", a principal debt of \$1,161,266.39 owed to the Bank by Hi-Point Isle Limited, an Oklahoma corporation, which debt had been personally guaranteed by both plaintiff and defendant.

Ultimately, defendant failed to pay the debt secured by the Stramiello Note and the Bank foreclosed its security interest in his 50% interest. Defendant characterizes the loan secured by the Stramiello Note as a personal loan. Plaintiff counters by pointing out that the loan was conditioned upon defendant's agreement to loan the proceeds thereof to Hi-Point.

The Agreement provides at page 2, paragraph 6, as follows:

Property Division (Sandra): As a division of the parties' jointly acquired property and in consideration of Sandra's relinquishment of her demand for the payment of permanent alimony for support, Sandra shall receive the following, free and clear of any claim, right or interest of Scott:

. . .

c. The Stramiello Promissory Note and Mortgage.

. . . (Emphasis added.)

The language is clear that plaintiff was entitled to receive the Stramiello Note and Mortgage free of any claim, right or interest of the defendant, not the Bank. Since it is undisputed that plaintiff knew of the Bank's interest when the Agreement was entered into, no possibility of fraud or misunderstanding exists. The Court concludes that defendant did not breach the Agreement in this respect.

Defendant also defaulted on the Hi-Point indebtedness and the Bank sued plaintiff and defendant upon their personal guaranties. The Bank ultimately released the personal guaranties in a deed in lieu of foreclosure transaction. The Bank initially raised all its claims in a Delaware County petition. The claim regarding defendant's "personal loan" of \$100,000.00 was dismissed because of improper venue and refiled in Payne County. It apparently was the Payne County action which resulted in the loss to plaintiff of defendant's one-half interest in the Stramiello Note.

Plaintiff argues that defendant's characterization of the \$100,000.00 as a personal loan is misleading, because the money was immediately pledged to Hi-Point. Thus, the argument continues, the provision in the Agreement that defendant shall be responsible for the "Hi-Point indebtedness" is ambiguous, and the term should include the \$100,000.00 and this Court should find such as an issue of fact regarding breach.

The Court concludes that it is unnecessary to resolve the ambiguity question, because the Agreement contains no provision which would hold plaintiff harmless for the Hi-Point indebtedness, however that indebtedness is defined. The Agreement does contain a provision holding plaintiff harmless as to the "O.A.I. Stock," which was also encumbered by a debt owing to the Bank. If the parties intended similar protection to plaintiff regarding the Hi-Point indebtedness, a similar provision should have been drafted.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Widon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). *cert den.* 480 U.S. 947 (1987). 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, 106 S.Ct. 1348, 89 L.Ed.2d 538, (1986).

The Court concludes that summary judgment is appropriate as to Count One.

Regarding Count Two, alleging contempt of court, defendant's argument that the claim is in the wrong court is somewhat disingenuous, in that defendant removed this action to federal court. Plaintiff concedes that this Court cannot grant the relief she seeks, and requests a dismissal without prejudice. This request is granted.

It is the Order of the Court that the motion of the defendant for summary judgment is hereby granted as to Count One. Count Two is hereby dismissed without prejudice.

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


THOMAS R. BRETT
United States District Judge

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

FILED

MAY 08 1992

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

MARCUS R. MILLER,
Plaintiff,

v.

TULSA COUNTY JAIL, STANLEY
GLANZ, SHERIFF, et al,
Defendants.

Case No. 90-C-526-BV ✓

ORDER

The Complaint was filed herein on June 27, 1990. The Amended Complaint was filed herein on August 8, 1990.

The Court concludes this matter is subject to dismissal without prejudice, pursuant to Rule 4 (j), Federal Rules of Civil Procedure, as to named Defendants George Rogers, Deputy Sheriff, DeWayne Harris, Deputy Sheriff, John Doe, Investigator, Doctor Barnes, John Doe, Deputy Sheriff, Jane Doe, Nurse #1 and Jane Doe, Nurse #2, none of whom have been served herein.

The Court concludes this matter should be and the same is hereby DISMISSED without prejudice as to the above named Defendants.

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



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE