

ERED ON DOCKET

DATE 6-30-92

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

**FILED**

JUN 30 1992

RICHARD M. LAWRENCE, CLERK  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ROBERT G. TILTON,  
Plaintiff,

vs.

GARY L. RICHARDSON, et al.,  
Defendants.

No. 92-C-424-E

ORDER

The instant case was inspired by lawsuits filed against the Plaintiff and the publicity which surrounds that litigation.<sup>1</sup> Characterized by Plaintiff as a "firestorm of negative media coverage and ... lawsuits", (Complaint at 4), the publicity and the lawsuits question the veracity of Plaintiff's tele-evangelical ministry solicitations and prayer services and they level charges of fraudulent conduct and intentional infliction of emotional distress in connection therewith. In this lawsuit, Plaintiff avers that Defendants' participation in these activities evinces a conspiratorial attempt to deprive him of his Constitutional right to free exercise of his religion. In sum, Plaintiff claims that Defendants' actions implicate his First and Fourteenth Amendment rights (Complaint at 34) and are, further, actionable under state libel and slander laws (Complaint at 35-37).

On May 14, 1992, this Court denied Plaintiff's request for a

<sup>1</sup>To date, some nine causes of action, based upon similar allegations have been filed against the Plaintiff. Plaintiff identifies those causes in his Complaint at pp. 9-29.

Temporary Restraining Order but scheduled the case for expedited - "fast track" - resolution. The issues of liability and damages were bifurcated and the liability portion of the case was set for bench trial on the third day of August, 1992. Subsequently, Defendants individually filed motions to dismiss. At conference, on June 23, 1992, all parties agreed that because diversity jurisdiction is unavailable, the only basis of this Court's jurisdiction is the relief sought by Plaintiff under 42 U.S.C. §1985(3). Therefore, on June 24, 1992, the Court heard oral argument on the respective motions to dismiss premised upon the jurisdictional issue. This order addresses that dispositive issue.

Title 42 U.S.C. §1985(3)(1976 ed., Supp. V) provides, in pertinent part that:

If two or more persons in any state or territory conspire ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any state or territory from giving or securing to all persons within such state or territory the equal protection of the laws ... [and] in any case of conspiracy set forth in this section, if any one or more persons engaged therein, do, or cause to be done, any act in furtherance of the object of such conspiracy whereby another is injured in his person or property ... the party so injured ... may have an action for recovery of damages occasioned by such injury ... against any one or more of the conspirators.

In Griffin v. Breckenridge, 403 U.S. 88, 102-103, 91 S.Ct. 1790, 1798, 29 L.Ed.2d 338 (1971), the Supreme Court identified those elements which must be proved in order to sustain a §1985(3)

claim. For purposes of this lawsuit those elements may be paraphrased as follows: the Plaintiff must allege and demonstrate that there was 1) a conspiracy; 2) the purpose of which was to deprive plaintiff individually or as a member of a class, either directly or indirectly, of the equal protection of the laws or of equal privileges and immunities provided thereunder; and 3) an act in furtherance of that conspiracy; 4) whereby the plaintiff is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.

In Griffin plaintiffs, black residents of the State of Mississippi, charged defendant whites of, inter alia, interfering with their Thirteenth Amendment rights and their right to interstate travel. The record revealed that defendants believing one of the plaintiffs to be a Civil Rights advocate, obstructed passage of plaintiffs' automobile on public highways whereby plaintiffs were detained and subjected to assault with deadly weapons. Id. at 91 S.Ct. 1792-1793. The pivotal issue in Griffin was whether §1985(3), element #2 (supra) encompassed only 1) conspiracies under color of state law, and 2) an interference with or influence upon state officials. Id. at 91 S.Ct. 1796. Because the record implicated plaintiffs' rights under the Thirteenth Amendment, which requires no state action but includes the conduct of private persons as well, the Court concluded that the record adequately demonstrated a §1985(3) claim. Id. at 91 S.Ct. 1793-1798. The Court hastened to explain, however, that in so ruling it did not construe the Section to encompass "all tortious,

conspiratorial interferences with the rights of others." Id. at 91 S.Ct. 1798. By way of clarification the Court opined:

The constitutional shoals that would lie in the path of interpreting §1985(3) as a general federal tort law can be avoided by giving full effect to the congressional purpose - by requiring, as an element of the cause of action, the kind of invidiously discriminatory motivation stressed by the sponsors of the limiting amendment. [citation omitted] The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action.

Id. (footnote omitted) And, then, as if to punctuate this limiting language, the Court, at footnote 9, declared:

We need not decide, given the facts of this case, whether a conspiracy motivated by invidiously discriminatory intent other than racial bias would be actionable under the portion of §1985(3) before us.

Id. Accordingly, the Supreme Court left for another day the issues of whether the instigating animus of the conspiracy must be racial; and if it is not limited to racial bias, how broad is the reach of the kind of "class-based invidiously discriminatory animus" proscribed by §1985(3). But Griffin leaves no doubt that an assault upon black citizens arising out of a conspiracy to impede the exercise or advocacy of their constitutional rights is actionable pursuant to §1985(3) even though no state action is involved.

The unresolved question of Griffin was addressed by the Tenth Circuit in Taylor v. Gilmartin, 686 F.2d 1346 (1982). There, plaintiff sought recovery under §1985(3) (and under §1983, §1985(2))

and state common law) claiming that a religious deprogramming scheme deprived him of the equal protection of the laws and violated his rights to freedom of religion and association. Id. at 1348-1350. The Circuit queried whether this conspiracy to coerce plaintiff into changing his religious beliefs was the kind of class-based invidious discrimination required by the Griffin test.<sup>2</sup> Id. at 1358. Based upon the record before it, the Circuit concluded that it was:

So, therefore, this is a situation in which there is a gross concerted interference with a very fundamental right, the right to choose one's religion, and it is this underlying factor that makes this case actionable, or which greatly aggravates it.

Id. at 1362 (emphasis added).

The Court also found a sufficient nexus with state action:

While the suit before us alleges a private conspiracy in the sense that the named defendants - those who transported and sought to deprogram the plaintiff - are not state officers, nevertheless, there is no dearth of state involvement as a result of the cooperation of the judges and the sheriff's officers.

Id. at 1358. The Court concluded its analysis of §1985(3) as applied to the record by declaring that "a private conspiracy ... motivated by class-based invidiously discriminatory animus, to induce the state to violate one's first and fourteenth amendment rights is remedied by §1985 ... (3)." Id. at 1360.

Tilton cites Taylor as authority for the position that his

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<sup>2</sup>Whether the defendant business which performed the actual deprogramming was motivated by the animus required in Griffin was a question of fact for the jury. Id. at 1358.

claim in the instant matter falls within the ambit of §1985(3). He argues that Taylor is analogous and factually on point. This Court is not persuaded.

In 1983, the Supreme Court was again invited to ponder the reaches of §1985(3) and the particular type of animus proscribed by it. United Broth. of Carpenters & Joiners v Scott, 463 U.S. 822, 103 S.Ct. 3352 (1983). Scott involved a dispute on a federal construction site between nonunion workers and union representatives that degenerated into violence. Injured nonunion employees brought an action alleging, in part, that the actions of the union constituted the kind of conspiratorial discrimination prohibited under §1985(3). Id. at 103 S.Ct. 3356. The Supreme Court first declared that First and Fourteenth Amendment rights can only be vindicated under §1985(3) if the state is implicated in the conspiracy. Id.<sup>3</sup> Therefore, where, as in Scott and in the instant case, the gravamen of plaintiff's claim describes a scheme to infringe upon his First and Fourteenth Amendment, state involvement must be found. Whether Tilton can demonstrate a sufficient nexus between the alleged conspiracy and state authority will not be addressed in this Order because the Court is compelled to dismiss this cause on other grounds.

The Scott Court also found that plaintiffs (Respondents) had

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<sup>3</sup>The Court noted that it was not the Section itself which required state involvement but the right which plaintiff alleged was infringed upon. Thus, in Griffin where plaintiffs sought protection of their rights under the Thirteenth Amendment which is not limited to acts of the State, no showing of state involvement was required.

failed to demonstrate the kind of discriminatory animus required by the Griffin test. Id. at 103 S.Ct. 3357. And it is the Court's reasoning on this issue that commands our attention. Recall that in Griffin the Court was loath to rule without appending the caveat that §1985(3) was not to be construed as a omnifarious tort statute proscribing "all tortious conspiratorial interferences with the rights of others." (supra at 4). Rather, the conspiracy alleged must be motivated by "some racial or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' actions." (Id.)(emphasis added). As the Scott Court reminds us, the Griffin case involved animus against black citizens - a class which is clearly within the purview of §1985 since the express purpose of that statute was to curtail "the prevalent animus against Negroes and their supporters." Id. at 103 S.Ct. 3360. While the Scott Court, as the Griffin Court before it, was reluctant to limit the provisions of §1985(3) to conspiracies motivated by racial animus alone, it did express substantial doubt that §1985(3) should be read to include politically motivated conspiracies. The Scott Court, however, expressed no hesitation in construing the Section to exclude conspiracies motivated by the "economic views, status or activities" of another. By way of explanation, the Court declared that it found no support in the legislative history for the proposition that economic interests were intended to be protected by the Section. "Such a construction", said the Court, would extend §1985(3) into the economic life of the country in a way that we doubt the 1871

Congress would have intended when it passed the provision in 1871." Id. at 103 S.Ct. 3361.

In Scott, the plaintiff-respondents had argued that the conspiratorial scheme directed against them was political in nature and therefore intended to be proscribed by §1985(3).<sup>4</sup> The Court did not concur, however, finding the dispute essentially an economic one. Id. Similarly, in the present case, Tilton has argued that the lawsuits against him and the ensuing publicity infringed upon his First Amendment right to practice his religion and are motivated by religious animus. But this Court after copious review of the record, exhibits presented and the arguments advanced finds that it is predominately his economic and commercial interests which are implicated in the "firestorm". Indeed, the Court can find no evidence that the litigation and publication impede his religious practice qua religious practice. Furthermore, the alleged animus emanating from the concerted activity of the Defendants appears to be economic in nature rather than religious. This then appears to be a case which falls outside the provisions of §1985(3). Because, as stated above, the only basis for the Court's jurisdiction was the federal claim under §1985(3), this matter should be dismissed. The Court notes that while a dismissal

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<sup>4</sup>In so arguing, they cited, as did Tilton in the case at bar, the speech of Senator Edmunds prior to passage of the Section by Congress. See Scott, 103 S.Ct. at 3360; Griffin, 91 S.Ct. at 1798, n. 9. Plaintiff-respondents in Scott also cited to various statements made during the debates on the 1871 Civil Rights Act which they interpreted to include Northern laborers and businessmen. The Court did not find that interpretation compelling. Id. 103 S.Ct. at 3361.

is ordinarily a final judgment - appealable without leave of Court - under the circumstances of this case, the Court elects to retain jurisdiction and certify the dispositive issue for interlocutory appeal.

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss for want of jurisdiction is granted;

IT IS FURTHER ORDERED that the Court will retain jurisdiction of the matter pending resolution of the issue by the Circuit in the interest of judicial economy;

IT IS FURTHER ORDERED that, in order to expedite the process, the issue is certified for interlocutory appeal pursuant to 28 U.S.C. §1292(b) because it involves "a controlling question of law as to which there is substantial ground for difference of opinion" and "an immediate appeal from the Order may materially advance the ultimate termination of the litigation";

IT IS FURTHER ORDERED that all proceedings in this Court are stayed until the Circuit's decision is rendered.

So ORDERED this 30<sup>th</sup> day of June, 1992.

  
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JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET  
DATE 6/30/97

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

JOSEPH MACASTLE JACKSON,  
Plaintiff,  
v.  
RON CHAMPION, et al.,  
Defendants.

No. 90-C-1012-B ✓

**FILED**  
JUN 26 1992

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

ORDER

Before the Court are the motions for summary judgment, injunction and judicial notice of adjudicative facts filed by the plaintiff, Joseph M. Jackson ("Jackson"), and the motion for summary judgment filed by the defendants, Ron Champion ("Champion"), M. Sirmons, S. Bears, Marvin Keenen, and Pete Iverson.

The following facts are undisputed.

Jackson filed this action pursuant to 42 U.S.C. §1983 alleging that the defendants violated his constitutional rights guaranteed by the First, Eighth, Thirteenth and Fourteenth Amendments by refusing to grant him a religious exemption to the inmate grooming code at the Dick Conner Correctional Center ("DCCC"). Jackson applied for a religious exemption on October 4, 1990, claiming that he was required to grow a beard in accordance with the tenets of his Muslim faith. The Facility Classification Committee ("FCC") denied the exemption on or about November 20, 1990. Jackson appealed the FCC decision by filing a grievance with Warden

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Champion. After an investigation, the grievance was denied on November 26, 1990.

At the time of his application, the DCCC allowed exemptions to the grooming code pursuant to the Application and Review Procedures for Exemption to the Conner Correctional Center Inmate Grooming Code (DCCC-070309-02, Sections I., II., III., and V.). On September 11, 1991, the Oklahoma Department of Corrections ("DOC") enacted a non-exemption grooming policy which prohibited any religious exemptions to the inmate grooming code. When the district court of the Western District of Oklahoma held that the new DOC policy was an unconstitutional intrusion on the religious freedom of inmates in Leflor v. Maynard, No. CIV-91-1521-R (W.D. Okla., Jan. 7, 1992), the DOC instituted a new grooming policy which again provides for religious exemptions.<sup>1</sup>

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<sup>1</sup> In his motion for judicial notice, Jackson requests the Court to take judicial notice of certain facts adjudicated in Leflor. A copy of the Leflor memorandum opinion was submitted by the defendants in support of their motion for administrative closure of this action on January 12, 1992.

The court in Leflor determined that the DOC had failed to establish a security risk which mandated a policy of no religious exemptions to "those inmates whose sincerely held religious beliefs prohibit the cutting of their hair." Id. at 14. Leflor, therefore, concerned the non-exemption policy that was put into effect after Jackson filed his request for exemption, the denial of which is the subject of this action. Any question of the constitutionality of the non-exemption policy was resolved by the court in Leflor. The question before this Court, however, is not whether a legitimate penological interest exists which would preclude religious exemptions, but whether Jackson's constitutional right to practice his sincerely held religious beliefs was violated when he was denied a religious exemption. Because the Court does not find the facts of Leflor to be germane to this case, and the evidentiary record in Leflor is not a part of the record in this case, Longstreth v. Maynard, \_\_\_ F.2d \_\_\_, 1992 WL 67983 (10th Cir., April 6, 1992), the Court denies plaintiff's application.

The FCC reviews the applications for religious exemptions and renders a decision granting or denying the applications. Pursuant to the DCCC Application and Review Procedures, the criteria for exemption include the following inquiries:

1. Is the religion a recognized religion?
2. Is there evidence to prove the inmate is an adherent to the religion?
3. Is there sufficient evidence as to how the practice of his religion is significantly inhibited by CCC-070309-01 entitled, "Inmate Grooming Code"?

(Plaintiff's Exhibit C, §II.C.).

The FCC reviewed Jackson's request for religious exemption at a hearing held on November 20, 1990, which Jackson attended. The FCC was comprised of Marvin Keenen, the Chaplain of DCCC; Pete Iverson, the Case Manager Coordinator; M. Sirmons, the Deputy Warden of DCCC; and Captain Steve Bears, Acting Security Major of DCCC. In his application for exemption, Jackson stated that he was seeking the exemption

In spite of the fact some believers of Islam choose not to grow beard and, some choose to, by tradition. The extent of my faith spiritually is to follow the guide of the prophet and his tradition of growing beard, and the dictates of the Quran (H.Q.) XIV 11-12 (44-45); XXII:67; Bhukari/Muslim Hadith as reported by the prophets' wife Aersha.

(Plaintiff's Exhibit D). Jackson also attached an unidentified document which discussed the Muslim requirement of growing a beard.

(Plaintiff's Exhibit D).

Because the FCC had previously received applications from Muslim inmates who requested religious exemptions, Pete Iverson and Marvin Keenen, in late 1989 or early 1990, had contacted the World

Community of Islam and the Islamic Information Center, Chicago Illinois, to inquire if the wearing of a beard were required of Muslim men. They were informed that it was not. Iverson and Keenen further attest that "[a]t that time," they had "never been told by any individual that the growing of a beard is required of Muslim men." (Affidavit of Pete Iverson, ¶2; Affidavit of Marvin Keenen, ¶2).<sup>2</sup> Based on this information, the FCC denied Jackson's request, concluding the following: "The committee through interviews with Muslim leaders does not feel that the DOC grooming policy inhibits the inmates [sic] ability to be a practicing Muslim." (Facility Classification Committee Review, Plaintiff's Exhibit E; Affidavit of Pete Iverson, ¶3; Affidavit of Marvin Keenen, ¶3).

Pursuant to procedures, Jackson appealed the FCC decision by filing a grievance with Warden Champion. Champion assigned his assistant, Steve Moles ("Moles"), to investigate and research Jackson's claims. (Affidavit of Ron Champion, ¶4). Upon review of

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<sup>2</sup> Although plaintiff moves for summary judgment stating that no genuine issue of material fact exists, plaintiff appears to dispute this fact and in support submits the affidavit of Malik Muhammed, a contract Muslim Chaplain, in which the affiant states "That during the years 1988 thru [sic] 1991 I have informed the Oklahoma Department of Corrections, in my professional capacity, that the growing of a beard is consistent with the Islamic Faith and keeping with Islamic Tradition" and "That if a sincere Muslim man is able to grow a beard it is obligatory because it was commanded by the Prophet of Islam." However, Malik Muhammed in his affidavit does not state that he informed the members of FCC before or during Jackson's hearing on November 20, 1990. The affidavit, therefore, does not directly dispute the statements of Iverson and Keenen in their affidavits.

Plaintiff has also attached the affidavit of Jemal A.R. Aziz, who also attests that "The Islamic Faith require [sic] a sincere adherent to grow a beard." However, the affiant states that he gave this information to chaplain Marvin Keenen on or about May 28, 1991.

a prior request for exemption in a letter sent by Jackson to Champion, dated February 27, 1990,<sup>3</sup> Moles noted that Jackson had referred the warden to The Original Tents of Kedar to verify the requirement of growing a beard.<sup>4</sup> Moles attests that on or about December 27, 1990, he telephoned The Original Tents of Kedar, as requested by Jackson.

The gentleman to whom I spoke informed me that the wearing of a beard is preferred, but is not a mandatory requirement for members of the Muslim faith. He further stated "not all brothers can even grow a beard," and that it would [sic] unfair to not recognized persons of the Muslim faith who could not grow beards.

(Affidavit of Stephen Moles, ¶4). On the basis of this investigation and that of the FCC, Champion denied Jackson's request for exemption. (Affidavit of Steve Moles, ¶5; Affidavit of Ron Champion, ¶5). Champion's formal response stated that

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<sup>3</sup> It is unclear from the record how many other requests for exemptions were filed by Jackson prior to the subject application. Jackson states in his motion for summary judgment that "at least on three (3) separate occasions [sic] his exemption papers were somehow lost in the prison administration."

In their supplemental briefs and at the telephone conference held on May 27, 1992, however, the parties acknowledged at least two subsequent requests for exemption: the first, denied on October 7, 1991 because the grooming code in effect at that time did not allow religious exemptions; the second, granted on April 15, 1992.

<sup>4</sup> The pertinent part of the letter stated the following:  
The belief of growing beard is practiced and followed by many Muslims, more than I can accurately mention here, as Islam is a large and forever growing religion. But, this belief can be further verified by contacting anyone at 'The Original Tents of Kedar,' 717 Bushwick Ave., Brooklyn, N.Y. 11221 - Phone (718)452-9329."

(Affidavit of Stephen Moles, Attachment A).

I have reviewed your grievance. It is not a mandatory tennant [sic] of your belief, as a Muslim, that a beard be worn. Therefore, you will not be provided an exception to the departmental grooming code, OP-090126. The wearing of a beard is only preferred and, as such, is not a strict requirement for you to maintain compliance with the tennants [sic] of your religion.

(Affidavit of Ron Champion, Attachment B).

In April and May 1991 Jackson received several misconduct reports for refusing to shave his beard. (Plaintiff's Exhibits 'AA' - 'FF'). As a result, DCCC took disciplinary action against Jackson which included segregation, fines and loss of earned credit, and culminated in his transfer from medium security at DCCC to maximum security at Oklahoma State Penitentiary in McAlester, Oklahoma. (Plaintiff's Exhibits 'OO' - 'QQ'). The parties agree that the following disciplinary actions were taken against the plaintiff for his failure to shave his beard:<sup>5</sup>

4/19/91	Disobedience to Orders - refused to shave. 15 days DU, \$10.00 fine;
5/1/91	Disobedience to Orders - refused to shave. 30 days DU, Loss of 30 earned credits, \$15.00 fine;
5/7/91	Disobedience to Orders - refused to shave. 15 days DU, \$10.00 fine;
5/9/91	Disobedience to Orders - refused to shave. 30 days DU, \$15.00 fine;
5/13/91	Disobedience to Orders - refused to shave. 30 days DU, \$15.00 fine;
5/15/91	Disobedience to Orders - refused to shave. 30 days DU, \$15.00 fine;
5/17/91	Disobedience to Orders - refused to shave. 30 days DU, \$15.00 fine;
5/21/91	Disobedience to Orders - refused to shave. 30 days DU, \$15.00 fine;

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<sup>5</sup> Although it is undisputed that Jackson wore a beard since December 1987, Jackson had not been challenged for his noncompliance with the inmate grooming code until after denial of his appeal.

5/23/91 Disobedience to Orders - refused to shave. 30 days DU.  
5/27/91 Disobedience to Orders - refused to shave. 30 days DU,  
Loss of 30 earned credits.  
5/30/91 Disobedience to Orders - refused to shave. 30 days DU.  
6/12/91 Transferred to Oklahoma State Penitentiary.  
(Defendants' Response to Court Order, pp. 2-3)

On April 9, 1992, the plaintiff applied for a religious exemption under the new inmate grooming code at Oklahoma State Penitentiary and his application was approved by Warden Dan M. Reynolds on April 15, 1992, and remains in effect.

Both parties move for summary judgment based on the above undisputed facts. Plaintiff asserts that the undisputed facts establish DCCC's violation of his constitutional rights, specifically his rights under the First, Eighth, Thirteenth and Fourteenth Amendments. The defendants, contrarily, contend that the undisputed facts prove that plaintiff's constitutional rights were not violated, and even if plaintiff's constitutional rights were violated, defendants are entitled to qualified immunity for their discretionary acts as members of the FCC.

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

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a

party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

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

On review of the record and hearing by telephone conference with the parties, the Court concludes that the defendants violated the plaintiff's constitutional rights under the First Amendment and Fourteenth Amendments<sup>6</sup> by failing to investigate adequately the basis of plaintiff's claim for religious exemption under the inmate grooming code and, as a result, denying plaintiff a religious exemption.

Although incarcerated, an inmate has a right to free exercise of his religious beliefs, subject to reasonable regulations which are related to legitimate penological interests. O'Lone v. Estate of Shabazz, 482 U.S. 342, 348-49 (1987). Plaintiff does not challenge the constitutionality of the DOC inmate grooming code, but rather challenges the constitutionality of the code as applied to him. Iron Eyes v. Henry, 907 F.2d 810, 816 (8th Cir. 1990). Although the FCC concluded that Jackson was a sincere adherent of

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<sup>6</sup> Plaintiff cites no case law for his claim for violation of his rights under the Eighth and Thirteenth Amendments and the Court is aware of none. The Court, therefore, concludes that the plaintiff has failed to establish violations of the Eighth or Thirteenth Amendments.

Islam, a recognized religion, the FCC denied plaintiff's application based on its finding that the DCCC's prohibition against beards did not inhibit Jackson's ability to be a practicing Muslim, in spite of Jackson's claim to the contrary and his presentation of documentation in support of his claim. According to the affidavits of Keenen and Iverson, the FCC came to this conclusion based solely on inquiries made to the World Community of Islam and the Islamic Information Center pursuant to earlier applications for religious exemptions made by other Muslim inmates.

Notwithstanding the Court's observation that repeated claims by Muslim inmates that they are required to grow a beard in accordance with their faith should have alerted the FCC that further investigation of this issue might be warranted, the FCC failed to conduct an inquiry tailored to Jackson's personal claim for religious exemption. At the exemption hearing, Jackson presented sufficient evidence of his claim for religious exemption. He did not merely rest upon an allegation that his Muslim faith required him to grow a beard;<sup>7</sup> he explained that his belief was traditional and was not shared by all practicing Muslims, and provided documentation of the tradition. Mosier v. Maynard, 937

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<sup>7</sup> Cf. Dunn v. White, 880 F.2d 1188, 1197 (10th Cir. 1989): Plaintiff's conclusory allegations, however, do not require us to reach the issue whether the prison's interest in testing for AIDS overrides plaintiff's interest in expressing his religious beliefs by declining to be tested. Plaintiff did not accompany his allegation with any details about his religious faith, nor did he allege what tenet of his faith required that he refuse the test.

F.2d 1521, 1527 (10th Cir. 1991). On the other hand, the FCC's only investigation of the merits of Jackson's claim preceded his application and concerned other inmates. In denying Jackson's application, the FCC relied solely on the responses of the earlier inquiries made of the World Community of Islam and the Islamic Information Center, although "[d]iffering beliefs and practices are not uncommon among followers of a particular creed." LeFevers v. Saffle, 936 F.2d 1117, 1119 (10th Cir. 1991) (citing Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707, 716 (1981)). Most significantly, the FCC conspicuously failed to inquire of the contract Muslim chaplains concerning Jackson's religious beliefs, although the chaplains personally ministered to Jackson in the practice of his faith.<sup>8</sup> The Court concludes that the defendants' conduct resulted in a "slipshod investigation [which has] prevented a legitimate adherent from following the dictates of his faith," McElyea v. Babbitt, 833 F.2d 196, 198 (9th Cir. 1987), and therefore, in denying Jackson a religious exemption to the inmate grooming code, the FCC violated Jackson's constitutional right to practice the tenets of his Muslim faith.

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<sup>8</sup> The only specific response to Jackson's application was the special investigator's effort to contact the Original Tents of Kedar on Jackson's appeal of the FCC's decision. In light of LaFevers, the Court finds that the response of an unidentified man concerning the general requirements for male members of the Muslim faith does not adequately address Jackson's claim. ("[T]he guarantees of the First Amendment are not limited to beliefs shared by all members of a religious sect. . . . Instead, plaintiff is entitled to invoke First Amendment protection if his religious beliefs are sincerely held." Id. at 1119 (citations omitted)). The Court notes, however, that the plaintiff did state in his letter to Warden Champion that "this belief can be further verified by contacting anyone at 'The Original Tents of Kedar'."

constitutional rights were violated, defendants are protected by qualified immunity. See Harlow v. Fitzgerald, 457 U.S. 800 (1982). "When government officials are performing discretionary functions, they will not be held liable for their conduct unless their actions violate 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" Pueblo Neighborhood Health Centers v. Losavio, 847 F.2d 642, 645 (10th Cir. 1988). "In deciding whether the law that the defendant allegedly violated was clearly established, the court will examine the law as it was at the time of the defendant's actions." Id.

Once the defense of qualified immunity is raised, it is the plaintiff's burden to convince the Court that the law was clearly established. Pueblo Neighborhood, *supra*; Lutz v. Weld County School Dist. No. 6, 784 F.2d 340, 342-43 (10th Cir. 1986). The "plaintiff must do more than identify in the abstract a clearly established right and allege that the defendant has violated it." Pueblo Neighborhood, *supra*. The "contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034, 3039 n.2 (1987). "[T]he plaintiff bears a heavy burden and must demonstrate a substantial correspondence between the conduct in question and prior law allegedly establishing that the defendant's actions were clearly prohibited." Laidley v. McClain, 914 F.2d 1386, 1394 (10th Cir. 1990). Whether or not the defendants are entitled to qualified immunity is a matter of law for the Court to decide. Lutz, 784 F.2d at 343.

The Court finds that the plaintiff has failed to meet this "heavy burden" in response to defendants' alleged aegis of qualified immunity. Plaintiff fails to show that the law as of November 1990, the time of the denial of the exemption and appeal, clearly established that defendants' denial of plaintiff's application for exemption was constitutionally flawed. Applying the standard adopted in Anderson, the Court is not persuaded that a reasonable person in the position of the members of the FCC or the special investigator would have understood that the "investigation" of Jackson's application was inadequate to protect his constitutional rights under the First and Fourteenth Amendments. In fact, at the time of the denial, Leflor and Mosier had not been decided, and several circuit courts had upheld prison regulations which precluded any inquiry into an inmate's religious beliefs by enforcing blanket prohibitions against long hair or beards, regardless of the sincerity or genuineness of an inmate's religious beliefs. Fromer v. Scully, 874 F.2d 69 (2nd Cir. 1989); Pollock v. Marshall, 845 F.2d 656 (6th Cir.), cert. denied, 488 U.S. 987, 109 S.Ct. 239 (1988); Brightley v. Wainwright, 814 F.2d 612 (11th Cir. 1987), cert. denied, 484 U.S. 944 (1987). The Court, therefore, concludes that defendants are protected from liability for their discretionary act in determining that Jackson was not entitled to a religious exemption.

Although defendants' qualified immunity defeats the plaintiff's claim for civil damages, it does not preclude Jackson's prayer for injunctive relief. Harlow, 457 U.S. at 819, n.34.

Because Jackson has since been granted a religious exemption, his request for exemption is now moot. The Court, however, in accordance with its finding of violation of the plaintiff's constitutional rights, orders the defendants to restore Jackson to status quo prior to the exemption hearing by purging the disciplinary actions noted above from his record, refunding the amount of fines paid, and crediting the number of earned credits lost as a result of his failure to comply with the grooming code. The Court further instructs the defendants to return Jackson to the medium security facility at DCCC.

In accordance with the above, the Court grants plaintiff's motion for injunctive relief, grants plaintiff's motion for summary judgment in part and denies it in part, grants defendants' motion for summary judgment in part and denies it in part and denies plaintiff's motion for judicial notice.

IT IS SO ORDERED, this 25 day of June, 1992.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



DATE 6-30-92

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

**FILED**  
JUN 26 1992

KILM W. ADKINS, )  
)  
Petitioner, )  
)  
v. )  
)  
U. S. MARSHAL, Western District of )  
Missouri, et al., )  
)  
Respondents. )

92-C-534-B

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

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 Washington County District Court of two counts of robbery with firearms and sentenced to two five-year concurrent terms of imprisonment. The conviction was not appealed to the Oklahoma Court of Criminal Appeals and petitioner does not claim to have filed an application for relief under the Oklahoma Post-Conviction Procedure Act, 22 O.S. § 1080 et seq.

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. In Anderjaska v. Harless, 459 U.S. 4, 7 (1982), the Supreme

Court stated:

... 28 U.S.C. § 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).

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).

The court finds that the claims raised in petitioner's petition for a writ of habeas corpus have not been exhausted in the state courts, and that petitioner has an available remedy for these claims under the Post-Conviction Relief Act of Oklahoma, 22 O.S. §§ 1080-1088. While pleadings drafted by pro se litigants are held to a less stringent standard than formal pleadings drafted by attorneys under Hines v. Kerner, 404 U.S. 519 (1972), such exhaustion is required by law. Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is denied.

Dated this 26<sup>th</sup> day of June, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ONE PARCEL OF REAL PROPERTY )  
 KNOWN AS: )  
 )  
 1412 NORTH 12TH STREET, )  
 SAPULPA, CREEK COUNTY, )  
 OKLAHOMA 74066, )  
 )  
 CONSISTING OF: )  
 )  
 LOTS 5, 6, 7, AND 8, )  
 BLOCK 2, HILLCREST )  
 ADDITION TO THE CITY )  
 OF SAPULPA, CREEK )  
 COUNTY, OKLAHOMA, )  
 AND ALL BUILDINGS, )  
 APPURTENANCES, AND )  
 IMPROVEMENTS THEREON, )  
 )  
 Defendant. )

CIVIL ACTION NO. 92-C-32-B

**F I L E D**

JUN 29 1992

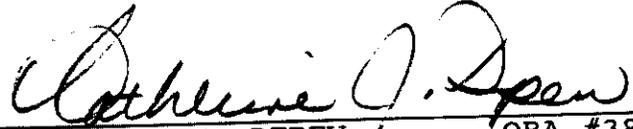
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure the plaintiff, United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and the Claimant, Kenneth Neal Powell, by and through Curtis J. Biram, his attorney of record, hereby stipulate to dismissal of this cause of action, without prejudice and without costs.

TONY M. GRAHAM

United States Attorney



CATHERINE J. DEPEW, / OBA #3836  
Assistant United States Attorney  
3600 United States Courthouse  
333 West Fourth Street  
Tulsa, Oklahoma 74104  
(918) 581-7463



CURTIS J. BIRAM  
6th Floor, Pratt Tower  
125 West 15th Street  
Tulsa, Oklahoma 74119  
Attorney for Kenneth Neal Powell

CJD/ch

N:\UDD\CHOOK\FC\POWELL\POWELL\HILLCRES\02171

DATE 6/29/92

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

**F I L E D**

JUN 29 1992

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

KENNETH WAYNE CRESSWELL, )  
)  
Plaintiff, )  
)  
v. )  
)  
SHERIFF STANLEY GLANTZ, )  
)  
Defendant. )

91-C-387-B

**ORDER**

This order pertains to plaintiff's Application for Summary Default Judgement [sic] Pursuant to Fed. R. Civ. Procedure Rule 55 (b), (2) (Docket #15)<sup>1</sup> plaintiff's Motion to Strike Order for Enlargement of Time to File Special Report (#16), and plaintiff's Motion to Stay Proceedings and Enlargement of Time to Respond to Special Report (#17).

The court denied defendant's Motion to Dismiss on April 23, 1992 (#10) and ordered defendant to answer the complaint within thirty (30) days. On May 20, 1992, defendant sought an enlargement of time to prepare a Special Report and this motion was granted on May 22, 1992. On June 10, 1992, defendant's Motion to Dismiss or in the Alternative Summary Judgment (#12) was filed. Plaintiff contends that defendant has failed to answer the complaint in the ordered time, but there is no merit to this claim. Plaintiff's Application for Summary Default Judgement [sic] Pursuant to Fed. R. Civ. Procedure Rule 55 (b), (2) (#15) is denied.

Plaintiff argues that the Magistrate Judge improperly granted defendant's Motion for Enlargement of Time to Prepare the Special Report. There is also no merit to this claim.

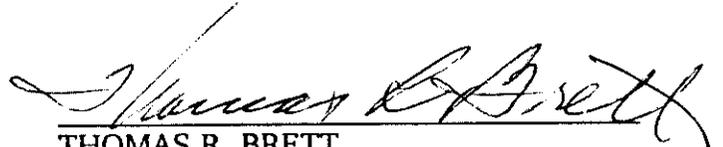
<sup>1</sup> "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared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

18

Plaintiff's Motion to Strike Order for Enlargement of Time to File Special Report (#16) is denied.

Plaintiff's Motion to Stay Proceedings and Enlargement of Time to Respond to Special Report (#17) is denied in part and granted in part. The proceedings in this case are not stayed. Plaintiff is granted thirty (30) days from the date of this order to respond to the Special Report.

Dated this 25 day of June, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUN 29 1992

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

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

RANDY CHARLES LEATHERS;  
BETHANY E. LEATHERS; DR. LARRY  
LANE; COUNTY TREASURER, Rogers  
County, Oklahoma; BOARD OF  
COUNTY COMMISSIONERS, Rogers  
County, Oklahoma; and BANK OF  
CHELSEA,

Defendants.

CIVIL ACTION NO. 91-C-247-C

**DEFICIENCY JUDGMENT**

This matter comes on for consideration this 29 day  
of June, 1992, upon the Motion of the Plaintiff, United  
States of America, acting on behalf of the Secretary of Veterans  
Affairs, for leave to enter a Deficiency Judgment. The Plaintiff  
appears by Tony M. Graham, United States Attorney for the  
Northern District of Oklahoma, through Kathleen Bliss Adams,  
Assistant United States Attorney, and the Defendants, Randy  
Charles Leathers and Bethany E. Leathers, appear neither in  
person nor by counsel.

The Court being fully advised and having examined the  
court file finds that a copy of Plaintiff's Motion was mailed by  
certified return receipt addressee restricted mail to Randy  
Charles Leathers and Bethany E. Leathers, 424 West 5th, Chelsea,  
Oklahoma 74016, and by first-class mail to all answering parties  
and/or counsel of record.

The Court further finds that the amount of the Judgment  
rendered on November 13, 1991, in favor of the Plaintiff United

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

States of America, and against the Defendants, Randy Charles Leathers and Bethany E. Leathers, with interest and costs to date of sale is \$25,060.76.

The Court further finds that the appraised value of the real property at the time of sale was \$17,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered November 13, 1991, for the sum of \$15,717.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 4th day of June, 1992.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Randy Charles Leathers and Bethany E. Leathers, as follows:

Principal Balance as of 11/13/91	\$20,374.22
Interest	3,508.75
Late Charges to Date of Judgment	198.40
Appraisal by Agency	300.00
Abstracting	306.00
Publication Fees of Notice of Sale	148.39
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$25,060.76
Less Credit of Appraised Value	- <u>17,500.00</u>
DEFICIENCY	\$ 7,560.76

plus interest on said deficiency judgment at the legal rate of 4.11 percent per annum from date of deficiency judgment until

paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

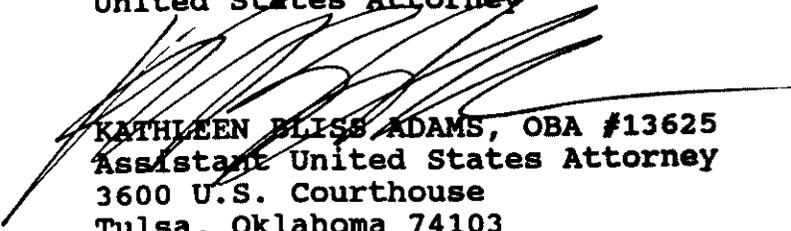
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Randy Charles Leathers and Bethany E. Leathers, a deficiency judgment in the amount of \$7,560.76, plus interest at the legal rate of 4.11 percent per annum on said deficiency judgment from date of judgment until paid.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM  
United States Attorney



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

KBA/css

DATE 6/29/92

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

**FILED**

JUL 2 1992

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

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Victor Federal Savings and Loan Association, Muskogee, Oklahoma,

Plaintiff,

vs.

ROBERT A. BAINE and DEBORAH K. BAINE, a/k/a DEBBIE K. BAINE, husband and wife; TOMMY D. HICKEY and MYRA D. HICKEY, husband and wife; et al.,

Defendants.

Case No. 91 C 737 B

**DEFICIENCY JUDGMENT**

NOW on this 24<sup>th</sup> day of June, 1992, there came on for hearing the Motion of FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC"), Plaintiff herein, for Leave To Enter Deficiency Judgment herein, filed on the 27<sup>th</sup> day of April, 1992, a true and correct copy of said Motion together with a copy of the Order for Hearing entered herein, having been duly served upon the Defendants, TOMMY D. HICKEY and MYRA D. HICKEY, as provided in said Order and as shown by the return filed herein. The Plaintiff appeared by and through its attorney, Jerry L. Stone, and the Defendants appeared not either in person or through an attorney.

The Court thereupon considering said Motion and the evidence produced in open Court on June 3rd, 1992 finds that the fair and reasonable market value of the subject property does not exceed \$12,000.00; that the amount of the highest and best bid at the Sheriff's Sale herein and the price for which the subject property was sold at said Sale was \$10,100.00, and that

Plaintiff is entitled to a deficiency judgment of FORTY-SEVEN THOUSAND THREE HUNDRED THIRTY-SEVEN DOLLARS AND SIXTY-FIVE CENTS (\$47,337.65), said amount being the lesser sum of the difference between the amount of Plaintiff's judgment and the sale price of the subject property at Sheriff's Sale and the difference between the amount of the Plaintiff's judgment and the market value of the property, all as provided by law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the FDIC have and recover a deficiency judgment against the Defendants, TOMMY D. HICKEY and MYRA D. HICKEY, in the sum of FORTY-SEVEN THOUSAND THREE HUNDRED THIRTY-SEVEN DOLLARS AND SIXTY-FIVE CENTS (\$47,337.65).

S/ THE HONORABLE JERRY L. STONE

JUDGE OF THE U. S. DISTRICT COURT

APPROVED:

JERRY L. STONE, OBA #8660  
Post Office Box 26208  
Oklahoma City, Oklahoma 73126  
(405) 841-4342  
Attorney for FDIC

DATE 10/29/92

FILED

JUN 26 1992

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

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

ATLANTIC RICHFIELD COMPANY, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 AMERICAN AIRLINES, INC., et al., )  
 )  
 Defendants. )

Case Nos. 89-C-868 B;  
89-C-869 B;  
90-C-859 B  
(Consolidated)

AND CONSOLIDATED ACTIONS

AMERICAN AIRLINES, INC., et al. )  
 )  
 Third-Party Plaintiffs, )  
 vs. )  
 )  
 AMF; et al. )  
 )  
 Third-Party Defendants. )

NOTICE OF DISMISSAL

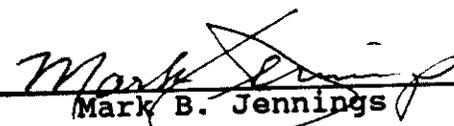
The Group I Defendants/Third-Party Plaintiffs American Airlines, Inc., et al., pursuant to and in accordance with Fed. R. Civ. P. 41(a)(1), hereby dismiss their Third-Party Complaint, with prejudice, against each of the Third-Party Defendants listed below, with these Third-Party Plaintiffs and the Third-Party Defendants listed below each to bear their own costs, expenses, and attorney fees with regard to this resolution of these respective third-party claims:

1. Chris Nikel's Autohaus, Inc.
2. Tulco Oils, Inc.
3. Tommy Williams d/b/a Tommy Williams Auto Service

4. Troco Oil Company
5. Miljack, Inc. d/b/a Budget Rent A Car of Tulsa
6. Chandler Materials Company
7. Gene Pyeatt d/b/a Gene Pyeatt's Service Center
8. Chevally Moving & Storage, Inc., successor in interest to Millstead Van Lines, Inc.
9. Parker Drilling Company
10. Reynolds Ford, Inc.
11. Industrial Vehicles International, Inc.
12. Turner Bros. Trucking Co., Inc.
13. R. A. Young & Sons, Inc.
14. James H. Reed Trucking Co.
15. City of Muskogee
16. Occidental Chemical Corporation, f/k/a Diamond Shamrock, Inc.
17. Shamrock Oil and Gas, Inc.
18. Williams Auto Service, Inc.

CHARLES W. SHIPLEY, OBA No. 8182  
DOUGLAS L. INHOFE, OBA No. 4550  
MARK B. JENNINGS, OBA No. 10082  
MARK A. WALLER, OBA No. 14831

SHIPLEY, INHOFE & STRECKER  
3600 First National Tower  
15 East Fifth Street  
Tulsa, Oklahoma 74103  
(918) 582-1720

By   
Mark B. Jennings

Attorneys for Third-Party  
Plaintiffs (GROUP 1)

CERTIFICATE OF MAILING

I do hereby certify that on the 26<sup>th</sup> day of June, 1992, I deposited the above and foregoing instrument in the United States mail, first class, postage pre-paid to the following:

Professor Martin A. Frey  
Tulsa University College of Law  
3120 E. 4th Place  
Tulsa, Oklahoma 74104

Larry G. Gutteridge, Esq.  
Sidley & Austin  
633 W. 5th Street, Suite 3500  
Los Angeles, CA 90071

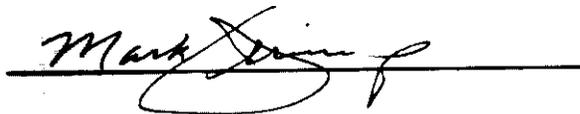
Michael D. Graves, Esq.  
Hall, Estill, Hardwick, Gable, Golden & Nelson  
4100 Bank of Oklahoma Tower  
Tulsa, Oklahoma 74172

William C. Anderson, Esq.  
Doerner, Stuart, Saunders, Daniel & Anderson  
320 South Boston, Suite 500  
Tulsa, Oklahoma 74103

Steve Harris, Esq.  
Doyle & Harris  
P. O. Box 1679  
Tulsa, Oklahoma 74101

John H. Tucker, Esq.  
Rhodes, Hieronymus, Jones, Tucker & Gable  
2800 Fourth National Bank Building  
Tulsa, Oklahoma 74119

Bradley Bridgewater, Esq.  
U. S. DOJ-Environmental &  
Natural Resources Division  
999 18th Street, Suite 501  
North Tower  
Denver, Colorado 80202



DATE JUN 25 1992

FILED

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

JUN 25 1992

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

TDINDUSTRIES, INC.,  
a Texas corporation,

Plaintiff,

vs.

Case No. 91-C-742-B

AIR CONDITIONING INSULATION  
REFRIGERATION CO., an  
Oklahoma corporation,  
and MIKE HERRIN  
and DEBBIE HERRIN,  
husband and wife,

Defendant.

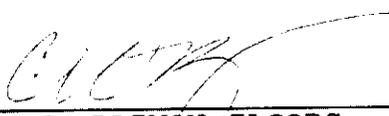
STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, Plaintiff TDIndustries, Inc. and Defendants Air Conditioning Insulation Refrigeration Co., Mike Herrin and Debbie Herrin hereby stipulate that the captioned case be dismissed with prejudice, each party to bear its own costs.

  
Steven K. Balman OBA #492

BOND & BALMAN  
800 Beacon Building  
406 South Boulder  
Tulsa, Oklahoma 74103  
(918) 583-0303

ATTORNEY FOR PLAINTIFF  
TDINDUSTRIES, INC.

---

C. W. DAIMON JACOBS  
OBA #14107

2727 East 21st Street Suite 101

Tulsa, Oklahoma 74114

(918) 747-2727

Digital Pager 628-4848

ATTORNEY FOR DEFENDANTS  
AIR CONDITIONING INSULATION  
REFRIGERATION, INC. AND  
DEBBIE HERRIN

---

Mike Herrin

P. O. Box 8401

Tulsa, Oklahoma 74101

DATE JUN 29 1992

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

MAJOR BOB MUSIC, BAIT AND BEER MUSIC,  
FORERUNNER MUSIC, INC., CASS COUNTY  
MUSIC COMPANY, ZAPPO MUSIC, WARNER BROS.)  
INC., WB MUSIC CORP., CALEDONIA  
PRODUCTIONS, INC. AND HOWLIN' HITS  
MUSIC, INC.,

Plaintiffs,

vs.

GARY ROBERT HOWELL AND RUBY HOWELL,  
Defendants.

FILED

JUN 29 1992

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

Case No. 92-C-350-B

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 25 day of June, 1992, upon the written application of the plaintiffs, and for good cause shown, the Court finds that the above-styled and numbered cause should be dismissed with prejudice, each party to bear their own costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above-styled and numbered cause be, and the same hereby is, dismissed with prejudice to any right to refile or further pursue the same claim, action or suit.

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT COURT JUDGE

APPROVED:

*Peter L. Wheeler*

---

Hugh A. Baysinger (# 000617)  
Peter L. Wheeler (# 012929)  
PIERCE COUCH HENDRICKSON  
JOHNSTON & BAYSINGER  
Post Office Box 26350  
Oklahoma City, OK 73126  
(405) 235-1611

Attorneys for Plaintiffs

*S/ Fred Monachello by PLW*

---

Fred Monachello (#13327 )  
MORRIS & MORRIS  
1616 South Denver Avenue  
Tulsa, OK 74119  
(918) 587-6614

Attorney for Defendants



**FILED**

**JUN 26 1992**

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
JOHN CHISHOLM,  
Defendant.

Civil Action No. 91-C-949-E /

ENTERED ON DOCKET  
DATE JUN 26 1992

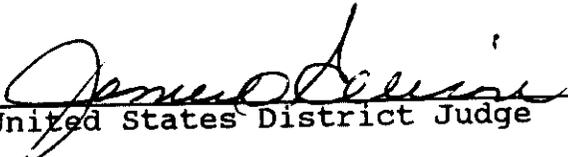
DEFAULT JUDGMENT

This matter comes on for consideration this 25th day of June, 1992, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, John Chisholm, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, John Chisholm, was served with Summons and Complaint on or about February 13, 1992. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, John Chisholm, for the principal amount of \$2,500.00, plus administrative charges in the amount of \$87.00, plus accrued interest of \$763.73 as of June 22, 1992, plus interest thereafter

at the rate of 8 percent per annum until judgment, a surcharge of 10% of the amount of the debt in connection with the recovery of the debt to cover the cost of processing and handling the litigation and enforcement of the claim for this debt as provided by 28 U.S.C. § 3011, plus interest thereafter at the current legal rate of 4.26 percent per annum until paid, plus costs of this action.

  
United States District Judge

Submitted By:

  
KATHLEEN BLISS ADAMS, OBA# 13625  
Assistant United States Attorney  
3900 United States Courthouse  
333 West 4th Street  
Tulsa, Oklahoma 74103  
(918) 581-7463

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

JUN 26 1992

AMERISTAR FENCE PRODUCTS, )  
INC., an Oklahoma )  
corporation, )

Plaintiff, )

vs. )

INTERNATIONAL GATE DEVICES, )  
INC., a Pennsylvania )  
Corporation and RONALD J. )  
DIMEDIO, an individual, )

Defendants. )

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

No. 92-C-49-E

ENTERED ON DOCKET  
DATE JUN 26 1992

**ORDER OF DISMISSAL**

The parties having represented to this Court that they have entered into a Settlement Agreement, it is hereby ordered that the above action is dismissed with prejudice.

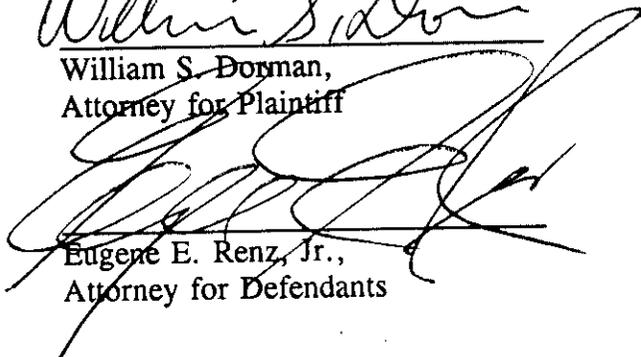
6-25-92  
Date

S/ JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



William S. Dorman,  
Attorney for Plaintiff



Eugene E. Renz, Jr.,  
Attorney for Defendants

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

**FILED**

THEN OPEN COURT

JUN 26 1992

JOANN SELF,

Plaintiff,

vs.

BOULDER HOLDINGS, INC., an  
Oklahoma corporation, d/b/a  
PINOCCHIO'S CHILD CARE  
CENTER, and S. CARL MARK,

Defendants.

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

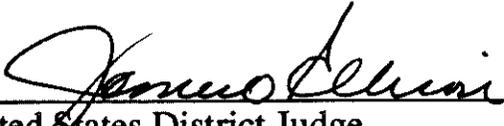
Case No. 91-C-751-E

**JUDGMENT**

Now on this 26<sup>th</sup> day of June, 1992, comes on before me, the undersigned United States District Judge, the Application for Default Judgment filed by Plaintiff herein. The Court, being fully advised in the premises, finds that the Clerk has entered default against Boulder Holdings, Inc., and that Judgment should be entered as against said Defendant and in favor of Plaintiff. The Court further finds that there is no just reason for delay in entry of the judgment and the Court expressly directs the entry of judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, Joann Self, recover of Defendant, Boulder Holdings, Inc., an Oklahoma corporation, the sum of \$3,704.26, with interest thereon at the rate of 4.1/2% per annum from and after this date, together with costs of this action in the sum of \$150.00 and an attorney's fee ~~in the sum of \$1,500.00.~~ *TO BE CONSIDERED UPON APPLICATION.*

For all of which let execution issue.

  
United States District Judge

*applied  
cc:*

ENTERED ON DOCKET

DATE JUN 26 1992

**FILED**

JUN 24 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

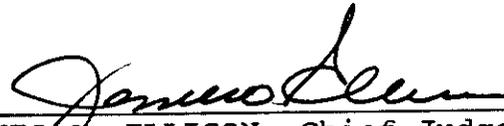
EM KAY, INC. and VILLAGE OF )  
NEW JERSEY, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
JERRY MIZE d/b/a GRANDEZA )  
RANCH, )  
 )  
Defendant. )

No. 88-C-258-E

ORDER

Pursuant to the mandate of the Tenth Circuit, this matter is remanded to the Bankruptcy Court for further proceedings.

So ORDERED this 23<sup>rd</sup> day of June, 1992.

  
\_\_\_\_\_  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUN 26 1992

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JAMES S. WALTERS, )  
 )  
Defendant. )

Civil Action No. 92-C-72-E ✓

ENTERED ON DOCKET  
DATE JUN 26 1992

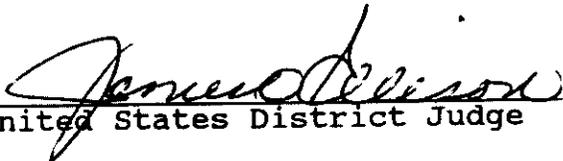
DEFAULT JUDGMENT

This matter comes on for consideration this 25th day of June, 1992, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, James S. Walters, appearing not.

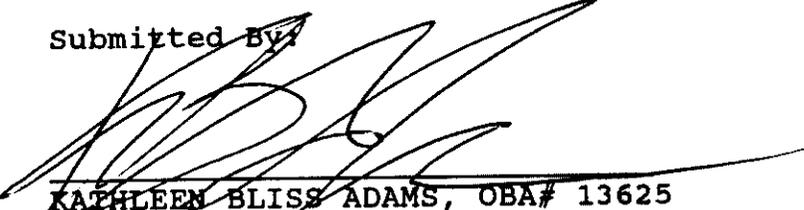
The Court being fully advised and having examined the court file finds that Defendant, James S. Walters, was served with Summons and Complaint on February 10, 1992. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, James S. Walters, for the principal amount of \$1,206.23, plus accrued interest of \$45.69 as of June 22, 1992, plus interest thereafter at the rate of 3 percent per annum until judgment, plus

administrative charges in the amount of \$87.00, a surcharge of 10% of the amount of the debt in connection with the recovery of the debt to cover the cost of processing and handling the litigation and enforcement of the claim for this debt as provided by 28 U.S.C. § 3011, plus interest thereafter at the current legal rate of 4.26 percent per annum until paid, plus costs of this action.

  
United States District Judge

Submitted By:

  
KATHLEEN BLISS ADAMS, OBA# 13625  
Assistant United States Attorney  
3900 United States Courthouse  
333 West 4th Street  
Tulsa, Oklahoma 74103  
(918) 581-7463

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

**FILED**

JUN 29 1992

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

CLIFFORD LEROY PERRIN,	)
	)
Plaintiff,	)
	)
v.	)
	)
LEONARD AMES, JR., EDDIE MASON,	)
and the CITY OF BARTLESVILLE,	)
OKLAHOMA,	)
	)
Defendants.	)

Case No. 89-C-959-B

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the Joint Stipulation of Dismissal filed by the Plaintiff and Defendants, the Court dismisses, with prejudice, Plaintiff's Complaint against the Defendants, Lenard (a/k/a Leonard) Ames, Jr., Eddie Mason and The City of Bartlesville, Oklahoma, with each party being responsible for their costs and attorneys' fees incurred herein.

Dated this 26<sup>th</sup> day of June, 1992.

**S/ THOMAS R. BRETT**

\_\_\_\_\_  
The Honorable Thomas R. Brett  
United States District Judge

DATE 6/26/92

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

WILLIAM PRITCHARD,  
  
Plaintiff,  
  
v.  
  
FORD MOTOR COMPANY,  
a Delaware corporation,  
  
Defendant.

CIV. 92-C-149-B

**FILED**

JUN 23 1992

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

**ORDER**

Now on this 23rd day of June, 1992 the Court considers the Stipulation of Dismissal filed by the parties in the above numbered and styled cause.

Based upon the pleadings and for good cause shown this matter is hereby dismissed without prejudice to refileing, each party to bear their own costs, *expenses & fees.*

S/ THOMAS R. BRETT

*JRH  
JAG*

\_\_\_\_\_  
JUDGE THOMAS R. BRETT

Michael Barkley  
Jeffrey A. Glendening  
BARKLEY, RODOLF & McCARTHY  
2700 Mid-Continent Tower  
401 South Boston Avenue  
Tulsa, Oklahoma 74103  
ATTORNEYS FOR PLAINTIFF

John A. Kenney  
Victoria H. Hales  
McAfee & Taft  
10th Floor, Two Leadership Square  
Oklahoma City, Oklahoma 73102  
ATTORNEYS FOR DEFENDANT

ENTERED ON DOCKET  
DATE JUN 25 1992

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JUN 24 1992

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

RONALD W. SHIVELY a/k/a RONALD  
SHIVELY; CYNTHIA L. SHIVELY  
a/k/a CYNTHIA SHIVELY n/k/a  
CYNTHIA L. CARVER; FIRST FEDERAL  
SAVINGS BANK OF OKLAHOMA;  
RALPH C. BURKE; COUNTY TREASURER,  
Rogers County, Oklahoma;  
BOARD OF COUNTY COMMISSIONERS,  
Rogers County, Oklahoma; and  
BANK OF CHELSEA, an Oklahoma  
banking institution,

Defendants.

) CIVIL ACTION NO. 91-C-394-C

RECEIVED  
MAGISTRATE COURT  
NORTHERN DISTRICT OF OK

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 24 day  
of June, 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, Rogers County, Oklahoma, and  
Board of County Commissioners, Rogers County, Oklahoma, appear by  
Bill M. Shaw, Assistant District Attorney, Rogers County,  
Oklahoma; the Defendant, First Federal Savings Bank of Oklahoma,  
appears not, having previously filed its Disclaimer; the  
Defendant, Ralph C. Burke, appears pro se; and the Defendants,  
Ronald W. Shively a/k/a Ronald Shively, Cynthia L. Shively a/k/a  
Cynthia Shively n/k/a Cynthia L. Carver, and Bank of Chelsea, an  
Oklahoma banking institution, appear not, but make default.

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

The Court being fully advised and having examined the court file finds that the Defendant, Ronald W. Shively a/k/a Ronald Shively, was served with Summons and Complaint on August 9, 1991; that the Defendant, Cynthia L. Shively a/k/a Cynthia Shively n/k/a Cynthia L. Carver, was served with Summons and Complaint on July 24, 1991; that Defendant, First Federal Savings Bank of Oklahoma, acknowledged receipt of Summons and Complaint on June 12, 1991; that the Defendant, Ralph C. Burke, was served with Summons and Complaint on July 24, 1991; that the Defendant, Bank of Chelsea, an Oklahoma banking institution, acknowledged receipt of Summons and Amended Complaint on November 14, 1991; that Defendant, County Treasurer, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on June 13, 1991; and that Defendant, Board of County Commissioners, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on June 12, 1991.

It appears that the Defendants, County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, filed their Answer and Cross-Petition on June 19, 1991; that the Defendant, First Federal Savings Bank of Oklahoma, filed its Entry of Appearance and Disclaimer on June 18, 1991 and September 10, 1991; that the Defendant, Ralph C. Burke, filed his Answer on September 3, 1991; and that the Defendants, Ronald W. Shively a/k/a Ronald Shively, Cynthia L. Shively a/k/a Cynthia Shively n/k/a Cynthia L. Carver, and Bank of Chelsea, an Oklahoma banking institution, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on December 31, 1987, Ronald Wayne Shively and Cynthia Lynn Shively filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-03668-C. On April 5, 1988, a Reaffirmation Agreement with the Veterans Administration of the United States of America was entered in this case. On April 25, 1988, a Discharge of Debtor was entered and on July 12, 1988, this case was closed.

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

A tract of land in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 17, Township 21 North, Range 16 East of the I.B.&M. Rogers County, Oklahoma, according to the U.S. Government survey thereof. Described as follows: Begin at a point 91' South of the NE corner of said NE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$  thence N 75° 50' West 238 feet thence South 120 feet thence SEasterly 238 feet to a point on the East line of NE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$  which point is 100 feet South of point of beginning, thence North on East line 100 feet to point of beginning.

The Court further finds that on October 15, 1987, Ronald W. Shively and Cynthia L. Shively executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$35,501.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, Ronald W. Shively and Cynthia L. Shively executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated October 15, 1987, covering the above-described property. Said mortgage was recorded on October 16, 1987, in Book 770, Page 701, in the records of Rogers County, Oklahoma.

The Court further finds that the Defendants, Ronald W. Shively a/k/a Ronald Shively and Cynthia L. Shively a/k/a Cynthia Shively n/k/a Cynthia L. Carver, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Ronald W. Shively a/k/a Ronald Shively and Cynthia L. Shively a/k/a Cynthia Shively n/k/a Cynthia L. Carver, are indebted to the Plaintiff in the principal sum of \$34,927.66, plus interest at the rate of 10 percent per annum from August 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$44.20 (\$20.00 docket fees, \$16.20 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, County Treasurer, Rogers 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 \$89.38, plus penalties and interest, for the year 1990. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Ralph C. Burke, has a lien on the property which is the subject matter of this action in the amount of \$1,100.00 plus interest at the rate of 14 percent from June 30, 1990, until fully paid, by virtue of a Second Real Estate Mortgage, dated June 1990, and recorded on December 7, 1990, in Book 844, Page 820 in the records of Rogers County, Oklahoma.

The Court further finds that the Defendant, First Federal Savings Bank of Oklahoma, disclaims any right, title or interest in the subject real property.

The Court further finds that the Defendant, Bank of Chelsea, an Oklahoma banking institution, is in default and has no right, title or interest in the subject real property.

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

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Plaintiff have and recover judgment against the Defendants, Ronald W. Shively a/k/a Ronald Shively and Cynthia L. Shively a/k/a Cynthia Shively n/k/a Cynthia L. Carver, in the principal sum of \$34,927.66, plus interest at the rate of 10 percent per annum from August 1, 1990 until judgment, plus interest

thereafter at the current legal rate of 4.26 percent per annum until paid, plus the costs of this action in the amount of \$44.20 (\$20.00 docket fees, \$16.20 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, County Treasurer, Rogers County, Oklahoma, have and recover judgment in the amount of \$89.38, plus penalties and interest, for ad valorem taxes for the year 1990, plus the costs of this action.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, Ralph C. Burke, have and recover judgment in the amount of \$1,100.00 plus interest at the rate of 14 percent from June 30, 1990, until fully paid, by virtue of a Second Real Estate Mortgage, dated June 1990, and recorded on December 7, 1990, in Book 844, Page 820 in the records of Rogers County, Oklahoma.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendants, First Federal Savings Bank of Oklahoma, Bank of Chelsea, an Oklahoma banking institution, and Board of County Commissioners, Rogers County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Ronald W. Shively a/k/a Ronald Shively and Cynthia L. Shively a/k/a Cynthia Shively n/k/a Cynthia L. Carver, 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, Rogers County, Oklahoma, in the amount of \$89.38, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

**Third:**

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

**Fourth:**

In payment of the judgment rendered herein in favor of the Defendant, Ralph C. Burke.

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

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

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

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

  
\_\_\_\_\_  
RALPH G. BURKE  
601 East 9th  
Claremore, Oklahoma 74017

  
\_\_\_\_\_  
BILL M. SHAW, OBA #10127  
Assistant District Attorney  
219 South Missouri, Room 1-111  
Claremore, OK 74017  
County Treasurer and  
Board of County Commissioners,  
Rogers County, Oklahoma

Judgment of Foreclosure  
Civil Action No. 91-C-394-C

**FILED**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JUN 24 1992

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

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
CRAIG MOSQUITO,  
  
Defendant.

Civil Action No. 91-C-630-E

ENTERED ON DOCKET  
DATE JUN 25 1992

DEFAULT JUDGMENT

This matter comes on for consideration this 23<sup>rd</sup> day of June, 1992, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, Craig Mosquito, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Craig Mosquito, was served with Summons and Complaint on December 13, 1991. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Craig Mosquito, for the principal amount of \$4,683.10, administrative costs of \$87.00, plus accrued interest of \$1,660.45 as of June 22, 1992, plus interest thereafter at the rate of 4.26 percent per

annum until judgment, a surcharge of 10% of the amount of the debt in connection with the recovery of the debt to cover the cost of processing and handling the litigation and enforcement of the claim for this debt as provided by 28 U.S.C. § 3011, plus interest thereafter at the current legal rate of 4.26 percent per annum until paid, plus costs of this action.

United States District Judge

Submitted By:

KATHLEEN BLISS ADAMS, OBA# 13625  
Assistant United States Attorney  
3900 United States Courthouse  
333 West 4th Street  
Tulsa, Oklahoma 74103  
(918)581-7463

Resolution Trust Corporation

P. O. BOX 3048  
TULSA, OKLAHOMA 74101

RECORDED ON DOCUMENT  
DATE JUN 25 1992

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

**FILED**

RESOLUTION TRUST CORPORATION,  
as Conservator for CIMARRON FEDERAL  
SAVINGS ASSOCIATION,

Plaintiff,

vs.

WOODLAND HILLS, a California general  
partnership, et al.,

Defendants.

JUN 24 1992

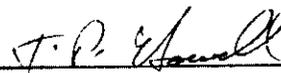
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Case No. 91-C-429-B

OF  
STIPULATION ~~FOR~~ DISMISSAL

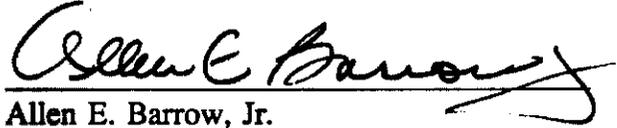
Pursuant to Fed.R.Civ.P. 41(a)(1), Plaintiff, Resolution Trust Corporation in its capacity as Conservator for Cimarron Federal Savings Association, and Defendants, Woodland Hills, Barnett Range Realty Holding Company No. 1, Ltd., Barnett Range Corporation, Freeman & Rishwain, Maxwell M. Freeman, Robert J. Rishwain, Hal W. Barnett and James E. Range, hereby stipulate for the dismissal of all claims asserted in this action, with prejudice, with each party to bear its own costs and attorney fees; provided, however, that such dismissal shall not be effected until this Court has discharged the Receiver appointed in this action.

Respectfully submitted,



T.P. Howell  
Of the Firm:  
EDWARDS, SONNERS & PROPESTER  
2900 First Oklahoma Tower  
210 West Park Avenue  
Oklahoma City, Oklahoma 73102-5605  
Telephone: (405) 239-2121

ATTORNEYS FOR PLAINTIFF,  
RESOLUTION TRUST CORPORATION



Allen E. Barrow, Jr.

Of the Firm:

**BARROW, GADDIS, GRIFFITH & GRIMM**

**610 S. Main Street, Suite 300**

**Tulsa, Oklahoma 74119-1224**

**Telephone: (918) 584-1600**

**ATTORNEY FOR DEFENDANTS**

**FILED**

**JUN 24 1992**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JAMES E. SPENCER, )  
 )  
Defendant. )

Civil Action No. 92-C-74-E

ENTERED ON DOCKET  
DATE JUN 25 1992

DEFAULT JUDGMENT

This matter comes on for consideration this 23<sup>rd</sup> day of June, 1992, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, James E. Spencer, appearing not.

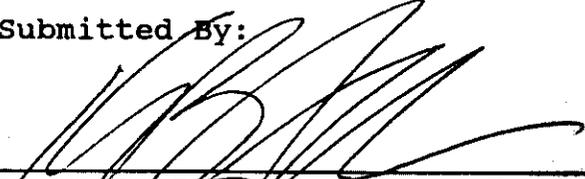
The Court being fully advised and having examined the court file finds that Defendant, James E. Spencer, was served with Summons and Complaint on February 15, 1992. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, James E. Spencer, for the principal amount of \$1,683.64, plus administrative charges in the amount of \$87.00, plus accrued interest of \$1,879.72 as of June 22, 1992, plus interest thereafter at the rate of 9

percent per annum until judgment, a surcharge of 10% of the amount of the debt in connection with the recovery of the debt to cover the cost of processing and handling the litigation and enforcement of the claim for this debt as provided by 28 U.S.C. § 3011, plus interest thereafter at the current legal rate of 4.26 percent per annum until paid, plus costs of this action.

  
United States District Judge

Submitted By:

  
KATHLEEN BLISS ADAMS, OBA# 13625  
Assistant United States Attorney  
3900 United States Courthouse  
333 West 4th Street  
Tulsa, Oklahoma 74103  
(918)581-7463

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUN 24 1992

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CONSTANCE L. CLEVELAND, )  
 )  
 Defendant. )

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

Civil Action No. 91-C-877-E

ENTERED ON DOCKET  
DATE JUN 25 1992

DEFAULT JUDGMENT

This matter comes on for consideration this 23<sup>rd</sup> day of June, 1992, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, Constance L. Cleveland, appearing not.

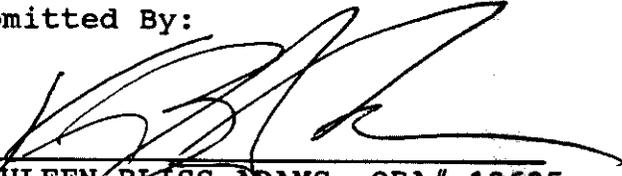
The Court being fully advised and having examined the court file finds that Defendant, Constance L. Cleveland, was served with Summons and Complaint on January 24, 1992. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Constance L. Cleveland, for the principal amount of \$1,132.44, plus administrative charges and penalties in the amount of \$383.00, plus accrued interest of \$43.55 as of June 22, 1992, plus interest

thereafter at the rate of 3 percent per annum until judgment, a surcharge of 10% of the amount of the debt in connection with the recovery of the debt to cover the cost of processing and handling the litigation and enforcement of the claim for this debt as provided by 28 U.S.C. § 3011, plus interest thereafter at the current legal rate of 4.26 percent per annum until paid, plus costs of this action.

  
United States District Judge

Submitted By:

  
KATHLEEN BLISS ADAMS, OBA# 13625  
Assistant United States Attorney  
3900 United States Courthouse  
333 West 4th Street  
Tulsa, Oklahoma 74103  
(918) 581-7463

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

**FILED**

JUN 24 1992

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

DENNIS S. FUNKHOUSER,  
Plaintiff,

vs.

No. 90-C-1046-E

JAMES L. SAFFLE, ATTORNEY  
GENERAL OF THE STATE OF  
OKLAHOMA,

Defendant.

ENTERED ON DOCKET

DATE JUN 25 1992

ORDER

Before the Court for reconsideration is the Report and Recommendation of the Magistrate denying Petitioner's Application for Writ of Habeas Corpus, affirmed by this Court on September 18, 1991. Subsequently, this Court has permitted Petitioner additional time to file his Objection to the Magistrate's Report and Recommendation and Petitioner's Supplement to that Objection. The Court has considered Petitioner's arguments in light of the applicable law and finds that Petitioner's Application for Writ of Habeas Corpus should be denied.

So ORDERED this 23<sup>rd</sup> day of June, 1992.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

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

JUN 24 1992

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

JACK DUNCANSON and CHERYL ANN )  
DUNCANSON, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
BRAINERD HELICOPTER SERVICE, )  
 )  
Defendant. )

No. 91-C-880-C ✓

**ORDER**

Before the Court is the motion of defendant, Brainerd Helicopter Service, to dismiss asserting the court lacks personal jurisdiction over the defendant.

Plaintiffs are residents of the State of Oklahoma. Defendant, Brainerd Helicopter Service, Inc. ("Brainerd"), is a Minnesota corporation with its principal place of business in the State of Minnesota. Plaintiff, Jack Duncanson, was an employee of Willbros Butler Engineers ("Willbros"), hired to perform aerial inspections of pipelines.

Willbros is not a party to this action. Mr. Noel A. Fielding an employee of Willbros located in its Iron River, Michigan office contacted Brainerd in Minnesota and Brainerd agreed to provide a helicopter and pilot in order that Willbros could perform an aerial inspection of a pipeline located in Minnesota. Plaintiff, Jack Duncanson, was designated by Willbros to perform the aerial survey.

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On October 9, 1989 Brainerd picked up Mr. Duncanson in Duluth, Minnesota, to conduct the aerial survey in Minnesota. The helicopter crashed near Oaklee, Minnesota causing injuries to Mr. Duncanson.

Plaintiff brought this action setting forth a claim for negligence. Defendant moved for dismissal asserting lack of this court's in personam jurisdiction over Brainerd. In support of its motion, Brainerd asserts that it is a small helicopter service consisting of four helicopters with 99% of its business conducted in the State of Minnesota, and the remaining 1% in the State of Wisconsin. Defendant contends that it has no contacts with the State of Oklahoma nor has it conducted any business in Oklahoma.

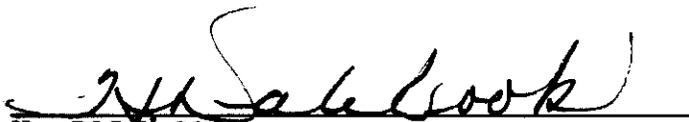
In response, plaintiffs offer four invoices that Brainerd sent to Mr. Fielding in Michigan for services rendered by Brainerd in places other than Oklahoma. The invoices are marked by Mr. Fielding indicating approval for payment. Since these invoices were apparently sent from Brainerd's office in Minnesota to Mr. Fielding's office in Michigan, the invoices do not establish any contact between Brainerd and the State of Oklahoma. The invoices only establish contact with the State of Michigan.

Plaintiffs also attach an affidavit by Noel Fielding who attests that Willbros' principal office is located in Tulsa, Oklahoma. However, this fact alone is not sufficient to establish jurisdiction by an Oklahoma court over Brainerd. Willbros is not a party to this action. Plaintiffs' exhibits establish that Brainerd's only contact with Willbros was in sending invoices to

Michigan, where upon the invoices were approved in Michigan for payment. The fact that Willbros may also have connections with the State of Oklahoma is not sufficient to establish this Court's jurisdiction over Brainerd. Plaintiffs have failed to establish any contact by Brainerd with the State of Oklahoma. Imposition of personal jurisdiction by this Court over Brainerd is contrary to traditional concepts of fair play and substantial justice embodied in the Due Process Clause of the Fourteenth Amendment, as memorialized in International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945). Accordingly, the Court finds defendant's motion should be granted.

It is therefore ordered that the motion of the defendant, Brainerd Helicopter Service, to dismiss for lack of personal jurisdiction is hereby granted.

IT IS SO ORDERED this 23<sup>rd</sup>-day of June, 1992.

  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE

FILED  
JUN 24 1992

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

THRIFTY RENT-A-CAR SYSTEM, INC., )  
an Oklahoma corporation, )

Plaintiff, )

vs. )

DEPEW AUTO LEASE CORPORATION, )  
a foreign corporation; and )  
BRUCE HANSON, an individual, )

Defendants. )

RICHARD H. LAWRENCE  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OK

Case No. 92-C-115-B

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Thrifty Rent-A-Car System, Inc. ("Thrifty"), pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, and hereby dismisses the above-captioned action without prejudice. This dismissal is taken prior to service of a summons and complaint upon the Defendants.

Respectfully submitted,

LIPE, GREEN, PASCHAL,  
TRUMP & GOURLEY, P.C.

By: Mark E. Dreyer  
Richard A. Paschal, OBA# 6927  
Mark E. Dreyer, OBA #14998  
2100 Mid-Continent Tower  
401 South Boston Avenue  
Tulsa, Oklahoma 74103  
(918) 599-9400

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

ENTERED ON DOCKET  
DATE JUN 25 1992

INTERNATIONAL GATE DEVICES, )  
INC., )  
Plaintiff, )  
vs. )  
AMERISTAR FENCE PRODUCTS, )  
Defendant. )

No. 92-C-372-E

**FILED**

JUN 24 1992

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

ORDER OF DISMISSAL

The parties having advised the Court that they have entered into a Settlement Agreement, it is hereby ordered that this action is dismissed with prejudice. This case was originally filed in the United States District Court for the Eastern District of Pennsylvania as Civil Action No. 91-7702.

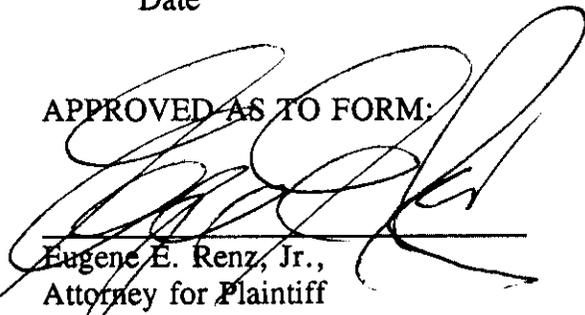
6-23-92

Date

5/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

  
Eugene E. Renz, Jr.,  
Attorney for Plaintiff

  
William S. Dorman,  
Attorney for Defendant

ENTERED ON DOCKET  
DATE JUN 25 1992

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

**FILED**  
IN OPEN COURT

JUN 25 1992

ADELA SHERRI CLARK, as the )  
surviving spouse and next of kin )  
of KEVIN DEAN CLARK, Deceased, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
VARITY CORPORATION, a Delaware )  
corporation, )  
 )  
Defendant. )

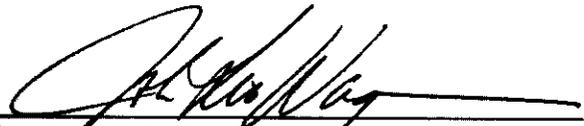
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

No. 92-C-16-E

ORDER OF DISMISSAL WITH PREJUDICE

The Court, having before it the written Stipulation for Dismissal with Prejudice signed by all parties to this litigation, **finds** that based upon the agreement of the parties the Stipulation for Dismissal with Prejudice should be granted, and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the litigation captioned herein, including all complaints, counterclaims, cross-complaints and causes of action of any type by any party, should be and the same are hereby dismissed with prejudice to the refiling thereof. This Judgment is entered this 25<sup>th</sup> day of June, 1992.

  
JOHN LEO WAGNER  
Magistrate Judge of the U.S. District Court

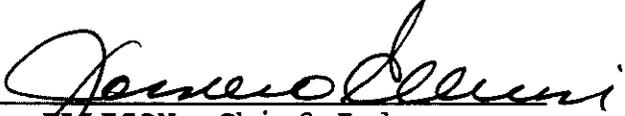
JAD/bjo



120 (8th Cir. 1983).

IT IS THEREFORE ORDERED that the report and recommendation of the Magistrate Judge is hereby affirmed; upon transfer to the Western District Court it must be determined whether Petitioner has exhausted all administrative remedies, and if so, determine whether there are appropriate grounds to pursue a §2241 action in this cause.

So ORDERED this 23<sup>d</sup> day of June, 1992.

  
\_\_\_\_\_  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

W

**FILED**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**JUN 25 1992**

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

AVA J. MORRISON and RON  
MORRISON

Plaintiffs,

VS.

United States of America,  
ex. rel. U.S. Department  
of Housing and Urban  
Development, and  
RALPH JONES COMPANY, INC.,

Defendants.

Civil Action No. 92-C-257E

Tulsa County District Court  
Case No. CJ-92-00424

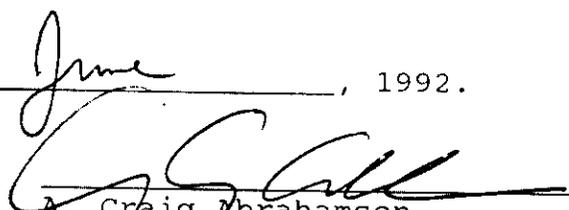
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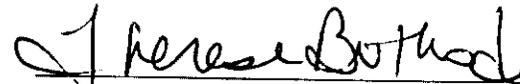
DATE JUN 25 1992

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

It is hereby stipulated that the above-entitled action may be  
dismissed without prejudice.

Dated this 25th day of June, 1992.

  
A. Craig Abrahamson  
Morris & Morris  
Attorney for Plaintiffs  
1616 South Denver  
Tulsa, Oklahoma 74119  
(918) 587-5514

  
Therese Buthod  
Attorney for Defendant Ralph L.  
Jones Company  
525 South Main, Suite 1130  
Tulsa, Oklahoma 74103  
(918) 599-7088

  
Phil Pinnell  
Attorney for Defendant United  
States of America  
Assistant U.S. Attorney  
3900 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

**FILED**

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

JUN 25 1992

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 AFTON MEMORIAL HOSPITAL, )  
 INC., a/k/a AFTON MEMORIAL )  
 HOSPITAL CO., d/b/a AFTON )  
 MEMORIAL HOSPITAL and )  
 LAWRENCE K. JOHNSON, D.O., )  
 )  
 Defendants. )

Case No. 91-C-758-E

ENTERED ON DOCKET  
DATE JUN 25 1992

**JOINT STIPULATION OF  
DISMISSAL WITH PREJUDICE**

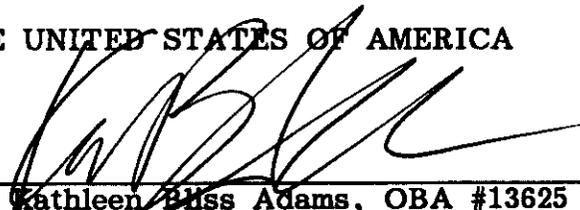
The plaintiff, the United States of America (the "Government"), and the defendants, Afton Memorial Hospital, Inc., a/k/a Afton Memorial Hospital Co., d/b/a Afton Memorial Hospital ("Afton Hospital"), and Lawrence K. Johnson, D.O. ("Dr. Johnson"), stipulate that this case be dismissed with prejudice pursuant to Federal Rule 41(a)(1), for the reason that the parties have entered into a full and final settlement of the issues and controversies pending between them, with each side to bear their respective costs and attorney fees.

WHEREFORE, based on the settlement of the case, the parties jointly stipulate to the dismissal of this case with prejudice.

Date: June 25, 1992.

THE UNITED STATES OF AMERICA

By:

  
Kathleen Bliss Adams, OBA #13625

ASSISTANT UNITED STATES ATTORNEY  
3900 United States Courthouse  
333 West 4th  
Tulsa, OK 74103  
(918) 581-7463

AFTON MEMORIAL HOSPITAL, INC.,  
d/b/a AFTON MEMORIAL HOSPITAL CO.,  
a/k/a AFTON MEMORIAL HOSPITAL and  
LAWRENCE K. JOHNSON, D.O.

By: Mark S. Rains  
Mark S. Rains, OBA #10935  
A. F. Ringold, OBA #7597

ROSENSTEIN, FIST & RINGOLD  
525 South Main, Suite 300  
Tulsa, OK 74103  
(918) 585-9211

Attorneys for Defendants, Afton  
Memorial Hospital, Inc., a/k/a Afton  
Memorial Hospital Co., d/b/a Afton  
Memorial Hospital, and Lawrence K.  
Johnson, D.O.

**FILED**

JUN 24 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

LEONARD DAVIS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 STANLEY GLANZ, et al., )  
 )  
 Defendants. )

91-C-316-E /

ENTERED ON DOCKET

DATE JUN 24 1992

ORDER & JUDGMENT

The court has for consideration the Report and Recommendation of the Magistrate Judge filed May 29, 1992, in which the Magistrate Judge recommended that defendants' alternative Motion for Summary Judgment be granted. 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 Magistrate Judge should be and hereby is affirmed.

It is therefore Ordered that defendants' alternative Motion for Summary Judgment is granted.

Dated this 23rd day of June, 1992.

  
JAMES O. ELLISON, CHIEF  
UNITED STATES DISTRICT JUDGE

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

DATE JUN 24 1992

LINDSEY L. WILLIAMS and  
AMY L. WILLIAMS,  
  
Plaintiffs,  
  
v.  
  
UNITED STATES OF AMERICA,  
  
Defendant and  
Counterclaimant.  
  
v.  
  
LINDSEY L. WILLIAMS,  
  
Counterclaim  
Defendant.

Case No. 90-C-1-B

**FILED**  
JUN 23 1992

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

ORDER

Pursuant to the stipulation of counsel, judgment shall enter in favor of the defendant and counterclaimant, United States of America, against the plaintiff and counterclaim defendant, Lindsey L. Williams, on the complaint and counterclaim in the amount of \$20,473.33, plus interest thereon according to law.

Dated this 23<sup>rd</sup> day of June, 1992.



UNITED STATES DISTRICT JUDGE

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

ENTERED ON BOOKET  
DATE JUN 23 1992

TOMMY CRAIG CONAWAY,  
Plaintiff and  
Counterclaim Defendant,

vs.

UNITED STATES OF AMERICA,

Defendant and  
Counterclaimant,

vs.

NADIM A. KALED,  
aka NED A. KALED,

Additional Counterclaim  
Defendant.

Case No. 91-C-509-E

**FILED**

JUN 22 1992

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

JUDGMENT

Defendant and Counterclaimant, United States of America ("USA") and additional Counterclaim Defendant, Nadim A. Kaled ("Kaled"), having filed their Stipulation for Judgment herein, requesting that the Court enter its Judgment as provided therein, and there being no objection thereto,

IT IS THEREFORE ORDERED AND ADJUDGED that the USA have and recover judgment against Kaled in the amount of \$137,779.40, plus assessed interest, unassessed but accrued interest, and other accruals.

DATED this 22<sup>nd</sup> day of June, 1992.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE ~~JUN 23 1991~~ JUN 23 1992

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

KEVIN PARK,

Plaintiff,

vs.

Case No. 91 C-198-B ✓

ARABESQUE CORPORATION, an  
Oklahoma corporation; and  
MONTE MORRIS FRIESNER, a  
bankrupt, by and through  
Ada Wynston, Trustee, and  
BETTE MITCHELL, an individual,

Defendants.

**FILED**

JUN 23 1992

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

ORDER

Now before the Court for its consideration is plaintiff's Motion to Amend Order of Dismissal to Grant Leave to Amend Complaint. Various other motions by the parties are pending before the Court and will be addressed in separate orders.

By this motion, plaintiff seeks relief from the Court's Order of March 12, 1992, which dismissed plaintiff's RICO and state law claims against defendants Arabesque Corporation (Arabesque) and Bette Mitchell (Mitchell). In that Order, the Court found that the plaintiff's complaint and RICO Case Statement were legally insufficient to state causes of action against those two defendants. The Court noted that "it is difficult to conceive how plaintiff can cure these many insufficiencies in an amended complaint." Order, p. 11.

Apparently taking the Court's comment as a challenge, plaintiff has crafted an amended complaint, attempting to supply

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the deficiencies in pleading noted by the Court in its Order. In his motion, plaintiff asks the Court to retract its refusal to allow him to file an amended complaint. Plaintiff avers that the amended complaint should be considered against Arabesque and Mitchell "in the interests of justice and the proper adjudication of the merits of the cases." Plaintiff's Motion to Amend Order of Dismissal to Grant Leave to Amend Complaint, p. 3 [hereinafer referred to as Motion to Amend].

F.R.Cv.P. 15(a) states that leave to amend "shall be freely given when justice so requires." However, leave to amend may be denied for "apparent or declared reasons" such as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc." Foman v. Davis, 371 U.S. 178, 182 (1962). A court must state reasons for its refusal to grant leave to amend. Triplett v. LeFlore County, Okla., 712 F.2d 444, 446-47 (10th Cir. 1983).

Here, the Court finds it would be futile to allow the plaintiff to file his proposed amended complaint, since that complaint fails to state causes of actions against Arabesque and Mitchell and could not withstand a motion to dismiss for many of the same failings as plaintiff's previous complaint against those two defendants. In reaching this conclusion, the Court has had to examine the proposed amended complaint submitted by plaintiff. The Court will not undertake a detailed analysis of the proposed

amended complaint, but will briefly comment upon its shortcomings in order to illustrate the futility of allowing the amendment.

Amended RICO Causes of Action

As his first two causes of action, plaintiff has alleged that he has been damaged by defendants' violations of 18 U.S.C. §1962(a) and (b). As in his original complaint, and as was noted by the Court in its Order of March 12, 1992, plaintiff has again failed to plead an "investment injury" under §1962(a) and an "acquisition injury" under §1962(b).

In his third cause of action, alleging violations of §1962(c), plaintiff has failed in several ways to link defendants Mitchell and Arabesque to a "pattern of racketeering activity" required by that subsection. Although plaintiff appears to have recently discovered more predicate acts committed by all the defendants, those alleged predicate acts of wire fraud, in the form of telephone communications and the wiring of funds to the defendants are again not plead with the particularity required by F.R.Cv.P 9(b). In the proposed complaint with reference to the alleged misrepresentations made by Mitchell, plaintiff always alleges that "Friesner and Mitchell" made the misrepresentations. For purposes of Rule 9(b), pleadings alleging misrepresentation and fraud must state the "specific content of the false representations as well as the identities of the parties to the misrepresentation." Graue Mill Dev. v. Colonial Bank and Trust Co., 927 F.2d 988, 992-993 (7th Cir. 1991) (quoting Moore v. Kayport Package Express, 885 F.2d 531, 540 (9th Cir. 1989)).

The "pattern of racketeering activity" alleged by plaintiff in his amended complaint references only actions taken by defendant Friesner. Plaintiff has not plead a "pattern of racketeering activity" with reference to Mitchell's or Arabesque's activities under §1962(c).

Likewise, plaintiff has failed to adequately identify an "enterprise" under §1962(c). In his amended complaint, plaintiff states that "Arabesque is liable under a theory of respondeat superior because the enterprise is an association in fact comprised of the corporation and the individual defendants." Proposed Amended Complaint ¶ 38. In Garbade v. Great Divide Mining and Milling Corp., 831 F.2d 212 (10th Cir. 1987), the Tenth Circuit held that a corporation could not be a "person" and the "enterprise" within the purposes and wording of §1962(c). Id. at 213. In Garbade, the court also recognized that §1962(c) does not relate to corporate or enterprise liability, citing decisions from other circuits which have refused to hold a corporate defendant liable for a §1962(c) violation on a theory of respondeat superior. Id. (citing Shoefield v. First Commodity Corp., 793 F.2d 28 (1st Cir. 1986), Haroco, Inc. v. Amer. Nat'l Bank & Trust Co., 747 F.2d 384 (7th Cir. 1984) and United States v. Computer Sciences Corp., 689 F.2d 1181 (4th Cir. 1982)).

In his fourth cause of action, plaintiff states that he has "specifically set forth facts showing Defendants Friesner and Mitchell and, through them, Arabesque agreed to and did knowingly conspire to commit two or more predicate crimes. . . ." Proposed

Amended Complaint, ¶ 40. The Court's review of the amended complaint finds no specific facts alleged by plaintiff to indicate an agreement among the defendants. Plaintiff again has plead only conclusory allegations of a conspiracy, which are insufficient to state a claim against defendants Mitchell and Arabesque for a violation of §1962(d).

#### Amended State Law Claims

In his motion, plaintiff requests that he be allowed to amend his complaint in order to state causes of action against Mitchell and Arabesque. Plaintiff seeks to bring in two other plaintiffs, Lorraine Latter-Giamos (Giamos) and her corporation, Arabica-Ontario Properties, explaining that these additional parties are "the missing link in the equation." Motion to Amend, p. 2. Plaintiff apparently believes that the addition of these two parties will furnish him with a cause of action for fraud and conversion under Oklahoma law against Mitchell and Arabesque. Plaintiff is mistaken in this belief. Whether or not<sup>1</sup> these additional parties have a cause of action against Mitchell or Arabesque in no way affects the issue of whether plaintiff can legally state a cause of action against these two defendants. As briefly explained below by the Court, plaintiff's proposed amended complaint does not state a cause of action against Mitchell or Arabesque for fraud or conversion under Oklahoma law.

---

<sup>1</sup> Giamos and Arabica are not before the Court as parties to this action, and the Court will not express any opinion here as to the merits of any claim they may make against the defendants.

1. Fraud.

An examination of the proposed complaint shows that plaintiff has not plead any misrepresentation, attributable to defendants Mitchell or Arabesque, on which he relied and thereby suffered his alleged damages. All representations on which plaintiff purportedly relied in giving a mortgage on his property were alleged by plaintiff to have been made by defendant Friesner only, to Giamos, in connection with the Performance Guarantee Fee. See Proposed Amended Complaint, ¶¶ 6, 9, 10, 11 and 12.

2. Conversion.

Plaintiff's proposed amended complaint contains no allegation that he owns or has any right to the funds allegedly transferred to the defendants. Instead, plaintiff alleges that he is "entitled to possession and free use of his equity in his real property." Proposed Amended Complaint, ¶ 46. According to plaintiff's RICO Case Statement, the mortgage on his property is held by Gontier. Plaintiff has not plead a wrongful interference by defendants Mitchell and Arabesque of plaintiff's possession and use of his equity in his property.

The Court's impression of the proposed amended complaint is that the plaintiff's attorney has merely added conclusory language, attempting to overcome the deficiencies in his first complaint, but has not adequately researched the law under which he makes plaintiff's claims. F.R.Cv.P. 11 "contemplates and demands an attorney's investigation of both the facts and the law . . ."

Glenn v. First Nat. Bank in Grand Junction, 868 F.2d 368, 370 (10th Cir. 1989). Such investigation should have been done for the first complaint filed by the plaintiff; additionally, the RICO Case Statement requiring the plaintiff to provide the details of his RICO claims should have alerted the plaintiff's attorney to the need to research further the RICO case law in order to plead those claims. The Court is unwilling to continue expending its resources in educating plaintiff's attorney as to what is required legally to plead claims under RICO. The Court is likewise reluctant to require defendants Mitchell and Arabesque to respond to a defective amended complaint with a motion to dismiss, in hopes that plaintiff will eventually bring forth a pleading that will withstand such a motion.

Because of the legal deficiencies of the proposed amended complaint, the Court believes that allowing plaintiff to file the amended complaint would be futile. The Court declines to grant plaintiff leave to file that amended complaint and **DENIES** plaintiff's motion to amend the Court's Order of March 12, 1992 to permit the filing of that amendment.

IT IS SO ORDERED this 22<sup>nd</sup> day of June, 1992.

  
THOMAS R. BRETT  
United States District Judge

ENTERED ON DOCKET

DATE JUN 23 1992

**FILED**

JUN 23 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

BRENTLEY ROBERTS, et al., )

Plaintiffs, )

vs. )

JESS C. ROBERTS, et al., )

Defendants. )

No. 91-C-492-E

ADMINISTRATIVE CLOSING ORDER

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

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigation is necessary.

ORDERED this 23<sup>RD</sup> day of June, 1992.

  
\_\_\_\_\_  
JAMES G. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

100

ENTERED ON DOCKET  
DATE JUN 23 1992

**FILED**

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

JUN 19 1992

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

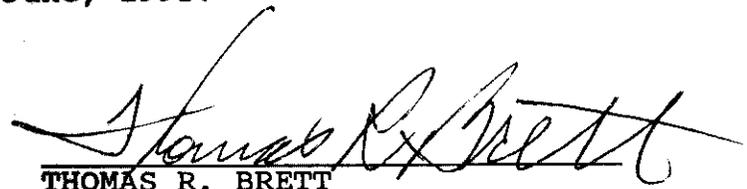
VICKI SMITH,  
  
Plaintiff,  
  
vs.  
  
SKAGGS ALPHA BETA, INC.,  
a Delaware Corporation,  
  
Defendant.

Case No. 91-C-502-B

**J U D G M E N T**

In accordance with the jury verdict rendered June 18, 1992, Judgment is hereby entered in favor of Plaintiff, Vicki Smith, and against the Defendant, Skaggs Alpha Beta, Inc., in the amount of Three Thousand Two Hundred Fifty Dollars (\$3,250.00), plus pre-judgment interest at the rate of 9.58% per annum (12 O.S.Supp.1992, §727B) from July 15, 1991, until June 19, 1992, plus post-judgment interest at the rate of 4.26% per annum (28 U.S.C. § 1961) from June 19, 1992, on the total of said principal sum and pre-judgment interest. Costs are assessed against Defendant if timely applied for under Local Rule 6, parties to bear their own attorneys fees.

DATED this 19<sup>th</sup> day of June, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

5

ENTERED ON DOCKET

DATE JUN 23 1992

FILED

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

JUN 23 1992

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

LARRY DON LONG and BARBARA KAY LONG, )

Plaintiffs, )

vs. )

J & B MANAGEMENT COMPANY, a )  
corporation, and CONNECTICUT GENERAL )  
LIFE INSURANCE COMPANY, a corporation, )

Defendants. )

Case No. 91-C-613-B

ORDER OF DISMISSAL WITH PREJUDICE

The Plaintiffs and Defendant Connecticut General Life Insurance Company, having compromised and settled all issues in the action and having stipulated that the Complaint and the action may be dismissed with prejudice, it is therefore,

ORDERED, that the Complaint and this cause of action are, by the Court, dismissed with prejudice to the bringing of another action upon the same cause or causes of action.

Entered this 22<sup>nd</sup> day of June, 1992.

S/ [Signature]

UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE JUN 23 1992

FILED

JUN 22 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

JOE A. THOMAS,	)
	)
Plaintiff,	)
	)
v.	)
	)
GARY D. MAYNARD, et al.,	)
	)
Defendants.	)

Case No. 91-C-29-B

ORDER

This order pertains to Plaintiff's Amended Complaint (Docket #6)<sup>1</sup>, Defendants' Motion to Dismiss (Docket #14), and the Amended Report of Review of Factual Basis of Claims Asserted in Civil Rights Complaint Pursuant to U.S.C. Section 1983 (Docket #20). Plaintiff alleges that the Defendants deprived him of his right to be free from cruel and unusual punishment by unjustly holding him in custody after his sentence was terminated. The Special Report shows that Plaintiff was convicted in Tulsa County District Court on September 29, 1980 of unauthorized use of a motor vehicle in Case No. CRF-80-196 and second degree burglary in Case No. CRF 80-3039. He was sentenced to two years in Case No. CRF-80-196, and the sentence was to run concurrently with a three year sentence in Case No. CRF-80-3039. He was received at the Lexington Assessment and Reception Center on October 7, 1980. He was discharged from the second degree burglary sentence on November 18, 1981.

Plaintiff alleges that he was confined in Tulsa County Jail on a two-year second

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<sup>1</sup> "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.

degree burglary sentence, transferred to Muskogee on December 3, 1980, and while out on a weekend pass in January of 1981 was arrested for the burglary offense. He claims that when he was brought before the Judge and explained that he was out of jail on the pass, the judge ordered his release from the serving of any further time for his conviction. He was later returned to confinement. He has presented no written documentation to corroborate these claims.

Plaintiff's petition is barred by the state of limitations for § 1983 civil rights claims, which is two years under the applicable statute, Title 12 of the Oklahoma Statutes, § 95. See, Abbitt v. Franklin, 731 F.2d 661, 662 (10th Cir. 1984); Garcia v. Wilson, 731 F.2d 640 (10th Cir. 1984), affirmed, 471 U.S. 261 (1985). The conduct complained of occurred ten years prior to the time Plaintiff filed his complaint. Plaintiff's Amended Complaint (Docket #6) is dismissed.

Dated this 22<sup>nd</sup> day of June, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

DATE 6/23/92

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THE UNKNOWN HEIRS, EXECUTORS, )  
 ADMINISTRATORS, DEVISEES, )  
 TRUSTEES, SUCCESSORS AND )  
 ASSIGNS OF LENOVA E. COOKS, )  
 DECEASED; EMMA J. JENKINS, )  
 ADMINISTRATRIX OF THE ESTATE )  
 OF LENOVA E. COOKS, DECEASED; )  
 JOHN DOE, Tenant; JANE DOE, )  
 Tenant; COUNTY TREASURER, )  
 Tulsa County, Oklahoma; )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Tulsa County, Oklahoma; and )  
 LAMAR PUNCELL COOKS, )  
 )  
 Defendants. )

**FILED**  
 JUN 17 1992  
 Richard M. Lawrence, Clerk  
 U. S. DISTRICT COURT  
 NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 90-C-703-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17<sup>th</sup> day  
 of June, 1992. The Plaintiff appears by Tony M.  
 Graham, United States Attorney for the Northern District of  
 Oklahoma, through Peter Bernhardt, Assistant United States  
 Attorney; the Defendants, County Treasurer, Tulsa County,  
 Oklahoma, and Board of County Commissioners, Tulsa County,  
 Oklahoma, appear not, having previously filed their Answers  
 disclaiming any right, title or interest in the subject property;  
 and the Defendants, The Unknown Heirs, Executors, Administrators,  
 Devisees, Trustees, Successors and Assigns of Lenova E. Cooks,  
 Deceased; Emma J. Jenkins, Administratrix of the Estate of Lenova  
 E. Cooks, Deceased; John Doe, Tenant, a/k/a Murphy Jenkins; Jane  
 Doe, Tenant, a/k/a Emma J. Jenkins; and Lamar Puncell Cooks  
 appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Emma J. Jenkins, Administratrix of the Estate of Lenova E. Cooks, Deceased, acknowledged receipt of Summons and Complaint on September 4, 1990; that the Defendant, John Doe a/k/a Murphy Jenkins, acknowledged receipt of Summons and Complaint on September 4, 1990, by the signature of Emma J. Jenkins; that the Defendant, Jane Doe, Tenant, a/k/a Emma J. Jenkins, acknowledged receipt of Summons and Complaint on September 4, 1990; that Defendant, Lamar Puncell Cooks, was served with Summons and Amended Complaint on September 25, 1991 and acknowledged receipt of Summons and Amended Complaint on September 29, 1991; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 21, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 21, 1990.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lenova E. Cooks, Deceased, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 13, 1992, and continuing to April 17, 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 Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lenova E. Cooks, Deceased, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lenova E. Cooks, Deceased. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on September 10, 1990, disclaiming any right, title or interest in the subject property; the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on September 10, 1990, disclaiming any right, title or interest in the subject property; and that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lenova E. Cooks, Deceased; Emma J. Jenkins, Administratrix of the Estate of Lenova E. Cooks, Deceased; John Doe, Tenant, a/k/a Murphy Jenkins; Jane Doe, Tenant, a/k/a Emma J. Jenkins; and Lamar Puncell Cooks, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Eleven (11), Block Two (2), Valley View Acres, Addition to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of Lenova E. Cooks, and of judicially determining the heirs of Lenova E. Cooks.

The Court further finds that Lenova E. Cooks, now deceased, became the record owner of the real property involved in this action by virtue of a Warranty Deed dated July 10, 1975, filed of record on July 14, 1975 in Book 4173, Page 1081 in the records of Tulsa County Oklahoma.

The Court further finds that Lenova E. Cooks died intestate on May 11, 1980 while seized and possessed of the real property being foreclosed; and that on December 10, 1981, Emma J. Jenkins was appointed Administratrix of the Estate of Lenova E. Cooks, but that a final accounting has never been filed. The Certificate of Death No. 10386 was issued by the Oklahoma State Department of Health certifying Lenova E. Cooks' death.

The Court further finds that on July 11, 1975, Lenova E. Cooks, now deceased, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, her mortgage note in the amount of \$9,500.00, payable in monthly installments, with interest thereon at the rate of 8.5 percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Lenova E. Cooks, now deceased, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated July 11, 1975, covering the above-described property. Said mortgage was recorded on July 14, 1975, in Book 4173, Page 1114, in the records of Tulsa County, Oklahoma.

The Court further finds that Lenova E. Cooks died intestate on May 11, 1980, and the subject property vested in The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lenova E. Cooks.

The Court further finds that Lenova E. Cooks, now deceased, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof, Lenova E. Cooks is indebted to the Plaintiff in the principal sum of \$8,065.97, plus interest at the rate of 8.5 percent per annum from November 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$320.84 (\$4.44 fees for service of Summons and Complaint, \$316.40 publication fees).

The Court further finds that the Plaintiff is entitled to a judicial determination of the death of Lenova E. Cooks and to a judicial determination of the heirs of Lenova E. Cooks.

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

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lenova E. Cooks, Deceased; Emma J. Jenkins, Administratrix of the Estate of Lenova E. Cooks, Deceased; John Doe, Tenant, a/k/a Murphy Jenkins; Jane Doe, Tenant, a/k/a Emma J. Jenkins; and Lamar Puncell Cooks, are in

default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem in the principal sum of \$8,065.97, plus interest at the rate of 8.5 percent per annum from November 1, 1989 until judgment, plus interest thereafter at the current legal rate of 4.26 percent per annum until paid, plus the costs of this action in the amount of \$320.84 (\$4.44 fees for service of Summons and Complaint, \$316.40 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 death of Lenova E. Cooks be and the same hereby is judicially determined to have occurred on May 11, 1980 in the City of Oklahoma City, Oklahoma County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff mailed a copy of the Order For Service By Publication with a printed copy of the Publisher's Affidavit, to Emma J. Jenkins and to Lamar Puncell Cooks, the only known heirs of Lenova E. Cooks, Deceased, and the Court approves the Certificate of Publication and Mailing filed by Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lenova E. Cooks, Deceased; Emma J. Jenkins, Administratrix of the Estate of Lenova

E. Cooks, Deceased; John Doe, Tenant, a/k/a Murphy Jenkins; Jane Doe, Tenant, a/k/a Emma J. Jenkins; Lamar Puncell Cooks; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisal, the real property involved herein and apply the proceeds of the sale as follows:

**First:**

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

**Second:**

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

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

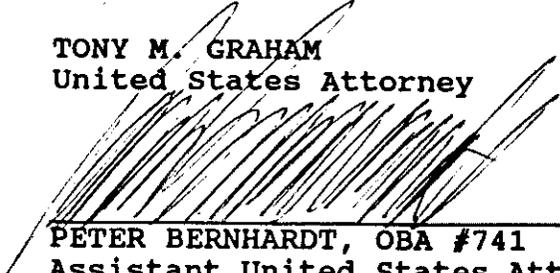
**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any

right, title, interest or claim in or to the subject real property or any part thereof.

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney



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

Judgment of Foreclosure  
Civil Action No. 90-C-703-B

PB/esr

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

**FILED**

JUN 22 1992

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

FEDERAL DEPOSIT INSURANCE CORPORATION, as Manager of the Federal Savings and Loan Insurance Corporation Resolution Fund;

Plaintiff,

v.

JAMES P. FAWCETT; VIRGIL S. TILLY, JR.; ROBERT S. COPE; R. KENNETH DOSE; CHARLIE MITCHELL; Individuals;

Defendants.

Case No. 91-C-677-E

ENTERED ON DOCKET

DATE JUN 23 1992

ORDER WITHDRAWING MOTION FOR SUBSTITUTION PARTIES  
AND DISMISSAL OF DEFENDANT VIRGIL S. TILLY, JR.

On the 11th day of June, 1992, the Federal Deposit Insurance Corporation (the "FDIC") filed its Application to Withdraw Motion to Substitute Parties and Motion to Dismiss Defendant Virgil S. Tilly, Jr. The Court Finds that the Application and the Motion should be granted.

IT IS THEREFORE ORDERED that the FDIC's Motion of May 20, 1992, for Substitution of Parties is hereby withdrawn and that Defendant, Virgil S. Tilly, Jr., is dismissed without prejudice from this case.

DATED this 22<sup>nd</sup> day of June, 1992.

S/ JAMES O. ELLISON

JUDGE OF THE DISTRICT COURT



ENTERED ON DOCKET

DATE 6-23-92

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

JUN 22 1992

RECEIVED  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

BOBBY L. BLAKE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LIBERTY MUTUAL FIRE INSURANCE )  
 COMPANY, )  
 )  
 Defendant. )

No. 91-C-170-C ✓

ORDER OF DISMISSAL

The above cause comes on for hearing upon the Application of the plaintiff, Bobby L. Blake, and his attorney of record, Joe Richard, for a dismissal with prejudice of the above and foregoing action as to the defendant, Liberty Mutual Fire Insurance Company, and the Court, being well advised in the premises, FINDS that the Order of Dismissal should issue.

IT IS THEREFORE ORDERED that the above entitled cause, and each claim thereof, be and the same is hereby dismissed upon the merits and with prejudice to a future action as to the defendant, Liberty Mutual Fire Insurance Company, each party to bear its own costs.

DATED this 22<sup>nd</sup> day of June, 1992.

[Signature]  
United States District Judge

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

HARRISON WHITEIS and JO ANN )  
WHITEIS, husband and wife, )  
 )  
Plaintiff, )

ENTERED ON DOCKET  
JUN 22 1992  
DATE \_\_\_\_\_

v. )

No. 91-C-585 E

SUNTEK INDUSTRIES, INC., )  
d/b/a MID AMERICAN YARN MILLS, )  
an Oklahoma corporation; )  
AMERICAN SECURITY LIFE )  
INSURANCE CO.; INTERNATIONAL )  
REHABILITATION ASSOCIATES, )  
INC., a Delaware corporation, )  
d/b/a INTRACORP, a/k/a )  
INTRACORP MEDICAL REVIEW )  
CENTER; DAVID BRIDGES and )  
BURTON WEIL, )  
 )  
Defendants. )

**FILED**

JUN 19 1992

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

ORDER OF DISMISSAL WITH PREJUDICE

The matter comes before this court pursuant to the Stipulation of Dismissal With Prejudice and Application for Order of Dismissal filed by the Plaintiff and the Defendants upon whom service of process has been obtained. The court having reviewed the Stipulation of Dismissal With Prejudice and Application for Order of Dismissal with Prejudice and being fully advised in the premises, finds that the Plaintiff's cause of action against all Defendants, including Suntek Industries, Inc., d/b/a Mid American Yarn Mills, an Oklahoma corporation, American Security Life Insurance Company and its successor, American National Insurance Company, International Rehabilitation Associate, Inc., a Delaware corporation, d/b/a Intracorp, a/k/a Intracorp Medical Review Center, David Bridges and Burton Weil, should be and the same is hereby dismissed on the merits and with prejudice to the filing of

any future action with each party to bear its respective costs,  
expenses and attorney's fees.

**AND IT IS SO ORDERED.**

Dated this 19<sup>th</sup> day of June, 1992.

S/ JAMES O. ELLISON

United States District Judge

U.S. DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

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

**FILED**

RANDY DALE JONES, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 RON CHAMPION, )  
 )  
 Defendant. )

92-C-511-B

JUL 17 1992

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

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, Oklahoma, 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.

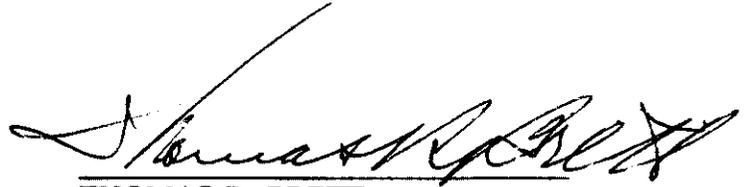
(3) In the furtherance of justice this case should be transferred to the United States District Court for the Western District of Oklahoma.

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.

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

Dated this 16<sup>th</sup> day of June, 1992.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

ENTERED ON DOCKET  
DATE JUN 22 1992

BARBARA PIERCE,

Plaintiff,

v.

No. 91-C-584 *BE*

SUNTEK INDUSTRIES, INC.,  
d/b/a MID AMERICAN YARN MILLS,  
an Oklahoma corporation;  
AMERICAN SECURITY LIFE  
INSURANCE CO.; INTERNATIONAL  
REHABILITATION ASSOCIATES,  
INC., a Delaware corporation,  
d/b/a INTRACORP, a/k/a  
INTRACORP MEDICAL REVIEW  
CENTER; DAVID BRIDGES and  
BURTON WEIL,

Defendants.

**FILED**

JUN 19 1992

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

ORDER OF DISMISSAL WITH PREJUDICE

The matter comes before this court pursuant to the Stipulation of Dismissal With Prejudice and Application for Order of Dismissal filed by the Plaintiff and the Defendants upon whom service of process has been obtained. The court having reviewed the Stipulation of Dismissal With Prejudice and Application for Order of Dismissal with Prejudice and being fully advised in the premises, finds that the Plaintiff's cause of action against all Defendants, including Suntek Industries, Inc., d/b/a Mid American Yarn Mills, an Oklahoma corporation, American Security Life Insurance Company and its successor, American National Insurance Company, International Rehabilitation Associate, Inc., a Delaware corporation, d/b/a Intracorp, a/k/a Intracorp Medical Review Center, David Bridges and Burton Weil, should be and the same is hereby dismissed on the merits and with prejudice to the filing of any future action with each party to bear its respective costs,

expenses and attorney's fees.

**AND IT IS SO ORDERED.**

Dated this 19<sup>th</sup> day of June, 1992.

**S/ JAMES O. ELLISON**

**United States District Judge**

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

**FILED**

JUN 19 1992

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

STEPHANIE ABRAMS, )  
)  
Plaintiff, )  
)  
v. )  
)  
SUNTEK INDUSTRIES, INC., )  
d/b/a MID AMERICAN YARN MILLS, )  
an Oklahoma corporation; )  
AMERICAN SECURITY LIFE )  
INSURANCE CO.; INTERNATIONAL )  
REHABILITATION ASSOCIATES, )  
INC., a Delaware corporation, )  
d/b/a INTRACORP, a/k/a )  
INTRACORP MEDICAL REVIEW )  
CENTER; DAVID BRIDGES and )  
BURTON WEIL, )  
)  
Defendants. )

No. 91-C-582 E

ENTERED ON DOCKET  
DATE JUN 22 1992

**ORDER OF DISMISSAL WITH PREJUDICE**

The matter comes before this court pursuant to the Stipulation of Dismissal With Prejudice and Application for Order of Dismissal filed by the Plaintiff and the Defendants upon whom service of process has been obtained. The court having reviewed the Stipulation of Dismissal With Prejudice and Application for Order of Dismissal with Prejudice and being fully advised in the premises, finds that the Plaintiff's cause of action against all Defendants, including Suntek Industries, Inc., d/b/a Mid American Yarn Mills, an Oklahoma corporation, American Security Life Insurance Company and its successor, American National Insurance Company, International Rehabilitation Associate, Inc., a Delaware corporation, d/b/a Intracorp, a/k/a Intracorp Medical Review Center, David Bridges and Burton Weil, should be and the same is hereby dismissed on the merits and with prejudice to the filing of

any future action with each party to bear its respective costs,  
expenses and attorney's fees.

**AND IT IS SO ORDERED.**

Dated this 19<sup>th</sup> day of June, 1992.

S/ JAMES O. ELLISON

United States District Judge

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

ROWENA EASTON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SUNTEK INDUSTRIES, INC., )  
 d/b/a MID AMERICAN YARN MILLS, )  
 an Oklahoma corporation; )  
 AMERICAN SECURITY LIFE )  
 INSURANCE CO.; INTERNATIONAL )  
 REHABILITATION ASSOCIATES, )  
 INC., a Delaware corporation, )  
 d/b/a INTRACORP, a/k/a )  
 INTRACORP MEDICAL REVIEW )  
 CENTER; DAVID BRIDGES and )  
 BURTON WEIL, )  
 )  
 Defendants. )

No. 91-C-583 E

FILED JUN 22 1992  
DATE \_\_\_\_\_

**FILED**

JUN 19 1992

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

ORDER OF DISMISSAL WITH PREJUDICE

The matter comes before this court pursuant to the Stipulation of Dismissal With Prejudice and Application for Order of Dismissal filed by the Plaintiff and the Defendants upon whom service of process has been obtained. The court having reviewed the Stipulation of Dismissal With Prejudice and Application for Order of Dismissal with Prejudice and being fully advised in the premises, finds that the Plaintiff's cause of action against all Defendants, including Suntek Industries, Inc., d/b/a Mid American Yarn Mills, an Oklahoma corporation, American Security Life Insurance Company and its successor, American National Insurance Company, International Rehabilitation Associate, Inc., a Delaware corporation, d/b/a Intracorp, a/k/a Intracorp Medical Review Center, David Bridges and Burton Weil, should be and the same is hereby dismissed on the merits and with prejudice to the filing of

any future action with each party to bear its respective costs,  
expenses and attorney's fees.

**AND IT IS SO ORDERED.**

Dated this 19<sup>th</sup> day of June, 1992.

S/ JAMES O. ELLISON

United States District Judge

DATE 6-22-92

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUN 19 1992

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

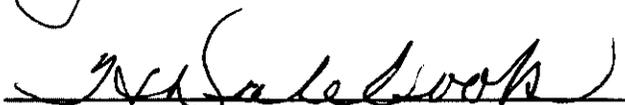
UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DARRELL D. McBRIDE; CHARLOTTE J. )  
 McBRIDE; COFFEYVILLE STATE BANK; )  
 and JOHN DEERE COMPANY, )  
 )  
 Defendants. )

CIVIL ACTION NO. 91-C-363-C

**ORDER**

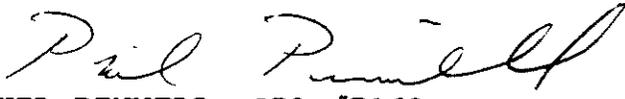
Upon the Motion of the United States of America, acting through the Farmers Home Administration, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 17<sup>th</sup> day of June, 1992.

  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM  
United States Attorney

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

PP/css

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

ENTERED ON DOCKET  
DATE JUN 22 1992

SECURITY BANK, )

Plaintiff, )

vs. )

Case No. 91-C-176-E

HARRIS TECHNOLOGIES, INC., )

A/K/A HARRIS TECHNOLOGIES )

CORPORATION; and WILDON L. )

HARRIS, a/k/a W.L. HARRIS, )

a/k/a SONNY HARRIS and )

SHAREESE D. HARRIS, husband )

and wife; and the UNITED )

STATES OF AMERICA, ex rel )

THE INTERNAL REVENUE )

SERVICE; TULSA COUNTY; THE )

TRIDENT COMPANY, a/k/a THE )

RICHARDSON TRIDENT COMPANY;) )

NORWEST FINANCIAL LEASING, )

INC., and EDGAR WALDEN, JR., )

Defendants, )

RANDY G. NOONKESTER, )

Intervenor. )

**FILED**

JUN 19 1992

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

**AGREED ORDER AND JUDGMENT**

This matter comes on before the undersigned Judge of the United States District Court upon the agreement of the Plaintiff, Security Bank ("Security"), and the Defendants, Harris Technologies, Inc., Wildon L. Harris, Shareese D. Harris, United States of America, ex rel the Internal Revenue Service, Tulsa County, and Randy G. Noonkester. Security Bank appearing by and through its counsel of record, Boone, Smith, Davis, Hurst & Dickman, by Paul E. Swain, III. Harris

Technologies, Inc., Wildon L. Harris and Shareese D. Harris appearing by and through their counsel, David K. Hoel. The United States of America, ex rel Internal Revenue Service, appearing by and through its attorney of record, John Marrella of the United States Department of Justice. Tulsa County appearing by and through its attorney of record, Dennis Semler of the Tulsa County District Attorney's office. The Defendant, Randy G. Noonkester, appearing by and through his attorney of record, Mark Thurston.

The Court, having reviewed the record and considered the stipulations of the parties, finds as follows:

1. The Defendant, Norwest Financial Leasing, Inc., was served with Summons and a copy of the Amended Complaint on August 6, 1991, by service upon its registered service agent by certified mail. The Summons directed the Defendant to file an answer or otherwise plead to the Plaintiff's Amended Complaint by August 26, 1991. The Defendant, Norwest Financial Leasing, Inc., has failed to file an Answer or otherwise respond to the Plaintiff's Amended Complaint and is in default.

2. The Defendant, The Trident Company, a/k/a The Richardson Trident Company, was served with a Summons and a copy of the Plaintiff's Amended Complaint on August 6, 1991, by agreed service upon the Defendant's attorney, Kelly Monaghan. On August 15, 1991, the Defendant, Trident Company, a/k/a Richardson Trident Company, filed a Disclaimer of Interest disclaiming any interest in the property which is the subject of this action.

3. The Defendant, Edgar Walden, Jr., was served by personal service by private process server with a Summons and a copy of the Plaintiff's Second Amended Complaint on December 10, 1991. The Summons directed the Defendant to answer or otherwise plead to the Plaintiff's Second Amended Complaint by

December 30, 1991. The Defendant, Edgar Walden, Jr., has failed to respond or plead to the Plaintiff's Second Amended Complaint and is in default.

4. On December 3, 1991, the Court entered an Agreed Order awarding judgment in favor of Security Bank against the Defendants, Harris Technologies, Inc., a/k/a Harris Technologies Corporation, Wildon L. Harris, a/k/a W.L. Harris, a/k/a Sonny Harris, and Shareese D. Harris, in the following amounts:

A. On the October 3, 1987, promissory note in the sum of \$68,866.36 together with interest as of October 1, 1991, in the amount of \$3,588.33, plus interest accruing after October 1, 1991, at the rate of \$18.73 per day until paid, plus a reasonable attorney's fee of \$6,000.00 and all costs of collection incurred;

B. On the September 16, 1986, promissory note in the sum of \$18,866.36 together with interest through October 1, 1991, in the amount of \$1,104.82, plus interest accruing from and after October 1, 1991, at the rate of \$5.17 per day until paid, plus a reasonable attorney's fee of \$6,000.00 and all costs of collection incurred;

C. On the March 14, 1990, note in the sum of \$158,464.71 together with interest through October 1, 1991, in the sum of \$7,712.88, plus interest accruing from and after October 1, 1991, at the rate of \$43.41 per day, plus a reasonable attorney's fee of \$6,000.00 and all costs of collection incurred;

D. On the overdrafts of the Harris Technologies bank accounts at Security in the sum of \$155,213.88 together with interest thereon from and after February 14, 1991, at the rate of six percent (6%) per annum until paid, plus a reasonable attorney's fee of \$6,000.00 and all costs of collection incurred.

5. The only issues remaining to be determined by the Court are the relative interests of the parties' mortgages, liens, and ownership claims against the property held by the Receiver and the claims of Security Bank against the Defendants, Randy G. Noonkester and Edgar Walden, Jr.

6. Security's mortgages and security interests described in the Fourth, Fifth and Seventh Causes of Action of Security's Second Amended Complaint are first, prior and superior liens on all property held by the Receiver, subject only to the interests of the Internal Revenue Service in and to the equipment held by Avacelle, Inc. as more completely described in paragraph 8 herein, and the ad valorem taxes of Tulsa County as more completely described in paragraph 11 herein. Except as described in paragraphs 8 and 11 herein, the mortgages and security interests of Security Bank are prior and superior to any right, title or interest of any Defendant herein.

7. Pursuant to the Court's Order of August 26, 1991, the Receiver liquidated all equipment, machinery and other personal property of Harris Technologies by public auction. The Receiver received gross sale proceeds from the sale of the personal property in the sum of \$199,997.50. The Receiver paid the following expenses in relation to the sale of the equipment:

Sales Commission	\$ 14,374.75
Advertising Expense	\$ 9,375.00
Preparation of Property for Sale	\$ 250.00
Payoff of Lease on Okuma Lathe	\$ 32,556.00
<b>Total Expenses</b>	<b><u>\$ 56,555.75</u></b>

After the payment of all the above expenses, the Receiver is in possession of the sum of \$143,441.75 from the sale of the equipment. Due to the judgments against Harris Technologies on the four claims described above in paragraph 4, Security Bank has a first, prior and superior mortgage lien on the sale proceeds held by the Receiver as to \$139,398.98 of the \$143,441.75. The Internal Revenue Service has a

first lien on the sales proceeds held by the Receiver as to \$4,042.77 of the \$143,441.75 due to the unpaid tax liens of E&R Machines.

8. Prior to commencement of this action, Harris Technologies sold two Bridgeport Mills to Avacelle, Inc., located in Edmond, Oklahoma. At the time of said sale, said equipment was encumbered by the tax liens of E&R Machines in the amount of \$67,596.00 plus penalties and interest and the security interests of Security Bank due to the judgments on the four claims described above in paragraph 4. The Internal Revenue Service has a first, prior and superior lien on said equipment in the amount of \$67,596.00 plus penalties and interest. Security Bank has a second lien on said equipment in the amount of \$401,411.31 plus interest, attorney fees and costs. The claims of all other Defendants herein are subject and inferior to the claims of the Internal Revenue Service and Security Bank.

9. The Receiver has collected all accounts receivable owed to Harris Technologies with the exception of one account owed by Avacelle, Inc. which has filed bankruptcy in the United States Bankruptcy Court for the Western District of Oklahoma. After the collection of all accounts and payment of ongoing expenses of the Receivership, the Receiver is in possession of the sum of \$13,345.33 in accounts receivable collections. Security Bank has a first, prior and superior mortgage lien on said accounts receivable as to \$12,641.61 of the \$13,345.33. The Internal Revenue Service has a first lien due to the tax liens of Harris Technologies as to \$703.72 of the \$13,345.33. Said claims of Security Bank and the Internal Revenue Service, respectively, are superior to all claims of all other Defendants herein.

10. Avacelle, Inc. is indebted to Harris Technologies in the sum of \$57,477.26. Security Bank has a first, prior and superior mortgage lien as to \$53,620.30 of the \$57,477.26. The Internal Revenue Service has a first lien against said account receivable due to the tax liens of Harris Technologies as to \$3,856.96 of the \$57,477.26. Any right, title or interest of all other Defendants herein is

subsequent and inferior to the claims of Security Bank and the Internal Revenue Service, respectively, and the Receiver is hereby ordered to assign the account receivable of Avacelle, Inc. to Security Bank and the Internal Revenue Service in the amounts described above.

11. Security Bank's judgment on the four claims described in paragraph 4 above is secured by a mortgage which constitutes a first, prior and superior lien, subject only to ad valorem taxes owed to Tulsa County in the amount of \$760.00 upon the real estate and premises located in Tulsa County, Oklahoma, described as follows:

A tract of land in the Southwest Quarter of the Southwest Quarter (SW/4, SW/4) of Section 17, Township 20 North, Range 13 East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, more particularly described as follows: Commencing at the Southwest Corner of said Southwest Quarter of Section 17, Township 20 North, Range 13 East, thence North along the West line of said Southwest Quarter of the Southwest Quarter for a distance of three hundred and fifty one (351) feet to the point of beginning; thence East a distance of two hundred fifty (250) feet to a point; thence North a distance of one hundred seventy-five (175) feet to a point; thence West a distance of two hundred fifty (250) feet to a point; thence South a distance of one hundred seventy-five (175) feet to the point of beginning.

and that any and all right, title or interest of the Defendants herein to said real estate and premises is subsequent, junior and inferior to the mortgage and lien of the Plaintiff, Security Bank.

12. On December 3, 1991, this Court entered an Order authorizing the Receiver to advertise and sell, free and clear of all liens, the real estate described above in paragraph 11. To date, the Receiver has been unable to sell said property. The Court hereby finds that said Order should be vacated and that the Plaintiff, Security Bank, is entitled to have its mortgage foreclosed and the above described

real estate sold with the proceeds of said sale being applied against the indebtedness of the four claims described above in paragraph 4.

13. Security has agreed to dismiss its claims against Randy G. Noonkester and Edgar Walden, Jr., as described in the Tenth, Eleventh and Twelfth Causes of Action of Security's Second Amended Complaint.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the mortgages and security interests of Security Bank as described in the Fourth, Fifth and Seventh Causes of Action of Security's Second Amended Complaint are first, prior and superior liens on all property held by the Receiver, subject only to the interests of the Internal Revenue Service in the equipment held by Avacelle, Inc. as more completely described in paragraph 8 herein, and the ad valorem taxes of Tulsa County as more completely described in paragraph 11 herein. Except as described in paragraphs 8 and 11 herein, the mortgages and security interests of Security Bank are prior and superior to any right, title or interest of any Defendant herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that of the \$143,441.75 being held by the Receiver from the sale of equipment, the Receiver shall deliver \$139,398.98 to Security Bank and \$4,042.77 to the Internal Revenue Service.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Internal Revenue Service has a first lien against the two Bridgeport Mills sold by Harris Technologies to Avacelle, Inc. in the amount of \$67,596.00 plus penalties and interest and Security Bank has a second lien on said equipment in the sum of \$401,411.31 plus interest, attorney fees and costs, and that the claims of the Internal Revenue Service and Security Bank, respectively, are superior to the claims of all other Defendants herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that of the \$13,345.33 the Receiver is holding from the collection of accounts receivable, the

Receiver shall deliver \$12,641.61 to Security Bank and \$703.72 to the Internal Revenue Service.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Receiver shall assign the account receivable of Avacelle, Inc. owed to Harris Technologies in the sum of \$57,477.26 to Security Bank in the amount of \$53,620.30 and to the Internal Revenue Service in the amount of \$3,856.96.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Security Bank's judgments described in paragraph 4 above are secured by mortgages that constitute first, prior and superior liens upon the real estate and premises located in Tulsa County, Oklahoma, described as follows, subject only to ad valorem taxes owed to Tulsa County in the amount of \$760.00:

A tract of land in the Southwest Quarter of the Southwest Quarter (SW/4, SW/4) of Section 17, Township 20 North, Range 13 East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, more particularly described as follows: Commencing at the Southwest Corner of said Southwest Quarter of Section 17, Township 20 North, Range 13 East, thence North along the West line of said Southwest Quarter of the Southwest Quarter for a distance of three hundred and fifty one (351) feet to the point of beginning; thence East a distance of two hundred fifty (250) feet to a point; thence North a distance of one hundred seventy-five (175) feet to a point; thence West a distance of two hundred fifty (250) feet to a point; thence South a distance of one hundred seventy-five (175) feet to the point of beginning.

And that any right, title or interest which the Defendants, Harris Technologies, Inc., a/k/a Harris Technologies Corporation; Wildon L. Harris, a/k/a W.L. Harris, a/k/a Sonny Harris; Shareese D. Harris; United States of America, ex rel the Internal Revenue Service; The Trident Company, a/k/a The Richardson Trident Company; Norwest Financial Leasing, Inc.; Edgar Walden, Jr.; and Randy G. Noonkester, have in or to said real estate and premises is subsequent, junior and inferior to the mortgage and lien of the Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff's mortgage be foreclosed as provided by law, and that an Order of Sale issue in this cause commanding the Sheriff of Tulsa County to sell the above described real property with appraisalment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that an Order of Sale be issued directing and commanding the advertisement and sale according to law on execution with appraisalment of the subject real property, free and clear, and discharged of, and from all interests, claims, liens and rights of redemption, of the Defendants, and any and all persons claiming by, through or under the Defendants since the filing of this action; that such real property be sold according to the laws of the State of Oklahoma; that the proceeds of such sale be immediately transmitted to the Clerk of the United States District Court for the Northern District of Oklahoma; and that the Clerk be and hereby is ordered and directed to pay from the proceeds of the sale as follows:

FIRST, to the payment of costs of this action;

SECOND, to the payment of the judgments of the Plaintiff, Security Bank;

FINALLY, the balance, if any, to be retained by the Court Clerk to abide the further Order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of the real property, the parties to this action and any and all other persons claiming under them be and are hereby barred, restrained and enjoined from having or asserting any right, title or interest to the real property, and that upon confirmation of the sale of the real property, the proper party to do so shall deliver a good and sufficient Sheriff's Deed to the purchaser of the real property which Deed shall convey all right, title, interest, estate and equity of

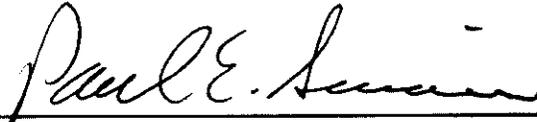
redemption of all parties herein and each of them and all parties claiming under them.

IT IS SO ORDERED this 18<sup>th</sup> day of June, 1992.

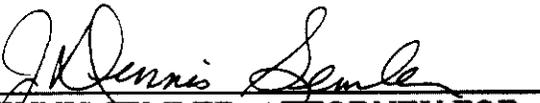
**57** JAMES O. ELLISON

**United States District Court Judge**

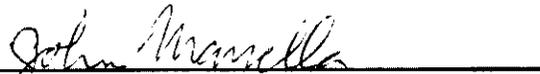
APPROVAL:



PAUL E. SWAIN, III  
ATTORNEY FOR SECURITY BANK



DENNIS SEMLER, ATTORNEY FOR  
TULSA COUNTY AND TULSA COUNTY  
COMMISSIONERS

  
JOHN MARRELLA, ATTORNEY FOR  
THE INTERNAL REVENUE SERVICE

  
MARK THURSTON, ATTORNEY FOR  
RANDY G. NOONKESTER

  
DAVID K. HOEL, ATTORNEY FOR HARRIS  
TECHNOLOGIES, INC., WILDON L. HARRIS  
AND SHAREESE D. HARRIS

6/22/92

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

FILED

JUN 18 1992

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

FEDERAL DEPOSIT INSURANCE  
CORPORATION,

Plaintiff,

vs.

JAMES M. INHOFE, an  
individual,

Defendant.

Case No. 90-C-0079-CO

FINAL JUDGMENT

On September 20 and December 10, 1991, the Court heard oral argument on the motion for summary judgment by plaintiff Federal Deposit Insurance Corporation, in its corporate capacity ("FDIC"), against defendant James M. Inhofe ("Inhofe"). At the December 10 hearing, the Court granted the FDIC's motion. On December 24, 1991, Mr. Inhofe filed a motion for reconsideration and motion to alter or amend the judgment. The Court heard oral argument on Mr. Inhofe's motions on April 3, 1992. The Court denied Mr. Inhofe's motions by Memorandum Opinion and Order filed April 20, 1992. FDIC is hereby granted final judgment against Mr. Inhofe as follows:

1. On Count I of the Complaint, in the principal sum of \$203,395.84, plus interest through April 20, 1992 in the sum of \$214,041.53, for a total of \$417,437.37, which sum shall bear interest from April 20, 1992 until paid in full at the annual rate of 4.55%, pursuant to 28 U.S.C. § 1961;

2. On Count II of the Complaint, in the principal sum of \$153,992.34, plus interest through April 20, 1992 in the sum of \$92,147.86, for a total of \$246,140.20, which sum shall bear interest from April 20, 1992 until paid in full at the annual rate of 4.55%, pursuant to 28 U.S.C. § 1961; and

3. For its reasonable attorneys' fees and costs herein. Pursuant to Local Rule 6, FDIC shall file its motion for attorneys' fees and costs within fifteen days after entry of this final judgment.

DATED this 14 day of June, 1992.

*/s/ John E. Conway*  
JOHN E. CONWAY  
UNITED STATES DISTRICT JUDGE

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

SECURITY BANK, )  
)  
Plaintiff, )

vs. )

HARRIS TECHNOLOGIES, INC., )  
A/K/A HARRIS TECHNOLOGIES )  
CORPORATION; and WILDON L. )  
HARRIS, a/k/a W.L. HARRIS, )  
a/k/a SONNY HARRIS and )  
SHAREESE D. HARRIS, husband )  
and wife; and the UNITED )  
STATES OF AMERICA, ex rel )  
THE INTERNAL REVENUE )  
SERVICE; TULSA COUNTY; THE )  
TRIDENT COMPANY, a/k/a THE )  
RICHARDSON TRIDENT COMPANY;) )  
NORWEST FINANCIAL LEASING, )  
INC., and EDGAR WALDEN, JR., )

Defendants, )

RANDY G. NOONKESTER, )

Intervenor. )

ENTERED ON DOCKET  
DATE JUN 22 1992

Case No. 91-C-176-E

**FILED**

JUN 19 1992

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

**DEFICIENCY JUDGMENT**

THIS MATTER coming on this date upon the Plaintiff's Motion for Deficiency Judgment against the Defendants, Harris Technologies, Inc., a/k/a Harris Technologies Corporation, Wildon L. Harris, a/k/a W.L. Harris, a/k/a Sonny Harris, and Shareese D. Harris. The Plaintiff appearing by and through its attorneys of record, Boone, Smith, Davis, Hurst & Dickman by Paul E. Swain, III.

The Defendants appearing by and through their attorney of record, David K. Hoel. The Court, having been advised that the parties have agreed as to the amount of Deficiency Judgment that should be entered against the Defendants, makes the following findings:

1. Pursuant to the Court's Order of December 3, 1991, the total amount of judgments entered against the Defendants, Harris Technologies, Inc., a/k/a Harris Technologies Corporation, Wildon L. Harris, a/k/a W.L. Harris, a/k/a Sonny Harris, and Shareese D. Harris, as of May 10, 1992, is \$466,507.97. The Court further finds that the fair market value of the Tulsa County Property is \$60,000.00 and that the fair market value of the Dover Pond Property located in Rogers County is \$40,000 which shall be credited against the Judgment previously entered by the Court.

2. The Court further finds that the Receiver is in the possession of \$139,398.98 from the sale of equipment and \$12,641.61 from the collection of accounts receivable which shall be delivered to Security Bank and shall be credited against the Judgment previously entered by the Court.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Plaintiff, Security Bank, receive and recover a Deficiency Judgment against the Defendants, Harris Technologies, Inc., a/k/a Harris Technologies Corporation, Wildon L. Harris, a/k/a W.L. Harris, a/k/a Sonny Harris, and Shareese D. Harris, in the sum of \$214,467.38 plus interest at the statutory rate of 9.58% until paid.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** by the Court that any sums collected by Security Bank from Avacelle, Inc. which is currently in bankruptcy shall be credited against the Deficiency Judgment.

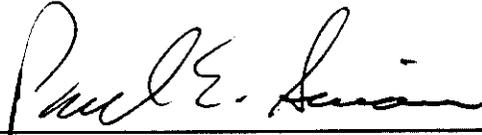
Dated this 16<sup>th</sup> day of June, 1992.

**6/ JAMES O. ELLISON**

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**United States District Court Judge**

APPROVED AS TO FORM AND CONTENT:



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PAUL E. SWAIN, III, ATTORNEY  
FOR PLAINTIFF, SECURITY BANK



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DAVID K. HOEL, ATTORNEY FOR THE  
DEFENDANTS, HARRIS TECHNOLOGIES, INC.,  
WILDON L. HARRIS, AND SHAREESE D.  
HARRIS