

1980); and

That, pursuant to the Jury's verdict, Plaintiff, James F. Quinlan recover of Defendant, Koch Oil Company the sum of \$44,536.55 as actual damages and \$244,663.04 as punitive damages, with post-judgment interest thereon at the rate provided in 28 U.S.C. §1961 (currently 4.11% annually) from the date of this judgment, and costs of this action, if timely applied for pursuant to Local Rule 6. Any claim for attorneys fees, if applicable, should be filed pursuant to Local Rule 6.

Issued on this 14th day of July 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE 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

FILED

JUL 14 1992

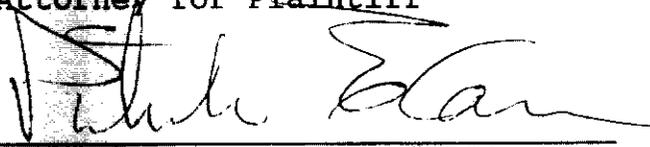
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

NOTICE OF DISMISSAL

COME NOW the Plaintiffs pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure and dismiss the instant action with prejudice against J & B Management Company. The Plaintiffs would show the Court that service was never obtained on this Defendant. Moreover, the Plaintiffs have previously settled with the remaining Defendant, Connecticut General Life Insurance Company, and have filed a Stipulation of Dismissal as to that Defendant. No further action, therefore, remains to be taken in this case.

Respectfully submitted,

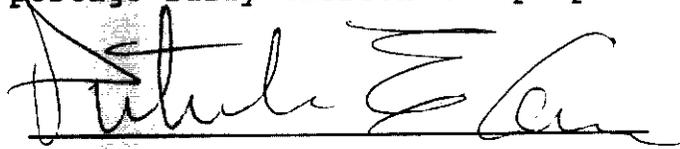
CARR & CARR ATTORNEYS
Attorney for Plaintiff

By: 

Patrick E. Carr, OBA #1506
Sidney A. Martin II, OBA #10892
P.O. Box 35647
4520 S. Harvard, Suite 135
Tulsa, Oklahoma 74153
(918) 747-7207

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed on the 13th day of July, 1992, to: R. Casey Cooper, R. David Whitaker, BOESCHE, MCDERMOTT & ESKRIDGE, 800 Oneok Plaza, 100 W. 5th Street, Tulsa, OK 74103, by first class mail, with proper postage fully thereon and prepaid.

A handwritten signature in cursive script, appearing to read "R. Casey Cooper", is written over a horizontal line.

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

DALE H. STUART,
Plaintiff,
v.
THE BUTLER GROUP, INC., a
Georgia corporation,
Defendant.

ENTERED ON DOCKET
DATE JUL 14 1992

Case No. 91-C-0058-E

FILED

JUL 14 1992

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

ORDER OF DISMISSAL WITH PREJUDICE

The above matter comes on to be heard this 13 day of July, 1992, upon the written application of the parties for a dismissal of said action with prejudice between Plaintiff and Defendant. The Court, having examined said application, finds that the parties have entered into a compromise settlement covering all claims involved in the action between Plaintiff and Defendant, and the Court, being fully advised in the premises, finds that said action should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff's cause of action filed herein against the Defendant be, and the same is hereby dismissed with prejudice to any future action.

/S/ JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

~~U.S. DISTRICT JUDGE~~

ENTERED ON DOCKET
DATE JUL 14 1992

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

FILED

JUL 14 1992

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

FIRST FINANCIAL INSURANCE COMPANY,)
an Illinois corporation,)
)
Plaintiff,)
)
v.)
)
CITIPROP INVESTMENTS, INC., an)
Oklahoma corporation, d/b/a)
WEST L.A. BAR,)
)
Defendant.)

No. 91-C-894-B

J U D G M E N T

In keeping with the Court's order sustaining the motion for summary judgment of First Financial Insurance Company, Judgment is hereby entered in favor of First Financial Insurance Company against Citiprop Investments, Inc., an Oklahoma corporation, d/b/a West L.A. Bar, the Court having determined the subject liability insurance policy does not extend coverage by way of a duty to pay for alleged wrongful death damages claimed in the subject action pending in the District Court in and for Tulsa County, State of Oklahoma, filed July 9, 1991, Case No. CJ-91-03055. The costs of this action are assessed against the Plaintiff and each party is to pay their own respective attorney fees.

DATED this 13th day of July, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 7-14-92 H

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

FILED

JUL 13 1992

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

JEFFREY DEAN KING,

Plaintiff,

v.

RON CHAMPION, et al,

Defendants.

92-C-564-E

ORDER TO TRANSFER CAUSE

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

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

(2) That the Petitioner **demand**s 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.

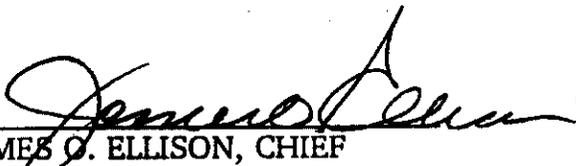
(3) In the furtherance of **justice** this case should be transferred to the United States District Court for the Western District of Oklahoma.

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 13th day of July, 1992.


JAMES O. ELLISON, CHIEF
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE JUL 14 1992

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

FILED

JUL 13 1992

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

FIRST FINANCIAL INSURANCE COMPANY,)
an Illinois corporation,)

Plaintiff,)

v.)

CITIPROP INVESTMENTS, INC., an)
Oklahoma corporation, d/b/a)
WEST L.A. BAR,)

Defendant.)

No. 91-C-894-B

ORDER SUSTAINING MOTION FOR SUMMARY JUDGMENT

Before the Court for decision is the Motion for Summary Judgment of Plaintiff, First Financial Insurance Company ("First Financial"). First Financial commenced this action pursuant to 28 U.S.C. § 2201(a) seeking a declaratory judgment that its liability insurance policy written to the Defendant excludes coverage concerning the alleged wrongful death claim filed on July 9, 1991 in the District Court in and for Tulsa County, Oklahoma (Case No. CJ-91-03055), alleging that the death of Michelle Lee Hopkins in an automobile accident on December 23, 1990, resulted from her intoxication from alcoholic beverage consumed on the premises of the Defendant bar.

The record before the Court reveals the following material facts are uncontroverted pursuant to Fed.R.Civ.P. 56 and Local Rule 15B:

1. First Financial is a corporation duly organized and existing under the laws of Illinois, with a principal place of business located outside of Oklahoma.

B

2. Citiprop is a corporation duly organized and existing under the laws of Oklahoma, with its principal place of business in Tulsa, Oklahoma. It does business as "West L.A. Bar," which is a tavern located in Tulsa, Oklahoma.

3. Citiprop obtained from First Financial a policy of liability insurance with an effective period of December 7, 1990 to December 7, 1991, which insured the tavern for bodily injury or property damage as follows:

The company will pay on behalf of insured all sums which the insured shall become legally obligated to pay as damages because of

- A. bodily injury or
- B. property damage

to which this insurance applies, caused by an occurrence and arising out of the ownership, maintenance or use of the insured premises and all operations necessary or incidental thereto, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claims or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

(Plaintiff's Exhibit B, p. 4, Sec. I.

4. Under the terms of the Policy, "occurrence" is defined as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damages neither expected nor intended from the standpoint of the insured."

(Plaintiff's Exhibit B, "Definitions").

5. The Policy contains a specific exclusion covering the sale and distribution of alcoholic beverages. This exclusion provides:

Exclusions

This insurance does not apply:

* * *

(h) to bodily injury or property damage for which the insured or his indemnitee may be held liable

(1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or

(2) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed

(i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or

(ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part (ii) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (2) above

(Plaintiff's Exhibit B, p. 4, Exclusions ¶ (h)).

6. Under "Persons Insured," the Policy provides as follows:

Each of the following is an insured under this insurance to the extent set forth below:

(a) if the named insured is designated in the declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is

the sole proprietor, and the spouse of the named insured with respect to the conduct of such a business;

- (b) if the named insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the named insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such;
- (d) any person (other than an employee of the named insured) or organization while acting as real estate manager for the named insured; and

(Plaintiff's Exhibit B, p. 4, Persons Insured ¶¶ (a)-(d)).

7. Citiprop Investors, Inc., d/b/a West L.A., is the named insured in the Policy. (Plaintiff's Exhibit B, p. 1).

8. The Policy also contains a punitive damage exclusion, which provides:

It is agreed and understood that this insurance does not apply to punitive or exemplary damages except that if a suit shall have been brought against the insured with respect to a claim for acts or alleged acts falling within the coverage hereof, seeking both compensatory and punitive or exemplary damages, then company will afford a defense to such action without liability, however, for such punitive or exemplary damages.

(Plaintiff's Exhibit C - Punitive Damages Exclusion).

9. On July 9, 1991, the Estate of Michelle Lee Hopkins, by and through Jimmy L. West, Personal Representative, and Mary Catherine Hopkins, mother and next-of-kin, filed a petition against

the insured, alleging injuries and death to Michelle Lee Hopkins as a result of the actions of the insured and its employees in serving the deceased alcoholic beverages, from which she became intoxicated and subsequently experienced an automobile accident resulting in her death. The Plaintiff also demanded punitive damages in her petition filed in the District Court in and for Tulsa County, State of Oklahoma, Case No. CJ-91-03055. (Plaintiff's Exhibit D).

10. On November 15, 1991, First Financial filed its Complaint, seeking a declaratory judgment that it has no liability under the Policy to Citiprop.

The Court has jurisdiction of the subject matter and the parties by virtue of 28 U.S.C. § 1332 and 28 U.S.C. § 2201(a) permitting Plaintiff's alleged declaratory judgment action herein.

Fed.R.Civ.P. 56(c) permits the entry of a summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). If there is a complete failure of proof concerning an essential element of the nonmovant's case, there can be no genuine issue of material fact because all other facts are necessarily rendered immaterial. *Id.* at 323.

A party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials of his pleadings, but must affirmatively prove specific facts showing there is a genuine issue of material fact for trial. Anderson v.

Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The court stated that:

"... The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. . . ."

Id. at 252. The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986). The Tenth Circuit requires "more than pure speculation to defeat a motion for summary judgment" under the standards set by Celotex and Anderson. Setliff v. Memorial Hospital of Sheridan County, 850 F.2d 1384 (10th Cir. 1988).

The subject insurance policy clearly excludes from coverage injuries that arise out of the sale of alcohol, the operation of a business selling alcohol, violation of a statute governing alcohol, or the sale of alcohol to a minor. There is no ambiguity in the policy or the exclusion. Frank v. Allstate Ins. Co., 727 P.2d 577 (Okla. 1986), and Young v. Fidelity Union Life Ins. Co., 597 F.2d 705 (10th Cir. 1979). Insurance policies excluding punitive damages are given full force and effect. Dayton Hudson Corp. v. American Mutual Life Insurance, 621 P.2d 1155 (Okla. 1980).

Exclusion (h) (Plaintiff's Exhibit B, p. 4) compels the conclusion there is no coverage extended to the subject wrongful death claim, by the plain language of the policy. Plaintiff's motion for summary judgment is therefore SUSTAINED and a Judgment in keeping with the Court's ruling shall be entered

contemporaneously herewith. The duty of First Financial to defend the subject state court wrongful death action is not an issue before the Court at this time.

DATED this 13th of July, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE **JUL 14 1992**

F I L E D

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

JUL 13 1992

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

AMERICAN AIRLINES, INC.)
)
 Plaintiff,)
)
 v.)
)
 CRAIG TWEEDY and)
 LILLIAN GRAHAM,)
)
 Defendants.)

Case No. 91-C-762-B

ORDER

This matter comes on for consideration of Defendants' Second Motion For Reconsideration, filed May 27, 1992, of this Court's Order of March 31, 1992, wherein the Court enjoined Defendants Craig Tweedy and Lillian Graham "from proceeding further in the state court proceeding styled Lillian A. Graham v. American Airlines, Inc., George Barton, Buck Williams and Wayne Ping, Agent for United Transport Workers Union of America, CJ-91-4125, D.C. Tulsa County, State of Oklahoma. These Defendants are further enjoined from instigating, against American and those parties in privy thereto to the claims and issues herein, any further action or proceeding, in either state or federal court or any court or administrative tribunal, on these same claims and/or issues. Any violation of the Court's injunction by either Defendant will subject the violator to appropriate sanctions." Also included in Defendants' Second Motion For Reconsideration is Defendants' request that the Court "reconsider and vacate its Order of May 21,

44

Parties phone
42

1992".¹

Also for consideration herein is Defendants' appeal from (objection to) the May 27, 1992 Report and Recommendation of the Magistrate Judge and Defendants' Motion For Stay pending the decision of the Tenth Circuit Court of Appeals in Case No. 92-5107 on the Petition for Writ of Mandamus against Thomas R. Brett, United States District Judge. By Order filed June 15, 1992, the Tenth Circuit Court of Appeals denied Defendants' Petition for Writ of Mandamus on the ground the "[P]etitioners have not satisfied the requirements for invoking mandamus relief." On June 30, 1992, the Clerk of the Northern District of Oklahoma received a copy of Defendants' Petition For Rehearing With Suggestion En Banc in Case No. 92-5107 apparently now pending before the Tenth Circuit Court of Appeals.

The Court is fully familiar with this matter and has carefully examined Defendants' various pleadings in support of their Second Motion For Reconsideration, Appeal from the Magistrate Judge's Amended Report and Recommendation of May 27, 1992, and Motion For Stay, and Plaintiff's responses thereto. The Court concludes Defendants' pleadings essentially re-urge and re-argue the same issues and arguments presented by these Defendants in earlier pleadings. The Court further concludes these Defendants have presented no substantial reasons why this Court should reconsider,

¹ This "Order" is a Report and Recommendation of the Magistrate Judge, recommending that the Court grant American's request for \$3,912.01 in fees, expenses and costs against Tweedy. The Magistrate Judge filed an Amended Report and Recommendation on May 27, 1992, recommending the Court grant American's request for \$36,421.01 in attorney fees, as well as costs in the amount of \$3,912.01, for an aggregate award against Tweedy of \$40,333.01.

vacate and/or modify its previous Order of March 31, 1992. Further, the Court concludes Defendants' appeal from the Magistrate Judge's Amended Report and Recommendation of May 27, 1992, should be denied. Defendants failed to appear at the hearing before the Magistrate Judge held April 28, 1992, nor did Defendants file a response by April 20, 1992 (or at anytime prior to the hearing) relative to excess costs, expenses and attorneys fees incurred in this action as directed by this Court in its Order of March 31, 1992.

The Court further concludes Defendants' Motion For Stay should be denied. Defendants have cited no authority for entering a stay nor offered a bond staying this Court's injunctive relief granted American in its Order of March 31, 1992.

The Court concludes Defendants' Second Motion For Reconsideration should be and the same is herewith DENIED. The Court further concludes Defendants' Motion For Stay should be and the same is herewith DENIED. The Court further DENIES Defendants' appeal of (objection to) the Magistrate Judge's Amended Report and Recommendation of May 27, 1992. The Court herewith affirms and adopts the Magistrate Judge's Amended Report and Recommendation of May 27, 1992.

IT IS SO ORDERED this 13th day of July, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

JUL 13 1992

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

BUCHBINDER & ELEGANT, P.A.,)
Receiver of Aikendale Associates,)
A California limited partnership,)
ROBERT MARLIN and JACK D. BURSTEIN,)

Plaintiffs,)

V.)

No. 89-C-843-E

SOONER FEDERAL SAVINGS AND LOAN)
ASSOCIATION, W.R. HAGSTROM,)
EDWARD L. JACOBY, DELOITTE, HASKINS)
& SELLS, PAINWEBBER INCORPORATED,)
and STEPHEN ALLEN,)

Defendants.)

ENTERED ON DOCKET

DATE JUL 14 1992

ORDER

The Court has for consideration, first, Defendant's, Resolution Trust Corporation, Motion to Enlarge Order Dismissing Amended Complaint; and second, Plaintiffs' Motion to Enlarge Time Within Which to File Amended Complaint.

IT IS HEREBY ORDERED that the Order entered by the Court on the 10th day of June 1992, is enlarged to include Defendant Resolution Trust Corporation among the parties as to which Plaintiffs' Amended Complaint was dismissed.

IT IS FURTHER ORDERED that the Plaintiffs' Motion is granted. They are allowed to file a new amended complaint, complying with Rule 9(b) of the Federal Rules of Civil Procedure, by the 8th day of July 1992.

SO ORDERED this 8th day of July 1992.


CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

115

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

ENTERED ON DOCKET
DATE JUL 14 1992

B. N. ROLFE, et al.,
Plaintiffs,

vs.

R. D. LANGENKAMP, Successor
Trustee Republic Financial
Corporation,

Defendant.

No. 92-C-354-E

FILED

JUL 13 1992

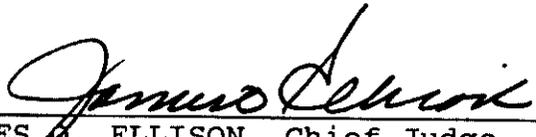
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

After careful review of the record, the arguments and authorities submitted, the Court finds that the instant case must be dismissed. The record indicates that this is not a civil rights action but a case sounding in bankruptcy process. Issues regarding Trustee Removal and Stays of Execution on bankruptcy judgments are within the purview of the Bankruptcy Judge. As Defendant points out, this Court has no original jurisdiction in this matter. It must therefore dismiss the action. Should Plaintiffs wish to pursue their claims they should present them to the Bankruptcy Judge. Any final order issued by that Court may then be appealed to the federal district court.

IT IS THEREFORE ORDERED that this case is dismissed.

So ORDERED this 13th day of July, 1992.



JAMES B. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

ENTERED ON DOCKET
DATE JUL 13 1992

FIRST FINANCIAL INSURANCE COMPANY,)
an Illinois corporation,)

Plaintiff,)

v.)

No. 91-C-714 E

K INVESTMENT GROUP, INCORPORATED)
d/b/a GROUP K INVESTMENTS)
d/b/a CADILLAC COUNTRY,)

Defendant.)

FILED

JUL 10 1992

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

JUDGMENT BY DEFAULT

Upon Motion and Application of the Plaintiff and for good cause shown, the Plaintiff is granted judgment by default as against the Defendant, K Investment Group Incorporated, d/b/a Group K Investments d/b/a Cadillac Country.

Dated this 10th day of June, 1992.

S/ JAMES O. ELLISON

United States District Judge

7/13/92

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

FRANK B. ANDREWS, et al.,

Plaintiffs,

v.

THOMAS N. HALL, et al.,

Defendants.

Civil Case No.
88-C-422-B

FILED

JUL 07 1992

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

ORDER

This Court has considered the Motion to Dismiss Claims of Saul Stone & Co. Against Donald Brooks and for Order Excusing Saul Stone & Co. from Attendance at Further Hearings, and finds that it should be granted. Therefore, the Court orders as follows:

- (1) That all claims of Saul Stone & Co. against Donald Brooks are dismissed without prejudice and without costs; and
- (2) That Saul Stone & Co. is excused from further attendance at hearings in this case.

Dated: July 8, 1992

THOMAS R. BRETT

Honorable Thomas R. Brett
United States District Judge

NOTE: THIS ORDER IS TO BE RECORDED
BY THE CLERK OF COURT AND
FILED WITH THE ORIGINAL
FILED IN THE CASE.

DATE 7/13/92
FILED
JUL 09 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

LEC CAPITAL CORPORATION,)
)
 Plaintiff,)
)
 vs.)
)
 CAMPBELL DRILLING COMPANY, INC.,)
 BOB E. WALLS, TRUMAN D. HOOVER,)
 BOB L. HAMILTON and BYTHEL)
 CAMPBELL,)
)
 Defendants.)

No. 89-C-1047-B ✓

ORDER

Plaintiff's properly supported and itemized application for award of attorney fees against Defendant, Bob E. Walls, was filed herein pursuant to Local Rule 6(G) on February 18, 1992. The same was supported by a duly filed affidavit of counsel. The Defendant, Bob E. Walls, filed no response thereto.

Having determined said fee application is reasonable and awardable herein pursuant to Okla. Stat. tit. 12, § 936, judgment is hereby entered in favor of Plaintiff, LEC Capital Corporation, and against the Defendant, Bob E. Walls, in the amount of Seventeen Thousand Forty-Two and 50/100 Dollars (\$17,042.50), plus post-judgment interest at the rate of 4.11% per annum.

DATED this 8th day of July, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE 7/13/92

FILED

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

JUL 9 1992

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

JOHN L. HARDIN, an individual,
Plaintiff

vs.

FIRST SECURITY MORTGAGE CO. and;
MERRILL LYNCH REALTY OPERATING
PARTNERSHIP, a Delaware Limited
Partnership,

Defendants.

Case No. 89-C-1033-B

J U D G M E N T

Pursuant to the Findings of Fact and Conclusions of Law entered simultaneously herewith, Judgment is hereby entered in favor of Plaintiff John L. Hardin and against Defendant Merrill Lynch Realty Operating Partnership (MLROP) in the amount of \$1.00 on the issue of violation of warranty of title in a deed issued by MLROP to John L. Hardin on or about April 19, 1989, covering the following described property: Lot 20, Block 14, South Country Estates Addition to the Town of Bixby, Tulsa County, Oklahoma. Plaintiff's claim for attorneys fees is denied.

Judgment is also entered in favor of MLROP and against John L. Hardin on the issue of MLROP's alleged negligence relative to the use of First Security Mortgage Company as a settlement agent or relative to MLROP's alleged negligence in failing to require First Security to pay Citicorp's first mortgage on the property above described by certified or cashier check.

Judgment is also hereby entered in favor of MLROP and against John L. Hardin, *in rem* foreclosing MLROP's vendor's lien in the amount of \$74,150.00 plus pre-judgment interest of \$19,689.59 as of July 24, 1991, plus per diem interest of \$23.79 from and after that date to the date of this Judgment. Post-judgment interest is awarded MLROP on the above amounts from the date hereof at the annual rate of 4.11% (28 U.S.C. § 1961).

Judgment is also entered in favor of MLROP and against Plaintiff Hardin, *in rem*, for attorneys fees pursuant to 42 O.S. § 26. Said attorneys fees amount will be determined if timely applied for pursuant to Local Rule 6. Costs are awarded to neither party.

DATED this 9th day of July, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUL 10 1992

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

UNITED STATES OF AMERICA)
)
 Plaintiff)
)
 vs.)
)
 JACQUELINE CRAWFORD,)
)
 Defendant.)

CIVIL ACTION NO. 92-C-181-E

ENTERED ON DOCKET
DATE JUL 13 1992

AGREED JUDGMENT

This matter comes on for consideration this 10th
day of July, 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, Jacqueline Crawford, appearing pro se.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Jacqueline Crawford, was
served with Summons and Complaint on June 11, 1992. The
Defendant has not filed an Answer but in lieu thereof has agreed
that she is indebted to the Plaintiff in the amount alleged in
the Complaint and that judgment may accordingly be entered
against her in the principal amount of \$3,428.47, plus
administrative charges in the amount of \$75.54, plus accrued
interest in the amount of \$680.69 as of December 16, 1991, plus
interest thereafter at the rate of 3% per annum until judgment, a
surcharge of 10% of the amount of the debt as provided by 28
U.S.C. § 3011, plus interest thereafter at the legal rate until
paid, plus the costs of this action.

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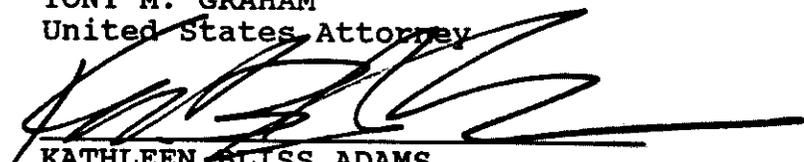
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the defendant in the principal amount of \$3,428.47, plus administrative charges in the amount of \$75.54, plus accrued interest in the amount of \$680.69 as of December 16, 1991, plus interest thereafter at the rate of 3% per annum until judgment, a surcharge of 10% of the amount of the 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 the costs of this action.


UNITED STATES DISTRICT JUDGE

APPROVED;

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


KATHLEEN BLISS ADAMS
Assistant United States Attorney

See signature below

Jacqueline Crawford 7-6-92

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

JUL 10 1992

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

DAVID LEE WILLIS,)
)
 Plaintiff,)
)
 vs.)
)
 MIDLAND RISK INSURANCE CO.,)
)
 Defendant.)

Case No. 92-C-244-B

ORDER

Before the Court are Motions for Summary Judgment, pursuant to Fed.R.Civ.P. 56, filed by both Plaintiff and Defendant. This case was transferred from the Eastern District of Oklahoma in March 1992 at Defendant's request for a change of venue, over Plaintiff's objections. Plaintiff David Lee Willis ("Willis") alleges breach of contract and bad faith because of the refusal of Defendant Midland Risk Insurance Co. ("Midland") to pay claims made against Willis, which have since been paid by Midland.

Willis alleges that on June 7, 1990, he, through his wife, obtained an oral binder on a 30-day general liability policy from Midland through Becky Rohr ("Rohr") of Rogers County Insurance Agency ("Rogers"). The policy was to cover the heavy equipment Willis owned and planned to use on a clearing job at the Litchfield housing addition construction site.¹ Rohr obtained the insurance for Willis by contacting Joel Stinson ("Stinson"), president of LGI

¹Litchfield addition is located at 83rd Street and South Delaware Avenue in Tulsa.

Surplus Lines ("LGI"). LGI and Lloyd's General Agency, owned by Lloyd and Rita Scherwenski, can bind Defendant Midland regarding coverage and claims. Rohr can solicit business for and issue certificates of insurance for Midland, but cannot bind Midland.

When the Litchfield job was delayed, Willis instead obtained a clearing job for American Airlines ("American").² Willis' wife again contacted Rohr on June 7, 1990, and obtained a certificate of insurance to show to American that Willis was covered by liability insurance. It is unclear whether Rohr again contacted Stinson regarding the second certificate of insurance.

A written binder was issued and mailed on June 12, 1990. An accident occurred at the American site on the same date, and damage claims were made against Willis.

The policy that was issued (and delivered to Willis sometime after July 11, 1990) contained a Designated Operations Limitation Endorsement, which limited coverage to the Litchfield addition site. Willis states that neither he nor his wife were aware such a provision was to be in the policy. In addition, Rohr testified she was unaware the policy would have such a clause, until Stinson so advised her on June 13, 1990. Stinson states in his affidavit that he orally bound Midland to the contract on June 7, 1990, at Rohr's request, and that among the information he requested from Rohr was the exact location of the work Willis intended to do. He stated that this type of policy, in the industry, is for certain

²The American Airlines complex is located at 46th Street North and Mingo Road.

specifically designated sites only. Because of the accident at the American site, claims were filed against Willis by M&M Lumber Co. and American. Midland initially denied coverage based on the Designated Operations Limitation Endorsement.

Willis filed this action seeking in excess of \$50,000 in damages for breach of contract, which represents the insured loss and for costs of the actions filed against plaintiff. Willis also seeks in excess of \$50,000 for breach of implied covenant of good faith and fair dealing, and another sum in excess of \$50,000 in punitive damages because of Midland's alleged bad faith denial of the claims.

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, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Widon Third Oil & Gas v. FDIC, 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).

Willis' counsel stated in open court that the contract damages have been paid; therefore, the Court will only consider the claim for breach of implied covenant of good faith and fair dealing, and punitive damages for bad faith denial of Willis' claim. Belated payment of a claim does not cure a provable bad faith claim. Rawlings v. Apodaca, 726 P.2d 565 (Ariz. 1986).

Oklahoma first recognized an implied covenant of good faith and fair dealing in insurance contracts in Christian v. American Home Assurance Co., 577 P.2d 899 (Okla. 1977). The Christian court imposed tort liability "only where there is a clear showing that the insurer unreasonably, and in bad faith, withholds payment of the claim of its insured." Id. at 905. McCorkle v. Great Atlantic Insurance Co., 637 P.2d 583 (Okla. 1981). Manis v. Hartford Fire Insurance Co., 681 P.2d 760 (Okla. 1984). A Christian cause of action will not lie when there is a legitimate dispute. Manis, 681 P.2d at 761.

Insurance companies have the right to dispute a claim in good faith. Id. at 762. The Christian court held that it is not per se bad faith for an insurer to resist or litigate a claim. "We recognize that there can be disagreements between insurer and insured on a variety of matters such as insurable interest, extent of coverage, cause of loss, amount of loss, or breach of policy conditions." Id. at 904. However, if bad faith is shown, the insured may recover consequential, and in some cases, punitive damages. Id. at 904. In determining whether punitive damages should

be awarded, the focus is on the unreasonableness of the insurer's conduct. McCorkle, 637 P.2d at 588. "Exemplary damages are imposed by the law on the theory of punishment to the offender, for the general benefit of society, and are allowed only in cases where fraud, oppression, gross negligence or malice, actual or presumed, enter into the cause of action, but a person may commit such willful acts in reckless disregard of another's rights that malice will be inferred." McLaughlin v. National Benefit Life Insurance Co., 772 P.2d 383, 387 (Okla. 1988).

In deciding whether a bad faith issue should be submitted to a jury, the Court must first determine as a matter of law whether the insurer's conduct may be reasonably perceived as tortious. City National Bank and Trust Co. v. Jackson National Life Insurance, 804 P.2d 463 (Okla.App. 1990). "In the absence of evidence to show that [the insurer's] actions were tainted by oppression, fraud, malice or gross negligence, there was no basis for the submission of the punitive damage issue to the jury." McLaughlin, 772 P.2d at 389.

Stinson stated in his affidavit that he requested information regarding the specific site for which the insurance would be needed. Rohr, in her affidavit, stated that she did not know that the insurance policy was for a specific site only. She did not state that Stinson had misled her in any way; there apparently was a misunderstanding between the two. Rohr also apparently did not contact Stinson when she issued a certificate of insurance for the American site, so Stinson still believed Midland was insuring work on the Litchfield addition. Therefore, a reasonable dispute existed

over whether Midland would be liable for payment of the claims. Stinson believed the policy was for one site only; Willis believed a certificate of coverage under the policy could be issued for any site within the 30-day coverage period. The Court concludes that, assuming, arguendo, that Midland would be responsible for Rohr's statements to Willis, at best it was a good-faith misunderstanding between Rohr and Stinson that was passed on to Willis.

The misunderstanding among Stinson, Rohr and Willis does not rise to the level of unreasonableness necessary to support a bad faith claim giving rise to punitive damages. Nor, the Court concludes, is such misunderstanding a breach of an implied covenant of good faith and fair dealing. Midland had the right to dispute payment in good faith. Even taking all of Willis' allegations as true, Willis has not provided evidence to show that Midland's conduct constituted fraud, oppression, gross negligence or malice. The Court concludes that Midland's motion for summary judgment should be and the same is hereby GRANTED. The Court further concludes Willis' motion for summary judgment should be and the same is hereby DENIED.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE 7-3-92 **FILED**

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

JUL 10 1992

DAVID LEE WILLIS,)
)
 Plaintiff,)
)
 vs.)
)
 MIDLAND RISK INSURANCE CO.,)
)
 Defendant.)

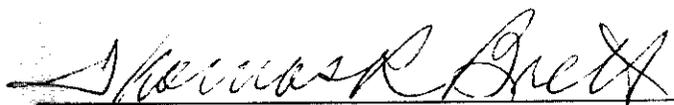
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 92-C-244-B

J U D G M E N T

In accord with the Order filed simultaneously herewith, sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendant, Midland Risk Insurance Co., and against the Plaintiff, David Lee Willis. Costs are assessed against the Plaintiff and each party is to pay its respective attorney's fees.

Dated, this 10th day of July, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE JUL 13 1992

FILED

JUL 9 1992 *[Signature]*

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

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

JAMES ELLIS WHITE,)
)
 Plaintiff,)
)
 v.)
)
 STANLEY GLANTZ, Sheriff for)
 Tulsa County, and STEVE WARREN,)
 Deputy Sheriff for Tulsa County,)
)
 Defendants.)

Case No. 91-C-869-B ✓

ORDER

This order pertains to Plaintiff's **Civil Rights** Complaint Pursuant to 42 U.S.C. § 1983 (Docket #2)¹ and Defendants' Motion To Dismiss Or In The Alternative, Motion For Summary Judgment (Docket #9).

Plaintiff seeks injunctive relief and monetary damages for the alleged violations of his constitutional rights. Plaintiff's **first cause** of action is based on Defendants' alleged failure to recognize religious dietary restrictions by not posting a non-pork diet prescription with kitchen personnel within the **Tulsa County Jail**. Plaintiff alleges that on October 31, 1991 he was served green beans with **bacon bits** during his evening meal, which violated his Muslim religious beliefs regarding **the ingestion** of pork. The Plaintiff claims that this infringes upon his First Amendment **right to the free exercise of religion**. Plaintiff's second cause of action is based upon the **allegation that** by serving him a meal that included pork, Plaintiff's Eighth Amendment right to **be free from cruel and unusual punishment** was

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

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violated. Plaintiff's third cause of action further alleges that his Fourteenth Amendment right to equal protection of the law was violated.

Pursuant to the Court's Order of January 21, 1992, Defendants submitted a Special Report addressing Plaintiff's allegations. The report includes extensive documentation of the Tulsa County Jail system's policies and procedures regarding special diets requested by inmates due to religious or medical reasons, sworn statements by jail personnel who recount what transpired on the evening in question, and a copy of Plaintiff's bland diet prescription that was in Plaintiff's medical file and posted in the jail's kitchen. The incident where Plaintiff was served green beans appears to be purely accidental. Once the Sheriff's employees were made aware of Plaintiff's problem, they acted promptly to provide Plaintiff with a meal-tray that contained no pork. Because the court has based its decision upon these materials outside the pleadings, Defendants' Alternative Motion for Summary Judgment is under consideration.

"[T]he plain language of Rule 56(c) [Fed.R.Civ.P.] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). If there is a complete failure of proof concerning an essential element of the non-movant's case, there can be no genuine issue of material fact because all other facts are necessarily rendered immaterial. Id at 323.

A party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must affirmatively prove specific facts

showing that there is a genuine issue of **material** fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The Court stated that "the mere existence of a scintilla of evidence in support of the plaintiff's **position** will be insufficient; there must be evidence on which the jury could reasonably find **for the plaintiff.**" Id. at 252.

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

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

In order to recover in a § 1983 **action**, a Plaintiff must establish two essential elements: (1) that the conduct **complained of** was committed by a person acting under color of state law; and (2) that **this conduct** deprived Plaintiff of rights, privileges or immunities secured by the Constitution **or the laws** of the United States. The conduct in this case satisfies the "under color of **state law**" requirement, as Defendants are state employees who were acting in their **official capacity**. The question then becomes whether Plaintiff has been deprived of his **First Amendment** right to the free exercise of religion when he was served green beans **containing** pork. Having examined the record in this matter, it is evident that Plaintiff had **not been** deprived of the right of free exercise of

religion.

The Special Report shows that Plaintiff did not consume any of the pork on the evening in question before the problem was rectified. Plaintiff has not alleged a recurring problem with receiving pork products with his meals nor does he allege that the Defendants have a policy of not recognizing religious dietary restrictions.

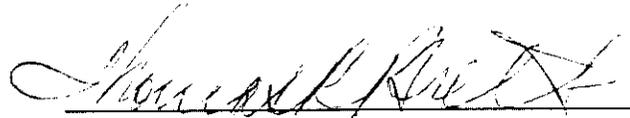
In Pell v. Procunier Corrections Director, 417 U.S. 817, 822 (1974), the United States Supreme Court stated that in a First Amendment context, "a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." The Special Report shows that the Tulsa County Jail has adopted a policy which acknowledges the dietary restrictions of Muslims who require meals without pork or pork products. The Tenth Circuit has not discussed this specific issue. However, at least one court has held that where prisoners can obtain balanced rations while voluntarily avoiding foods containing pork or pork products, prisons are not obliged to provide special diets for religious purposes. Abernathy v. Cunningham, 393 F.2d 775, 778 (4th Cir. 1968). As Plaintiff has not shown that Defendant deviated from jail policies, which appear to be more conducive to religious dietary restrictions than required, nor that the jail's procedures were clearly unreasonable, his complaint fails to establish a constitutional deprivation of his First Amendment rights.

In order to establish a § 1983 action under the Eighth or Fourteenth Amendments to the Constitution, the Plaintiff must demonstrate that Defendants acted with "deliberate indifference" or that their conduct was "so reckless as to be tantamount to desire to inflict harm." Redman v. County of San Diego, 942 F.2d 1435, 1439 (9th Cir. 1991). Plaintiff

has failed to show that Defendants acted with deliberate indifference or intentional recklessness when serving Plaintiff green beans with bacon. Such an incident arising from the Sheriff's employees' negligence will not support an Eighth nor a Fourteenth Amendment claim under § 1983. Estelle v. Gamble, 429 U.S. 97 (1976).

Plaintiff's Complaint fails to establish a right to relief under 42 U.S.C. § 1983. Defendants' Motion for Summary Judgment is granted.

Dated this 9 day of July, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE JUL 13 1992

FILED

JUL 9 1992 *plw*

Richard B. ...
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

JAMES ELLIS WHITE,)
)
 Plaintiff,)
)
 vs.)
)
 STANLEY GLANTZ, Sheriff for)
 Tulsa County, and STEVE WARREN,)
 Deputy Sheriff for Tulsa County,)
)
 Defendants.)

Case No. 91-C-869-B ✓

J U D G M E N T

In accord with the Order entered simultaneously herein granting Summary Judgment in favor of Defendants Stanley Glantz, Sheriff for Tulsa County, and Steve Warren, Deputy Sheriff for Tulsa County, and against Plaintiff James Ellis White, Judgment is hereby entered in favor of Defendants Stanley Glantz, Sheriff for Tulsa County, and Steve Warren, Deputy Sheriff for Tulsa County and against Plaintiff James Ellis White on all claims. The parties shall pay their own respective costs and attorneys fees.

DATED this 9 day of July, 1992.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

17

ENTERED ON DOCKET
DATE JUL 10 1992

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

FILED

JUL 9 1992

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

ROBERT L. HOLLMAN,

Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D., SECRETARY
OF HEALTH AND HUMAN SERVICES.

Defendant.

CASE NO. 91-C-723-B

ORDER

Upon the Motion of Louis W. Sullivan, Secretary of the Department of Health and Human Services, 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 the above-styled case be remanded to the Defendant to procure formal testing of plaintiff's reading and writing skills, if any; afford plaintiff a supplemental hearing on the subject of those skills; and take such other action as may be necessary to resolve the literacy issue.

Dated this 7th day of July, 1992.


UNITED STATES DISTRICT JUDGE

SUBMITTED BY:



PHIL PINNELL, OBA# 7169
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

ENTERED ON DOCKET
DATE JUL 10 1992

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

F I L E D

JUL 07 1992

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

BORDER FREIGHT DISTRIBUTING)
AND WAREHOUSE, INC.,)

Plaintiff,)

vs.)

Case No.: 91-C-956-B

CHUBB GROUP OF INSURANCE)
COMPANIES, FEDERAL INSURANCE)
COMPANY and ALEXANDER AND)
ALEXANDER, INC.,)

Defendants.)

ORDER OF DISMISSAL
OF PLAINTIFF'S COMPLAINT

NOW on this 7th day of July 1992, upon the written stipulations of the Plaintiff for a Dismissal with Prejudice of the Plaintiff's complaint, the Court having examined said stipulation for dismissal, finds the parties have entered into a compromised settlement of all of the claims involved herein, and the Court being fully advised in the premises finds that the Plaintiff's complaint against the Defendants should be dismissed with prejudice.

IT IS THEREFORE ORDERED by the Court, that the complaint of the Plaintiff against the Defendants be and the same is hereby dismissed with prejudice to any further action.


UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE JUL 10 1992

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

EUGENE MOORE,

Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.,
SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant.

FILED

JUL 9 1992

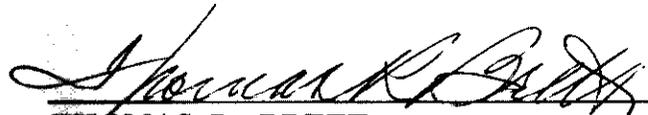
Richard M. [unclear] Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CASE NO. 91-C-666-B

ORDER

Upon the motion of the defendant, Secretary of Health and Human Services, by Tony M. Graham, United States Attorney of the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that this case be remanded to the Secretary for further administrative proceedings.

DATED this 7th day of July, 1992.



THOMAS R. BRETT
United States District Judge

SUBMITTED BY:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA # 7169
Assistant United States Attorney

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

FILED

JUL 9 1992

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

DYCO PETROLEUM CORPORATION,)
)
Plaintiff,)
)
vs.)
)
ANR PIPELINE COMPANY,)
)
Defendant.)

No. 86-C-1097-E ✓

ENTERED ON DOCKET
DATE JUL 10 1992

ORDER

AND JUDGMENT

Following the Court's telephone conference with the parties of June 18, 1992, the Court retraced the tortious path of this case pertaining to resolution of those issues relevant to damage calculation. And finding, as Plaintiff now appears finally to concede (see docket #843), that all relevant issues have been decided so that nothing remains to detain the Court from entering its damage calculation. The Defendant stated in the June 18th conference, it will accept the figure proffered by Plaintiff. After review of the record the Court finds that it should adopt that figure as well.

IT IS THEREFORE ORDERED that the amount of the judgment in this case shall be the sum of \$360,239.00.

So ORDERED this 9th day of July, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

844

DATE 7-9-92

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES A. REINERT a/k/a JAMES
REINERT; MARSHA FERN REINERT
a/k/a MARSHA REINERT;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

JUL 8 - 1992

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

CIVIL ACTION NO. 91-C-343-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7th day
of July, 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 by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, James A.
Reinert a/k/a James Reinert and Marsha Fern Reinert a/k/a Marsha
Reinert, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, James A. Reinert a/k/a James
Reinert, filed an Entry of Appearance through his attorney
James A. Conrady on November 25, 1991; that the Defendant, Marsha
Fern Reinert a/k/a Marsha Reinert, acknowledged receipt of

Summons and Complaint on February 29, 1992; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 29, 1991; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 29, 1991.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on June 18, 1991; that the Defendant, James A. Reinert a/k/a James Reinert, filed his Entry of Appearance through his attorney James A. Conrady on November 25, 1991, but has failed to answer and his default has therefore been entered by the Clerk of this Court; and that the Defendant, Marsha Fern Reinert a/k/a Marsha Reinert, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that on December 8, 1989, James Reinert and Marsha Fern Reinert filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 89-03763-C, and were subsequently discharged in bankruptcy on March 26, 1990. On April 27, 1990, this bankruptcy case was closed.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real

property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirteen (13) and the North Twenty (20) Feet of Lot Fourteen (14), Block Six (6), of the AMENDED PLAT OF PARK HILL ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on September 10, 1983, James A. Reinert and Marsha Reinert executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$32,750.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, James A. Reinert and Marsha Reinert executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated September 10, 1983, covering the above-described property. Said mortgage was recorded on September 12, 1983, in Book 4726, Page 280, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, James A. Reinert a/k/a James Reinert and Marsha Fern Reinert a/k/a Marsha Reinert, 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, James A. Reinert a/k/a James Reinert and Marsha Fern Reinert a/k/a Marsha Reinert, are indebted to the Plaintiff in the principal sum of \$32,071.53, plus interest at the rate of 12.5 percent per annum from September 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, James A. Reinert a/k/a James Reinert and Marsha Fern Reinert a/k/a Marsha Reinert, in the principal sum of \$32,071.53, plus interest at the rate of 12.5 percent per annum from September 1, 1989 until judgment, plus interest thereafter at the current legal rate of 4.11 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners,

Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, James A. Reinert a/k/a James Reinert and Marsha Fern Reinert a/k/a Marsha Reinert, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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

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

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



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



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

Judgment of Foreclosure
Civil Action No. 91-C-343-C

PB/css

DATE 7-9-92

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

J.L. DIAMOND and GRETNA DIAMOND,)

Plaintiffs,)

v.)

Case No. 90-C-921-C

UNION BANK AND TRUST OF)

BARTLESVILLE, and FEDERAL DEPOSIT)

INSURANCE CORPORATION, in its)

corporate capacity and as)

Liquidator of the assets of Union)

Bank and Trust of Bartlesville,)

Defendants,)

v.)

TOM BERRY,)

Third-Party Defendant.)

F I L E D

JUL 9 - 1992 *mw*

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

**ENTRY OF DEFICIENCY JUDGMENT AGAINST
J.L. DIAMOND AND GRETNA DIAMOND**

NOW the Motion of the Defendant and Counterclaimant, the Federal Deposit Insurance Corporation in its corporate capacity ("FDIC"), for leave to enter deficiency judgment against Plaintiffs, J.L. Diamond and Gretna Diamond (the "Diamonds"), comes on for consideration before the Honorable H. Dale Cook, Judge of the United States District Court for the Northern District of Oklahoma. After examining said Motion and the file herein, and noting that no objections have been filed to said Motion, the Court finds as follows:

54.

1. On October 2, 1991, an "Entry of Final Judgment in Favor of Defendant, Federal Deposit Insurance Corporation in its Corporate Capacity, Against Plaintiffs, J.L. and Gretna Diamond" was entered in this case by the Honorable H. Dale Cook, Judge of the United States District Court for the Northern District of Oklahoma.

2. This Final Judgment granted the FDIC judgment against the Diamonds, jointly and severally, in the principal amount of \$1,598,059.87, together with accrued interest thereon through April 4, 1991, in the amount of \$852,007.57, with further interest thereon through judgment at the rate of \$470.66 per diem, together with further interest on the entire amount owing from the date of judgment at the rate provided by 28 U.S.C. §1961, being 5.57% per annum, together with costs and reasonable attorney's fees. The Final Judgment also granted the FDIC judgment against J.L. Diamond singly in the principal amount of \$916,053.86, together with accrued interest thereon through April 4, 1991, in the amount of \$302,593.61, with further interest thereon through judgment at the rate of \$269.80 per diem, together with further interest on the entire amount owing from the date of judgment at the rate provided by 28 U.S.C. §1961, being 5.57% per annum, together with costs and reasonable attorney's fees and expenses.

3. The Final Judgment further granted the FDIC judgments in rem against the Diamonds and Defendant Tom Berry on certain mortgages held by the FDIC.

4. The Final Judgment further decreed that the subject properties were to be sold, with appraisal, and that the proceeds were to be applied as follows: first, towards satisfaction of costs, attorney's fees, and expenses; second, towards satisfaction of the amount awarded the FDIC against the Diamonds jointly; and third, towards satisfaction of the amount awarded the FDIC against J.L. Diamond, individually.

5. The FDIC thereafter filed said Entry of Final Judgment with the Washington County Court Clerk pursuant to Oklahoma's Uniform Enforcement of Foreign Judgments Act as Case No. C-91-579.

6. Thereafter, on January 14, 1992, an Alias Special Execution and Order of Sale was issued by the Washington County Court Clerk, directing the appraisal and sale of the real property described in said Entry of Final Judgment.

7. Said property was duly appraised as follows:

REAL PROPERTY	APPRAISED VALUE
Parcel Two	\$ 70,000.00
Parcel Three	\$300,000.00
Parcel Four	\$250,000.00

8. Said parcels of real property were sold at a Sheriff's Sale on February 28, 1992, as follows:

REAL PROPERTY	HIGHEST BIDDER	AMOUNT
Parcel Two	L.E. Scott	\$46,700.00
Parcel Three	FDIC	\$200,100.00
Parcel Four	Michael Lippitt	\$256,000.00

9. The Sheriff's Sale was confirmed by the Honorable John G. Lanning, Judge of the District Court of Washington County, on March 19, 1992, who found that said sale had been properly conducted in all respects.

10. Under 12 O.S. § 686, when seeking a deficiency judgment, a mortgagee is required to give the mortgagor credit for either the fair market value of the property or the sales price of the mortgaged property, whichever is higher. The Court finds that the Sheriff's appraisements

of the parcels of real property involved in this case accurately set forth their fair market values.

A comparison of the fair market value and the sales prices of said parcels is set forth below:

REAL PROPERTY	FAIR MARKET VALUE	SALES PRICE
Parcel Two	\$ 70,000.00	\$ 46,700.00
Parcel Three	\$300,000.00	\$200,100.00
Parcel Four	\$250,000.00	\$256,000.00

11. Plaintiffs are therefore entitled to credit for Parcel Two in the amount of \$70,000.00; for Parcel Three in the amount of \$300,000.00; and for Parcel Four in the amount of \$256,000.00, for a total credit on the judgment of \$626,000.00.

12. As of the date of the Sheriff's Sale, the amount due and owing to the FDIC by J.L. and Gretna Diamond, jointly and severally, was \$2,593,284.45; the amount due and owing to the FDIC by J.L. Diamond, individually, was \$1,296,576.95.

13. The Judgment provided that the proceeds of the foreclosure sale would be applied first to the FDIC's costs and attorney fees, second to the sums owing on the FDIC's judgment against J.L. and Gretna Diamond, jointly, and third to the sums owed to the FDIC by J.L. Diamond, individually. After applying the sum of \$626,000.00 to the FDIC's attorney's fees (\$27,543.19, the amount awarded to the FDIC by Order of the Court on December 2, 1991) and then to the amount owing on the judgment against J.L. and Gretna Diamond jointly (\$2,593,384.45), there remains owing on said claim the sum of \$1,994,927.64. No credit remains to be applied to the judgment against J.L. Diamond individually.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that a deficiency judgment is hereby entered in favor of the FDIC and against Plaintiffs, J.L. Diamond and Gretna

Diamond, jointly and severally, in the principal sum of One Million Nine Hundred Ninety-Four Thousand Nine Hundred Twenty-Seven and 64/100's Dollars (\$1,994,927.64), together with interest thereon at the judgment rate; and a deficiency judgment is also entered in the FDIC's favor against J.L. Diamond, individually, in the amount of One Million Two Hundred Ninety-Six Thousand Five Hundred Seventy-Six and 95/100's Dollars (\$1,296,576.95), together with interest thereon at the judgment rate.



H. Dale Cook, Judge of the United States District Court for the Northern District of Oklahoma

APPROVED:



T.P. Howell

Of the Firm:

Edwards, Sonders & Propester

2900 First Oklahoma Tower

210 West Park Avenue

Oklahoma City, Oklahoma 73102-5605

Telephone: 405/239-2121

ATTORNEYS FOR FEDERAL DEPOSIT INSURANCE
CORPORATION IN ITS CORPORATE CAPACITY

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

ENTERED ON DOCKET

DATE JUL 9 1992

ROBERT G. TILTON,
Plaintiff,
vs.
GARY L. RICHARDSON, et al.,
Defendants.

No. 92-C-424-E

F I L E D

JUL 9 1992

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

ORDER

On July 2, 1992, the Plaintiff filed his Application to Lift Stay to Amend Complaint and for Reconsideration of Court's Ruling on Motions to Dismiss. The Court elicited responses from the Defendants; those briefs are now of record; the matter is ripe for consideration and resolution.

At the outset it is apparent to the Court that some clarification is in order. Upon agreement of the parties the matter was considered on the issue of the Court's jurisdiction: did the cause asserted by Plaintiff involve a federal question (see the Court's prior Order at 2). Thus, on June 24th the Court heard the matter as a Rule 12(b)(1) hearing not as a Rule 12(b)(6) motion hearing nor as a Rule 56 motion hearing. The distinction is crucial, of course, bearing as it most certainly does on the nature of the Court's inquiry as well as the respective burdens of the parties.

A Rule 12(b)(6) inquiry considers whether Plaintiff has stated a claim upon which relief may be granted; it is an inquiry into the legal sufficiency of his claim, thus the Court must assume that all

of the factual allegations of the Complaint are true. U.S. ex rel. Stinson, Lyons, et al. v. Blue Cross, 755 F.Supp. 1040, 1046 (S.D.Ga. 1990)(citations omitted). Put another way, "[b]ecause 12(b)(6) results in a determination on the merits at an early stage of Plaintiff's case, the Plaintiff is afforded the safeguard of having all its allegations taken as true and all inferences favorable to Plaintiff will be drawn." Mortenson v. First Federal Savings and Loan Ass'n, 549 F.2d 884, 891 (3rd Cir. 1977). And if the Court, in considering the legal sufficiency of the Plaintiff's claim, looks to matters outside the pleadings then the issue is converted to a Rule 56 analysis. Rule 56 also compels the Court to take Plaintiff's allegations as true along with the inferences which can reasonably be drawn therefrom. Further, the trial court can only grant summary judgment against Plaintiff's cause if there is no genuine issue as to any material fact. Id.

By contrast, Rule 12(b)(1) motions challenge the Court's jurisdiction over the cause and neither summary judgment standards nor 12(b)(6) govern the trial court's determination regarding jurisdictional issues. Osborn v. United States, 918 F.2d 724 (D.N.D. 1990). "Broad discretion is granted to the district court as to the mode of inquiry in a 12(b)(1) motion as there is no designated statutory procedure for such an inquiry under the Federal Rules." SWT Acquisition Corp. v. TW Services, Inc., 700 F.Supp. 1323, 1327 (D. Del. 1988)(citation omitted). "... when a question of the District Court's jurisdiction is raised, either by a party or by the court on its own motion ... the court may

inquire, by affidavits or otherwise, into the facts as they exist, and it does not, thereby, transform the (b)(1) motion into a Rule 56 motion." Land v. Dollar, 67 S.Ct. 1009, 1011 n. 4 (1947).

The Fifth Circuit has written extensively on the methodology of 12(b)(1) considerations. In Williamson v. Tucker, 645 F.2d 404, 413 (1981) it identified three separate approaches to a jurisdictional analysis pursuant to Rule 12(b)(1): the court may consider (1) the Complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." The 12(b)(1) analysis may, thus, be "facial" or "factual."¹ Menchaca v. Chrysler Credit Corp., 613 F.2d 507, 511 (5th Cir.) cert. denied, 101 S.Ct. 358 (1980). Once the issue of jurisdiction is raised, Plaintiff bears the burden of "proving the facts necessary to sustain jurisdiction."² Stuart v. Federal Energy Systems, Inc., 596 F.Supp. 458, 460 (D. Vermont 1984); Morris v. United States Dept. of Justice, 540 F.Supp. 898, 900 (S.D. Texas 1982). The latitude afforded the Court in addressing a 12(b)(1) issue is justified because it is imperative that the Court satisfy itself as to its authority to hear the case at the

¹As the Third Circuit has cautioned, there is a "crucial distinction to be drawn" between the two analyses: in a facial inquiry the court must taken plaintiff's allegations as true; in a factual inquiry the court may weigh the evidence as to disputed allegations. Mortenson at 891.

²"However, when a determination of the jurisdictional facts is intertwined with and may be dispositive of questions of ultimate liability, a 'threshold' showing of jurisdiction is all that is required." Stuart at 460.

outset. It should go without saying that this initial determination serves the interests of the parties as well, considering the financial burden litigation imposes.

Based upon the foregoing, the Court concludes that its prior Order of June 30, 1992 should stand. That conclusion is based upon the Court's determination that neither Plaintiff's Complaint nor his proffered Amended Complaint nor any of the evidence submitted and on file herein states a §1985(3) claim (to reiterate, all parties agree that Section is the sole basis for this Court's jurisdiction). The Court finds that the gravamen of Plaintiff's case is a claim of slander and/or libel which he alleges have had a deleterious effect upon his economic/commercial interests and his reputation - interests not protected under Section 1985(3). The Court further finds that Plaintiff has not shown infringement of his right to freely practice his religion; the facts in Taylor v. Gilmartin, 686 F.2d 1346 (10th Cir. 1982) are clearly distinguishable from the case at bar. The Court further finds that while it need not reach the issue of whether Plaintiff has shown the requisite nexus between the activities alleged and the actions of state officials - the decision herein resting upon the Court's finding that Plaintiff has not alleged a claim of infringement of interests protected by §1985(3) - the Court will state for the record that Plaintiff has failed to make a colorable showing of state action as well. The Court does not believe that additional fact finding by the parties or this Court will assist in the determination of the jurisdictional issue because it is the Court's

assessment that the evidence is before the Court is sufficient for it to reach the jurisdictional determination. The Court is of the view that the jurisdictional issue under consideration is not intertwined with the substantive issues of the case. Nevertheless, the Court concludes that any interface between the jurisdictional facts and the merits of the claim will not work to preclude the Court from dismissing this case on jurisdictional grounds because Plaintiff's claim is "foreclosed by prior decisions of ... [the Supreme] Court ... [and does] not involve a federal controversy" Bell v. Hood, 66 S.Ct. 773, 776 (1946), quoted in Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3rd Cir. 1991). Finally, it is the Court's view that expeditious appeal of its June 30, 1992 Order as explicated and supplemented herein, is proper and appropriate.

IT IS THEREFORE ORDERED that Plaintiff's Application to Lift Stay to Amend Complaint and for Reconsideration of Court's Ruling on Motions to Dismiss is denied.

ORDERED this 9th day of July, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

FILED
JUL 8 1992

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

BRENDA CARRELL,

Plaintiff,

vs.

LORILLARD TOBACCO
COMPANY, a Delaware corporation,
and ALLEN CARLISLE,
et al.,

Defendants.

Case No. 92-C-⁴²⁷~~427~~-E

ENTERED ON DOCKET
DATE JUL 9 1992

ORDER

Now on this 8th day of July, 1992, comes on before me, the undersigned Judge, the Application of Plaintiff for an Order of Dismissal With Prejudice of the above styled and number cause by virtue of settlement of this action. The Court, being fully advised in the premises and finding no objection, finds that same should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above styled and numbered cause be and same is hereby dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE 7/9/92
FILED

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

JUL 11 1992

Richard L. ...
U.S. District Court
Northern District of Oklahoma

E. BERGEN YOUNG,
Plaintiff,

vs.

Case No.: 92-C-143-B ✓

McDONNELL DOUGLAS
CORPORATION, CONNECTICUT
GENERAL LIFE INSURANCE,
Defendants.

DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, E. BERGEN YOUNG, by and through his attorney, W. E. Sparks, and dismisses the above captioned case without prejudice.

Respectfully submitted,



W. E. Sparks, OBA# 8478
5801 East 41st, Suite 803
Tulsa, Oklahoma 74135
(918) 622-4700

CERTIFICATE OF SERVICE

This is to certify a true and correct copy of the above and foregoing Dismissal was mailed on this 9th day of July, 1992, to: J. Daniel Morgan, Attorney At Law, 2000 Fourth National Bank Building, 15 West Sixth Street, Tulsa, Oklahoma 74119-5447.



W. E. Sparks

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

FILED

JUL 8 1992

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

TRACY PIGUET,

Plaintiff,

vs.

No. 89-C-1041-E

LOUIS W. SULLIVAN, M.D.,
SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant.

ENTERED ON DOCKET

DATE JUL 8 1992

ORDER AND JUDGMENT

The Court has for consideration the Plaintiff's Motion for Attorney's Fees pursuant to 42 U.S.C. §406(B)(1). It is undisputed that following the Court's reversal of the Secretary's initial determination that Plaintiff was not disabled, the Plaintiff prevailed and was awarded back benefits in the approximate sum of \$11,442.00 exclusive of Medicare benefits. On December 30, 1991, Plaintiff filed Application and Motion for a Final Order and for Attorney's Fees and Expenses under the Equal Access to Justice Act. (Docket at #15). The Secretary objected asserting that the Application and Motion came too late under Melkonyan v. Sullivan, 111 S.Ct. 2157 (1991) and Sullivan v. Finkelstein, 110 S.Ct. 2658 (1990) (docket at #20). The Court finds, however, that under the analysis of Gutierrez v. Sullivan, Nos. 90-4198 and 91-4009 (10th Cir. Jan. 2, 1992) - provided to the Court by the Secretary at docket 22, the Application and Motion did not come too late because the Court's remand herein, pursuant to sentence four of Section 405(g) of Title 42, United States Code, was not intended as a final

judgment under 28 U.S.C. §2412(d)(2)(G). It is the practice of this Court to enter final judgment only after completion of the Secretary's proceedings in accord with the remand. Pursuant to Gutierrez at 10-12, and its reliance on the rationale found in Sullivan v. Hudson, 490 U.S. 877 (1989), and in Melkonyan, supra., the Court's practice appears to fit into a permissible "subcategory of cases in which the district court makes a fourth sentence remand but intends to retain jurisdiction over the action pending further administrative proceedings and enter final judgment after those proceedings are completed." Gutierrez at 10 (citations omitted). Therefore, Plaintiff's Application and Motion should be granted. The Court further finds that an attorney's fee of \$3,814.00 representing 34.15 hours of work and preparation herein is fair and reasonable.

IT IS THEREFORE ORDERED that Plaintiff shall be awarded an attorney fee of \$3,814.00.

ORDERED this 17th day of July, 1992.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

TULSA MUNICIPAL AIRPORT TRUST,)
a public trust, and AMERICAN)
AIRLINES, INC., a Delaware)
corporation,)

Plaintiffs,)

GIFFELS ASSOCIATES, INC.,)
a Michigan corporation,)
TMSI CONTRACTORS, INC., a)
California corporation, and)
INSURANCE COMPANY OF NORTH)
AMERICA, a Pennsylvania)
corporation,)

Defendants.)

ENTERED ON DOCKET
JUL 8 1992
DATE _____

Case No. 89-C-908-E

FILED

JUL -7 1992

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

STIPULATION OF DISMISSAL WITH PREJUDICE

It is hereby stipulated, pursuant to Fed. R. Civ. P. 41(a)(1), that the Plaintiffs, Tulsa Municipal Airport Trust and American Airlines, Inc., dismiss with prejudice their claims and cross-claims against the Defendant Giffels Associates, Inc. only. All other claims in this action (including the claims of Plaintiffs against TMSI Contractors, Inc. and Insurance Company of North America, and all claims of TMSI Contractors, Inc. or Insurance Company of North America against Plaintiffs and Giffels Associates, Inc.), shall remain pending against the respective parties.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By Richard T. McGonigle
Richard T. McGonigle, OBA #11675
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-4570

ATTORNEYS FOR PLAINTIFFS, TULSA
MUNICIPAL AIRPORT TRUST AND AMERICAN
AIRLINES, INC.

AND

GABLE & GOTWALS

By Sidney G. Dunagan
Sidney G. Dunagan, OBA #2524
James W. Rusher, OBA #
2000 Fourth National Building
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR DEFENDANT, GIFFELS
ASSOCIATES, INC.

AND

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

By Michael J. Gibbens
Michael J. Gibbens, OBA #3339
15 East 5th Street, Suite 3800
Tulsa, Oklahoma 74103
(918) 581-8200

ATTORNEYS FOR DEFENDANTS, TMSI
CONTRACTORS, INC. and INSURANCE
COMPANY OF NORTH AMERICA

ENTERED ON DOCKET

DATE JUL 8 1992

F I L E D

WRC:CDD:lmc IN THE UNITED STATES DISTRICT COURT
6/30/92 IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUL 07 1992

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

WILLIAM-SONOMA STORES, INC.)

Plaintiff,)

vs.)

Case No.: 92-C-199-B

AMERICAN TELEPHONE AND TELEGRAPH)
and MED-X CORPORATION,)

Defendants.)

**ORDER GRANTING WILLIAMS-SONOMA STORES, INC.
APPLICATION TO DISMISS LAWSUIT WITHOUT PREJUDICE**

Williams-Sonoma Stores, Inc.'s Application to Dismiss the case without prejudice comes on for hearing on this 7th day of July, 1992. The Court, having heard arguments of the parties, finds that the Application is supported by evidence.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff, Williams-Sonoma Stores, Inc., is granted leave to dismiss this case without prejudice.

Dated this 7th day of July, 1992.

Thomas R. B... [Signature]
JUDGE

4

Parties: pmel

DATE JUL 8 1992

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DONALD HOLMAN; ROCHELLE
HOLMAN; COUNTY TREASURER,
Tulsa County, Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

CIVIL ACTION NO. 92-C-59-B

FILED

JUL 07 1992

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

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7th day of July, 1992. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear not, having previously disclaimed any right, title or interest in the subject property; and the Defendants, Donald Holman and Rochelle Holman, appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Donald Holman, was served with Summons and Complaint on May 26, 1992; that the Defendant, Rochelle Holman, was served with Summons and Complaint on May 26, 1992; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 27, 1992; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 27, 1992.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on February 13, 1992; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on February 13, 1992; and that the Defendants, Donald Holman and Rochelle Holman, 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 21, Block 19, 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 on July 26, 1973, the Defendants, Donald Holman and Rochelle Holman, 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 \$9,500.00, payable in monthly installments, with interest thereon at the rate of 4.5 percent (4.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Donald Holman and Rochelle Holman, 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 26, 1973, covering the above-described property. Said mortgage was recorded on July 30, 1973, in Book 4080, Page 1792, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Donald Holman and Rochelle Holman, 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, Donald Holman and Rochelle Holman, are indebted to the Plaintiff in the principal sum of \$5,702.43, plus interest at the rate of 4.5 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 \$44.00 for service of Summons and Complaint.

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, Donald Holman and Rochelle Holman, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, Donald Holman and Rochelle Holman, in the principal sum of \$5,702.45, plus interest at the rate of 4.5 percent per annum from August 1, 1990 until judgment, plus interest thereafter at the current legal rate of 4.11 percent per annum

until paid, plus the costs of this action in the amount of \$44.00 for service of Summons and Complaint, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Donald Holman, Rochelle Holman, 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 appraisalment, the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

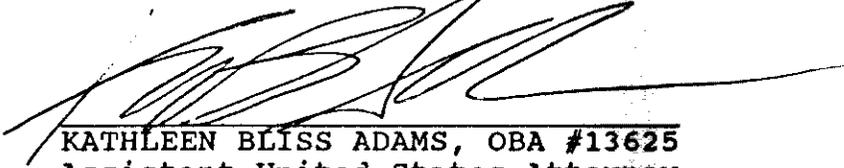
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under

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

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Judgment of Foreclosure
Civil Action No. 92-C-59-B

KBA/esr

ENTERED ON DOCKET
DATE JUL 8 1992

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

FILED

JUL -7 1992

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

TYRONE G. FARLEY,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,

Defendant.

No. 91-C-775-C

J U D G M E N T

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

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered on behalf of the defendant American Airlines, Inc. and against the plaintiff Tyrone G. Farley.

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


H. DALE COOK
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE JUL 8 1992

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

FILED

JUL 8 1992

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

IN RE:)
)
FIRST SECURITY MORTGAGE)
CO.,)
)
Debtor.)
)
PATRICK J. MALLOY III,)
Trustee,)
)
Plaintiff/Appellee,)
)
vs.)
)
SECURITY NATIONAL BANK,)
of Sapulpa, Oklahoma;)
WALTER BROWN; EDWARD A.)
CARSON; and WILEY SMITH,)
)
Defendants/Appellants.)

Bankruptcy #89-03147-W
Chapter 7

Adversary No. 91-0059-W
District Ct. No. 92-C-234-E

ORDER

This order pertains to Defendants' Application for Leave to Appeal Under 28 U.S.C. § 158(a) (Docket #2)¹ and Plaintiff's Response to Defendants' Application for Leave to Appeal Under 28 U.S.C. Sec. 158(a) (Docket #4).

Defendants, Security National Bank of Sapulpa ("the Bank"), Walter Brown ("Brown"), Edward A. Carson ("Carson"), and Wiley Smith ("Smith"), seek leave to appeal the interlocutory order of the Bankruptcy Court for the Northern District of Oklahoma entered on March 6, 1992, striking their demand for a jury trial in their answer to the Trustee's First Amended Complaint and denying their motion to transfer this action to the

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

district court.

The Trustee originally filed this action on March 4, 1991 alleging that a payment made by the Debtor two weeks before the one year period prior to bankruptcy was a preferential payment which inured to the benefit of an alleged insider, the Debtor's parent corporation. Defendants made no demand for a jury trial in their original answer. On Friday, January 31, 1992, the Trustee filed a motion requesting leave to file an amended complaint to add factual allegations that the Defendants were all insiders of the Debtor and that Defendants, Carson, Brown and Smith, were alternatively initial transferees or mediate transferees of the Debtor. By order filed February 4, 1992 the Court granted the Trustee's motion to amend.

The First Amended Complaint filed on February 5, 1992, asserted the following facts which were not contained in his original Complaint: 1) Dwight Maulding was on the Board of Directors of First Security Mortgage Company 2) the note sold by the Bank was the response to the Bank regulators' demand that, given the 'insider' relationship between the Bank and First Security Mortgage Company, the note, coupled with other notes, should be sold, 3) prior to the sale of the note, the Bank and First Security Mortgage Company were involved in a joint venture and/or partnership, the terms of which provided that the Bank would fund loans generated by the mortgage company and that the mortgage company would generate, close and package the loans and later sell them to downstream investors and upon the sale retain monies for its own benefit and remit the remainder to the Bank, 4) the Bank and defendants Carson, Brown, and Smith were insiders with respect to the mortgage company, as defined by the Bankruptcy Code, and 5) that Carson, Brown,

and Smith were the immediate transferees of the note by the initial transferee, the Bank.

Defendants answered and filed a Motion to Transfer Action to District Court and Demand for Jury Trial. On March 6, 1992, the bankruptcy court struck the Defendants' demand for a jury trial and denied their motion for transfer to the district court. Defendants seek leave to appeal this order, claiming that the Trustee raised new facts in the First Amended Complaint which entitled them to demand a jury trial in their Answer. If the jury demand was timely made, Defendants contend the action should have been transferred to the district court for trial.

Plaintiff alleges that Defendants' Request for Jury Trial was untimely under Rule 38(b) of the Federal Rules of Civil Procedure, which provides in part: "Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand thereof in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue"

The parties agree that in Langenkamp v. Culp, ___ U.S. ___, 111 S.Ct. 330, 112 L.Ed.2d 343 (1990), the Supreme Court recognized that the Seventh Amendment provides defendants in preference actions the right to a jury trial if they have not filed claims against the bankruptcy estate. Id. at 331. None of the Defendants to this preference action have filed claims against FSMC's estate. The Tenth Circuit has held that bankruptcy judges lack the power to conduct jury trials and that, where a jury trial has been timely demanded and is proper under the United States Constitution, it must take place in the district court "sitting in its original jurisdiction in bankruptcy". In re Kaiser Steel Corp., 911 F.2d 380, 392 (10th Cir. 1990).

The general rule with respect to amendments of pleadings is that when a party has waived right to a jury trial with respect to original complaint and answer by failing to make timely demand, amendments of pleadings that do not change issues also do not revive this right. State Mut. Life Assurance Co. of America v. Arthur Andersen & Co., 581 F.2d 1045, 1049 (2nd Cir. 1978); Land v. Roper Corp., 531 F.2d 445, 450 (10th Cir. 1976).

Plaintiff contends that the second amended complaint contained no new factual allegations regarding the single issue of whether there was a transfer of the debtor's assets within one year for an antecedent debt that benefitted an insider. It claims it will contest none of the new factual allegations. It alleges the only new issues raised are legal ones with respect to the status of the defendants as insiders and/or transferees under 11 U.S.C. § 550. Even if new factual issues had been raised, Plaintiff claims Defendants would only be entitled to a jury trial on those new issues. In Re Suburban Motor Freight, Inc., 114 B.R. 943, 955 (Bkr. S.D. Ohio 1990); Rosen v. Dick, 639 F.2d 82, 94 (2nd Cir. 1980).

Plaintiff claims that the order appealed from is not a final order subject to appeal under Bankruptcy Rule 8001(a), but is a interlocutory order which may only be appealed by leave of court when a controlling question of law is involved and an intermediate appeal would materially advance the ultimate termination of the litigation.

The order striking Defendants' Demand for Jury Trial and denying the Motion to Transfer was a interlocutory order. City of Morgantown v. Royal Insurance Co., Ltd., 337 U.S. 254, 256 (1949). Authority for the district court to hear appeals from interlocutory orders is found at 28 U.S.C. § 158, which provides in pertinent part:

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

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

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

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

The court finds that there is no controlling question of law involved here which entails substantial ground for differences of opinion, the resolution of which would materially advance the termination of this case. Defendants' Motion for Leave to Appeal is denied and this matter should proceed to trial.

Dated this 7th day of July, 1992.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE JUL 8 1992

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

FILED

JUL -7 1992

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

TYRONE G. FARLEY,)
)
Plaintiff,)
)
vs.)
)
AMERICAN AIRLINES, INC.,)
)
Defendant.)

No. 91-C-775-C

ORDER

Before the Court is the motion of the defendant for summary judgment. Plaintiff brings this action for wrongful discharge under Burk v. K-Mart, 770 P.2d 24 (Okla. 1989), alleging that he was discharged for his refusal to participate in an unlawful act in contravention of the public policy of Oklahoma. The Court must determine if there are genuine issues of material fact, viewing the evidence in the light most favorable to the nonmovant. Aldrich Enterprises, Inc., v. United States, 938 F.2d 1134, 1138 (10th Cir. 1991).

Plaintiff was an aircraft maintenance mechanic employed by defendant for approximately two years until he was terminated on January 23, 1991. He contends that on December 6, 1990, plaintiff's supervisor requested plaintiff to perform an alteration to an aircraft that was not in conformance with the aircraft maintenance manual nor approved by the Federal Aviation Administration. Further, that an engineer told plaintiff that the requested alteration was an unauthorized type of repair. Plaintiff asserts that he refused to perform the alteration, and was fired for his unwillingness to participate in the violation

23

of a federal regulation.

Defendant contends that plaintiff was in fact discharged for poor attendance. It notes that plaintiff filed a grievance over his discharge which, pursuant to the Collective Bargaining Agreement (CBA), between the Transport Workers Union (TWU) and defendant, was heard by the System Board of Adjustment (the Board). Following an evidentiary hearing, the Board held that plaintiff had been properly discharged for poor attendance.

Defendant asserts that Burk is limited to at-will employees. The decision's language is plain that the Supreme Court of Oklahoma was recognizing an "exception to the at-will termination rule" 770 P.2d at 28 (emphasis added). Also, that "[a]n employer's termination of an at-will employee in contravention of a clear mandate of public policy is a tortious breach of contractual obligations" *Id.* (footnote omitted) (emphasis added). Defendant contends that the "just cause" termination provision of the TWU Agreement precludes a finding that plaintiff is an at-will employee.

In response, plaintiff states that in fact he is an at-will employee. He relies primarily upon Freeman v. Chicago Rock Island R.R. Co., 239 F. Supp. 661 (W.D. Okla. 1965), in which Judge Daugherty ruled that an employee who had such a "just cause" provision in his contract was nevertheless an at-will employee because the employee had no limitation on his ability to terminate the relationship and therefore a lack of mutuality existed.

Defendant persuasively argues that, even if Freeman was correct when decided, it no longer represents the law of Oklahoma. The Oklahoma Court of Appeals has stated that the mutuality requirement is simply the requirement that there be consideration. Langdon v. Saga Corp., 569 P.2d 524, 526-7 (Okla. App. 1976). Moreover, Judge Daugherty relied

upon the reasoning expressed in certain Arkansas cases. 239 F. Supp. at 663. As defendant notes, this reasoning was rejected in Gladden v. Arkansas Children's Hospital, 728 S.W.2d 501 (Ark. 1987), as "outmoded and untenable."

Next, plaintiff argues that the right granted by the Burk decision cannot be "bargained away" in a CBA. Plaintiff misses the point. For all employees who are not terminable at will, the Burk decision grants nothing. The Oklahoma Supreme Court came to grips with the situation where, for example, an employee fired for refusing to commit perjury had no recourse. Such an employee had no recourse precisely and only because he was terminable at will. Accordingly, the court fashioned a judicial remedy for that narrow class of cases. Here, plaintiff was in no way precluded from raising the alleged wrongful discharge. The right to do so already existed because of the "just cause" provision. Because plaintiff was not an at-will employee, Burk is not implicated.

As a final argument on this point, plaintiff contends that an arbitration board could conceivably uphold a discharge which contravenes public policy. This hypothetical argument taken to its logical extreme would negate all labor arbitration, and it again ignores the language of the Burk decision. The Court believes that judgment in defendant's favor would be appropriate on this point alone.

Defendant presents three subsidiary arguments to the first one discussed above. They are: (1) an alternative remedy (i.e., arbitration) exists, (2) the public policy invoked by plaintiff must be based on state, not federal, law and (3) plaintiff has failed to identify a clear mandate of public policy allegedly violated. In view of the broad reading of Burk given by the Oklahoma Supreme Court in Tate v. Browning - Ferris, Inc., 63 O.B.J.1507

(May 19, 1992), the Court rejects the first two arguments. The Court also finds that plaintiff has adequately identified federal statutes and regulations relating to aircraft repair so that the third argument also fails.

Next, defendant contends that plaintiff's claim is pre-empted by the Railway Labor Act, 45 U.S.C. §§151 et seq. (RLA). In 1936, Congress extended coverage of the RLA to the air transportation industry. 45 U.S.C. §§181-188. Generally, the RLA recognizes two types of disputes: (1) "major" disputes, which relate to the formation of collective bargaining agreements or efforts to secure them; and (2) "minor" disputes, which involve the interpretation of a collective bargaining agreement, the existence of which is not in dispute. Barnett v. United Air Lines, Inc., 738 F.2d 358, 361 (10th Cir.) cert. denied, 469 U.S. 1087 (1984). The Supreme Court recently stated that "[w]here an employer asserts a contractual right to take the contested action, the ensuing dispute is minor if the action is arguably justified by the terms of the parties' collective-bargaining agreement. Where, in contrast, the employer's claims are frivolous or obviously insubstantial, the dispute is major." Consolidated Rail Corp. v. RLEA, 491 U.S. 299 (1989) ("Conrail"). Federal courts do not have jurisdiction over minor disputes. Polich v. Burlington Northern, Inc., 942 F.2d 1467, 1470 (9th Cir. 1991).

Upon review, the Court has concluded that this action involves a minor dispute over which this Court lacks jurisdiction. Plaintiff filed a grievance, proceeded to arbitration and was ruled against by the Board. It therefore seems indisputable that the employer's action was "arguably justified" by the terms of the CBA. In Grote v. Trans World Airlines, Inc., 905 F.2d 1307 (9th Cir.), cert. denied, 111 S.Ct. 386 (1990), the court held that a claim for

wrongful discharge for alleged refusal to commit perjury was pre-empted under the RLA. Plaintiff in that case, as does the plaintiff here, relied upon Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399 (1988) and Atchison, T. & S.F. Ry. v. Buell, 480 U.S. 557 (1987). The Ninth Circuit distinguished Lingle by noting that it involved preemption under §301 of the Labor-Management Relations Act (LMRA), which is not as broad as RLA preemption. 905 F.2d at 1309-10. (In any event, in Saunders v. Amoco Pipeline Co., 927 F.2d 1154 (10th Cir.), cert. denied, 112 S.Ct. 264 (1991), the Tenth Circuit held that a wrongful discharge claim was preempted under the LMRA). The Ninth Circuit also distinguished Buell by noting that the Supreme Court decision empowered an employee to bring claims arising under federal, not state, law. 905 F.2d at 1310. See also McAlester v. United Air Lines, Inc., 851 F.2d 1249 (10th Cir. 1988).

Plaintiff also contends that the "arguably justified" language in Conrail does not refer to whether the employer's actions were arguably justified under the CBA. This Court disagrees. See Polich v. Burlington Northern, Inc., 942 F.2d 1467, 1470 (9th Cir. 1991) (Plaintiff's pleadings and offers of proof not controlling; railroad's defense must also be considered). Judgement for defendant is proper on RLA preemption grounds as well.

Next, defendant argues that plaintiff's cause of action is preempted under the Federal Aviation Act, 49 U.S.C. App. §1301, et seq. The Court has found no authority for this proposition and denies it. See 49 U.S.C. App. §1506 (remedies under Act not exclusive).

Finally, defendant asserts that plaintiff's claim is barred by collateral estoppel because of the prior arbitration proceeding. It is established that "the findings of arbitration boards can serve as the basis for collateral estoppel in a federal court

proceeding." Benjamin v. Traffic Exec. Ass'n Eastern Railroads, 869 F.2d 107, 110 (2nd Cir. 1989). See also Coffey v. Dean Witter Reynolds Inc., 961 F.2d 922, 925 n.4 (10th Cir. 1992). The general rule under federal law gives "estoppel effect to issues actually litigated in an arbitration proceeding between the same parties unless the procedures followed suggest that the arbitration process was unfair and the decision unreliable or unless other policies, statutory or contractual, provide an exception." Ivery v. United States, 686 F.2d 410, 413 (6th Cir. 1982), cert. denied, 460 U.S. 1037 (1983). No issue of unfairness or unreliability has been raised. Plaintiff does argue for an exception of sorts, repeating his contention that under Lingle v. Norge Div. of Magic Chef Inc., 486 U.S. 399 (1988), plaintiff's cause of action arises independently of the CBA, and that therefore collateral estoppel is inapplicable. The Court disagrees, under existing authority. It has been determined through arbitration that plaintiff was discharged for just cause. He is therefore precluded from litigating that he was not (i.e., that he was discharged in violation of public policy). Even should Oklahoma law apply to this issue, the Court believes that the result would be the same. See Inglis v. Trickey, 45 P.2d 135, 137 (Okla. 1935).

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

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



H. DALE COOK
UNITED STATES DISTRICT JUDGE

FILED

JUL 8 1992

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

JOSEPH ARTHUR CARBRAY,)
)
Petitioner,)
)
v.)
)
STEPHEN KAISER, et al.,)
)
Respondents.)

Lawrence, Clerk
DISTRICT COURT
N. DISTRICT OF OKLAHOMA

92-C-356-E

ENTERED ON DOCKET

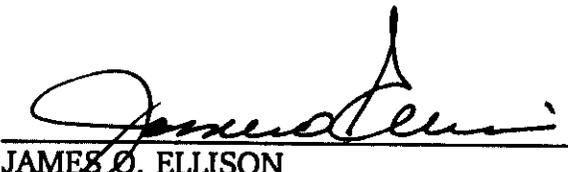
DATE JUL 8 1992

ORDER

This order pertains to petitioner's Motion for Voluntary Dismissal (Docket #3)¹. The court finds that the motion should be granted.

It is therefore ordered that petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (#1) is dismissed.

Dated this 7th day of July, 1992.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

6

FILED

JUL 8 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.)
)
 SUSAN MILLER,)
)
 Defendant.)

Civil Action No. 92-C-343-E

ENTERED ON DOCKET
JUL 8 1992
DATE _____

DEFAULT JUDGMENT

This matter comes on for consideration this 7 day of July, 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, Susan Miller, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Susan Miller, was served with Summons and Complaint on April 28, 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.

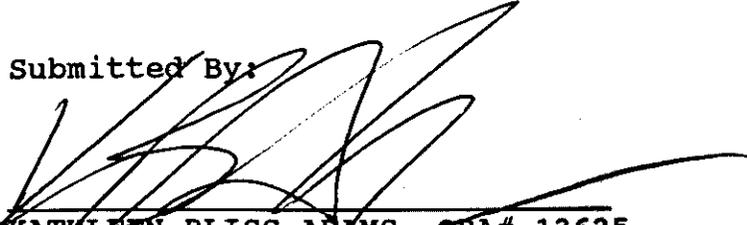
IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Susan Miller, for the principal amount of \$4,142.22, administrative costs in the amount of \$87.00, penalty charges in the amount of \$16.00, plus accrued interest of \$415.28 as of June 26, 1992, plus interest

thereafter at the rate of 3 percent per annum until judgment, plus a surcharge of 10 percent 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 4.11 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

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

ENTERED ON DOCKET
DATE JUL 8 1992

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TAWANDA BATEMAN a/k/a TAWANDA)
 J. BATEMAN a/k/a TAWANDA JEAN)
 BATEMAN; SPOUSE OF TAWANDA)
 BATEMAN a/k/a TAWANDA)
 J. BATEMAN a/k/a TAWANDA JEAN)
 BATEMAN; COUNTY TREASURER,)
 Creek County, Oklahoma;)
 BOARD OF COUNTY COMMISSIONERS,)
 Creek County, Oklahoma,)
)
 Defendants.)

FILED

JUL 8 1992

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

CIVIL ACTION NO. 91-C-939-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7 day
of July, 1992. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Kathleen Bliss Adams, Assistant United States
Attorney; the Defendant, Tawanda Bateman a/k/a Tawanda J. Bateman
a/k/a Tawanda Jean Bateman, appears through J. Michael Busch,
Esq.; and the Defendants, Spouse of Tawanda Bateman a/k/a Tawanda
J. Bateman a/k/a Tawanda Jean Bateman, if he exists, and the
County Treasurer and Board of County Commissioners, Creek County,
Oklahoma, appear not, but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Tawanda Bateman a/k/a
Tawanda J. Bateman a/k/a Tawanda Jean Bateman, acknowledged
receipt of Summons and Complaint on December 18, 1991; that the
Defendant, Spouse of Tawanda Bateman a/k/a Tawanda J. Bateman
a/k/a Tawanda Jean Bateman, if he exists, acknowledged receipt of

Summons and Amended Complaint on June 8, 1992, through the signature of Tawanda Bateman; that Defendant, County Treasurer, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on December 11, 1991; and that Defendant, Board of County Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on December 10, 1991.

It appears that the Defendant, Tawanda Bateman a/k/a Tawanda J. Bateman a/k/a Tawanda Jean Bateman, filed her Answer on January 9, 1992; and that the Defendants, Spouse of Tawanda Bateman a/k/a Tawanda J. Bateman a/k/a Tawanda Jean Bateman, if he exists, and the County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Five (5), in Block Two (2), MANNFORD MEADOWS ADDITION, An Addition to the Town of Mannford, in Creek County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on October 24, 1988, the Defendant, Tawanda J. Bateman, executed and delivered to the United States of America, acting through the Farmers Home Administration, her mortgage note in the amount of \$32,000.00,

payable in monthly installments, with interest thereon at the rate of 9.5 percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Tawanda J. Bateman, executed and delivered to the United States of America, acting through the Farmers Home Mortgage, a mortgage dated October 24, 1988, covering the above-described property. Said mortgage was recorded on October 28, 1988, in Book 241, Page 557, in the records of Creek County, Oklahoma.

The Court further finds that on October 28, 1988, the Defendant, Tawanda J. Bateman, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on July 10, 1989, the Defendant, Tawanda Bateman, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Tawanda Bateman a/k/a Tawanda J. Bateman a/k/a Tawanda Jean Bateman, made default under the terms of the aforesaid note, mortgage and interest credit agreements by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Tawanda Bateman a/k/a

Tawanda J. Bateman a/k/a Tawanda Jean Bateman, is indebted to the Plaintiff in the principal sum of \$32,405.90, plus accrued interest in the amount of \$1,725.51 as of December 28, 1990, plus interest accruing thereafter at the rate of 9.5 percent per annum or \$8.4344 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$2,421.72, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$8.00 for recording the Notice of Lis Pendens.

The Court further finds that the Defendants, Spouse of Tawanda Bateman a/k/a Tawanda J. Bateman a/k/a Tawanda Jean Bateman, if he exists, and County Treasurer and Board of County Commissioners, Creek County, Oklahoma, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Tawanda Bateman a/k/a Tawanda J. Bateman a/k/a Tawanda Jean Bateman, in the principal sum of \$32,405.90, plus accrued interest in the amount of \$1,725.51 as of December 28, 1990, plus interest accruing thereafter at the rate of 9.5 percent per annum or \$8.4344 per day until judgment, plus interest thereafter at the current legal rate of 4.11 percent per annum until paid, and the further sum due and owing under the interest credit agreements of \$2,421.72, plus interest thereafter at the current legal rate of 4.11 percent per annum until paid, plus the costs of this action in the amount of \$8.00 for recording the

Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Spouse of Tawanda Bateman a/k/a Tawanda J. Bateman a/k/a Tawanda Jean Bateman, if he exists, and County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

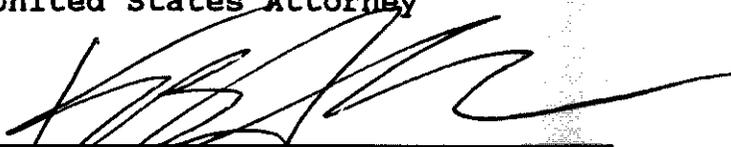
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



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

J. MICHAEL BUSCH, OBA #10227
Attorney for Defendant,
Tawanda Bateman a/k/a
Tawanda J. Bateman a/k/a
Tawanda Jean Bateman

Judgment of Foreclosure
Civil Action No. 91-C-939-E

KBA/esr

MCW/vlw

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

ENTERED ON DOCKET
DATE JUL 7 1992

JO ANNE BEARD,

Plaintiff,

vs.

No. 90-C-432-E

DONNA MARIE VIENE and
THE CITY OF KANSAS CITY
MISSOURI,

Defendants.

and

BRADLEY C. BROCKMAN,

Plaintiff,

vs.

No. 90-C-433-E

DONNA MARIE VIENE and
THE CITY OF KANSAS CITY,
MISSOURI,

Defendants.

JO ANNE BEARD and
BRADLEY C. BROCKMAN,

Plaintiffs,

vs.

Consolidated Into
Case No. 90-C-432-E

DONNA MARIE VIENE and
THE CITY OF KANSAS CITY,
MISSOURI,

Defendants.

ORDER OF DISMISSAL

Upon the stipulation of the parties to the above styled
and numbered cause(s) of action, and for good cause shown, this
action is dismissed with prejudice.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

FILED

JUL 7 1992

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

MCW/vlw

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

ENTERED ON DOCKET
DATE JUL 7 1992

JO ANNE BEARD,

Plaintiff,

vs.

DONNA MARIE VIENE and
THE CITY OF KANSAS CITY
MISSOURI,

Defendants.

and

BRADLEY C. BROCKMAN,

Plaintiff,

vs.

DONNA MARIE VIENE and
THE CITY OF KANSAS CITY,
MISSOURI,

Defendants.

JO ANNE BEARD and
BRADLEY C. BROCKMAN,

Plaintiffs,

vs.

DONNA MARIE VIENE and
THE CITY OF KANSAS CITY,
MISSOURI,

Defendants.

No. 90-C-432-E

FILED

JUL 7 1992

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

No. 90-C-433-E

Consolidated Into
Case No. 90-C-432-E

ORDER OF DISMISSAL

Upon the stipulation of the parties to the above styled and numbered cause(s) of action, and for good cause shown, this action is dismissed with prejudice.

W. TAMPS O. ELISON

UNITED STATES DISTRICT JUDGE

DATE JUL 7 1992

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

FILED

JUL 03 1992

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

JOHN HEAVENER,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLIE ARNOLD, et al.,)
)
 Defendants.)

No. 91-C-59-B

ORDER

The Court has for consideration the Plaintiff's Objection to a Report and Recommendation entered by the Magistrate Judge on November 19, 1991, dismissing Plaintiff's Civil Right's Complaint, pursuant to 42 U.S.C. § 1983.

Plaintiff, an inmate at the Dick Conner Correctional Center in Hominy, Oklahoma, claims that his Fifth and Fourteenth Amendment rights were violated when he was denied a fair hearing on charges of group disruption, for allegedly conspiring to assault a fellow inmate. As a result of this charge, and the subsequent hearing, Plaintiff was placed in disciplinary segregation and lost credits previously earned for good behavior.

The Supreme Court's decision in Wolff v. McDonald, 418 U.S. 539 (1974), established that, where a prison disciplinary hearing may result in the loss of good time credits, an inmate is entitled to the following considerations: a disciplinary hearing prior to the imposition of punishment; at least twenty-four hours written notice of the charges against him; an opportunity to call witnesses and present documentary evidence in his defense; and a written

statement by the fact finder of the evidence relied on and the reasons for disciplinary action. Id. at 563-570.

Plaintiff claims that the prison wardens failed to adequately prove the reliability of the confidential witness they used in determining Plaintiff's guilt, and further asserts that Defendants did not properly allow the use of an amended witness statement that would have supported Plaintiff's position. Plaintiff claims that because the prison officials' failure to comply with these rules equates to a due process violation, he is entitled to a new hearing on the matter.

It is well established that there must be a "...reasonable basis for establishing the credibility of the informant's information...." Taylor v. Wallace, 931 F. 2d 698, 701-702 (10th Cir. 1991). However, courts generally defer to the judgment of prison officials, asking only if there is "any evidence in the record that could support the conclusion reached by the disciplinary board." Superintendent v. Hill, 472 U.S. 445 (1985). The court in Superintendent explained that because prison officials work in a highly charged atmosphere and must often act swiftly, they frequently rely on evidence that "might be insufficient in less exigent circumstances." Id. at 455-56. The Court summarized its position by stating that the "fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact." Id.

Plaintiff also contends there is a dispute over whether this amended witness statement was made available to the prison

officials before or after the original hearing. The Magistrate deemed this statement of sufficient importance to Order it produced for in camera review.

Defendants submitted, on August 13, 1991, a copy of the amended witness statement provided by Kevin Anderson for in camera review. The Magistrate Judge reviewed the prison official's justification for considering the report reliable along with the amended witness statement of Kevin Anderson. The Magistrate Judge made a specific finding that the materials submitted "disclose sufficient indicia of reliability to satisfy due process requirements and allow the testimony to be given weight in the determination of plaintiff's guilt. The evidence shows that the hearing officer followed the prison rules regarding confidential witness testimony found in Regulation OP-090125 at pages 3,7, and 10 (Attachment I to Report of Review)."

The Court concludes the Report and Recommendation of the Magistrate Judge should be and the same is hereby adopted and affirmed. The Court further concludes Plaintiff' Civil Rights Complaint pursuant to 42 U.S.C. § 1983 should be and the same is hereby DISMISSED.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED 7/7/92

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

JUL -2 1992

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

ATLANTIC RICHFIELD COMPANY,)
)
Plaintiff,)
)
v.)
)
AAMCO TRANSMISSIONS, Et. Al.,)
)
Defendants.)

Consolidated Cases Nos.
89-C-868-B
89-C-869-B
90-C-859-B

NOTICE OF DISMISSAL WITHOUT PREJUDICE OF PENGO INDUSTRIES

Now on this 2nd day of July, 1992, all parties hereto please take notice that pursuant to Rule 41 (a) of the Federal Rules of Civil Procedure the Plaintiff hereby dismisses without prejudice this action against Pengo Industries, only, and expressly reserves its causes of action against all other Defendants, not heretofore dismissed from this action.



Gary A. Eaton, OBA #2598
Attorney at Law
1717 East 15th St.
Tulsa, OK 74104
918 743 8781

CERTIFICATE OF MAILING

The undersigned certifies that on July 3, 1992, a true and correct copy of the above instrument / pleading was mailed with postage prepaid to the following persons:

Mr. Larry Gutteridge, Co-Counsel for Plaintiff, 633 West 5th Street, 35th Floor, Los Angeles, California 90071

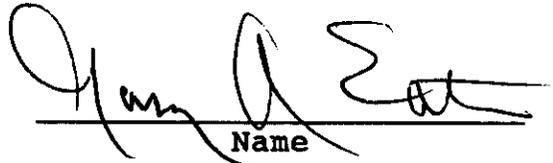
Mr. William Anderson, Attorney at Law and Liaison Counsel and Co-Lead Counsel for Owners and Non-Operator Lessees Group, 320 South Boston Building, Suite 500, Tulsa, OK 74103

Mr. John Tucker, Lead Counsel for Non Group Generators and Transporters, 2800 Fourth National Bank Building, Tulsa, OK 74119

Mr. Steven Harris, Attorney at Law and Lead Counsel for Operators Group, Suite 260 Southern Hills Tower, 2431 East 61st Street, Tulsa, OK 74136

Mr. Charles Shipley, Attorney at Law and Settlement Coordinator, 3600 First National Tower, Tulsa, OK 74103

Ms. Claire V. Eagan, Mr. Michael Graves, and Mr. Matthew Livengood, Attorneys at Law and Lead Counsel for the Sand Springs PRP Group, 4100 Bank of Oklahoma Tower, One Williams Center, Tulsa, OK 74172


Name

ENTERED ON DOCKET

DATE 7/7/92

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

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

FILED

JUL 6 1992

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

VACUUM & PRESSURE TANK TRUCK)
SERVICES,)
)
 Defendant and Third)
 Party Plaintiff,)
)
 vs.)
)
 AMERIGAS, INC., et al.,)
)
 Third Party Defendants.)

NOTICE OF DISMISSAL OF THIRD PARTY DEFENDANTS

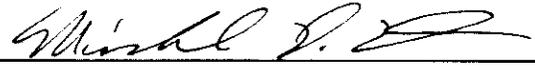
COMES NOW the Defendant/Third Party Plaintiff Vacuum & Pressure Tank Truck Services, Inc., pursuant to and in accordance with Rule 41(a)(1), Federal Rules of Civil Procedure, and hereby dismisses its Third Party Complaint in relation to the following Third Party Defendants:

- Amerigas, Inc.
- Baldwin Piano & Organ Co.
- Chickasha Manufacturing Co., Inc.
- American Can Company d/b/a Dixie Cups
- Fine Truck Line, Inc.
- Forsgren, Inc.
- Franks & Sons, Inc.
- Grief Bros Corporation
- Hallett Construction Company

Hudson Oil Company
Little Rock Road Machinery
Moll Tool & Plastic
Rollins Truck Rental
Superwrench, Inc.
Transmission Specialists Company
U S Pollution Control, Inc.
Yates Implement Co., Inc.
Commercial Cartage

Respectfully Submitted,

DOYLE & HARRIS



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

CERTIFICATE OF MAILING

I do hereby certify that on the 6th day of July, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

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

William Anderson
DOERNER, STUART, et al.
320 S. Boston, Suite 500
Tulsa, OK 74103



Steven M. Harris
Michael D. Davis

ENTERED ON DOCKET
DATE JUL 1 1992

FILED

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

JUL -1 1992

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its)
corporate capacity,)
Plaintiff,)
vs.)
J.F. STOABS & SONS, INC.,)
et al.,)
Defendants.)

Case No.: 91-C-44-C

ORDER

Before the Court is the objection of the plaintiff to the Report and Recommendation of the United States Magistrate Judge. This action involves plaintiff's motion for leave to enter deficiency judgment and the necessary appraisal of a certain parcel of land. The motion was referred to the Magistrate Judge, who held an evidentiary hearing. Each side of the litigation presented an expert witness and the Magistrate Judge entered his Recommendation as to fair market value. Plaintiff objects, and requests a rehearing and reconsideration of the evidence. The Court has allowed the parties to briefly supplement their presentations to the Magistrate Judge. Defendants have declined the opportunity, but plaintiff has submitted two additional affidavits and expert appraisals of the subject property. Defendants object on the basis that their counsel has not conducted cross-examination of these two appraisers. Apparently, the matter was not important enough to either counsel to attempt to arrange such cross-examination. Under the circumstances, the Court sees little alternative but to sustain

the objection, and to decline to consider the supplemental presentation of the plaintiff.

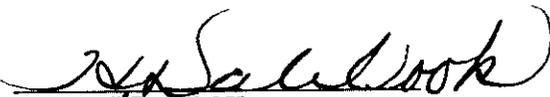
At the evidentiary hearing, plaintiff's expert testified that the fair market value of the property is \$180,000.00; defendants' expert testified that the fair market value of the property is \$430,000.00. The Magistrate Judge accepted the testimony of defendants' expert completely and found a fair market value of \$430,000.00. This Court's review is de novo. Gee v. Estes, 829 F.2d 1005, 1008 (10th Cir. 1987). Upon review, the Court finds error in that at two points in the Recommendation, the Magistrate Judge indicates that he believed his consideration of conflicting experts was an "either/or" proposition. For example, he writes that "[t]he question thus becomes which of two opinions as to fair market value should be adopted and applied by the court." (Report and Recommendation at 5). Further, "there is no absolute right and wrong opinion and the court must discern, based upon a review of the evidence, which opinion to adopt." Id. at 6. The Court is aware of no authority by which it is bound to adopt in whole one opinion or the other of two experts. The Court may make its own independent evaluation.

It is unassailable that the sheriff's sale of this property fetched a price of \$180,000.00, the value for which plaintiff contends. Defendants' expert explained this figure by arguing that the property is still involved in an ongoing divorce action and that there are existing contracts between certain parties which meant that J.F. Stoabs & Sons still control the ultimate

disposition of the property. The Court finds these points slightly persuasive as to assigning a higher market value, but not the skyrocketing \$430,000.00 sought by defendants. The Court, from a review of the testimony presented, also finds that the "comparable sales" of other properties presented by defendants were more persuasive than those presented by plaintiff, particularly the site in Dewey, Oklahoma. This was the sale of a convenience store, as is the subject property, in a suburb of Bartlesville, where the subject property is located. The sale price was \$307,000.00. Having carefully considered all the evidence properly before the Court, the Court concludes that the fair market value of the property is \$300,000.00. Deducted from the total amount owed of \$493,542.70, the result is a deficiency judgment of \$193,542.70.

It is the Order of the Court that a deficiency judgment should be entered in the amount of \$193,542.70. The parties are granted ten days in which to submit a Judgment approved as to form.

IT IS SO ORDERED THIS 30th day of June, 1992.


H. DALE COOK
United States District Judge

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

FILED

JUL 7 1992

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

COY ARTHUR HILL,)
)
 Petitioner,)
)
 vs.)
)
 DAN REYNOLDS, et al.,)
)
 Respondents.)

Case No. 90-C-846-B ✓

ORDER

Before the Court is Petitioner's objection to the Magistrate Judge's recommendation to deny Petitioner's request for a Writ of Habeas Corpus.

Petitioner Coy Arthur Hill seeks habeas relief on a claim that he did not voluntarily plead guilty to two 1979 convictions in that, prior to his guilty pleas in 1979, he had not been advised that he had a constitutional right against self-incrimination; that his due process rights were violated because the trial court did not determine whether there was a factual basis for his guilty pleas, and, lastly, he was not advised, or incorrectly advised, of the maximum and minimum sentences applicable to the offenses charged which severely impacted his decision to plead guilty to the crimes charged.

On July 3, 1979, Hill pled guilty to Second Degree Burglary and to Unauthorized Use of Motor Vehicle. The Tulsa County District Court sentenced Hill to two three-years terms to run concurrently. Hill has served his time under the sentences but claims the 1979

W

convictions enhanced a current sentence.

The Magistrate Judge determined that the state District Judge did not specifically advise Hill of his Fifth Amendment right against self-incrimination but "that omission is not fatal", nor did he "advise Hill of the minimum and maximum sentences for each offense, which he should have done." The Magistrate Judge further concluded that "Hill has not alleged that he was unaware of the factual basis for the two charges. He only says Dalton did not specifically mention them."

Hill, in alleging that his due process rights were violated because the trial court did not determine that there was a factual basis for his guilty pleas in the 1979 convictions, cites Boykin v. Alabama, 395 U.S. 238 (1969). In that case, the Supreme Court ruled that a guilty plea cannot be assumed to be knowledgeable and voluntary if the record does not disclose an affirmative showing of same. A bare record of a guilty plea, without supporting evidence, cannot be presumed to be knowledgeable and voluntary. Id. Here, the record is arguably questionable whether Hill's guilty pleas were knowledgeable and voluntary.

The transcript of the record before Tulsa County District Judge Jay Dalton of the hearing in which the pleas were accepted reflects:

THE COURT: As to the unauthorized use of a motor vehicle, do you understand the nature of that offense? You do, do you not?

HILL: Yes, sir.

THE COURT: In CRF-79-483, you're charged with burglary in the second degree. Do you understand that?

HILL: Yes, sir.

THE COURT: Is your desire to voluntarily waive your right to jury and nonjury trial in each one of those charges?

HILL: Yes, sir.

THE COURT: Do you tell the Court at this time that you do this voluntarily? Is that correct?

HILL: Yes, sir.

THE COURT: What is your understanding of the word voluntary? What does that word mean to you?

HILL: On my own free will because I want to and nobody made me do it.

THE COURT: No one has forced you or coerced you to do this?

HILL: No, sir.

* * * * *

THE COURT: You tell the Court you are entering pleas of guilty because you are guilty of each one of the charges?

HILL: Yes, sir.

Hill argues that using the bare record of a guilty plea for enhancement purposes has been declared unconstitutional in the Sixth Circuit in Dunn v. Simmons, 877 F.2d 1275 (6th Cir. 1989) cert. den. 494 U.S. 1061 (1990). The Dunn court says that the fact that a guilty plea was entered in earlier convictions is not enough to presume validity, when considering whether to convict the defendant of being a persistent felony offender under Kentucky law. The state has the burden of proving that the plea was intelligently and voluntarily given when using prior convictions as a basis for convicting someone as a persistent felony offender. Id. at 1279.

Oklahoma has declined to apply Boykin retroactively. Stowe v. Oklahoma, 612 P.2d 1362 (Okla. Crim. App. 1980). The court in Smith

v. Oklahoma City, 513 P.2d 1327 (Okla. Crim. App. 1973) outlined the procedure Oklahoma courts should use when a prisoner enters a guilty plea, in order to preserve the record for later appeals regarding whether the plea was made knowledgeably and voluntarily. This procedure required, among other things, that the judge inform the prisoner of his rights to a jury trial, to court-appointed counsel, and to not incriminate himself. "An affirmative waiver of these requirements must be reflected in the record prior to the acceptance of a plea of guilty." Id. at 1329. The Smith court states that the procedure will be used in "all future cases." Boykin is applicable to Hill's guilty pleas in the two 1979 convictions.

Hill's guilty pleas in the 1979 convictions arguably fall short under Smith and Boykin standards. However, Hill's failure to file a direct appeal may bar him from habeas relief, Maines v. State, 597 P.2d 774 (Okla. Cr. 1979), because a post-conviction application is not a substitute for direct appeal. Where a criminal defendant does not file a direct appeal of his state court conviction, the deliberate bypass standard of Fay v. Noia, 372 U.S. 391 (1963) is applied to determine if the post-conviction application is procedurally barred. The Oklahoma Court of Criminal Appeals applied this procedural rule to Hill's 1985 application for post-conviction relief, denying Hill the relief sought. PC-89-765. Therefore the highest state court has expressed its decision on Hill's procedural default, satisfying the "plain statement" requirement of Harris v. Reed, 489 U.S. 255 (1989). Typically, the

validity of a guilty plea challenged by a habeas corpus petitioner is a matter of state law. Larsen v. Frazier, 835 F.2d 258 (10th Cir.1987). In a habeas corpus proceeding, a petitioner is limited to raising "errors of such constitutional magnitude that they are valid federal habeas claims." Brinlee v. Crisp, 608 F.2d 839 (10th Cir. 1979) cert.den. 444 U.S. 1047 (1980). The interpretation of the laws of a state by its highest deciding court should be followed unless the interpretation is inconsistent with fundamental principles of liberty and justice. Larsen, *supra*.

Also, the issue of laches could present an obstacle to Hill's current effort. The court in Allen v. Raines, 360 P.2d 949 (Okla. Crim. App. 1961), held that Oklahoma courts "do not look with favor upon a case where a person acquiesces in a sentence pronounced against him for a long period of time, 16 years in this case, and then seeks to have the judgment, regular on its face, set aside by asserting that his constitutional rights were denied him in the proceedings before the trial court, especially where the proof consists wholly of the statement of the petitioner." Id. at 951.

The Allen court also stated:

The right to relief by habeas corpus may be lost by laches, when the petition for habeas corpus is delayed for a period of time so long that the minds of the trial judge and court attendants become clouded by time and uncertain as to what happened, or due to dislocation of witnesses, the grim hand of death and the loss of records, the rights sought to be asserted have become mere matters of speculation, based upon faulty recollection, or figments of imagination, if not out-right falsification.

Id. at 952 (citations omitted).

In Application of Lewis, 339 P.2d 799 (Okla. Crim. App. 1959),

cert.den. 359 U.S. 995 (1959), the court held that the petitioner, who filed a habeas corpus petition alleging that his constitutional rights were violated when he entered a guilty plea, had waived his right to appeal because he waited 24 years to do so. "One cannot sit by and wait until lapse of time handicaps or makes impossible the determination of the truth of a matter, before asserting his rights. This is in accordance with the uniform holding of this court over a long period of years." Id. at 799. The court also pointed to a long list of cases in which the right to a habeas corpus petition was lost by laches.¹

The Court holds that Hill has lost the right to appeal. Hill did not, either directly or collaterally, appeal the 1979 guilty pleas until he raised it in his first application for post-conviction relief in 1985. By that time, he had lost the right to appeal the issue of voluntariness of his guilty pleas since he should have raised the issue on direct appeal.²

The Court holds that Hill is procedurally barred from raising the issue of the voluntariness of the 1979 guilty pleas. Further, even if not barred, a serious question exists as to Hill's laches which may or could prevent the Court from considering the issues

¹Ex parte Motley, 193 P.2d 613 (Okla. Crim. App. 1948), where eleven years expired prior to application; Ex parte Ray, 198 P.2d 756 (Okla. Crim. App. 1948), where eight years had expired; Ex parte Cole, 208 P.2d 193 (Okla. Crim. App. 1949), where 16 years expired; Ex parte French, 240 P.2d 818 (Okla. Crim. App. 1952), where 15 years expired.

² Hill was adequately advised of his appeal rights by the state District Court.

raised. The Court concludes the Magistrate Judge's Report and Recommendation that Hill's Petition for Writ of Habeas Corpus be dismissed should be and the same is hereby adopted and affirmed. The Court further concludes Hill's request for a Writ of Habeas Corpus should be and the same is DENIED.

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



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

ENTERED ON DOCKET
DATE JUL 6 1992

HANG H. LAI,)
)
Plaintiff,)
)
v.)
)
ALVIN W. LAVENDER II, et al.,)
)
Defendants.)

FILED

91-C-897-E / JUL 6 1992

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

ORDER

This order pertains to plaintiff's Complaint (Docket #1)¹, the Motion to Dismiss of Defendant, Alvin Lavender (#3), the Motion to Dismiss of Defendant, Oklahoma Department of Public Safety (#5), the Motion to Dismiss of Defendant, Kenneth Vanhoy (#7), Plaintiff's Response to Defendants' Motion to Dismiss Case (#9), Defendants, Alvin Lavender, Kenneth Vanhoy and the Oklahoma Department of Public Safety's Reply to Plaintiff's Response to Defendants' Motion to Dismiss (#10), Plaintiff's Replies to Defendants' Second Motion to Dismiss Case (#11), and Plaintiff's [Corrected] Replies to Defendants' Second Motion to Dismiss Case (#12). A hearing was held on July 1, 1992 and oral arguments were heard.

The facts as alleged by plaintiff are that, on October 28, 1990, he was driving on Highway I-69 heading north near Big Cabin, Oklahoma. Defendant Patrolman Alvin Lavender ("Lavender") stopped him and told him that he was driving 67 miles per hour in a 55 miles per hour limit zone. Plaintiff claims that, due to Lavender's erroneous communications and preconception that plaintiff was a criminal carrying drugs and his

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

uncontrollable temper, Lavender pointed a loaded gun at plaintiff with absolutely no provocation. Plaintiff contends Lavender physically abused him and brutally beat him up. Plaintiff alleges that Lavender willfully, knowingly, and wrongfully handcuffed him and did a forced body search. Plaintiff claims Lavender and his partner later searched his car and belongings, causing property damage. These actions were done under constant protest and warning by plaintiff that it was being done illegally.

Plaintiff claims that, even after his identity and the registration of the vehicle were verified, Lavender still insisted on illegally impounding plaintiff's car, detaining plaintiff, and charging him with a crime. Plaintiff was tried on misdemeanor charges on January 17, 1991 and was acquitted.

Plaintiff claims he suffered lasting knee, arm and shoulder injuries, emotional distress, monetary loss, and loss of personal credibility as a result of Lavender's actions and the subsequent trial. He claims that these actions resulted in violations of federal civil rights laws, 42 U.S.C. § 1983, and Oklahoma statutes, 51 Okla.Stat. § 153 and 76 Okla.Stat. § 5.2.

Defendants seek dismissal on the grounds that plaintiff's claim under the Oklahoma Governmental Tort Claims Act was filed after the statute of limitations had run, only the State of Oklahoma can be sued under that Act, the claim against the Oklahoma Department of Public Safety ("Department") is barred by the Eleventh Amendment, and no personal participation by the Department and Kenneth Vanhoy ("Vanhoy") in the civil rights violations has been alleged.

The rule for reviewing the sufficiency of any complaint is that the "complaint should

not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief". Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). A court may dismiss an action for failure to state a cause of action "only if it is clear that no relief could be granted under any set of facts which could be proved". Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

Under Oklahoma's Governmental Tort Claims Act, 51 Okla.Stat. § 151 *et seq.*, sovereign immunity was adopted as to the state's agencies and employees, and waived only insofar as the state was concerned. A claim concerning an alleged tortious act of a state employee must be submitted in writing to the Office of the Risk Management Administrator of the Purchasing Division of the Office of Public Affairs, who "shall immediately notify the Attorney General".² Title 51 of the Okla.Stat., § 157, provides that, as a condition precedent to bringing an action against the state, the state must be given notice of the claim and afforded a ninety (90) day review period within which to consider the claim.³

² Title 51, Okla.Stat., § 156(C) provides:

A claim against the state shall be in writing and filed with the Office of the Risk Management Administrator of the Purchasing Division of the Office of Public Affairs who shall immediately notify the Attorney General and the agency concerned and conduct a diligent investigation of the validity of the claim within the time specified for approval or denial of claims by Section 157 of this title. A claim may be filed by certified mail with return receipt requested. A claim which is mailed shall be considered filed upon receipt by the Office of the Risk Management Administrator.

³ Title 51, Okla.Stat., § 157 provides:

A. A claim is deemed denied if the state or political subdivision fails to approve the claim in its entirety within ninety (90) days, unless the interested parties have reached a settlement before the expiration of that period. A person may not initiate a suit against the state or a political subdivision unless the claim has been denied in whole or in part. The claimant and the state or political subdivision may continue attempts to settle a claim, however, settlement negotiations do not extend the date of denial.

B. No action for any cause arising under this act . . . shall be maintained unless valid notice has been given and the action is commenced within one hundred eighty (180) days after denial of the claim as set forth in this section. Neither the claimant nor the state or political subdivision may extend the time to commence an action by continuing to attempt settlement of the claim.

Once a claim is denied, the claimant has one hundred eighty (180) days in which to commence suit against the state.

Plaintiff's tort claim was formally denied by a letter dated April 17, 1991 (See Attachment "E" to plaintiff's Complaint). Plaintiff's time in which to commence suit under the Act may have expired before November 18, 1991, the date on which he filed his Complaint.⁴

Under Title 51 of the Okla.Stat., § 163(C)⁵, the proper party defendant in all actions arising under the provisions of the Governmental Tort Claims Act is the state and only the state. Agencies and employees of state government retain the immunity adopted under 51 Okla.Stat. § 152.1. Lavender, Vanhoy, and the Oklahoma Department of Public Safety are improperly named by plaintiff in his Governmental Tort Claims Act allegation.

The Department of Public Safety is also immune from suit by virtue of the Eleventh Amendment, which provides immunity to, and prohibits suits against, a state in federal court. Wallace v. State of Oklahoma, 721 F.2d 301 (10th Cir. 1983). The immunity applies unless specifically waived by the state, and Oklahoma has not waived its immunity. Id. at 306. Therefore, plaintiff's claim for damages under the Governmental Tort Claims Act is hereby dismissed without prejudice as it has been brought in an improper forum.

section. Neither the claimant nor the state or political subdivision may extend the time to commence an action by continuing to attempt settlement of the claim.

⁴ Plaintiff attaches a letter signed by Sue Wycoff which indicates that a suit must be filed by May 30, 1991, which is 90 days after the submission of the claim. In the context of this case, this communication with the unrepresented plaintiff raises the issue of estoppel. I decline to rule upon the issue of whether plaintiff's Governmental Tort Claims Act cause of action is barred by limitations and reserve that question for state court determination, in the event the Governmental Tort Claim cause of action is refiled there.

⁵ Title 51, Okla.Stat., § 163(C) provides, in pertinent part, that "[s]uits instituted pursuant to the provisions of this act shall name as defendant the state or the political subdivision against which liability is sought to be established...."

To be liable under 42 U.S.C. § 1983, a public official must have personally participated in the deprivation of a constitutional right. This is an essential allegation in a § 1983 claim. See, Coleman v. Turpen, 697 F.2d 1341, 1346 n.7 (10th Cir. 1982); Bennett v. Passic, 545 F.2d 1260, 1262-63 (10th Cir. 1976). It is settled that respondeat superior cannot be used as a basis for liability under 42 U.S.C. § 1983. Polk County v. Dodson, 454 U.S. 312, 325 (1981).

Plaintiff fails to allege any personal participation whatsoever on the part of defendants Vanhoy and the Oklahoma Department of Public Safety. Plaintiff only alleges that Vanhoy is the "chief" of the Oklahoma Department of Public Safety. This does not rise to the level of participation by Vanhoy or his department in the alleged deprivation of plaintiff's constitutional right. Plaintiff's § 1983 claims as to these defendants are dismissed.

Plaintiff has made no allegations of racial discrimination prohibited by 42 U.S.C. § 1981 or a conspiracy among the defendants prohibited by 42 U.S.C. § 1985. These claims are dismissed

Plaintiff has alleged that defendants violated Title 76 of the Okla.Stat., § 5.2, which is part of Oklahoma's "Good Samaritan Act". Plaintiff has pled no facts that would constitute a claim under this Act.⁶ This claim is dismissed.

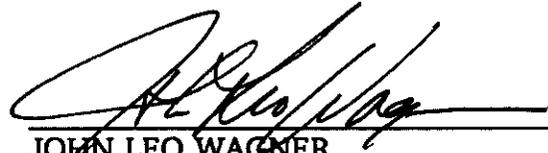
⁶ Title 76, Okla.Stat., § 5(a)(1), defines the individual protected by the Good Samaritan Act:

Where no prior contractual relationship exists, any person licensed to practice any method of treatment of human ailments, disease, pain, injury, deformity, mental or physical condition, or licensed to render services ancillary thereto, including licensed registered and practical nurses, who, under emergency circumstances that suggest the giving of aid is the only alternative to probable death or serious bodily injury, in good faith, voluntarily and without compensation, renders or attempts to render emergency care to an injured person or any person who is in need of immediate medical aid, wherever required, shall not be liable for damages as a result of any acts or omissions except for committing gross negligence or willful or wanton wrongs in rendering the emergency care.

In summary, the Motion to Dismiss of Defendant, Alvin Lavender (#3) is granted as to all claims but the 42 U.S.C. § 1983 claim. The Motion to Dismiss of Defendant, Oklahoma Department of Public Safety (#5) and the Motion to Dismiss of Defendant, Kenneth Vanhoy (#7) are granted in their entirety.

Discovery is to proceed as to plaintiff's one remaining claim under 42 U.S.C. § 1983 against the one remaining defendant, Lavender.

Dated this 6th day of July, 1992.



JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

n:lai.ord

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

IN THE UNITED DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

PHILLIPS PETROLEUM COMPANY,
Plaintiff,
v.
MANUEL LUJAN, JR., SECRETARY
OF INTERIOR, et al.,
Defendants.

Case No. 89-C-914-B

J U D G M E N T

In accord with the Order entered herein on October 24, 1991, wherein the Court granted Plaintiff Phillips Petroleum Company's motion for summary judgment and denied Defendants' motion for summary judgment, Judgment is herewith entered granting Summary Judgment in favor of Plaintiff and against all Defendants. Costs are assessed against Defendants if timely applied for under Local Rule 6. Each party is to bear their own attorneys fees.

DATED this 2nd day of July, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

7/6/92
FILED

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

JUN 10 1992

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

STAR ENTERPRISE AND
BECHTEL CORPORATION,

Plaintiffs,

vs.

RADCO, INC.,

Defendant.

CASE NO. 92-C-492-B

ORDER

This matter was transferred to this Court on May 28, 1992, (Order filed June 1, 1992) from the United States District Court for the Southern District of Texas, Houston Division, pursuant to Title 28, U.S.C., § 1404(a). The case was received and docketed in this Court on June 5, 1992.

Based upon Plaintiffs' Motion For Reconsideration, filed in the Southern District of Texas, Houston Division, that Court entered an Order June 10, 1992 (filed June 11, 1992) granting such motion and directing that the Clerk of the Court for Northern District of Oklahoma be notified so that the case may be returned to the Texas District Court. The Court stated its reason for granting the motion to reconsider was "[B]ecause the Court did not consider the opposition papers timely filed by plaintiffs before granting Radco's motion to change venue . . .".

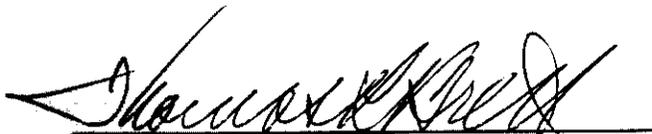
This Court is of the opinion that the Texas Court lost jurisdiction the moment the case was received in the Northern

District of Oklahoma unless an appropriate stay pleading was filed prior to the case receipt by the Northern District Court Clerk. The Court further concludes a Motion For Reconsideration, even filed prior to the receipt of the case by the Northern District Clerk, does not automatically stay such transfer Order. See, Blankenship v. Allis-Chalmers, 460 F.Supp. 37 (N.D.Miss.1978).

This Court takes judicial notice that Plaintiffs' Motion For Reconsideration was filed in the Southern District of Texas, Houston Division, on June 2, 1992, one day after the Court's transfer Order was entered but before the case was received by the Northern District of Oklahoma Clerk. This Court agrees with the Texas District Court that the better practice would be for the original Court to consider the parties' Motion For Transfer after all the filed pleadings have been entered.

The Court concludes that, to the extent it has jurisdiction herein, this matter is herewith re-transferred to the United States District Court for the Southern District of Texas, Houston Division.

IT IS SO ORDERED this 29th day of June, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 1 1992

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

LINDA SUSAN MORGAN; COUNTY)
TREASURER, Tulsa County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)

Defendants.)

CIVIL ACTION NO. 92-C-078-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 30 day
of June, 1992. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Wyn Dee Baker, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendant, Linda Susan
Morgan, appears not, but makes default.

The Court being fully advised and having examined the
court file finds that the Defendant, Linda Susan Morgan, was
served with Summons and Complaint on April 29, 1992; that
Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged
receipt of Summons and Complaint on January 31, 1992; and that
Defendant, Board of County Commissioners, Tulsa County, Oklahoma,
acknowledged receipt of Summons and Complaint on January 31,
1992.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on February 13, 1992; and that the Defendant, Linda Susan Morgan, has failed to answer and her default has therefore been entered by the Clerk of this Court.

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

Lot Twenty-Five (25), Block Three (3), Town of Carbondale, now an addition to Tulsa, Tulsa County, 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 Norma R. Glenn a/k/a Norma Rae Glenn and of judicially terminating the joint tenancy of Linda Susan Morgan and Norma R. Glenn a/k/a Norma Rae Glenn.

The Court further finds that Norma R. Glenn a/k/a Norma Rae Glenn (hereinafter referred to by either of these names) and Linda Susan Morgan became the record owners of the real property involved in this action by virtue of that certain Warranty Deed dated July 26, 1983, from the Administrator of Veterans Affairs to Norma R. Glenn, a single person, and Linda Susan Morgan, a single person, as joint tenants, and not as tenants in common,

with full right of survivorship, the whole estate to vest in the survivor in the event of the death of either, which Warranty Deed was filed of record on July 27, 1983, in Book 4710, Page 1894, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that on July 27, 1983, Norma R. Glenn and Linda Susan Morgan 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 \$37,000.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Norma R. Glenn and Linda Susan Morgan 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 real estate mortgage dated July 27, 1983. This mortgage was recorded on July 27, 1983, in Book 4710, Page 1978, in the records of Tulsa County, Oklahoma.

The Court further finds that Norma Rae Glenn died on January 21, 1984. Upon the death of Norma Rae Glenn, the subject property vested in her surviving joint tenant, Linda Susan Morgan, by operation of law. Certificate of Death No. 02019 issued by the Oklahoma State Department of Health certifies Norma Rae Glenn's death.

The Court further finds that the Defendant, Linda Susan Morgan, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Linda Susan Morgan, is indebted to the Plaintiff in the principal sum of \$35,458.00, plus interest at the rate of 11.5 percent per annum from October 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$5.40 (\$5.40 fees for service of Summons and Complaint).

The Court further finds that Plaintiff is entitled to a judicial determination of the death of Norma Rae Glenn, and to a judicial termination of the joint tenancy of Linda Susan Morgan and Norma R. Glenn.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$4.00 which became a lien on the property as of 1990. Said lien is inferior to the interest of the Plaintiff, United States of America.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the death of Norma Rae Glenn be and the same hereby is judicially determined to have occurred on January 21, 1984, in the City of Tulsa, Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the joint tenancy of Linda Susan Morgan and Norma R. Glenn in the above-described real property be and the same hereby is judicially terminated as of the date of the death of Norma R. Glenn a/k/a Norma Rae Glenn on January 21, 1984.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Linda Susan Morgan, in the principal sum of \$35,458.00, plus interest at the rate of 11.5 percent per annum from October 1, 1990 until judgment, plus interest thereafter at the current legal rate of 4.11 percent per annum until paid, plus the costs of this action in the amount of \$5.40 (\$5.40 fees for service of Summons and Complaint), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$4.00 for personal property taxes for the year 1990, plus the costs of this action.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Linda Susan Morgan, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of

Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

Third:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$4.00, personal property taxes which are currently due and owing.

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

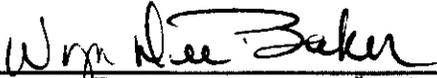
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON

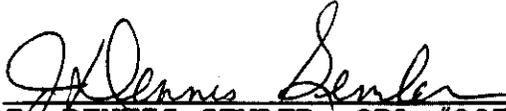
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



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



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

Judgment of Foreclosure
Civil Action No. 92-C-078-E

WDB/css

ENTERED ON DOCKET
DATE JUL 6 1992

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL J. MORGAN; SHELBY R.)
 MORGAN; COUNTY TREASURER, Tulsa)
 County, Oklahoma; and BOARD OF)
 COUNTY COMMISSIONERS, Tulsa)
 County, Oklahoma,)
)
 Defendants.)

FILED
JUL 01 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 91-C-951-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15th day
of July, 1992. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Wyn Dee Baker, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, Michael J.
Morgan and Shelby R. Morgan, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendants, Michael J. Morgan and
Shelby R. Morgan, were served with Summons and Complaint on
March 17, 1992; that Defendant, County Treasurer, Tulsa County,
Oklahoma, acknowledged receipt of Summons and Complaint on
December 16, 1991; and that Defendant, Board of County
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on December 16, 1991.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on January 3, 1992; that the Defendants, Michael J. Morgan and Shelby R. Morgan, 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 Sixteen (16), Block Eight (8), VAL CHARLES ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on June 21, 1985, the Defendants, Michael J. Morgan and Shelby R. Morgan, 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 \$41,000.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Michael J. Morgan and Shelby R. Morgan, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated June 21, 1985, covering the above-described

property. Said mortgage was recorded on June 25, 1985, in Book 4872, Page 640, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Michael J. Morgan and Shelby R. Morgan, 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, Michael J. Morgan and Shelby R. Morgan, are indebted to the Plaintiff in the principal sum of \$39,849.87, plus interest at the rate of 11.5 percent per annum from December 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$6.00 (\$6.00 fees for service of Summons and Complaint).

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Michael J. Morgan and Shelby R. Morgan, in the principal sum of \$39,849.87, plus interest at the rate of 11.5 percent per annum from December 1, 1990 until judgment, plus interest thereafter at the current legal rate of 4.11 percent per annum until paid, plus the costs of this action in the amount of \$6.00 (\$6.00 fees for service of Summons and Complaint), plus any additional sums advanced or to be advanced or expended during this foreclosure

action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Michael J. Morgan and Shelby R. Morgan, 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 appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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

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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



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



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

Judgment of Foreclosure
Civil Action No. 91-C-951-B

WDB/css

FILED

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

JUL 2 1992

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

CHRISTOPHER K. VAN LANDINGHAM,)
)
 Plaintiff,)
)
 v.)
)
 UNITED PARCEL SERVICE, INC.,)
)
 Defendant.)

No. 91-C-744-E

ENTERED ON DOCKET

DATE JUL 6 1992

ORDER OF DISMISSAL WITH PREJUDICE

Upon stipulation of the parties, the above-styled and numbered cause is hereby **DISMISSED** with prejudice, each party to bear its own costs.

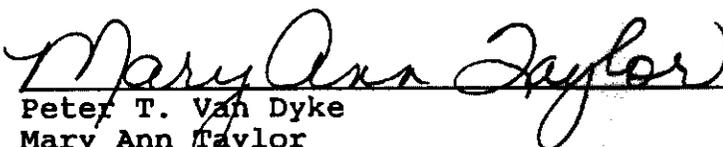
S/ JAMES O. ELLISON

United States District Judge

APPROVED:



Jeff Nix
2121 S. Columbia, #710
Tulsa, Oklahoma 74114
(918) 742-4486
Attorney for Plaintiff



Peter T. Van Dyke
Mary Ann Taylor

LYTLE SOULÉ & CURLEE
1200 Robinson Renaissance
119 North Robinson
Oklahoma City, Oklahoma 73102
(405) 235-7471
Attorneys for Defendant

~~EXHIBIT 5~~

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

THRIFTY RENT-A-CAR SYSTEM, INC.)
an Oklahoma Corporation,)
)
Plaintiff/Counterdefendant,)
)
vs.)
)
LOS ANGELES RENTAL AND LEASING,)
INC., a California corporation;)
ABCO AUTO FLEET, INC., a Georgia)
corporation; TED L. ANDERSON,)
an individual; P. THOMAS ANDERSON,)
an individual; and MARVIN J.)
ANDERSON, an individual,)
)
Defendants/Counterplaintiffs.)

Case No. 91-C-482-B

FILED
JUL 01 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

**STIPULATION AND ORDER DISMISSING THRIFTY'S
COMPLAINT AGAINST MARVIN J. ANDERSON
WITH PREJUDICE**

WHEREAS, plaintiff and counterdefendant Thrifty Rent-A-Car System, Inc. ("Thrifty") and Los Angeles Rental and Leasing, Inc., ABCO Auto Fleet, Inc., Ted L. Anderson, P. Thomas Anderson and Marvin J. Anderson ("the Andersons") have entered into an agreement, dated June 25, 1992 (the "Settlement Agreement");

WHEREAS, the Settlement Agreement provides for, among other things, the dismissal of Thrifty's complaint against Marvin J. Anderson with prejudice;

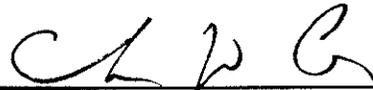
NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED as follows:

Thrifty's complaint against Marvin J. Anderson is hereby dismissed with prejudice, each party to bear its own costs.



Deanne C. Siemer
Pillsbury, Madison & Sutro
1667 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 887-0300

Counsel for Plaintiff and
Counterdefendant Thrifty Rent-
A-Car System, Inc.



Christopher Cerf
Wiley, Rein & fielding
1776 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 828-4918

Counsel for Defendants and
Counterclaimants

Dated: June 25, 1992

ORDER

Pursuant to the foregoing Stipulation, it is hereby ordered and adjudged that Thrifty's complaint against Marvin J. Anderson in this action be, and hereby is, dismissed with prejudice, each party to bear its own costs.

S/ THOMAS R. BRETT

United States District Judge

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

BEVERLY CROWLEY,)
)
 Plaintiff,)
)
 VS.)
)
 WORD OF FAITH WORLD OUTREACH)
 CENTRAL CHURCH, INC.; ROBERT)
 TILTON MINISTRIES; and ROBERT)
 TILTON, Individually,)
)
 Defendants.)

Case no. 92-C-168-E

FILED

JUN 30 1992

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

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Beverly Crowley, by and through RICHARDSON, MEIER & STOOPS, by Gary L. Richardson, and files her Notice of Dismissal without prejudice for each and every of the above-captioned defendants. This Dismissal is made pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure and for the reason that Plaintiff intends to pursue her claims against the above-named defendants in Tulsa County District Court. Plaintiff would further show the Court that she intends to name additional defendants, thereby necessitating the removal from the jurisdiction of this Court because of lack of diversity of the parties.

Respectfully submitted,

RICHARDSON, MEIER & STOOPS

By Gary Richardson
Gary L. Richardson, OBA # 7547
Dana C. Bowen, OBA # 10739
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105
(918) 492-7674

-- AND --

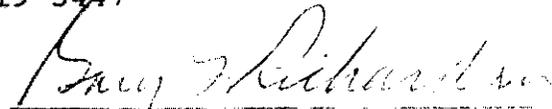
Bill Donovan
BILL DONOVAN & ASSOCIATES
Union Depot Building, 2nd Floor
111 East First Street
Tulsa, Oklahoma 74103
(918) 592-7777

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I, Gary L. Richardson, attorney, do hereby certify that a true and exact copy of the above and foregoing, was mailed by me through First Class U.S. Mails, with postage fully prepaid thereon, to the below listed individuals at the address that follows, the 9 day of June, 1992.

Sidney G. Dunagan
Kari S. Moroney
GABLE & GOTWALS
2000 Fourth National Bank Building
15 West Sixth Street
Tulsa, Oklahoma 74119-5447



Gary L. Richardson

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

ENTERED ON DOCKET
JUL 2 1992
DATE _____

DOROTHY RIES, widow of)
FRED J. RIES, deceased,)
)
Plaintiff,)

vs.)

Case no. 92-C-227-E

ROBERT TILTON, individually and)
d/b/a ROBERT TILTON MINISTRIES;)
and WORD OF FAITH WORLD)
OF BREACH CENTER CHURCH,)
INC., a foreign corporation,)
)
Defendants.)

FILED

JUN 30 1992

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

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Dorothy Ries, widow of Fred J. Ries, Deceased, by and through RICHARDSON, MEYER & STOOPS, by Gary L. Richardson, and files her Notice of Dismissal without prejudice for each and every of the above-captioned defendants. This Dismissal is made pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure and for the reason that Plaintiff intends to pursue her claims against the above-named defendants in Tulsa County District Court. Plaintiff would further show the Court that she intends to name additional defendants, thereby necessitating the removal from the jurisdiction of this Court because of lack of diversity of the parties.

Respectfully submitted,

RICHARDSON, MEYER & STOOPS

By Gary L. Richardson
Gary L. Richardson, OBA # 7547
Dana C. Bowen, OBA # 10739
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105
(918) 492-7674

Bill Donovan
BILL DONOVAN & ASSOCIATES
Union Depot Building, 2nd Floor
111 East First Street
Tulsa, Oklahoma 74103

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I, Gary L. Richardson, attorney, do hereby certify that a true and exact copy of the above and foregoing, was mailed by me through First Class U.S. Mails, with postage fully prepaid thereon, to the below listed individuals at the address that follows, the 17th day of June, 1992.

Sidney G. Dunagan
Kari S. Moroney
GABLE & GOTWALS
2000 Fourth National Bank Building
15 West Sixth Street
Tulsa, Oklahoma 74119-5447



Gary L. Richardson

ENTERED ON DOCKET
DATE JUL 24 1992

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

ELIENE R. GAINES,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT WOODSON, individually)
 and d/b/a ROBERT WOODSON)
 MINISTRIES and KING OF FAITH)
 WORLD OUTREACH CENTER CHURCH,)
 INC., a foreign corporation,)
)
 Defendants.)

Case No. 92-C-409 E

FILED

JUL 29 1992

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

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Eliene R. Gaines, by and through RICHARDSON, MEIER & STOOPS, by Gary L. Richardson, and files her Notice of Dismissal without prejudice for each and every of the above-captioned defendants. This Dismissal is made pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure and for the reason that Plaintiff intends to pursue her claims against the above-named defendants in Tulsa County District Court. Plaintiff would further show the Court that she intends to name additional defendants, thereby necessitating the removal from the jurisdiction of this Court because of lack of diversity of the parties.

Respectfully submitted,

RICHARDSON, MEIER & STOOPS

By Gary L. Richardson
Gary L. Richardson, OBA # 7547
Dana C. Bowen, OBA # 10739
5727 South Lewis, Suite 520
Tulsa, Oklahoma 74105
(918) 492-7674

-- AND --

Bill Donovan
BILL DONOVAN & ASSOCIATES
Union Depot Building, 2nd Floor
111 East First Street
Tulsa, Oklahoma 74103
(918) 592-7777

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I, Gary L. Richardson, attorney, do hereby certify that a true and exact copy of the above and foregoing, was mailed by me through First Class U.S. Mails, with postage fully prepaid thereon, to the below listed individuals at the address that follows, the 30th day of June, 1992.

Sidney G. Dunagan
Kari S. Moroney
CABLE & COTWALS
2000 Fourth National Bank Building
15 West Sixth Street
Tulsa, Oklahoma 74119-5447



Gary L. Richardson

DATE JUL 02 1992

EXHIBIT 4

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

FILED

JUL 01 1992

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

THRIFTY RENT-A-CAR SYSTEM, INC.)
an Oklahoma Corporation,)
)
Plaintiff/Counterdefendant,)
)
vs.)
)
LOS ANGELES RENTAL AND LEASING,)
INC., a California corporation;)
ABCO AUTO FLEET, INC., a Georgia)
corporation; TED L. ANDERSON,)
an individual; P. THOMAS ANDERSON,)
an individual; and MARVIN J.)
ANDERSON, an individual,)
)
Defendants/Counterplaintiffs.)

Case No. 91-C-482-B

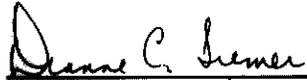
JOINT MOTION FOR ADMINISTRATIVE CLOSING ORDER

WHEREAS, plaintiff and counterdefendant Thrifty Rent-A-Car System, Inc. ("Thrifty") and defendants and counterplaintiffs Los Angeles Rental and Leasing, Inc., ABCO Auto Fleet, Inc., Ted L. Anderson, P. Thomas Anderson and Marvin J. Anderson ("the Andersons") have entered into an agreement, dated June 25, 1992 (the "Settlement Agreement");

WHEREAS, the Settlement Agreement provides for, among other things, the entry of an administrative closing order;

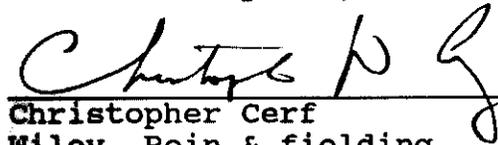
Now, Thrifty and the Andersons hereby move the court for entry of an administrative closing order removing this case from the

active docket and allowing the case to be reopened only upon the terms set forth in the Settlement Agreement.



Deanne C. Siemer
Pillsbury, Madison & Sutro
1667 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 887-0300

Counsel for Plaintiff and
Counterdefendant Thrifty Rent-
A-Car System, Inc.



Christopher Cerf
Wiley, Rein & fielding
1776 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 828-4918

Counsel for Defendants and
Counterclaimants

Dated: June 25, 1992

ORDER

Pursuant to the foregoing Stipulation, and Administrative Closing Order is hereby entered and the case is removed from the active docket. This case may be reopened only in accordance with the terms of this Settlement Agreement.

S/ THOMAS R. BRETT

United States District Judge

DATE 7/2/92

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

IN RE:

VOGUE COACH COMPANY

Debtor,

JUDI E. BEAUMONT, TRUSTEE

Plaintiff,

vs.

FOURTH NATIONAL BANK OF TULSA,
FIRST NATIONAL BANK OF PRYOR CREEK,
GENERAL ELECTRIC CAPITAL
CORPORATION, VOGUE R.V. SALES OF
CALIFORNIA AND JOSEPH Q. ADAMS as
TRUSTEE FOR VOGUE R.V. SALES OF
CALIFORNIA,

Defendants,

FOURTH NATIONAL BANK OF TULSA,

Third Party Plaintiff,

vs.

TRANSAMERICA COMMERCIAL FINANCE
CORPORATION,

Third Party Defendant.

) Case No. 90-03352-C
) (Chapter 7)

) Adv. Pro. No. 91-0345-C

) Case No. 92-C-084-B

FILED

JUL 01 1992

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

ORDER GRANTING JOINT APPLICATION
FOR ADMINISTRATIVE CLOSING

On this 1st day of July, 1992, there comes before the Court the Joint
Application for Administrative Closing Order filed herein by all of the parties to this action.

The parties request that the Court close this case administratively for a period of six (6)

months in order that the parties may finalize the Settlement Agreement which is now substantially completed. Having reviewed the Application, the Court finds that it should be granted.

IT IS THEREFORE ORDERED that this case is administratively closed.

IT IS FURTHER ORDERED that any party hereto may reopen this case upon motion, provided that if no such motion is made by January 4, 1993, this case will at that time be deemed dismissed with prejudice.

IT IS SO ORDERED THIS 1st DAY OF July, 1992.

SV THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT

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

FILED

JUL 1 1992

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

JUNE S. MARTIN, TRUSTEE OF
THE ANNA BELLE FLYNN
REVOCABLE TRUST,

Plaintiff,

vs.

No. 91 C 134 E

MEDICAL PLAN OF CHEVRON
CORPORATION MEDICAL
ORGANIZATION, and
METROPOLITAN
LIFE INSURANCE COMPANY,

Defendants.

ENTERED ON DOCKET
DATE JUL 2 1992

**ORDER DISMISSING THE PLAINTIFF'S PETITION AGAINST
DEFENDANT, MEDICAL PLAN OF CHEVRON CORPORATION
MEDICAL ORGANIZATION, WITH PREJUDICE**

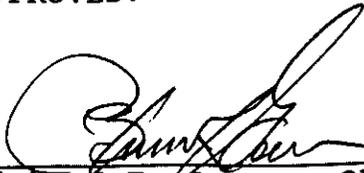
Upon the Joint Stipulation and Request for Entry of Order
Dismissing the Plaintiff's Petition With Prejudice, and pursuant to
Rule 41, Federal Rules of Civil Procedure;

IT IS THEREFORE ORDERED that Plaintiff's, June S. Martin,
Trustee of the Anna Belle Flynn Revocable Trust, claim is dismissed
with prejudice, with each party to bear its own costs and
attorney's fees.

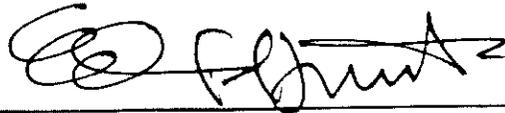
57 JAMES O. ELLISON

JUDGE

APPROVED:



Richard T. Garren OBA #3253
P. O. Box 52400
Tulsa, Ok 74152
918/743-9633
Attorney for Plaintiff
June S. Martin, Trustee of the
Anna Belle Flynn Revocable Trust



Edwin S. Hurst
Paul E. Swain, III
500 Oneok Plaza
100 W. 5th St.
Tulsa, Ok 74103

And,

Gina G. Palmer
P. O. Box 3725
Houston, Tx 77753-3725

Attorneys for Defendant Medical
Plan of Chevron Corporation
Medical Organization

Flynn.Dis

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

DATE 7/2/92

FILED

JUL 01 1992

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

UNITED DOMINION INDUSTRIES,
(formerly AMCA INTERNATIONAL
CORPORATION),

Plaintiff,

vs.

ECONO-THERM ENERGY SYSTEMS
CORP. and MORGAN PUMP CO.,

Defendants.

Case No. 91-C-424-B

ORDER

Before the Court are the plaintiff's motion for summary judgment, pursuant to Fed.R.Civ.P. 56, and the Magistrate Judge's Report and Recommendation to dismiss for failure to state a factual basis for Plaintiff's claim, pursuant to Local Rule 17(c). Plaintiff United Dominion Industries ("UDI"), formerly AMCA International Corp., alleges that Defendants Econo-Therm Energy Systems ("Econo-Therm") and Morgan Pump Co.¹ breached an asset purchase agreement dated October 7, 1985, that outlined AMCA's purchase of Braden Manufacturing plant ("Braden"). The contract stated, among other provisions, that Braden met all federal health and safety regulations, and that Defendants would indemnify AMCA, now UDI, for any loss suffered due to liabilities not assumed in the contract.

UDI hired former employees of Defendants to work at Braden.

¹Morgan apparently was a division of Econo-Therm, whose total assets were sold to the plaintiff in the asset purchase agreement between the parties in this case.

alm

Beginning in 1986, these employees began filing workers' compensation claims against UDI, alleging permanent hearing loss due to their employment at Braden. The employees stated that most of their noise exposure occurred during Defendants' ownership of Braden. However, UDI was ordered to pay all the workers' compensation claims associated with the long-term hearing loss, which UDI says totaled \$226,534.22. UDI states that baseline audiometric exams, required by the Section 1910 of the Occupational Safety Health Administration Act, were not conducted by Defendants, therefore UDI could not defend against the workers' compensation claims. UDI alleges Defendants breached the contract because of this violation of OSHA regulations, and because Defendants did not indemnify UDI for the losses sustained in the payment of workers' compensation claims.

Defendants are no longer represented in this case. In 1986, Econo-Therm filed for Chapter 11 bankruptcy in the United States District Court of Minnesota and UDI filed a Proof of Claim in the bankruptcy case. An agreement was reached that allowed UDI to file this suit, provided that UDI waives any right it may have against Econo-Therm beyond that for which there may be insurance coverage. Continental Loss Adjusting Services Inc., acting on behalf of Continental Insurance Company, provided representation for Econo-Therm in this case through January 1992. The attorney retained by Continental, James C. Daniel, notified the Court on January 27, 1992, that Continental had withdrawn representation because Plaintiff's claim would not be covered by the insurance policy

Continental had provided. Daniel stated that Econo-Therm is a de facto defunct corporation with no remaining officers, directors or employees. No attorney or representative of Econo-Therm has entered an appearance since the withdrawal of Daniel as counsel.

The "last injurious exposure" rule of Title 85 O.S. §11(4) bars the right of a current employer to seek contribution from a former employer for workers' compensation claims:

Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and the insurance carrier, if any, on the risk when such employee was last so exposed under such employers, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier...

UDI points to Parks v. Flint Steel Corp., 755 P.2d 680 (Okla. 1988) in support of its right to indemnification from Defendants. The Parks court held that the last injurious exposure rule does not transfer total liability from the earlier employer to the subsequent employer for workers' compensation claims of hearing loss, which is a cumulative effect accident, when there is unrefuted medical evidence that the injury arose during the worker's earlier employment. Parks allows a worker who files a compensation claim against his previous employer to collect workers' compensation benefits. The case does not deal with a current employer seeking indemnification from the previous employer, as is the case here.

The issue presented, therefore, is whether the parties intended that Econo-Therm would indemnify UDI for workers' compensation claims based on injuries caused before UDI purchased

Braden. The contract states that Defendants "jointly and severally agree to protect, defend, hold harmless and indemnify AMCA from and against any and all claims, suits, actions, damages and liabilities" that AMCA did not expressly assume, for breaches or inaccuracies in the contract, and for representations and warranties made by Defendant in the contract. (Section 3.3, page 11 of Plaintiff's Exhibit 1).

The contracting parties are presumed to have created a contract that was consistent with the law in force at the time the agreement is made. McKinley v. Prudential Property & Cas. Ins., 619 P.2d 1269 (Okl.App. 1980); Sinclair Oil & Gas Co. v. Bishop, 441 P.2d 436 (Okl. 1968). The rule of construction of indemnity contracts is to effect the intention of the parties, as long as it is consistent with accepted legal principles. Clifford v. United States Fidelity & Guaranty Co., 249 P. 938 (Okl. 1926).

Allied Hotels Co., Ltd., v. H. & J. Construction Co., Inc., 376 F.2d 1 (10th Cir. 1967) states, in regard to interpreting an indemnity provision, that "the language employed must clearly and definitely show an intention to indemnify against the loss or liability involved." If the parties intend by their contract to modify existing law, that intention must be expressed clearly. In Dickason v. Dickason, 607 P.2d 674 (Okl. 1980), the court stated:

An intent to modify applicable law by contract is not effective unless the power is expressly exercised ... To escape the incidence of general law, the agreement ... must not be silent as to the parties' intent vis-a-vis the law that applies to them.

Id. at 677.

The Court concludes that while the parties would be free to contract contrary to existing law for indemnity for workers' compensation claims of cumulative injury, such intent is not specifically expressed in the contract. A statement that Defendants would "indemnify AMCA from and against any and all claims, suits, actions, damages and liabilities" that AMCA did not expressly assume is too general to allow the Court to conclude that the parties specifically intended to contract around existing workers' compensation law.

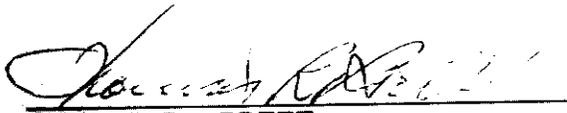
UDI, in its objection to the Magistrate Judge's Report and Recommendation, states that rather than seeking indemnification, it seeks damages for Defendants' breach of contract for failure to conduct the audiometric exams. The Court, however, concurs with the Magistrate Judge in finding that, while the contract may have been breached, UDI has failed to state a factual basis for its allegation that the Defendants' failure to provide baseline audiometric exams was the direct cause of UDI's incurred workers' compensation liabilities, even taking UDI's statements of undisputed facts as true, pursuant to its motion for summary judgment.

Although UDI states that expert medical opinion was available to the Workers' Compensation Court that indicated the workers' hearing losses could be attributable to Defendants, the allegations of damages as a result of a lack of baseline audiometric exams is wholly speculative. UDI has provided no factual basis for its allegation that the audiometric exams would have affected the

court's decision in holding UDI liable for the full amount of workers' compensation claims.

Therefore, the Court adopts and affirms the Magistrate Judge's Report and Recommendation. This case is hereby DISMISSED pursuant to Local Rule 17(c). This motion renders the plaintiff's motion for summary judgment moot.

IT IS SO ORDERED, this 15th day of July, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE 7-2-92

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

GENERAL ELECTRIC CAPITAL)
CORPORATION, a New York corporation,)
)
Plaintiff,)

vs.)

FOURTH NATIONAL BANK OF TULSA, a)
National Banking Association, and FIRST)
NATIONAL BANK OF PRYOR CREEK, a)
National Banking Association,)
)
Defendants,)

FOURTH NATIONAL BANK OF TULSA,)
)
Third Party Plaintiff,)

vs.)

JUDI E. BEAUMONT as Trustee of Vogue)
Coach Company, JOSEPH Q. ADAMS as Trustee)
of Vogue R.V. Sales of California, Inc.,)
and TRANSAMERICA COMMERCIAL)
FINANCE CORPORATION,)
)
Third Party Defendants.)

FILED

JUL 01 1992

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

Case No. 92-C-017-B

ORDER GRANTING JOINT APPLICATION
FOR ADMINISTRATIVE CLOSING

On this 1st day of July, 1992, there comes before the Court the Joint Application for Administrative Closing Order filed herein by all of the parties to this action. The parties request that the Court close this case administratively for a period of six (6) months in order that the parties may finalize the Settlement Agreement which is now substantially completed. Having reviewed the Application, the Court finds that it should be granted.

IT IS THEREFORE ORDERED that this case is administratively closed.

IT IS FURTHER ORDERED that any party hereto may reopen this case upon motion, provided that if no such motion is made by January 4, 1993, this case will at that time be deemed dismissed with prejudice.

IT IS SO ORDERED THIS 1st DAY OF July, 1992.

S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT

DATE 6/01/92

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

DON BILLUPS, et al,)
)
 Plaintiffs,)
)
 v.)
)
 HENRY BLOOMFIELD, et al,)
)
 Defendants.)

92-C-40-B

ORDER

On March 4, 1992, the Defendants filed a Motion To Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). As of this date, the Plaintiff has not filed a response. The applicable part of Local Rule 15 states:

Each motion, application, and objection filed in every civil and criminal case shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memorandum in opposition to such motion and objection shall be filed within fifteen (15) days in a civil case...after the filing of the motion or objection...Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

The Defendants filed their Motion To Dismiss on March 4 -- nearly four months ago. The Plaintiff has neither responded nor offered any reason as to why such a response was not made. Therefore, the Motion To Dismiss is GRANTED. The case will be dismissed with prejudice.

SO ORDERED THIS 30th day of June, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE 7-1-92

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

PHILIP C. BARR, individually,)
and BARR ENTERPRISES, INC.,)
an Oklahoma corporation,)
Plaintiff,)

v.)

KENNETH SASSER, BERDINA SASSER,)
and KEN SASSER ENTERPRISES, INC.,)
an Oklahoma corporation,)
Defendants.)

No. 91-C-197-B

FILED

JUN 21 1992

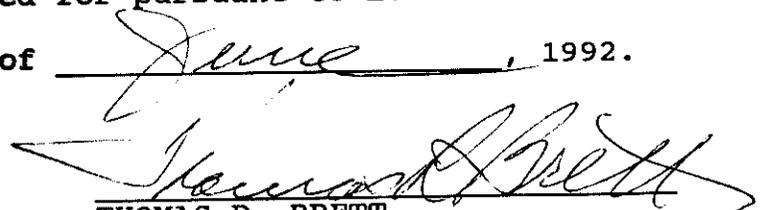
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law filed this date, Judgment is hereby entered in favor of Plaintiffs, Philip C. Barr, individually, and Barr Enterprises, Inc., an Oklahoma corporation, and against the Defendants, Kenneth Sasser, Berdina Sasser and Ken Sasser Enterprises, Inc., an Oklahoma corporation, regarding Plaintiff's injunction claim, as set out therein. No money damages are awarded Plaintiffs on said claims. The Plaintiffs are to have judgment on Defendants' counterclaim.

Plaintiffs are awarded costs of this action and a reasonable attorney's fee if timely applied for pursuant to Local Rule 6.

DATED this 29th 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 7-1-92

PHILIP C. BARR, individually,
and BARR ENTERPRISES, INC.,
an Oklahoma corporation,

Plaintiff,

v.

KENNETH SASSER, BERDINA SASSER,
and KEN SASSER ENTERPRISES, INC.,
an Oklahoma corporation,

Defendants.

No. 91-C-197-B

F I L E D

JUN 29 1992

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

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This action for federal (15 U.S.C. § 1125(a)) and state (Okla. Stat. tit. 75, § 31) trademark infringement and Oklahoma Deceptive Trade Practices Act violations (Okla. Stat. tit. 78, § 53), including Defendants' counterclaim for abandonment and abuse of trademark, came on for trial to the Court, sitting without a jury, on May 26 and 27, 1992. Following consideration of the evidence, applicable law, and arguments of counsel relating to the issues involved, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The parties hereto, Philip C. Barr ("Barr"), Kenneth Sasser ("Sasser") and Berdina Sasser, now and at all relevant times were residents and citizens of Tulsa County, Oklahoma, in the Northern District of Oklahoma. The business entities, **BARR ENTERPRISES, INC.** and **KEN SASSER ENTERPRISES, INC.**, are Oklahoma corporations with their principal place of business in Tulsa,

Oklahoma.

2. Defendants began operating a custom drapery business in approximately 1960 under the trade name "*DRAPERIES BY KEN SASSER.*" Defendants invested considerable time, effort and money in promoting the business itself and in the trade name "*DRAPERIES BY KEN SASSER.*" The custom drapery business was operated by the Defendants continuously up through 1982 under the trade name "*DRAPERIES BY KEN SASSER.*" The trade name by way of quality work and drapery products had developed significant good will in the area of Tulsa and Northeast Oklahoma.

3. Individual Defendants Kenneth Sasser and Berdina Sasser are husband and wife; together they own the entire interest in Defendant corporation, Ken Sasser Enterprises, Inc., an Oklahoma corporation.

4. In 1976, Plaintiff Philip Barr was employed by Defendants at the "*DRAPERIES BY KEN SASSER*" business and became the son-in-law of the individual Defendants by marrying their daughter.

5. In 1981, Defendant Ken Sasser approached his then son-in-law, Plaintiff Philip C. Barr, about buying the custom drapery business and they discussed a purchase price. For the calendar year 1982, a written agreement (Plaintiffs' Exhibit No. 1) was entered into transferring the entire assets of the business including the trade name "*DRAPERIES BY KEN SASSER*" to Plaintiff Barr for \$170,000 to be paid over a ten-year period. Defendants conveyed "the name of *DRAPERIES BY KEN SASSER*", and the right to use

the name, advertise under the name and in all premises operate the business with the benefit of the name '*DRAPERIES BY KEN SASSER*'." (See Court order dated March 24, 1992). The Plaintiff has remained current in the payments.

6. Prior to 1982 the Defendants created and used in connection with the business operated at 2609-C South Memorial a fabric roll logo which included the trade name "*DRAPERIES BY KEN SASSER*" in which the name Ken Sasser was a stylized signature.

7. At the time of the sale of the business in December 1982, "*DRAPERIES BY KEN SASSER*" was located at 2609-C South Memorial Drive, Tulsa, Oklahoma, which is its present location.

8. Plaintiff Barr organized Barr Enterprises, Inc., an Oklahoma corporation, after purchase of the "*DRAPERIES BY KEN SASSER*" business in 1982.

9. Since the date of purchase of the business, Plaintiffs have continued to operate the custom drapery business under the trade name and trademark "*DRAPERIES BY KEN SASSER*." Plaintiffs have also continued the usage started by the Defendants of the trade name "*KEN SASSER DRAPERIES*."

10. At the time of the purchase of the business, Plaintiffs placed a value of approximately \$70,000 on the good will of the business of which the trade name is a valuable component. Since the time of purchase of the business, Plaintiffs have spent approximately \$181,000 in advertising in promoting the business and the trade name.

11. The use of the phrase "*KEN SASSER MEANS DRAPERIES*" and the phrase "*KEN SASSER MEANS MORE THAN DRAPERIES*" was originated by the Plaintiffs after the purchase of the business at 2609-C South Memorial.

12. In 1979, the Defendants opened a separate, independent business called "*FREDDIES DISCOUNT DRAPERIES*" which continues to this day. By 1990, there was a single "*FREDDIES*" location on 21st Street in Tulsa managed by Mrs. Sasser. In January 1990, Defendants changed their newspaper advertising for the Freddie's store to read: "*KEN SASSER'S FREDDIES DISCOUNT FABRICS, INC.*" (Plaintiffs' Exhibit 56). From the spring of 1990 up to February 1991, Defendants placed at least one advertising sign visible from the exterior of the business as follows:

KEN SASSER'S

FREDDIES FOR CUSTOM DRAPERIES DISCOUNT FABRICS --

THE ORIGINAL DRAPERY FAMILY

(Plaintiffs' Exhibits 3 and 57).

13. In March 1991, Defendants began operating a new business under the trade name "*KEN SASSER FABRIC AND TRIM*" with the phrase "*THE ORIGINAL DRAPERY FAMILY*" used therewith. (Plaintiff's Exhibits 4 and 14).

14. The Defendants have continued to utilize from time to time a supply of work order forms which contained thereon the statement "work room" and "2609 S. Memorial" and these words have

not been obliterated from all such forms when used by Defendants.

15. From the time of the purchase of the business until 1987, Defendant Ken Sasser served as an officer of Plaintiff's corporation, Barr Enterprises, Inc. Defendants also purchased custom draperies from Plaintiffs from the time of the purchase in 1982 until 1989.

16. Defendant Ken Sasser was aware of the trade name usage "*DRAPERIES BY KEN SASSER*," "*KEN SASSER DRAPERIES*," "*KEN SASSER MEANS DRAPERIES*" and other derivatives. No objection was raised by the Defendants to the use of the trade name or advertising until about 1990.

17. Following a divorce, terminating the marriage of Defendants' daughter to Plaintiff Barr, obtained in July 1989, a child custody dispute ensued. In January 1990, Plaintiff Barr was awarded custody of the children of the marriage, the grandchildren of Defendants. Following the child custody dispute business relations became strained between Barr and the Sassers.¹ Ken Sasser at that time began using publicly his name, Ken Sasser, in relation to his ongoing fabric and drapery business.

18. It is uncontroverted that both Plaintiffs and the Defendants market and sell custom draperies as well as fabrics in the Tulsa, Oklahoma area.

¹Perhaps Ken Sasser did not initially contemplate the problems resulting from the sale of his name with the drapery business to a divorced son-in-law, but such was a risk inherent in the sale agreement.

19. Both parties utilize many of the same advertising channels, such as newspaper advertising, broadcast advertising and telephone directory listings.

20. A log was maintained by the Plaintiffs at their business of inquiries and telephone calls (Plaintiffs' Exhibits 20 and 21). A considerable amount of confusion was evidenced as to the association or affiliation between Plaintiffs' store and the new "*KEN SASSER FABRIC AND TRIM*" store.

21. Additionally, there was evidence of misdirected deliveries (Plaintiffs' Exhibits 64 and 65) and misdirected invoices and statements (Plaintiffs' Exhibits 6 and 60).

22. Plaintiffs are the owners of the Oklahoma Trademark Registration No. 23275 on "*DRAPERIES BY KEN SASSER*" (Plaintiffs' Exhibit No. 2). The trademark registration is valid and subsisting as of April 1990.

23. Mr. Ken Sasser is widely known and has an excellent reputation in Tulsa and the surrounding area in the custom drapery, fabric and related business. Mr. Ken Sasser has been in this business since 1960 and has a right to remain in the business.²

24. Although prior knowledge on the part of the Defendants is not a prerequisite for relief in this action, Defendants were aware of the Plaintiffs' business and trademark that they had sold, when they adopted the altered and/or additional trade names.

²Naturally, some unavoidable confusion will result from Mr. Sasser remaining in the drapery business in the Tulsa area under other names than Ken Sasser or Sasser's.

CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction and jurisdiction of the parties pursuant to 28 U.S.C. § 1338.

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

3. The trade name "*DRAPERIES BY KEN SASSER*" is a valuable asset and has become recognizable to customers and prospective customers.

4. The transfer of both the business and the trade name "*DRAPERIES BY KEN SASSER*" along with the logo was complete and without any reservations.

5. A sale of the entire business includes the sale of trademarks used in the conduct of the business. Loma Linda v. Thomson & Taylor, 279 F.2d 522, 524 (CCPA 1960); U.S. Ozone v. U.S. Ozone, 62 F.2d 881, 885 (7th Cir. 1932); President v. MacWilliam, 238 F. 159, 162 (2nd Cir. 1916).

6. It is a violation to use a trade name or to employ advertising where there is likelihood "to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association . . ." 15 U.S.C. § 1125(a). A number of factors may be examined arriving at a determination of likelihood of confusion.

Although the list is not exhaustive and no one factor is determinative, the following criteria should be used as a guideline:

- (a) A degree of similarity between the designation and the trademark or trade name in (1) appearance; (2) pronunciation of the words used; (3) verbal translation of the pictures

- or designs involved; (4) suggestion;
- (b) the intent of the actor in adopting the designation;
 - (c) the relation in use and manner of marketing between the goods or services marketed by the actor and those marketed by the other;
 - (d) the degree of care likely to be exercised by purchasers. Beer Nuts, Inc. v. Clover Club Foods Co., 805 F.2d 920, 925 (10th Cir. 1986).

7. In the present situation the trade name "*KEN SASSER FABRIC AND TRIM -- THE ORIGINAL DRAPERY FAMILY*" is too similar to "*DRAPERIES BY KEN SASSER.*"

8. The trade name "*KEN SASSER'S FREDDIES FOR CUSTOM DRAPERIES DISCOUNT FABRICS -- THE ORIGINAL DRAPERY FAMILY*" is too similar to "*DRAPERIES BY KEN SASSER.*"

9. Intent on the part of the alleged infringer raises an inference of likelihood of confusion. Beer Nuts, Inc. v. Clover Club Foods Co., 805 F.2d 920, 925 (10th Cir. 1986). Such inference was established by the evidence because Ken Sasser desired to communicate to the public his connection with his ongoing drapery business.

10. In a trademark action, actual confusion, as established by the evidence herein, is a factor. John Zink Co. v. Zinkco, Inc., 2 USPQ2d 1606, 1609 (N.D. Okl. 1986).

11. Defendants' business names and their advertising in which they use or project the name Ken Sasser or Sasser or potentially confusing derivatives thereof in connection with drapery or

interior fabric sales, are likely to cause confusion in the minds of the customers and prospective customers and, therefore, violate 15 U.S.C. § 1125(a). For the same reasons, Defendants' actions infringe Plaintiffs' registered Oklahoma trademark registration. Okla. Stat. tit. 78, § 31(a).

12. Accordingly, Defendants are enjoined from using the name "KEN SASSER" or "SASSER" or confusing derivatives thereof as a trade name in connection with the drapery business or interior fabrics business. 15 U.S.C. § 1116. All business signs, advertising, business cards and other usages must be altered or destroyed. This injunction does not prohibit Mr. Sasser or any of the Defendants from owning or operating a drapery or fabric business under names not confusing, like "FREDDIES". John Zink Co. v. Zinkco, Inc., 2 USPQ2d 1606 (N.D. Okl. 1986); Levitt Corp. v. Levitt, 593 F.2d 463 (2nd Cir. 1979).

13. Defendants may use "The Original Drapery Family" but not in connection with the name "Ken Sasser," "Sasser," or confusing derivatives thereof and a business selling draperies.

14. Under 15 U.S.C. § 1117(a), when a violation has been established, plaintiff is entitled "subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the cost of the action. . . . If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case."

15. Section 1117 confers broad discretion on the district court in providing a remedy for a trademark infringement. The exercise of this discretion is expressly made "subject to the principles of equity." Shell Oil Co. v. Commercial Petroleum, 928 F.2d 104, 108 (4th Cir. 1991); Otis Clapp & Son v. Filmore Vitamin, 754 F.2d 738, 746 (7th Cir. 1985); Burndy Corp. v. Teledyne Industries, 748 F.2d 767, 772 (2nd Cir. 1984); Burger King Corp. v. Mason, 710 F.2d 1480, 1495 (11th Cir. 1983), cert. denied 465 U.S. 1102 (1984); Faberge v. Saxony Products, 605 F.2d 426, 429 (9th Cir. 1979); Maier Brewing v. Fleischmann Distilling, 390 F.2d 117, 121 (9th Cir.), cert. denied 391 U.S. 966 (1968).

16. Plaintiffs' action for damages fails because the Court cannot determine from the evidence that Plaintiffs experienced any actual damages from Defendants' violations. Shell Oil Co. v. Commercial Petroleum, 928 F.2d 104, 108 (4th Cir. 1991); Burger King Corp. v. Mason, 710 F.2d 1480, 1493 (11th Cir. 1983), cert. denied 465 U.S. 1102 (1984); Foxtrap, Inc. v. Foxtrap, Inc., 671 F.2d 636, 642 (D.C. Cir. 1982).

17. The Court concludes that, in accordance with the principles of equity, Plaintiffs' prayer for damages in the amount of Defendants' lost profits should be denied. Shell Oil Co. v. Commercial Petroleum, 928 F.2d 104, 108-09 (4th Cir. 1991); Otis Clapp & Son v. Filmore Vitamin, 754 F.2d 738, 746 (7th Cir. 1985); Foxtrap, Inc. v. Foxtrap, Inc., 671 F.2d 636, 641 (D.C. Cir. 1982); Burndy Corp. v. Teledyne Industries, 748 F.2d 767, 772 (2nd Cir. 1984); Faberge v. Saxony Products, 605 F.2d 426, 429 (9th Cir.

1979).

18. The trademark act, 15 U.S.C. § 1117(a) provides that: "[t]he Court in exceptional cases may award reasonable attorney fees to the prevailing party." The Tenth Circuit has ruled that an exceptional case "is one in which the trademark infringement can be characterized as 'malicious', 'fraudulent', 'deliberate' or 'willful.'" Brunswick Corp. v. Spinit Reel Co., 832 F.2d 513, 528 (10th Cir. 1977). See also, Take-Care Corp. v. Takecare of Oklahoma, 889 F.2d 955 (10th Cir. 1989).

Also, under the Oklahoma Deceptive Trade Practices Act, Okla. Stat. tit. 78, § 54(b), attorney fees are within the discretion of the Court unless willful actions are found, in which case attorney fees are mandatory. The Court concludes the violations of Defendants of the federal and state acts herein were willful.

Accordingly, Plaintiffs are awarded their reasonable attorney fees if timely applied for pursuant to Local Rule 6.

19. Concerning Defendants' counterclaim, Defendants assert that Plaintiffs have abandoned the trademark "**DRAPERIES BY KEN SASSER**." The evidence has established that the Plaintiffs have continued to use the trade name and trademark "**DRAPERIES BY KEN SASSER**" from the time of the purchase of the business in 1982 to the present. These usages range from letterhead and note pads (Plaintiffs' Exhibits 52 and 53) to advertising.

20. The parties have stipulated and the Court has found (Order dated March 24, 1992) that the slogan "**KEN SASSER DRAPERIES**"

was created by the Defendants and utilized by them prior to the sale of the business in 1982. Several usages of "KEN SASSER DRAPERIES" were started by Defendants and simply continued by Plaintiffs. For example, the sign on the door of the business and the road sign were installed by Defendants. (Plaintiffs' Exhibits 18 and 22).

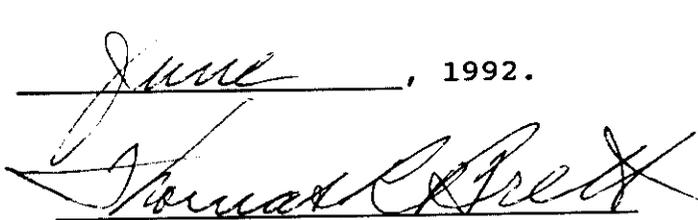
21. Although the use of "DRAPERIES AND INTERIORS BY KEN SASSER" was complained of in the counterclaim, at trial the Defendants conceded that this usage was permissible and, accordingly, this is not in dispute.

22. The limited variations of the trade name "DRAPERIES BY KEN SASSER," such as "KEN SASSER MEANS DRAPERIES" are well within the parameters of Plaintiffs' permissible uses of the trade name.

23. Thus, Defendants' counterclaim is accordingly DENIED.

24. A separate Judgment in keeping with these Findings of Fact and Conclusions of Law shall be filed contemporaneously herewith.

DATED this 29th day of June, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE JUL 1 1992

FILED

JUN 30 1992

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

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

TIMOTHY DAVID MC GUIRE, as)
Personal Representative of)
the Estate of PAULA GAIL MCGUIRE)
De ceased,)

Plaintiff,)

vs.)

BURLINGTON NORTHERN RAILROAD)
a foreign corporation,)

Defendant and)
Third Party Plaintiff,)

vs.)

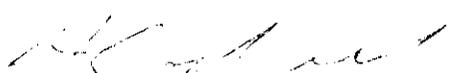
COUNTY COMMISSIONERS OF)
CREEK COUNTY,)

Third Party Defendant.)

No. 91-C-711-E /

JOINT STIPULATION OF DISMISSAL
WITHOUT PREJUDICE WITH RESPECT TO
COUNTY COMMISSIONERS OF CREEK COUNTY

Comes now the Defendant and Third Party Plaintiff, and the Third Party Defendant, by and through their attorneys of record, A. Camp Bonds, Jr., and Lantz McClain, respectively, and agree that this case may be dismissed without prejudice as to the Third Party Complaint against the County Commissioners of Creek County.


A. CAMP BONDS, JR. OBA # 944
BONDS, MATTHEWS, BONDS & HAYES
P. O. BOX 1906
MUSKOGEE, OK 74402-1906

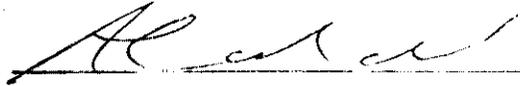

LANTZ MC CLAIN
DISTRICT ATTORNEY
P. O. BOX 1006
SAPULPA, OK 74067

CERTIFICATE OF MAILING

I hereby certify that on this 15 day of June, 1992, I mailed a true, correct and exact copy of the above and foregoing, with proper postage thereon fully prepaid to:

Garvin A. Issacs
Attorney at Law
1400 First National Center
Oklahoma City, OK 73102

Lantz McClain
District Attorney
P. O. Box 1006
Sapulpa, OK 74067



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

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its corporate)
capacity,)
))
Plaintiff,)
))
vs.)
))
HENDERSON HILLS SHOPS, INC.,)
an Oklahoma corporation, C. A.)
HENDERSON, an individual, WALTER)
TULLOS, an individual, TILLMAN)
M. HERSHBERGER, an individual,)
RAYMOND DOYAL HOOVER, an)
individual, and ROBERT J. NALE,)
an individual,)
))
Defendants.)

No. 89-C-144-E

FILED

JUN 30 1992

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

DEFICIENCY JUDGMENT

THIS MATTER comes on for hearing before this Court on this
29th day of June, 1992, upon the Motion for Leave to
Enter Deficiency Judgment filed herein by Plaintiff Federal Deposit
Insurance Corporation, in its corporate capacity ("FDIC") against
the Defendant Henderson Hills Shops, Inc. ("HHS"). FDIC appeared
by and through its attorneys Boesche, McDermott & Eskridge; the
Defendant HHS appeared by and through its attorney, Joseph H.
Bocock, of McAfee & Taft. The Court then proceeded to examine the
file herein and to hear the testimony of witnesses and the
statements and arguments of counsel. After due deliberation, the
Court finds as follows:

1. FDIC's Motion for Leave to Enter Deficiency Judgment
against the Defendant HHS was properly filed pursuant to 12 O.S.
§686 on June 18, 1992, said date being within the 90 days of the
date of the sale of the real estate by the Sheriff of Creek County

in this proceeding on April 20, 1992.

2. The Court further finds that the Defendant HHS, against whom this deficiency judgment is sought, was afforded proper notice of these proceedings by service of the Motion for Leave to Enter Deficiency Judgment.

3. The Court further finds that on April 20, 1992, the property foreclosed in the instant action (the "Property") was sold at Sheriff's Sale to Federal Deposit Insurance Corporation, in its corporate capacity, for the sum of \$105,500.00.

4. The Court further finds that the fair and reasonable market value of the Property as of the date of the sale was greater than the amount of the sale price.

5. The Court further finds that the amount of the judgment of the Plaintiff as of the date of sale exceeded the fair and reasonable market value as of the date of sale by Seventy-five Thousand Dollars (\$75,000.00). As a result, there is a deficiency due and owing on FDIC's judgment against the Defendant HHS in the amount of \$75,000.00, together with interest thereon at the statutory rate until paid.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that FDIC be and hereby is granted a deficiency judgment against the Defendant Henderson Hills Shops, Inc. for the sum of \$75,000.00, with interest thereon at the statutory rate until paid, together with all costs, accrued and accruing in this action, for all of which let execution issue.


UNITED STATES DISTRICT JUDGE

APPROVED:



Leslie Zieren, OBA No. 9999
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ATTORNEYS FOR FEDERAL DEPOSIT
INSURANCE CORPORATION



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ATTORNEY FOR DEFENDANTS
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and C. A. HENDERSON