

ENTERED ON DOCKET

DATE 8/31/92

CLOSED
I L E D

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

AUG 33 1992

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

CPI QUALIFIED PLAN CONSULTANTS, INC.)
)
 Plaintiff,)
)
 vs.)
)
 RONALD W. JACKSON, d/b/a)
 WESTERN MANAGEMENT GROUP)
)
 Defendant.)

Case No. 92-C-240-B

DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, Plaintiff CPI Qualified Plan Consultants, Inc. hereby dismisses the captioned action without prejudice.

Dated this 31st day of August, 1992.



Steven K. Balman, OBA #492
Patterson Bond, OBA #942

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

Attorneys for Plaintiff
CPI QUALIFIED PLAN CONSULTANTS, INC.

CERTIFICATE OF SERVICE

I, Steven K. Balman, do hereby certify that on the 24 day of August, 1992 I caused true and correct copies of the foregoing DISMISSAL WITHOUT PREJUDICE to be placed in the custody of the United States Postal Service, together with proper postage thereon fully prepaid, and addressed to:

Mr. Michael H. Freeman
2504 N. Hemlock Circle
Broken Arrow, OK 74012



Steven K. Balman

CLOSED

FILED

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

AUG 28 1992

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

ARCHY C. PARKER,
Plaintiff,

vs.

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

Defendant.

No. 91-C-352-E

ENTERED ON DOCKET

DATE AUG 31 1992

ORDER

The Court has for consideration the Report and Recommendations of the Magistrate filed on May 21, 1992. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the mater should be remanded to the Administrative Law Judge for a supplemental hearing, including testimony from a vocational expert witness.

IT IS THEREFORE ORDERED that the case be remanded to the Administrative Law Judge for a supplemental hearing including testimony from a vocational expert.

ORDERED this 28th day of August 1992.


CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

DATE AUG 31 1992

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

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Plaintiff,

vs.

No. 90-C-908-E

J. RAYMOND WRIGHT, a/k/a
J.R. WRIGHT, a/k/a J.R. WRIGHT)
d/b/a WRIGHT ANGUS VALLEY
RANCH, et al.,

Defendants.

FILED

AUG 28 1992

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

ORDER

NOW on this 28th day of August, 1992 comes on for consideration the above-styled case and the Court, being fully advised in the premises finds:

Before the Court for consideration is the application of Plaintiff for award of attorney's fees in the amount of \$15,273.75. No response to Plaintiff's application has been filed pursuant to Local Rule 15a. The Court finds that Plaintiff's affidavit in support of the application for award of attorney's fees is sufficient to satisfy the standards set forth in Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983), and that a hearing on the award of attorney's fees is not necessary. The Court finds that Plaintiff's application for award of attorney's fees should be and the same is hereby granted.

IT IS THEREFORE ORDERED that Plaintiff be awarded attorney's fees in the amount of \$15,273.75.

63

ORDERED this 28th day of August, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE AUG 31 1992

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JERRY W. GOULD a/k/a JERRY)
 WAYNE GOULD; ELIZABETH GOULD)
 a/k/a ELIZABETH FERN GOULD;)
 HORACE J. GRAHAM; KIM S. GRAHAM;)
 JOHN DOE, Tenant; TONIA GRAY,)
 Tenant; COUNTY TREASURER,)
 Tulsa County, Oklahoma; BOARD OF)
 COUNTY COMMISSIONERS, Tulsa)
 County, Oklahoma; and VA MEDICAL)
 CENTER FEDERAL CREDIT UNION,)
)
 Defendants.)

FILED

AUG 20 1992

Richard M. Lawrence, Clerk
U.S. District Court
Northern District of Oklahoma

CIVIL ACTION NO. 90-C-125-E

AMENDED JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day of August, 1992. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear not, having previously filed an Answer disclaiming any interest in the subject real property; the Defendant, John Doe, Tenant, appears not, and should be dismissed from this action; the Defendant, VA Medical Center Federal Credit Union, appears through its attorney, Matthew L. Gee; and the Defendants, Jerry W. Gould a/k/a Jerry Wayne Gould; Elizabeth Gould a/k/a Elizabeth Fern Gould; Horace J. Graham; Kim S. Graham; and Tonia Gray, Tenant, appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Horace J. Graham,

acknowledged receipt of Summons and Complaint on March 2, 1990; that the Defendant, Kim S. Graham, acknowledged receipt of Summons and Complaint on or about March 5, 1990; that the Defendant, Tonia Gray, Tenant, was served with Summons and Amended Complaint on June 7, 1990; that the Defendant, VA Medical Center Federal Credit Union, was served with Summons and Amended Complaint on June 13, 1991; that the Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 15, 1990; and that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 15, 1990.

The Court further finds that Defendant, John Doe, Tenant, has not been served herein, as such a person does not exist and should therefore be dismissed as a defendant herein.

The Court further finds that the tenant living at the property who was served with service of process is Tonia Gray, Tenant, and this Defendant is accordingly substituted as a Defendant for Mary Doe, Tenant, who is dismissed.

The Court further finds that the Defendants, Jerry W. Gould a/k/a Jerry Wayne Gould and Elizabeth Gould a/k/a Elizabeth Fern Gould, was served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning November 19, 1991, and continuing to December 24, 1991, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section

2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Jerry W. Gould a/k/a Jerry Wayne Gould and Elizabeth Gould a/k/a Elizabeth Fern Gould, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Jerry W. Gould a/k/a Jerry Wayne Gould and Elizabeth Gould a/k/a Elizabeth Fern Gould. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed his Answer on March 6, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on March 6, 1990; that the Defendant, VA Medical Center Federal Credit Union, filed its Answer To Plaintiff's Amended Complaint and Cross-Claim on July 20, 1992; and that the Defendants, Jerry W. Gould a/k/a Jerry Wayne Gould; Elizabeth Gould a/k/a Elizabeth Fern Gould; Horace J. Graham; Kim S. Graham; and Tonia Gray, Tenant, 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 Forty (40) in Block Five (5) NORTHGATE
2ND ADDITION, to the City of Tulsa, Tulsa
County, Oklahoma, according to the recorded
Plat thereof.

The Court further finds that on September 12, 1973, the Defendants, Jerry W. Gould and Elizabeth Gould, 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 \$11,500.00, 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, Jerry W.

Gould and Elizabeth Gould, 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 12, 1973, covering the above-described property. Said mortgage was recorded on September 14, 1973, in Book 4088, Page 126, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Jerry W. Gould a/k/a Jerry Wayne Gould and Elizabeth Gould a/k/a Elizabeth Gould a/k/a Elizabeth Fern Gould, 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, Jerry W. Gould a/k/a Jerry Wayne Gould and Elizabeth Gould a/k/a Elizabeth Fern Gould, are indebted to the Plaintiff in the principal sum of \$7,527.15, plus interest at the rate of 4.5 percent per annum from January 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$297.01 (\$20.00 docket fees, \$15.36 fees for service of Summons and Complaint, \$261.65 publication fee).

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

The Court further finds that the Defendant, VA Medical Center Federal Credit Union, has a lien on the property which is the subject matter of this action by virtue of a mortgage note and second mortgage from Defendants, Horace J. Graham and Kim S.

Graham, dated November 7, 1986 and recorded on February 5, 1990 in the records of Tulsa County, Oklahoma in Book 5234 at Page 1240 in the amount of \$14,578.59 plus interest thereon at 13.0% per anum, together with attorney fees for its attorney, other costs of this action, and for foreclosure of its second mortgage lien. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Jerry W. Gould a/k/a Jerry Wayne Gould; Elizabeth Gould a/k/a Elizabeth Fern Gould; Horace J. Graham; Kim S. Graham; and Tonia Gray, Tenant, 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, Jerry W. Gould a//a Jerry Wayne Gould and Elizabeth Gould a/k/a Elizabeth Fern Gould, in the principal sum of \$7,527.15, plus interest at the rate of 4.5 percent per annum from January 1, 1989 until judgment, plus interest thereafter at the current legal rate of 3.41 percent per annum until paid, plus the costs of this action in the amount of \$297.01 (\$20.00 docket fees, \$15.36 fees for service of Summons and Complaint, \$261.65 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, VA Medical Center Federal Credit Union, have and

recover judgment in personam and in rem against the Defendants, Horace J. Graham and Kim S. Graham, in the amount of \$14,578.59 plus interest thereon at 13.0% per annum, together with attorney fees for its attorney, other costs of this action, and for foreclosure of its second mortgage lien.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Jerry W. Gould a/k/a Jerry Wayne Gould; Elizabeth Gould a/k/a Elizabeth Fern Gould; Horace J. Graham; Kim S. Graham; John Doe, Tenant; Tonia Gray, Tenant; and the County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property; that the Defendant, John Doe, Tenant, is hereby dismissed as a Defendant herein; that the Defendant, Tonia Gray, Tenant, is substituted as a Defendant for Mary Doe, Tenant, who is dismissed.

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 appraisement, the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

Third:

In payment of the judgment of Defendant, VA
Medical Center Federal Credit Union, in
personam and in rem against Horace J. Graham
and Kim S. Graham, in the amount of
\$14,578.59 plus interest thereon at 13.0% per
annum, together with attorney fees for its
attorney, other costs of this action, and for
foreclosure of its second mortgage lien.

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

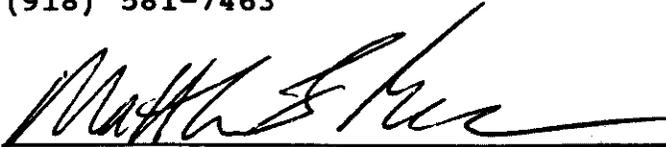
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



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



MATTHEW L. GEE, OBA #11314
Attorney for Defendant,
VA Medical Center Federal Credit Union

Judgment of Foreclosure
Civil Action No. 90-C-125-E

PB/esr

CLOSED

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

FILED ON DOCKET
AUG 31 1992

FEDERAL DEPOSIT INSURANCE)
CORPORATION, as receiver for)
American Federal Savings and)
Loan Association, Anadarko,)
Oklahoma,)

Plaintiff,)

Case No. 91-C-297-E

R.E. WHITLEY a/k/a EARL R.)
WHITLEY and GINGER D. WHITLEY,)
husband and wife; FEDERAL)
DEPOSIT INSURANCE CORPORATION)
in its corporate capacity;)
DIVERSIFIED FINANCIAL SYSTEMS)
INCORPORATED, a corporation;)
UNITED STATES OF AMERICA ex)
rel. INTERNAL REVENUE SERVICE;)
BOARD OF COUNTY COMMISSIONERS)
and TREASURER OF TULSA COUNTY,)
OKLAHOMA,)

Defendants.)

FILED

AUG 20 1992

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

DEFAULT JUDGMENT

NOW, upon Application of the Defendant, Diversified Financial Systems LP, a corporation, ("Diversified"), and after the filing of a Certificate of Default by the Court Clerk in this action, judgment is hereby rendered under a Cross-Claim pursuant to Federal Rules of Civil Procedure 55(b)(2), in favor of the Defendant, Diversified, against the Defendants, R.E. Whitley, a/k/a Earl R. Whitley and Ginger D. Whitley, husband and wife, in the amount of \$53,313.58 with interest thereon at the rate of 14.59 per cent (14.59%) per annum, being \$13.73 per diem, from 5-31-91 until paid, \$ -0- for court costs, and \$3,713.00 for attorney's fees,

which represent ten percent (10%) of the principal amount due.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE
James O. Ellison
DISTRICT OF OKLAHOMA

APPROVED:



Gary L. Blevins, OBA No. 879
HAYNES, MONTGOMERY, BLEVINS & SHDEED
6307 Waterford Boulevard, Suite 150
Oklahoma City, OK 73118
(405) 840-0501
Attorneys for Diversified Financial
Systems LP

CLOSED

ENTERED ON DOCKET
DATE AUG 31 1992

IN THE UNITED STATES DISTRICT COURT **FILE I**
FOR THE
NORTHERN DISTRICT OF OKLAHOMA AUG 28 1992

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

Sebastian Smith,
Plaintiff,
v.
McAlester Community
Correctional Center, Et Al,
Defendants.

Case No. 91-C-721-E

ORDER

Rule 35(a) of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may, in the Court's discretion, be entered.

In the action herein, notice pursuant to Rule 35(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on April 28, 1992. No action has been taken in the case within thirty (30) days of the date of the notice.

Therefore, it is the Order of the Court that this action is in all respects dismissed.

Dated this 28th day of August, 1992

James D. [Signature]
United States District Judge

3

CLOSED

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

ENTERED ON DOCKET
DATE **AUG 31 1992**

LINDA RASH,

Plaintiff,

SUNGLOW, INC.,

Defendant.

Case No. 91-C-907 E

FILED

AUG 28 1992

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

ORDER OF DISMISSAL WITH PREJUDICE

Based on the stipulation of all the parties filed herein, the Plaintiffs' action is hereby dismissed with prejudice.

IT IS SO ORDERED.

ENTERED THIS 28 DAY OF August, 1992.

s/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 8-31-92

CLOSED

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

AUG 23 1992

Richard M. ...
Clerk

REPUBLIC TRUST AND SAVINGS)
COMPANY, et al,)
)
Plaintiff,)
)
v.)
)
DOBIE R. LANGENKAMP, et al,)
)
Defendants.)

91-C-478-B

ORDER

This bankruptcy appeal deals with yet another chapter of the downfall of Wesley McKinney and his once-flourishing financial empire. This chapter focuses on the actions of Holliman, Langholtz, Runnels & Dorwart ("HLRD") during the law firm's representation of two McKinney-controlled enterprises: Republic Financial Corporation ("RFC") and Republic Trust & Savings ("RTS").

Two issues are raised in this appeal. First, did the Bankruptcy Court abuse its discretion in denying HLRD its requested attorney fees? Second, did Bankruptcy Judge Mickey D. Wilson abuse his discretion by not recusing himself pursuant to either 28 U.S.C. §455(a) or §455(b)(1). For the reasons discussed below, this Court AFFIRMS the Bankruptcy Court's decisions on both issues.

I. Summary of the Facts and Procedural History

McKinney controlled and operated a myriad of corporations, including RFC, RTS, Republic Bancorporation, Inc. ("RBI"), Petra International Corporation, Petra Drilling Corporation, Petra Petroleum Corporation, Petra Transportation Corporation and Petra

Exploration, Inc., Petra Aviation Corporation ("Petra companies") and Allied Oil and Gas Corporation ("Allied"). *Order Granting In Part and Denying In Part First Interim Application, Exhibit 10 of HLRD Exhibits To Brief.*

The facts important to this appeal focus on a four-day time frame from September 22, 1984 to September 26, 1984. McKinney, whose financial empire had virtually crumbled, had fled the state, leaving behind property such as valuable paintings at his Tulsa residence.

On September 22, 1984, HLRD took possession of the property at McKinney's residence for what the law firm described as payment for legal services and for "safekeeping."¹ On that same day, HLRD received two Caterpillar tractors and a working interest in certain oil and gas wells from Petra. The tractors later sold for \$75,000 and the working interest is estimated to be worth \$100,000. *Supplement To First Interim Application Of Debtor's Counsel For Compensation, June 13, 1985, Exhibit B.*

Then, on September 24, 1984 -- the day RTC and RFC filed bankruptcy -- HLRD collected \$31,400 from RTS for legal fees. *Id., Exhibit A.*

Two days later, on September 26, 1984, RTS and RFC filed separate applications with the Bankruptcy Court that asked for HLRD to be appointed their counsel. In the applications, HLRD attorney Frederic Dolwart wrote that neither he nor anyone else at the law firm "hold or represent an interest adverse to the estate [and] are disinterested." Application for Appointment of Attorneys, Exhibit 3, Successor Trustees Answer Brief.

¹ HLRD also noted that the property was placed in safekeeping if it was owned by someone other than Petra or McKinney. See *Supplement To First Interim Application Of Debtor's Counsel, June 13 1984, Exhibit B.*

The applications also did not disclose any of the above described events such as HLRD's taking of the property at McKinney's residence. In addition, the application did not include information concerning HLRD's relationship with Allied, Petra or other McKinney entities.² Wilson approved the applications, based on the record there before him.

The next date of importance is March 22, 1985 when HLRD filed interim applications for attorney fees and expenses. The law firm asked for \$52,258.60 and \$8,499.15 in expenses for its representation of RTC and \$38,571.10 in attorney fees and \$7,403.51 in expenses for RTS. Both applications included an Affidavit signed by Dorwart. See, *First Interim Application of Debtor's Counsel, Exhibits 1 & 2, Exhibits to HLRD Brief*. It stated:

No monies have been received as compensation for services rendered or reimbursement for expenses incurred in connection with this bankruptcy case since the commencement of this case. The Statement of Attorney's Compensation filed by Counsel in this case on September 24, 1984 noted that no monies had been received from the Debtor for services to be rendered in this case. First Interim Application at page 2.³

Again, as in the applications to be appointed as counsel, HLRD did not disclose information concerning its actions in obtaining McKinney's property, the tractors and working interest from Petra or about its relationship with Allied.

Hearings were conducted on the Application for Interim Fees in May of 1985. During the hearings, Fred W. Woodson, the Trustee in McKinney's individual bankruptcy

² HLRD represented Allied both before and after the bankruptcy filing of RTS and RFC. Allied also owed \$1 million to RTS and/or RFC. According to information provided by HLRD to the Bankruptcy Court, the following payments took place to HLRD from Allied: 8-24-84 (\$30,098.63); 9-5-84 (\$30,000); 11-21-84 (\$12,500); 12-19-84 (\$49.27 and \$1,274.89); and 2-13-85 (\$10,000). Including the payments from Allied, HLRD received more than \$300,000 from various McKinney entities from June 27, 1984 until February 13, 1985. *Id.* page 9.

³ In the RTS Application, HLRD wrote that it had received \$3,400 from RTS for compensation in the bankruptcy case.

case, filed a Complaint alleging that HLRD's actions in obtaining the paintings and other McKinney property "delayed, hindered, prolonged and complicated the administration and investigation of the Estate."⁴ See, *June 25, 1991 Order, page 8.*

That Complaint alerted the Bankruptcy Court of HLRD's actions prior to and on the day of RTS and RFC's bankruptcy. The Bankruptcy Court stated that it then urged HLRD to make full disclosure of what transfers of property took place from McKinney or one of his entities to HLRD from June 24, 1984. HLRD subsequently filed a supplement, detailing its conduct and/or dealings with McKinney entities.

In 1986, Judge Wilson granted HLRD all of its requested attorney fees and expenses for the representation of RBI. *Order Authorizing and Approving Payment of Interim Compensation, Exhibit 7, HLRD Exhibits.* But, he failed to rule on the law firm's applications concerning RTS and RFC. HLRD subsequently filed yet another request for fees on June 14, 1990. However, no **ruling** came from the Bankruptcy Court.

Then, on May 29, 1991, HLRD **filed a Motion To Withdraw Proceeding From The Bankruptcy Court.** However, while that motion was pending, Wilson issued a 30-page Order on June 25, 1991. See *June 25, 1991 Order.*

The Order, which included some **stinging** criticism of HLRD, found that no attorney fees should be awarded because the law firm failed to fully disclose pertinent information about potential and/or actual conflicts of interest. HLRD, a reputable Tulsa law firm, took offense not only with the merits of Wilson's decision but also with his criticism.

⁴ On January 8, 1987, Kenneth L. Stainer, who was the Trustee for the Petra companies, filed complaints to recover the property transferred by two of the Petra companies to HLRD two days before RTS and RFC filed bankruptcy on the theory that the transfers were either preferential or fraudulent under the Bankruptcy Code. As of June 25, 1992, a summary judgment motion in the cases was still pending.

II. Legal Analysis

The first issue raised on appeal is whether the Bankruptcy Court abused its discretion in denying the requested attorney fees. Such an issue is to be resolved applying the abuse of discretion standard. *In Re Mullendore*, 527 F.2d 1031, 1038 (10th Cir. 1975). Abuse of discretion is defined by the Tenth Circuit as "arbitrary, capricious or whimsical" decision. *Pelican Prod. Corp. v. Marino*, 893 F.2d 1143, 1146 (10th Cir. 1990).⁵

Contrary to what appears to be the hub of HLRD's argument, the issue is not whether an actual conflict eventually surfaced in the law firm's representation and/or dealings with RFC, RTS and the McKinney entities. The issue, as framed by this Court, is whether HLRD made the needed disclosure to be eligible for employment under 11 U.S.C. §327. See *In Re Roberts*, 75 B.R. 402, 406 (D. Utah 1987).

Section 327(a), which is intended to address "appearance of impropriety", allows the trustee or the debtor-in-possession, with the court's approval, to hire professionals such as attorneys as long as they are "disinterested" or as long as they do not have an interest adverse to the estate. See *In Re Martin*, 817 F.2d 175, 180 (1st Cir. 1987).⁶ Section 327's objective has been discussed by many courts:

There is no question that the purpose of the incorporation of the disinterest requirement of 11 U.S.C. §327 was to prevent even the appearance of a conflict irrespective of the integrity of the person or firm under consideration. Certainly a 'disinterested' person should be divested of any scintilla of

⁵ In a bankruptcy proceeding, abuse can only occur when the judge fails to apply the proper legal standard or to follow proper procedures in the determination or bases an award upon findings of fact clearly erroneous. *In Re Beverly Mfg. Corp.*, 841 F.2d 365 (11th Cir. 1988).

⁶ *In Re Martin* focuses on an attorney's fee arrangement, which is factually different from the instant case. However, *In Re Martin* and the other cases discussed offer sound explanations why strict enforcement of Rule 2014 and 11 U.S.C. §327 is vitally important to bankruptcy proceedings.

personal interest which might be reflected in his decision concerning estate matters. *In Re Codesco, Inc.*, 18 B.R. 997, 999 (Bankr.S.D.N.Y. 1982).⁷

The way §327 is supposed work is straightforward. An attorney is to submit an application together with information as set forth and discussed in Bankruptcy Rule 2014.⁸ This application should, at a minimum, make full and timely disclosure. *In Re Martin* at 182. In fact, some courts emphasize that attorneys who request court approval under §327 "owe a duty to disclose actual or potential conflicts of interest which bear upon their qualifications." *In Re Roberts*, 75 B.R. at 410.

Once an adequate application is submitted, the Bankruptcy Court -- armed with knowledge of all relevant facts -- decides whether the particular attorney has an adverse interest to the estate or whether he is disinterested pursuant to §327. If the attorney and/or law firm fails to make full disclosure, problems surface. Writes the First Circuit:

What counts is that the matter not be left either to hindsight or the unfettered desires of the debtor and his attorney, but that the bankruptcy judge be given an immediate opportunity to make an intelligent appraisal of the situation and to apply his experience, common sense, and knowledge of the particular proceeding to the request. If a lawyer is desirous of benefiting from such an arrangement, he has a responsibility to leave no reasonable stone unturned in bringing the matter to a head at the earliest practical moment. *In Re Martin*, 817 F.2d at 183.

⁷ See also *In Re Martin*, 817 F.2d 175, 181 (1st Cir. 1987) (Section 327 intended to remove the temptation and opportunity to do less than duty demands); *Matter of Consolidated Bancshares, Inc.*, 785 F.2d 1240, 1256 n.6 (5th Cir. 1986) ("standards for the employment of professional persons are strict, for Congress has determined that strict standards are necessary in light of the unique nature of the bankruptcy process"); *In re Philadelphia Athletic Club, Inc.*, 20 B.R. 328, 334 (E.D.Pa.1982) ("professionals engaged in the conduct of a bankruptcy case should be free of the slightest personal interest."

⁸ Rule 2014 requires an application reflecting the specific facts regarding employment, the name of the persons to be employed, reasons for the selection, the professional services to be rendered, any proposed arrangements for compensation, and to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants.

Such disclosure is not a minor matter. If actual or potential conflicts are not disclosed, it prevents the Bankruptcy Court from exercising its statutory obligation to rule on the propriety of the employment. *In Re Roberts*, 75 B.R. at 410. This exercise of the court's independent and informed discretion is "an important protection to client who may not be sophisticated in assessing conflicts of interest and to the court system which has an interest in avoiding even the appearance of impropriety." *Id.* Thus, an attorney who fails to make full disclosure robs the court of its ability to protect those whose interests may be vulnerable to predatory or unsavory practices.

In this case, HLRD did not fully disclose all the facts so that the Bankruptcy Court could properly exercise its statutory obligation. One only need review the facts that were missing from HLRD's September 26, 1984 application by HLRD. These include:

1. On September 22, 1984, two days before the Bankruptcy filings of RFC and RTS, HLRD obtained valuable paintings and other personal property of Wes McKinney. McKinney owned and controlled RFC and RTS.
2. Also, on September 22, 1984, Petra, which also was controlled and operated by McKinney, delivered two tractors (later sold for \$75,000) and working interest in oil and gas wells worth some \$100,000.
3. On the day of RFC and RTS's bankruptcy filing, RTS pays HLRD \$31,400.
4. On August 24, 1984, Allied -- another McKinney entity and one that owed RTS and RFC some \$1 million -- paid HLRD \$30,098.63. Also, on September 5, 1984, Allied paid HLRD an additional \$30,000. Allied also made other payments to HLRD.

HLRD argues that facts "deemed relevant" by its attorneys were disclosed, and, as a result, all §327 requirements were satisfied. This argument lacks merit. First, it is the Bankruptcy Court that is charged with the duty to sift through the facts to determine what

is relevant to its §327 analysis. Second, and most important, there is no question that the Bankruptcy Court needed to know the foregoing facts. To argue otherwise is unconvincing.

In situations where counsel is aware of apparent conflicts which counsel believes are outweighed by other factors, the conflicts must be disclosed. The decision concerning the propriety of employment should not be left exclusively with counsel, whose judgment may be clouded by the benefits of the potential employment." Id. at 411.⁹ (Emphasis added.)

HLRD also claims that its services to RTS and RFC greatly benefitted the debtors and the public in general. The record indicates such may be the case, and the Bankruptcy Court did not deny that. However, "noncompliance with 327(a) and 2014(a) generally leads to forfeiture of compensation even to professionals who furnished valuable services to the estate." *In Re Grabill Corp.*, 113 B.R. 966, 971 (Bankr. N.D.Ill. 1990). Attorney fees may be denied even if the services provided had "intrinsic value or brought a benefit to the bankruptcy estate." *In Re Chou-Chou Chemicals, Inc.*, 31 B.R. 842, 851 (Bankr.W.D.Ky.1983).

Finally, the issue of whether HLRD was statutorily eligible under §327 is normally answered at the time the Bankruptcy Court approved the initial application. But, non-disclosure of facts vitiates the court's approval.¹⁰ *In Re Roberts*, 75 B.R. 406-407. Consequently, the Bankruptcy Court made the call after the undisclosed information

⁹ Writes one Bankruptcy Court: "Appellant's argument that the court cannot deny the compensation and reimbursement sought herein without first finding an actual conflict of interest is not supported by the greater weight of case law within this jurisdiction. Time after time, in each of this court's decision dealing with conflict of interest situations, the approval or denial of compensation has hinged upon whether or not the attorney was placed in a position of being required to choose between conflicting duties and interests. It is no answer to say that fraud or unfairness were not shown to have resulted." *In Re WPMK, Inc.*, 42 B.R. 157 (Bankr. D. Hawaii 1984).

¹⁰ HLRD argues that the information not presented in the application was available elsewhere in the record. But it is not sufficient that the information might be mined from petitions, schedules or other sources. The burden is on the person to be employed to come forward and make full, candid, and complete disclosure. *In Re B.E.S. Concrete Products, Inc.*, 93 B.R. 228, 236-237 (Bankr.E.D.Cal. 1988). Negligent omissions do not vitiate the failure to disclose. *In Re Michigan General Corp.*, 78 B.R. 479, 482 (Bankr. N.D.Tex.1987). The court is not charged with ferreting out information buried by counsel in the record, when counsel otherwise has a clear obligation to disclose.

surfaced.¹¹

The facts are not disputed: HLRD did not make full disclosure in its initial application for employment or in its first application for fees. Failure to disclose facts giving rise to a conflict of interest may be grounds for denial of compensation wholly apart from the act of representing conflicting interests. *In Re Guy Apple Masonry Contractor, Inc.*, 45 B.R. 160, 163 (Bankr. D. Ariz. 1984).¹² Therefore, the Bankruptcy Court did not abuse its discretion in denying HLRD attorney fees in this case.¹³

The second issue is whether Bankruptcy Judge Mickey D. Wilson abused his discretion by not recusing himself pursuant to 28 U.S.C. §455(a) and/or §455(b)(1). The decision to recuse is committed to the trial court's discretion. *Hinman v. Rogers*, 831 F.2d 937, 938 (10th Cir. 1987). Likewise, the standard of review on appeal is abuse of discretion. See *U.S. v. Sammons*, 918 F.2d 592, 599 (6th Cir. 1990); *Jones v. Pittsburgh National Corporation*, 899 F.2d 1350, 1356 (3d Cir. 1990); *Shadid v. Oklahoma City*, 494 F.2d 1267 (10th Cir. 1974) and *Molina v. Rison*, 886 F.2d 1124 (9th Cir.1989). §455(a) and (b)(1) states:

¹¹ *The Bankruptcy Court also noted that it would have not approved the employment of HLRD had it been provided the facts that eventually surfaced.*

¹² See, also, *In Re Haldeman Pipe & Supply Co.*, 417 F.2d 1302, 1305 (9th Cir. 1969)(Interpreting General Order 44); *In Re Costal Equities, Inc.*, 39 B.R. 304, 308 (Bankr. S.D.Cal.1984)(former Bankruptcy Rule 215); *In Re Sixth Ave. Car Care Center*, 81 B.R. 628 (Bankr. D.Colo.1988); *In Re B.E.S. Concrete Products, Inc.*, 93 B.R. 226, 237 (Bankr.E.D.Cal. 1988); *In Re Marine Power & Equipment Co.*, 67 B.R. 643, 648 (W.D.Wash.1986).

¹³ *This Court does not reach the question of whether an actual conflict of interest occurred. Since HLRD did not make adequate disclosure in its application for employment, the Bankruptcy Court was well within its discretion to deny attorney fees. This Court's finding would be the same (i.e. Bankruptcy Court did not err in denying fees) even under a de novo review of the court's interpretation of 11 U.S.C. §327 and the relevant case law on this issue.*

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of evidentiary facts concerning the proceeding;

Under §455(a), the test is "whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality." *Hinman*, 831 F.2d at 939. §455(b) covers situations in which an actual conflict of interest exists, even if there is no appearance of one, and also describes circumstances where a judge's impartiality might reasonably be questioned. §455(b)(1), which is at issue here, refers to "personal bias" as a grounds for disqualification.

Similar parameters exist for both §455(a) and §455(b)(1). Both require, as a general rule, that the basis for recusal stem from extrajudicial bias and/or conduct. *United States v. Prichard*, 875 F.2d 789, 791 (10th Cir.1989).

Extrajudicial bias refers to that which the judge acquires on some basis other than what the judge learned from his participation in the case. *United States v. Grinnell Corp.*, 384 U.S. 563, 86 S.Ct. 1698, 1710, 16 L.Ed.2d 778 (1966). More specifically, the bias "must be personal, not judicial. It must arise out of the judge's background and association and not from the judge's view of the law." *United States v. Story*, 716 F.2d 1088, 1090 (6th Cir.1983).¹⁴

Two other parameters for analyzing recusal are equally plain. Adverse rulings,

¹⁴ An exception to that rule is when judicial conduct has "such pervasive bias and prejudice" that constitutes bias against a party. *United States v. Page*, 828 F.2d 1476,1481 (10th Cir.1987). No showing of pervasive bias and prejudice exists in this case.

standing alone, do not establish judicial bias. *United States v. Carroll*, 567 F.2d 955, 958 (10th Cir.1977). Furthermore, a motion to disqualify must be based on factual allegations -- not on conclusory or vague assertions. See *In Re Allied Signal, Inc.*, 891 F.2d 967 (1st Cir.1989) and *Samuel v. University of Pittsburgh*, 395 F.Supp. 1275 (W.D.Pa.1975), *vacated on other grounds*, 538 F.2d 991 (3d. Cir. 1976).

In this case, HLRD outlines four categories of Wilson's conduct which the law firm believes mandated disqualification: 1) He made assumptions of facts not in evidence, reached "erroneous statements of the law" and the language and tone of his opinion was hostile; 2) He used "preconceived opinions" about HLRD from other Republic proceedings; 3) The "hostility in the language and tone of the opinion, considered all by itself"; and 4) Wilson's use of his personal knowledge of disputed evidentiary facts in respect to the Petra and McKinney bankruptcies. See *Reply Brief, page 1*. In addition to the four general categories, HLRD offers the following illustrative examples of Wilson's conduct.

- The Bankruptcy Judge framed the issue as whether "HLRD deserves to be paid for its services performed and expenses incurred in this case." HLRD takes offense with the word "deserves."

- The Bankruptcy Judge wrote that HLRD "recently plundered \$200,000 from RFC, RTS and their affiliates in payment for antecedent or anticipated debts for legal services." HLRD takes offense with the word "plundered" and argues that the Judge did not properly use the legal interpretation of affiliate.

- The Bankruptcy Judge wrote that three trustees accused HLRD of "suppression of truth and obstruction of administration." HLRD claims this is an erroneous fact.

- The Bankruptcy Judge wrote that HLRD "diverted" assets from Allied. HLRD asserts that it was being paid in the ordinary course of business for legal work for Allied, and, therefore, it did not divert assets from Allied.

- The Bankruptcy Judge's "intuitive feelings" about the Republic bankruptcy cases. Also, HLRD says the Bankruptcy Judge's personal knowledge of "disputed evidentiary facts" in the Petra and McKinney bankruptcy cases hampered his judgment in this case.

- The general tone of the "hostile" opinion.

- The fact that the Bankruptcy Judge - based on the same set of facts -- granted HLRD fees for its representation of RBI, but denied attorney fees for the representation of RTS and RFC.

An important backdrop to this issue is that HLRD has not shown -- nor has this Court found -- any material facts determined by the Bankruptcy Court that were clearly erroneous. In addition, as discussed above, the Bankruptcy Court did not abuse its discretion in denying attorneys fees in this case. Therefore, the question is whether, either under §455(a) or §455(b)(1), HLRD has provided factual evidence of extrajudicial bias and/or conduct that shows Wilson should have disqualified himself.

The foundation of HLRD's allegations focus on the "hostility in the language and tone of the opinion, considered all by itself". There is no question that certain statements in the opinion criticized HLRD as discussed below.

Wilson wrote that HLRD "plundered over \$200,000 from RFC, RTS and their affiliates". June 25, 1991 Order at 24. He wrote that the law firm "diverted" some of Allied remaining assets. *Id.* He outlined the allegations by the various Trustees who suspected HLRD of misconduct. *Id.* at 26-27. The judge further described HLRD's non-disclosure as a "misleading half-truth" or "lies" *Id.* at 28. He also wrote the law firm was "not playing it straight." *Id.*

Other facets of the opinion also trouble HLRD. The law firm took particular offense

to Wilson's framing of the issue: "The question before this Court is whether, or to what extent, HLRD deserves to be paid for its services performed and expenses incurred in this case." *Id.* at 16.

HLRD also believes Wilson may have put too much stock into the Trustees' assertions of HLRD's preferential or fraudulent transfers, conflicts of interest, suppression of truth and obstruction of administration.¹⁵ What the Bankruptcy Court said concerning the assertions was, "whether or not HLR&D was actually guilty of such things, HLR&D did act in a manner that naturally excited suspicion and distrust." *Id.* at 27.

Predictably, HLRD does not either agree or appreciate the language in portions of Wilson's opinion. But the only factual evidence HLRD presents is the Opinion itself. No other evidence has been submitted that shows Wilson's alleged bias was either extrajudicial, personal or pervasive.

A second HLRD argument is whether Wilson either had a "preconceived opinion" or whether he used "personal knowledge of disputed evidentiary facts" from the Petra and McKinney bankruptcy proceedings. Again, no evidence supports the allegations.

More arguments and/or examples are cited by HLRD, which have been reviewed by this Court. Each one need not be discussed. The Court concludes that HLRD has failed to support its allegations with sufficient factual evidence. Therefore, Wilson did not abuse

¹⁵ The Bankruptcy Court wrote: "But it is not just an unhappy coincidence that three different Trustees in three different groups of cases all came to act on the belief that HLR&D was involved in preferential or fraudulent transfers, conflicts of interest, suppression of truth and obstruction of administration." *Id.* at 27. As noted, Fred Woodson, who was the trustee in McKinney's individual bankruptcy proceeding, questioned HLR&D's actions as did Kenneth Stainer, who was the Trustee for the Petra companies. Stainer questioned the law firm's conduct in two different proceedings. Also, in this case, the Successor Trustee criticizes HLRD.

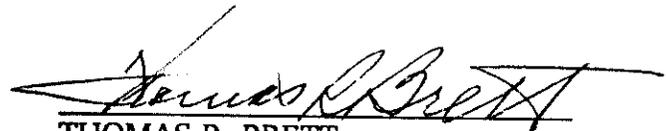
his discretion in not recusing himself.¹⁶

III. Conclusion

The Republic bankruptcy proceedings were described by HLRD's counsel as the most difficult cases in the "history" of the Northern District of Oklahoma Bankruptcy Court. And, obviously Judge Wilson -- who handled several of the cases -- had knowledge of the actions of McKinney and his entities, along with everyone who participated in the cases.

But the issues on this appeal focus on whether HLRD could sufficiently show that Wilson denied the attorney fees because he either misinterpreted the law, abused his discretion or because he should have recused himself pursuant to 28 U.S.C. §455(a) and §455(b)(1). No such showing has been made. Therefore, for the reasons discussed above, this Court **AFFIRMS** the Bankruptcy Court's decision.

SO ORDERED THIS 28th day of Aug., 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹⁶ While the undersigned may not have written the opinion with the occasional harsh language employed by the Bankruptcy Judge, a review of the record indicates that HLRD should have made full disclosure. This rings especially true, given the highly publicized and complex nature of the Republic bankruptcy proceedings. In addition, it should be noted that the Bankruptcy Court praised HLRD for its work on the case, and did not order disgorgement of any money, including the fees collected for the representation of RBI.

ENTERED ON DOCKET

DATE AUG 28 1992

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

CLOSED

Mary Johnson,
Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.,
Secretary of Health and
Human Services,

Defendant.

Case No. 91-C-353-B ✓

FILED

AUG 27 1992

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

ORDER

The Court has for its consideration the objections of the Plaintiff, Mary Johnson, to the Report and Recommendation (hereinafter "R & R") of the United States Magistrate Judge affirming the Administrative Law Judge's (hereinafter "ALJ") denial of disability insurance benefits.

Plaintiff filed the instant action pursuant to 42 U.S.C. § 405(g) seeking review of the decision of the Secretary of Health and Human Services. The matter was referred to the Magistrate Judge who entered his R & R on April 23, 1992. The Magistrate Judge recommended to affirm the Secretary's decision. (R & R, p. 8).

The Social Security Act entitles every individual who "is under a disability" to disability insurance benefits. 42 U.S.C.A. § 423(a)(1)(D) (1983). "Disability" is defined as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." *Id.* § 423(d)(1)(A). An individual

"shall be determined to be under disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but

cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work."

Id. §423(d) (2)(A).

Under the Social Security Act, the claimant bears the burden of proving a disability, as defined by the Act, which prevents him from engaging in his prior work activity. Reyes v. Bowen, 845 F.2d 242, 243 (10th Cir. 1988); 42 U.S.C. § 423(d)(5) (1983). Once a disability is established, the burden shifts to the Secretary who must show that the claimant retains the ability to do other work activity and that jobs the claimant could perform exist in the national economy. Reyes, 845 F.2d at 243; Williams v. Bowen, 844 F.2d 748, 751 (10th Cir. 1988); Harris v. Secretary of Health and Human Services, 821 F.2d 541, 544-45 (10th Cir. 1987). The Secretary meets this burden if the decision is supported by substantial evidence. See Campbell v. Bowen, 822 F.2d 1518, 1521 (10th Cir. 1987); Brown v. Bowen, 801 F.2d 361, 362 (10th Cir. 1986). "Substantial evidence" requires "more than a scintilla, but less than a preponderance," and is satisfied by such relevant "evidence that a reasonable mind might accept to support the conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971); Campbell, 822 F.2d at 1521; Brown, 801 F.2d at 362. The determination of whether substantial evidence supports the Secretary's decision, however,

"is not merely a quantitative exercise.

Evidence is not substantial 'if it is overwhelmed by other evidence--particularly certain types of evidence (e.g., that offered by treating physicians)--or if it really constitutes not evidence by mere conclusion.'"

Fulton v. Heckler, 760 F.2d 1052, 1055 (10th Cir. 1985) (quoting Knipe v. Heckler, 755 F.2d 141, 145 (10th Cir. 1985)). Thus, once the claimant has established a disability, the Secretary's denial of benefits must be supported by substantial evidence that the claimant could do other work activity in the national economy.

The Secretary has established a five-step process for evaluating a disability claim. The five steps, as set forth in Reyes v. Bowen, 845 F.2d at 243, are as follows:

- (1) A person who is working is not disabled. 20 C.F.R. § 416.920(b).
- (2) A person who does not have an impairment or combination of impairments severe enough to limit his ability to do basic work activities is not disabled. 20 C.F.R. § 416.920(c).
- (3) A person whose impairment meets or equals one of the impairments listed in the "Listing of Impairments," 20 C.F.R. § 404, subpt. P, app. 1, is conclusively presumed to be disabled. 20 C.F.R. § 416.920(d).
- (4) A person who is able to perform work he has done in the past is not disabled. 20 C.F.R. § 416.920(e).
- (5) A person whose impairment precludes performance of past work is disabled unless the Secretary demonstrates that the person can perform other work available in the national economy. Factors to be considered are age, education, past work experience, and residual functional capacity. 20 C.F.R. § 416.920(f).

The inquiry begins with step one, and if at any point the claimant is found to be disabled or not disabled, the inquiry ceases.

Reyes, 845 F.2d at 242; Talbot v. Heckler, 814 F.2d 1456, 1460 (10th Cir. 1987); 20 C.F.R. §416.920 (1991).

Plaintiff here allegedly suffers from severe back pain. The present appeal focuses on the effects of her pain, and specifically involves whether it permits her to hold substantial gainful employment as laid out in the fifth section of the test. Several physicians and a psychologist examined Plaintiff to understand the extent of her impairment. Based on the all of these reports, the ALJ found that Plaintiff's impairments did not meet the strictures of 20 C.F.R. § 404, subpt. P, app. 1, as she failed to satisfy the fifth section of the test. The ALJ concluded that Plaintiff's physical condition, although limited, allowed her to perform "light and sedentary work." (TR, p.17).

Plaintiff objects to the ALJ's weight given to the treating physician's opinion, the finding that Plaintiff's pain is not credible, and that the various occupations as set forth by the vocational expert are consistent with Plaintiff's abilities. Plaintiff believes that the ALJ's improper evaluation of the evidence resulted in the incorrect conclusion that Plaintiff can engage in substantial gainful employment in the national economy.

The Magistrate Judge found no error in the evaluations by the ALJ, nor any error in determining that Plaintiff can engage in substantial gainful employment as outlined by the vocational expert. Accordingly, the Court agrees with the recommendation of the Magistrate Judge.

Treating Physician Rule

The Tenth Circuit gives substantial credence to the opinions

of treating physicians on the subject of medical disability. A treating physician's opinion is binding on the fact finder unless it is contradicted by "substantial evidence," and the opinion is entitled to extra weight due to the physician's greater familiarity with the claimant's medical situation. Kemp v. Bowen, 816 F.2d 1469, 1476 (10th Cir. 1987); Frey v. Bowen, 816 F.2d 508, 513 (10th Cir. 1987).

Plaintiff's treating physician throughout her back fusion procedures, Dr. Field, felt that she was permanently disabled on April 30, 1990 from participating in a working career at her level of training. (Emphasis supplied) (TR, p.230). The Plaintiff's level of training does not determine whether "the person can perform other work available in the national economy." 20 C.F.R. §416.920(c)(5). On August 4, 1988, Dr. Field found that the bone simulator had resulted in a solid fusion and as this was one year post operative, he felt that Plaintiff "could undertake a light duty job description at this time" or consider a work hardening situation. (Emphasis supplied) (TR, p.133).

In October 1988, Dr. Martin performed a physical examination on Plaintiff for a worker's compensation impairment rating. He concluded that Plaintiff had a permanent partial impairment of 68% to her whole person and that he believed her to be 100% economically disabled and not employable. (TR, p.175).

Plaintiff underwent a work hardening evaluation on April 26, 1989 and the interviewer found that the Plaintiff would be a candidate for the work hardening program focusing on reconditioning, but she also reported that Plaintiff's willingness

to participate fully was questionable as Plaintiff stated "she was unaware of needing to come daily and reported 3 out-of-town appointments in the next 2 weeks that would prevent her attendance." (TR, p.183).

On July 6, 1989, during the hearing by the ALJ, Plaintiff testified that she cannot drive for more than two hours without her back hurting. She continued that she goes to the mall to walk four or five times a week and that she walks two miles in 45 minutes. She also goes to the grocery store, the bank, church, the library, goes to see friends, and plays bridge. At home, she does housework, laundry (albeit with a special tool because she can't bend), talks on the telephone, and reads for several hours. (TR, p.34 to 36, 38). Plaintiff's primary complaint was one of pain, and she indicated that although she takes medication to minimize the pain she can't work. (TR, pp.38 and 40). She reported that she takes four Tylenol capsules every four hours many days, Vicodin if her pain is severe, and Darvocet once a month; (TR, pp.48 and 95) nevertheless, these are not powerful medications. (R & R, p.6).

On August 2, 1989, the ALJ enlisted the assistance of Dr. Goldman to explain certain things including the medical report inconsistencies as to Plaintiff's bodily impairment and the reasonableness of Plaintiff's mental perception of her inability to do work in light of the activities in which she regularly engages. (TR, pp.186 to 187). Dr. Goldman believed Dr. Field's conclusion as to bodily impairment to be more accurate than the other physicians. Dr. Goldman also noted that Dr. Field was aware of Plaintiff's complaint of pain, nevertheless, on occasion felt that

her pain did not preclude light work. He found that according to the notes of Dr. Field, other physicians and the medical records, it would certainly appear that Plaintiff could have done some sedentary or light work since 1985. Lastly, Dr Goldman noted that Plaintiff's disability is that of somewhat restricted motion and a pain syndrome which is subjective and not objective. (TR, pp.188 to 190).

The ALJ considered the evidence of Plaintiff's treating physician, other doctors, the testimony of the Plaintiff, his own observations, and concluded that Plaintiff was not disabled under the Social Security Act. The ALJ considered all the evidence and the Magistrate Judge correctly found that substantial evidence supported the ALJ's ruling.

SUBJECTIVE PAIN

Plaintiff also contends that the ALJ and the Magistrate Judge failed to properly weigh Plaintiff's subjective claims of pain. The Tenth Circuit requires that, where a pain-causing impairment is isolated, the court must consider all evidence relating to the extent of the pain in this particular plaintiff. Luna v. Bowen, 834 F.2d 161, 164 (10th Cir. 1987). In the present case, the ALJ considered Plaintiff's testimony and medical records, evaluating all the symptoms and treatments. Additionally, the ALJ asked the Plaintiff to undergo a psychological examination to evaluate her ability to work based on a chronic pain syndrome. The psychologist reported on February 7, 1990 that:

The overall flavor of the results of her chronic pain battery indicate a very significant level of denial in addition to the likelihood of Mary over-stating the

limitations associated with her pain.

...There is most definitely an element of hysteria or over-reactivity to her current level of emotional functioning. There's a moderate level of depression underlying the conversion disorder. She clearly makes excessive use of denial, projection and rationalization, blaming her difficulties on an external event, in this particular case her work-related accident....

In summary, Mary Johnson is a 58 year old divorced female who worked some 8 1/2 years prior to sustaining an apparent back injury while on the job. Whereas she impressed this examiner as having some limitations of function due to pain, she is an extremely active woman for an individual who is alleging pain as precluding her from gainful employment.... It is this examiner's opinion, that Mary Johnson is not precluded from gainful employment due to pain.

(Emphasis supplied) (TR, p.214).

The ALJ made the determination based on all the relevant facts and the psychologist report that Plaintiff's pain is not disabling under the Act. This judgment is binding on the district court if there is substantial probative evidence to support it. See Richardson v. Perales, 402 U.S. at 399; Broadbent v. Harris, 698 F.2d 407, 413 (10th Cir. 1983). Plaintiff's own testimony shows that she lives an active life. Substantial evidence supports the ALJ's conclusion that Plaintiff's allegations of pain were not credible to the extent that they precluded light and sedentary work. The Magistrate Judge found no error in this evaluation. Accordingly, this Court agrees with the recommendation of the Magistrate Judge.

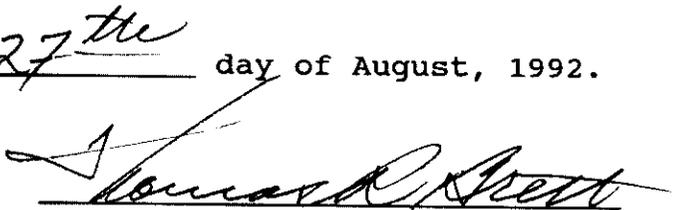
Substantial Gainful Employment

A vocational expert testified that Plaintiff could perform light jobs, such as sales person/ florist, counter clerk/photo finishing, service establishment attendant, film rental clerk; that Plaintiff could also perform sedentary jobs such as telephone solicitor, automobile rental clerk, order clerk (mail or phone) and cashier II. (TR, pp.199 to 200). The vocational expert considered Plaintiff's contention that she cannot stand for over one hour at a time or sit over 30 minutes in finding suitable employment for Plaintiff.

The ALJ, after considering all the evidence in the record, found that Plaintiff has a residual functional capacity which the vocational expert recognized when determining work that Plaintiff can perform. Since substantial evidence supports the ALJ's conclusion, no legal error was made and his decision stands.

The Court agrees with and adopts the Magistrate Judge's Report and Recommendation, and orders that the decision of the Secretary be AFFIRMED.

IT IS SO ORDERED this 27th day of August, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

CLOSED

ENTERED ON DOCKET

~~AUG 27 1992~~

FILED

DATE

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

AUG 26 1992

[Signature]

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

ROYCE LORNE NEWBY,)
)
 Plaintiff,)
)
 vs.)
)
 TOWN OF SALINA, OKLAHOMA,)
 and SALINA PUBLIC WORKS)
 AUTHORITY,)
)
 Defendants.)

Case No. 91-C-633-B ✓

ENTERED ON DOCKET

DATE AUG 28 1992

JUDGMENT

Pursuant to the Court's Order, entered on August 26, 1992, judgment is hereby entered in favor of Defendants, TOWN OF SALINA, OKLAHOMA, and SALINA PUBLIC WORKS AUTHORITY, and against Plaintiff, ROYCE LORNE NEWBY. Costs are awarded to Defendant, providing timely application is made pursuant to Local Rule 6. Each side is to pay its respective attorney's fees.

IT IS SO ORDERED this 26th day of August, 1992.

[Signature]
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

ENTERED ON DOCKET
DATE AUG 27 1992

ENTERED ON DOCKET
DATE AUG 28 1992
ENTERED

ROYCE LORNE NEWBY,
Plaintiff,

vs.

TOWN OF SALINA, OKLAHOMA,
and SALINA PUBLIC WORKS
AUTHORITY,

Defendants.

Case No. 91-C-633-B

FILED

AUG 28 1992

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

ORDER

This matter comes on for consideration of Defendants' Motion for Summary Judgment, pursuant to Fed.R.Civ.P. 56. Defendants filed this motion on June 15, 1992, and Plaintiff has not responded. The Federal Rules indicate that where the nonmoving party fails to respond to the Motion, "summary judgment, if appropriate, shall be entered against the adverse party." Fed.R.Civ.P. 56(e). After examining the arguments of Defendants' Motion, the Court concludes that no genuine issue of material fact remains, and the Motion is GRANTED.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). cert. denied 480 U.S. 947 (1987). In Celotex, 477 U.S. at 317, 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 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).

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.¹ In Anderson v. Liberty Lobby, Inc., *supra*, the Court stated:

... 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 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 parties are further governed by the constraints of Local Rule 15(B) which provides:

A brief in support of a motion for summary judgment [] shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. [] All material facts set forth in the statement of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party.

Defendants' Motion properly includes the Defendants' statement of uncontroverted material facts. Plaintiff acquiesces to these

¹ Here the Plaintiff has failed to respond to the motion for summary judgment, violating the express instructions of Rule 56(e). This rule further provides that in these cases summary judgment shall be entered if appropriate. The Court so finds.

facts in failing to respond to Defendants' statement.²

TITLE VII CLAIM

In order to overcome a summary judgment motion based on a Title VII claim, Plaintiff must prove that her termination was motivated by a discriminatory intent. Williams v. Colorado Springs, Colorado School District, 641 F.2d 835, 839 (1981); See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). The defendant is then given an opportunity to prove that nondiscriminatory factors resulted in the termination. McDonnell Douglas, 411 U.S. at 802. Finally, the plaintiff is given a chance to rebut the defendant's showing, if she can prove that these other factors were a mere pretext. Id. at 804.

An employer is not liable if there are nondiscriminatory reasons for the termination which, when viewed independently from the alleged discriminatory reasons, provide a legally justifiable cause for the firing. Price Waterhouse v. Hopkins, 490 U.S. 228, 242 (1989). In her Complaint, Plaintiff claims she was discriminated against by the Town of Salina and the Salina Public Works Authority ("SPWA") because of her gender. However, by failing to respond to Defendants' Motion for Summary Judgment, she admits that she has no knowledge of any discriminatory motivation for her termination. (Deposition of Newby, p. 82). She also admits that fellow employees who were paid differently

² Counsel for Plaintiff is personally quite knowledgeable concerning the requirements of Local Rule 15(B). He habitually fails to file a timely response and brief to Rule 56 motions. In recent years, on many occasions the Court has sustained motions for summary judgment because of Plaintiff's Counsel's failure to file any appropriate response as required by Rule 56. This is another one of those occasions.

than herself were required to do labor-intensive jobs, as compared to her office duties. (Id., pp. 79-80). She finally admits that her salary was lower than fellow male workers as the result of an agreement she entered with SPWA. (Id., pp. 31-32). No discriminatory intent is evident from these admitted facts, therefore summary judgment is appropriate.

FIRST AMENDMENT CLAIM

Under section 1983, a plaintiff must show that a right secured by the constitution has been violated, and that the violation occurred under color of state law. 42 U.S.C. § 1983. The plaintiff is required to plead facts that show she can prove "an arguable basis for a constitutional claim." Reed v. Durham, 893 F.2d 285 (10th Cir. 1990). A termination is not cognizable by section 1983 unless it was intended to deny that employee's First Amendment rights. The complainant must show that, but for the free speech motive, the termination would not have occurred. Givhan v. Western Line Consolidated School District, 439 U.S. 410, 417 (1978). Again, by not responding to the Defendants' Motion, Plaintiff has admitted that she recognized no free speech motive, or any other discriminatory reason, for her termination. (Deposition for Newby, p. 82). Relying on her pleadings alone, Ms. Newby fails to show a triable issue of fact on her First Amendment claim. Therefore, the Defendants' Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED this 26th day of August, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

CLOSED

ENTERED ON DOCKET
DATE **AUG 28 1992**

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

FILED
AUG 28 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JACKIE HOWARD PARRET,)
)
 Plaintiff,)
)
 v.)
)
 DONALD C. LANE and DAVID MOSS,)
)
 Defendants.)

No. 91-C-0540-B ✓

ORDER

Plaintiff Jackie Parret filed a 42 U.S.C. §1983 lawsuit, claiming that Tulsa County District Attorney David Moss and Tulsa County District Judge Donald Lane denied him of due process and equal protection of the law by improperly handling his applications for post-conviction relief.

This is Parret's third lawsuit concerning the state's handling of his post-conviction application. The first two lawsuits were 28 U.S.C. §2254 habeas proceedings dismissed by this Court on grounds of procedural default. The undersigned, therefore, raises the issue of *res judicata sua sponte*.¹ For the reasons discussed below, the doctrine of *res judicata* does apply, and the case is dismissed.

I. Facts/Procedural History

In 1987, a Tulsa County District Court jury convicted Parret of burglary after former conviction of a felony and sentenced him to 42 years in prison. Parret failed to file a direct appeal with the Oklahoma Court of Criminal Appeals. Under Oklahoma law, a failure to

¹ Defendants' do not specifically raise the issue of *res judicata*, although they argue that this lawsuit was brought only because of Parret's failure to directly appeal his state conviction -- the same issues raised in the earlier habeas proceedings. In the interests of judicial economy, and since all actions were brought in this Court, the undersigned believes it appropriate to raise the *res judicata* issue sua sponte. *Boone v. Kuntz*, 617 F.2d 435, 436 (5th Cir. 1980).

28

file a timely direct appeal waives **all issues** which could have been raised on appeal unless a sufficient reason is given for the **failure** to appeal. *See Jones v. State*, 704 P.2d 1138 (Okl.Cr. 1985)

In an effort to show why he **did not** timely appeal, Parret filed an application for post-conviction relief. Co-Defendant Lane, who was the assigned judge, denied the application in an eight-page opinion. The Oklahoma Court of Criminal Appeals affirmed Lane's decision.

Parret then filed a second application for post-conviction relief on the grounds that Moss failed to provide certain transcripts pursuant to 22 Okla.Stat. §1083.² Lane denied that application. The Oklahoma Court of Criminal Appeals again affirmed.

Then, on January 21, 1988, Parret filed a habeas petition with this Court. He listed eight issues, including two pertinent to this case.³ Parret's first issue states:

I attempted to perfect belated appeal by application for post-conviction relief. I showed, by grounds raised in Application that by no fault of my own timely direct appeal was not taken. The District Court arbitrarily denied my application stating that I waived issues by not taking direct appeal, and did not comply with rules of state post-conviction procedure in determining issues raised. Petition For Writ Of Habeas Corpus, 88-C-68-C, page 6.

And Parret's second issue states:

² §1083(a) states: "Within thirty (30) days after the docketing of the application, or within any further time the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. In considering the application, the court shall take account of substance, regardless of defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application; or such records may be ordered by the court."

³ Three other issues focus on why Parret believed the state trial court erred during his jury trial: 1) The state denied to help him locate witnesses; 2) The state denied him stamps and envelopes that would have helped him prepare his defense; 3) The sentence imposed was illegal; and 4) The state failed to disclose evidence before the trial.

The state did not attach portions of transcripts of record that were material to the issues raised in Applications for post-conviction relief. When I raised this issue in second application and Appeal, the District Court and the Oklahoma Court of Criminal Appeals did not make specific facts, finding or conclusions of law in determining the issue of state's failure to provide transcripts. *Id.* at page 8.

After reviewing these issues -- together with the others -- this Court dismissed the case on grounds of procedural default. *Order, page 1 (docket #18) Case No. 88-C-68-C.* Parret did not appeal the decision to the Tenth Circuit.

Instead, Parret filed a third application for post-conviction relief. Tulsa County District Judge B.R. Beasley denied that application applying the doctrine of *res judicata*. The Oklahoma Court of Criminal Appeals again affirmed.

Subsequently, on April 9, 1990, Parret filed his second habeas petition with this Court, raising essentially the same issues discussed above. *See, Petitioner's Brief In Support Of Subsequent Petition For Writ Of Habeas Corpus, Case No. 90-C-308-E.* (docket #2). This Court dismissed the petition as "successive" pursuant to Rule 9 of the *Rules Governing Section 2254 Cases*. Parret appealed to the Tenth Circuit. It wrote:

We do not reach the merits of petitioner's claim of various alleged deprivation of his rights by the state courts. The petition that he brings before us for review is clearly successive to his earlier petition in federal court...from which he took no appeal. ..Whether the district court's ruling in 1988 was correct is of no concern to us at this late date; petitioner's only recourse was to appeal that earlier determination, and he did not. He cannot acquire a new right of appeal by simply starting over again and appealing the subsequent denial. *Parret v. Cowley*, 931 F.2d 63 (10th Cir. 1991).

Two months after the Tenth Circuit decision, Parret filed the instant Complaint under 42 U.S.C. §1983, seeking declaratory and injunctive relief. Parret's Complaint alleges:

On June 1, 1987, I attempted to file belated appeal by filing Application for Post-Conviction Relief in the trial Court, In His response, defendant David Moss failed to comply with state statute [22 Okla. Stat. §1083(a)] requiring that he attach portions of transcript materials to the question raised....In his July 9, 1987 Order denying my APPLICATION FOR POST-CONVICTION RELIEF the defendant Donald C. Lane further deprived me of Due Process and Equal Protection of Law and a full and fair determination by his failure to disqualify himself...he failed to order transcript materials to the question raised..and failed to consider the substance of the application raised. *Civil Rights Complaint, 91-C-540-B (docket #1)*.

On September 3, 1991, Defendants Lane and Moss -- claiming immunity because the alleged actions took place as part of their official duties -- filed a Motion To Dismiss. The United States Magistrate Judge recommended granting the motion. However, on April 15, 1992, this Court rejected the Magistrate Judge's recommendation.⁴ See, Order, April 15, 1992. Defendants then filed a Motion For Summary Judgment.

II. Legal Analysis

The issue now presented is whether the doctrine of *res judicata* prevents Parret -- who twice failed in federal habeas proceedings in challenging the state's conduct concerning his post-conviction application -- from raising the issue a third time in a 42 U.S.C. §1983 lawsuit.

Under the doctrine of *res judicata*, a final judgment on the merits of an action "precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980)

⁴ *The Motion To Dismiss* could not be granted on grounds of immunity because Parret sought relief on equitable grounds. See *Pulliam v. Allen*, 466 U.S. 522 (1984).

The *res judicata* doctrine serves two objectives. It limits to one the number of times a defendant can be "vexed by the same claim" and it promotes efficiency in the judicial system by putting an end to the litigation. *Gilbert v. Ben-Ashr*, 900 F.2d 1407, 1410 (9th Cir. 1990). Stated another way, the doctrine relieves the parties of the cost and vexation of multiple lawsuits, conserves judicial resources, and, by preventing inconsistent decisions, encourages reliance on adjudication. *Allen*, 449 U.S. at 94.

The "test" for applying the *res judicata* doctrine focuses on examining the following questions: 1) Was the party against whom *res judicata* was asserted a party or in privity with a party to the prior adjudication; 2) Was there a final judgment on the merits; and, 3) Was the issue decided in the prior adjudication identical with the one presented in the action in question? *Northern Natural Gas Co. v. Grounds*, 931 F.2d 678, 683 (10th Cir.1991). Also, see *Roberts v. Clark*, 615 F.Supp. 1554, 1557 (D.Colo. 1985).

The first question is whether the same parties were present in the two prior habeas proceedings. Parret was the Plaintiff/Petitioner in the proceedings. In the first two habeas proceedings, Jack Cowley, who was the warden at the state prison that housed Parret at that time, was named Respondent. In this §1983 lawsuit, Lane and Moss are the Defendants.

Since the Defendants in the earlier and present lawsuits are different, the issues turns on whether Cowley is in privity with Lane and Moss. Privity exists where there is representation of the interests of the same person. *18 Wright, Miller and Cooper, Federal Practice and Procedure, §4454 (1981)*.

In this case, the interests of Cowley, the prison warden, Moss and Lane are one and the same. *James v. Kincheloe*, No. C-88-463-JBH 1991 U.S. Dist. WL 243309, pages 2-3 (E.D. Wash. Nov. 6 1991).⁵ Rule 2(a) of the *Rules Governing Section 2254 Cases* required Parret to name Cowley, who had custody of him, as the Respondent. And while the habeas petitions did not address Lane and Moss by name, they did attack their respective actions. Therefore, privity clearly exists.

The second question is whether there was a final judgment on the merits. This Court did not address the substantive merits of Parret's claims because of the state procedural default. The question then becomes whether a dismissal on grounds of procedural default is a "final judgment on the merits."

Case law on this issue is sparse. But this Court is persuaded, in part, by the decision in *James, supra*. That case, based on similar facts, concluded that a decision by a federal court not to review habeas issues because of procedural default is a decision on the merits. *Id.* at 4-5. Also, see, generally, *Harris v. Reed*, 489 U.S. 255 (1990). The court in *James* explained why:

To hold otherwise makes *Harris* and its federal-state comity rationale worthless. Litigants would never be held accountable for a procedural default at the state level and would not have the fear the consequences of *Harris*. The state has an important interest in seeing that litigants comply with state court procedures...Plaintiff should not be able to get around his procedural default at the state level by simply filing a section 1983 action and seeking judgment on the merits. *Id.* at 5. See, also, *Coleman v. Thompson*, 111 S.Ct. 2546, 2555 (1991)(Discussion of federal-state comity concerning

⁵ This case offers an in-depth analysis of the elements of res judicata on facts quite similar to the one in the instant case.

*procedural defaults in state court)*⁶

The facts here call for a similar result. Parret failed to file a direct appeal on his burglary conviction -- a procedural default under Oklahoma law. His subsequent attempts to explain why he did not appeal were unsuccessful at the state level. Consequently, he filed a federal habeas petition, which was dismissed on grounds of procedural default.⁷ Parret neglected to appeal that decision to the Tenth Circuit, and, instead, opted to file a second habeas petition. That petition was dismissed as successive under Rule 9 of the *Rules Governing Section 2254 Cases*. The Tenth Circuit affirmed. As a result, this Court finds that the habeas petitions were "on the merits".

The final question in a *res judicata* analysis is whether the issues decided in the habeas proceedings are identical with the ones presented in this §1983 action. In the instant lawsuit, Parret alleges Moss failed to attach transcripts when the District Attorney responded to the post-conviction applications. He claims that Lane: 1) Failed to give him a full and fair "determination" of his post-conviction application; 2) Failed to order transcript materials when deciding the post-conviction application; 3) Failed to consider the substance of the post-conviction application; and 4) Failed to recuse himself.

⁶ Another persuasive case on this issue is *Howard v. Lewis*, 905 F.2d 1318 (9th Cir.1990). It does not address the same facts in this case, but stands for the proposition that a dismissal of a federal habeas petition on the ground of state procedural default is a determination "on the merits." Writes the court: "In the case of state procedural default, a state court has not rendered a decision regarding the merits of the defendant's claims, but the defendant has no further opportunity to obtain a disposition on the merits of his or her claims in the state courts. [A] subsequent petition raising the same claims that were dismissed previously on the basis of state procedural default, the interest underlying the dismissal of the first petition, i.e. federal-state comity, is still present...We conclude, therefore, that the dismissal of a federal habeas petition [for] state procedural default is a determination "on the merits" for the purposes of the successive petition doctrine. *Id.* at 1322-23.

⁷ This Court also found that Parret deliberately bypassed the state appellate process.

In his first habeas petition, Parret's allegations were the same. He stated the District Court "arbitrarily" denied his post-conviction application. He also claims that the state did not attach relevant transcripts material to his post-conviction application. Similar issues surfaced in his second habeas petition. Both the habeas proceedings and this lawsuit involve the same facts.

Two differences do exist between the previous lawsuits and this one. First, Parret accused the state of wrongdoing in the habeas petitions; in this case, he specifically accuses state employees Moss and Lane. That, in itself, is of no consequence since Parret attacked the state's conduct in the habeas proceedings, which focused, in part, on the actions of Moss and Lane.

The second difference is that, in this case, Parret seeks a different remedy. He wants a declaratory judgment and injunctive relief; in the habeas petitions, he asked to be released from custody. However, just because Parret seeks a different remedy does not defeat the *res judicata* doctrine. The Seventh Circuit explains:

There are no hard and fast rules for determining when the same cause of action is involved, but one important consideration is whether the wrong for which the remedy is sought is the same and thus whether the same evidence would sustain both judgments. In this case, no detailed inquiry is necessary. Both actions arose out of the same reparole proceedings, and the habeas petition and civil rights complaint are almost indistinguishable. The factual allegations are identical, as are the asserted grounds for relief...It is of no moment that one case seeks a writ of habeas corpus and the other damages as well as injunctive relief. *Warren v. McCall*, 709 F.2d 1183, 1185 (7th Cir. 1983).

The wording of Parret's §1983 Complaint differs from the habeas petitions. As mentioned, he specifically named Moss and Lane in this lawsuit. He also had additional allegations such as the issue of whether Lane should have recused himself. But the

overriding question is whether Parret had a full and fair opportunity in his first habeas proceeding:

This second effort to prove [the case] is comprehended by the generally accepted precept that a party who has one fair and full opportunity to prove a claim and has failed in that effort, should not be permitted to go to trial on the merits of the claim a second time. Both orderliness and reasonable time saving in judicial administration requires that this be so unless some overriding consideration of fairness to a litigant dictates a different result in the circumstances of a particular case. *Bruzewski v. United States*, 181 F.2d 419, 421 (3d Cir.1950), quoted in *Northern Natural Gas Co. v. Grounds*, 931 F.2d 678, 682 (10th Cir.1991).

The present lawsuit involves the same facts and issues about the same post-conviction application proceedings raised in the earlier habeas petitions. Parret had a full and fair opportunity to address his issues in the initial habeas proceedings. He lost, and failed to appeal the decision. Then he unsuccessfully attempted yet another habeas petition; and, after that failed, this lawsuit was filed. Consequently, the §1983 lawsuit should be dismissed on the grounds of *res judicata*.

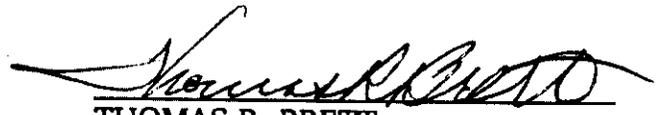
III. Conclusion

Few cases have dealt with the issue of whether a procedural default in a §2254 habeas proceeding can operate as *res judicata* in a subsequent 42 U.S.C. §1983 lawsuit that involves the same facts and issues.

But, as discussed above, federal-state comity or judicial economy is not advanced if a habeas petitioner can simply file a 42 U.S.C. §1983 lawsuit to circumvent the dismissal of his §2254 habeas proceedings for the same state procedural default. In addition, judicial resources are taxed.

In this case, Parret failed to file a timely direct appeal of his state conviction. His efforts for relief were precluded when he failed to appeal this Court's habeas decision to the Tenth Circuit. He then unsuccessfully attempted to skirt the procedural default by filing a second habeas petition regarding the same issues. To allow him a third chance for relief on the same set of facts and issues defeats the objective and purpose of the *res judicata* doctrine. Therefore, the case is **DISMISSED**.

SO ORDERED THIS 28th day of Aug, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE 8/28/92

CLOSED

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

BURNEY ALLEN,)
)
Plaintiff,)
)
v.)
)
JACK COWLEY,)
)
Defendant.)

FILED

AUG 27 1992 *OK*

92-C-80-B ✓

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

ORDER

Now before this Court is Respondent's Motion To Dismiss. Petitioner Burney Allen filed a Petition For A Writ Of Habeas Corpus on January 13, 1988. This Court later dismissed the Petition, and the Tenth Circuit affirmed. Allen then filed this Habeas Petition on January 29, 1992. Respondent now contends the instant Petition should be dismissed as an abuse of the writ pursuant to Rule 9 of the *Rules Governing §2254 Cases*.

I. Summary of Facts/Procedural History

On March 6, 1980, Allen and Calvin Baker argued outside a Tulsa bar. A witness testified that Allen killed Baker by shooting him four times. Baker died, and Allen was subsequently convicted of first-degree murder, following a jury trial. Allen was sentenced to life in prison for the murder. The Oklahoma Court of Criminal Appeals affirmed the conviction. *Allen v. State*, 674 P.2d 1149, 1150 (Okl.Gr. 1984).

On January 13, 1988, Allen filed a Petition For Writ Of Habeas Corpus in this Court. See Case No. 88-C-26-E. Five grounds were raised in the habeas: 1) That blacks were excluded from his jury panel; 2) That the prosecutor injected his personal opinion during

the trial's closing argument; 3) Inadequate jury instructions; 4) That the trial court erred in denying the motion to dismiss and in overruling his demurrer to the evidence; and 5) That his conviction was based on the testimony of a witness who later changed her story. See *Findings and Recommendations of U.S. Magistrate, February 25, 1988, Case No. 88-C-26-E*. The Petition was dismissed on the merits, and the Tenth Circuit affirmed.

On January 29, 1992, Allen filed this Petition For A Writ Of Habeas Corpus. Allen raises nine issues, many of which focus on ineffective assistance of counsel during his trial, on appeal and during his quest for post-conviction relief. On March 6, 1992, Respondent filed the Motion To Dismiss, arguing that Allen has abused the writ.

II. Legal Analysis

The issue is whether Allen has abused the writ by raising issues in this habeas proceeding that he could have asserted in his first habeas petition. Rule 9(b) of the *Rules Governing §2254 Cases* states:

(b) Successive petitions. A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

Allen's second Petition raises new and different grounds than his first request for habeas relief. As a result, Allen must prove that he has not abused the habeas writ. *McCleskey v. Zant*, 111 S.Ct. 1454, 1470 (1991).¹ He can do this in two ways: 1) He

¹ The Supreme Court explains what a court should examine on the "abuse of writ" issue: "When a prisoner files a second or subsequent application, the government bears the burden of pleading abuse of the writ. The government satisfies this burden if, with clarity and particularity, it notes petitioner's prior writ history, identifies the claims that appeared for the first time, and alleges that petitioner has abused the writ. The burden to disprove abuse then becomes petitioner's. To excuse his failure to raise the claim earlier, he must show cause for failing to raise it and prejudice therefrom...*McCleskey*, 111 S.Ct. 1454 at 1470. Respondent met his burden. See Memorandum Brief In Support Of Motion To Dismiss, docket #6).

must show cause for not raising the new grounds in his first Habeas Petition and the prejudice he has suffered as a result; or, he must show that a fundamental miscarriage of justice would result from a failure to entertain the claim. *Rodriquez v. Maryland*, 948 F.2d 684, 687 (10th Cir. 1991).

Allen has made no showing of a fundamental miscarriage of justice. *McCleskey*, 111 S.Ct. at 1470-71.² Therefore, to excuse his failure to raise these new grounds in his first petition, Allen must assert a valid "cause" that consists of factors external to him that cannot fairly be attributed to him. *See, generally, Coleman v. Thompson*, 111 S.Ct. 2546 (1991).

Allen has made no such showing. Given the fact that Allen's new claims revolve around alleged errors at his trial, on appeal, and during the post-conviction proceedings, the record indicates that Allen knew the factual basis for the new claims at the time he filed the first Habeas Petition. Allen does not assert otherwise and he does not adequately explain why he did not raise the new claims in his first petition. Instead, he simply reiterates the alleged misconduct by his trial attorney.

Therefore, based on the foregoing reasoning, this Court finds that Allen has not met his burden to disprove abuse of the writ. Respondent's Motion To Dismiss is GRANTED.

² Allen says he is innocent of the "charge that he stand[ed] convicted for." Supplemental Memorandum, page 2 (docket #9). But this is not a "colorable showing of factual innocence." And nothing in the record suggests that this case would fall into the fundamental miscarriage of justice category.

SO ORDERED THIS 27 day of August, 1992.

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

THOMAS R. BRET
UNITED STATES DISTRICT JUDGE

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

ENTERED ON DOCKET
AUG 28 1992
DATE

CLOSED

FILED

AUG 28 1992

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

PENSION BENEFIT GUARANTY
CORPORATION,
Plaintiff,

-vs-

SEISCOR TECHNOLOGIES INC.,
a corporation in Its Capacity as
Plan Administrator of SEISCOR
TECHNOLOGIES, INC., RETIREMENT
PLAN,
Defendant.

Case No. 92-C-651 E

NOTICE OF DISMISSAL WITHOUT PREJUDICE

The Plaintiff, Pension Benefit Guaranty Corporation, dismisses this case without prejudice pursuant to Fed. R. Civ. P. 41. Plaintiff has not been served with an Answer or a Motion for Summary Judgment.

James M. Little
JAMES M. LITTLE #5465
LITTLE & MORGAN
P.O. Box 26568

Oklahoma City, OK 73126-0568
Phone: (405) 235-1404
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that on the 26 day of August, 1992, I served a true and correct copy of the foregoing pleading by mailing a copy thereof, postage prepaid, addressed to:

Willard Krasnow, Esq.
Raytheon
141 Spring Street
Lexington, MA 02173

James M. Little
JAMES M. LITTLE

ENTERED ON DOCKET

DATE AUG 27 1992

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

ENTERED

MITCHELL PRICE, III,)
)
 Plaintiff,)
)
 vs.)
)
 STEPHENS RACING, INC.,)
)
 Defendant.)

Case No. 92-C-106-B ✓

FILED

AUG 27 1992

ORDER

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

The Court has for its consideration Defendant's Motion To Dismiss Or In The Alternative Motion For Summary Judgment. Defendant's Motion will be considered a Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56, since the Court must examine facts outside the pleadings. Fed.R.Civ.P. 12(b). Defendant operates an automobile race track, where Plaintiff first worked as a general laborer and then as Track Coordinator. (Price Affidavit, p. 1). Plaintiff asks the Court to award overtime compensation pursuant to the Fair Labor Standards Act ("FLSA"). Defendant, Stephens Racing, Inc. ("Stephens"), insists that neither Price nor Stephens is covered under FLSA, and that Stephens is exempt from FLSA as an amusement or recreational establishment. The Court finds no triable dispute as to the exemption issue, and the Motion is GRANTED.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th

21

Cir. 1986). cert. denied 480 U.S. 947 (1987). In Celotex, 477 U.S. at 317, 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) ("Matsushita").

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. In Anderson v. Liberty Lobby, Inc., supra, the Court stated:

... 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 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).

FLSA requires overtime compensation paid to employees working more than forty hours a week. 29 U.S.C. § 207. This provision covers "employees who in any workweek [are] engaged in commerce [] or [are] employed in an enterprise engaged in commerce." Id. Defendant claims that Price was not engaged in

commerce and that Stephens, although engaged in commerce, is exempt under 29 U.S.C. § 203(s)(A)(ii).¹ Defendant further argues that it is relieved of any § 207 obligation to Price because of its status as an amusement or recreational establishment. The Court finds this final argument to be dispositive.

According to section 29 U.S.C. § 213(a)(3):

(a) The provisions of [] section 207 of this title shall not apply with respect to--

* * *

(3) any employee employed by an establishment which is an amusement or recreational establishment [] if [] (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year... (emphasis added).

Defendant contends that it falls within this exemption, since a race track is an amusement or recreational establishment and because its financial status is as described in the statute.

A race track is considered an amusement or recreational establishment since it is not primarily engaged in the sale of goods. See Brennan v. Texas Dike & Marina, Inc., 492 F.2d 1115, 1118 (5th Cir. 1974), cert. denied 419 U.S. 896 (1974).

Plaintiff fails to object to this characterization of Stephens

¹ This section provides that the act only covers an enterprise "whose annual gross volume of sales made or business done is not less than \$500,000." There is no material dispute of fact as to this issue. Plaintiff's bare allegation of incorrect financial records fails to raise anything more than some hypothetical doubt as to the material facts, which is insufficient. See Matsushita, 475 U.S. at 586 (1986).

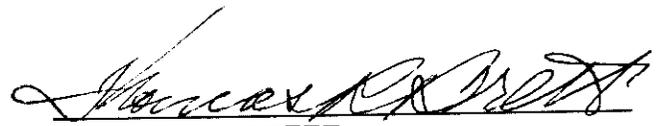
Racing. The only question remaining concerns the income provision of § 213(a)(3).

Defendant submits receipts from calendar year 1989, the year preceding the one in which Plaintiff claims he is entitled to overtime pay, as proof that it meets the income provision. Plaintiff objects that the dollar figures provided by Stephens may be inaccurate. This concern, dealt with earlier, is unpersuasive. See supra n. 1. Defendant has submitted official tax records for both 1989 and 1990, describing all income of Stephens Racing, Inc. for those years. Plaintiff's only specific objection to those records is the assertion that Stephens' figures for the month of June 1990 may not accurately reflect Defendant's earnings from one race that month. (Response, p. 6). Defendant explains that proceeds from the race in question were subject to a promotion agreement, which provided that Stephens would receive a percentage of total ticket sales from the event or \$5,000, whichever was larger. (Reply, Exhibit C; Stephens Affidavit, ¶ 4). As it turned out, Stephens only received \$5,000 for that particular race. (Stephens Affidavit, ¶ 4). The other income Plaintiff disputes has likewise been accounted for by Defendant in its Affidavit. (Id., ¶¶ 5-6). In short, Price's objection only raises hypothetical questions about Stephens' June 1990 income. The income relevant here is that for 1989, which Price only disputes by way of similar hypothetical doubts, which are insufficient to withstand summary judgment. See Matsushita, 475 U.S. at 586.

During the calendar year 1989, Defendant earned \$92,133.94. (Stephens Affidavit, Attachment 1). Calculating the total earnings for the highest six months and the lowest six months, as instructed in 29 U.S.C. § 213(a)(3), Defendant earned \$19,317.90 during its six slowest months in 1989, and \$72,816.04 in its high six months. (Id.). The average receipts for the low months equals \$3,219.65; the average receipts for the high months equals \$12,136.01. (Id.). Thus, the average receipts for the low six months only equals 27 percent of the average for the high six months. Therefore Defendant is exempt from FLSA according to 29 U.S.C. § 213(a)(3)(B).

There is no disputable issue of fact regarding Stephens' earnings in 1989. Applying those figures in the fashion described in 29 U.S.C. § 213(a)(3)(B), the Court finds that Stephens is exempt from FLSA. Therefore Defendant's Motion for Summary Judgment is hereby GRANTED. Defendant's pending Motion to Strike Scheduling Order is DISMISSED as moot.

IT IS SO ORDERED this 26th day of August, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE AUG 27 1992

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

MOUNTAIN STATES FINANCIAL
RESOURCES, CORP.,

Plaintiff,

vs.

DODSON AND COCHRAN AIR
CONDITIONING, INC., AND
RUSSELL G. DODSON, an
individual,

Defendants.

No. 91-C-89-E

FILED

AUG 27 1992

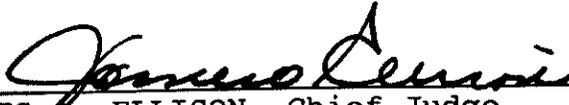
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

On January 22, 1992, Plaintiff, as prevailing party herein, requested an award of attorney fees and costs pursuant to 12 O.S. §936. Defendants filed no response. The Court has reviewed the evidence submitted by Plaintiff in support of its application and the Court finds the request to be reasonable. Plaintiff prays for fees in the sum of \$5,030.50 representing 59.05 hours for legal services rendered at an hourly rate of \$85.00/hour and paralegal services covering .25 hours at \$45.00/hour. Additionally, Plaintiff requests costs in the sum of \$829.14. The Court now grants Plaintiff's Application.

IT IS THEREFORE ORDERED that Plaintiff is awarded the sum of \$5,030.50 as an attorney fee and \$829.14 for costs.

So ORDERED this 26th day of August, 1992.


JAMES S. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE AUG 27 1992

CLOSED

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

CLYDE R. DURKEE,)
)
Plaintiff,)
)
v.)
)
MOORE FUNERAL HOME, INC.,)
an Oklahoma corporation,)
and MOORE FUNERAL HOME, INC.,)
MONEY PURCHASE PENSION PLAN,)
)
Defendants.)

No. 91-C-834-B

FILED

AUG 26 1992

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

J U D G M E N T

In accord with the Order filed August 25, 1992, sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendants, Moore Funeral Home, Inc. and Moore Funeral Home, Inc., Money Purchase Pension Plan, and against the Plaintiff, Clyde R. Durkee. Plaintiff shall take nothing on his claim. Costs are assessed against the Plaintiff, if timely applied for pursuant to Local Rule 6, and each party is to pay its respective attorney's fees.

DATED this 26th day of August, 1992.


 THOMAS R. BRETT
 UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE AUG 27 1992

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

CLOSED

FILED

AUG 26 1992

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

Case No. 91-C-785-B

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its Corporate)
Capacity as successor to BANK)
OF COMMERCE AND TRUST COMPANY)
))
Plaintiff,))
))
vs.))
))
THOMAS EDWARD SHERMAN, ET AL.,))
))
Defendants.))

ORDER OF DISMISSAL

Upon review of the Joint Motion for Dismissal Without Prejudice filed by Federal Deposit Insurance Corporation, in its corporate capacity and Defendants Thomas Edward Sherman and Donna Dianne Sherman, the Court finds that good cause exists for the granting of such Motion pursuant to F.R.Civ.P. 41(a)(2), and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the captioned action by and it hereby is dismissed without prejudice to the future filing thereof.

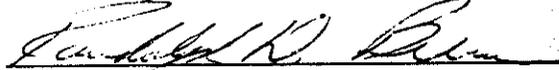
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:



Malcolm E. Rosser IV
Attorney for Plaintiff



Randolph D. Bunn, Esq.
Attorney for Defendants

DATE AUG 27 1992

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

CLOSED

JAMES ALEXANDER, JR.,

Plaintiff,

vs.

MTC/TULSA JOB CORPS CENTER,
ELESTER COOPER, Counselor, CHARLIE
WEBBER, Security, JERRY GLEESON,
Personnel Director, PAULINE RHYNE,
Counseling Supervisor, JOYCE ROSE,
Tulsa Job Corps Center Director, and
RHONDA CAMBIANO, Center Life Director,

Defendants.

CIVIL ACTION

No. 91-C-941-B

FILED

AUG 26 1992

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

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff James Alexander, Jr. hereby dismisses its action against Defendants MTC/Tulsa Job Corps Center, Elester Cooper, Charlie Webber, Jerry Gleeson, Pauline Rhyne, Joyce Rose, and Rhonda Cambiano, with prejudice to the refiling of same.

Respectfully submitted,

By: James Alexander, Jr.
JAMES ALEXANDER, JR.
Pro se

CERTIFICATE OF SERVICE

I hereby certify that on the 26 day of August, 1992, a true and correct copy of the above and foregoing was hand delivered to:

Angelyn L. Dale
NICHOLS, WOLFE, STAMPER,
NALLY & FALLIS, INC.
400 Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103-5010

James Alexander, Jr.
James Alexander, Jr.

CLOSED

ENTERED ON DOCKET

DATE 8-27-92

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

FILED

AUG 23 1992

Edward M. Lawrence
U.S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Plaintiff,

vs.

JAMES M. INHOFE, an individual,

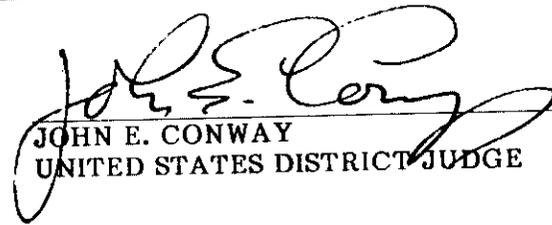
Defendant.

Case No. 90-C-0079-C ✓

JUDGMENT FOR ATTORNEY'S FEES AND COSTS

COMES NOW for consideration the Motion for Attorney's Fees and Costs filed by the Plaintiff, Federal Deposit Insurance Corporation, in its corporate capacity, and the Court FINDS, ORDERS AND DECREES that the FDIC is hereby granted judgment against Defendant James M. Inhofe for attorney's fees in the sum of \$23,325.00 and for costs in the sum of \$830.45.

DATED this 29 day of August, 1992.


JOHN E. CONWAY
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE AUG 27 1992

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

CLOSED

JOSEPH SHIPLEY,

Plaintiff,

vs.

THE CITY OF TULSA, and
ONE UNKNOWN POLICE OFFICER

Defendants.

Case No. 91-C-851-B ✓

FILED

AUG 26 1992

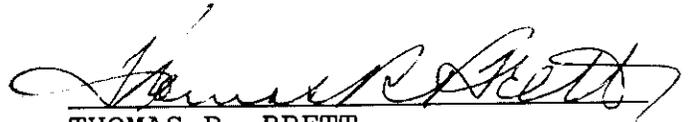
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

The Court has for its consideration the Magistrate Judge's recommendation that this cause be dismissed for failure to prosecute. On August 19, 1992, United States Magistrate Judge Wagner held an initial status conference per this Court's order of July 23, 1992. Defendants' counsel was present at this conference, but both the Plaintiff and his counsel failed to appear. Magistrate Wagner recommends that the matter be dismissed for failure to prosecute.

The Court agrees with the recommendation of the Magistrate Judge. Therefore this matter shall be dismissed without prejudice for failure to prosecute, pursuant to Fed.R.Civ.P. 41(b).

IT IS SO ORDERED this 26th day of August, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

CLOSED

ENTERED ON DOCKET

AUG 27 1992

DATE

FILED

AUG 26 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

MITCHELL PRICE, III,
Plaintiff,

vs.

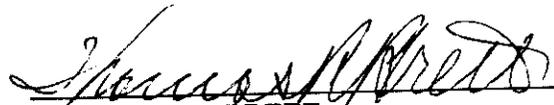
STEPHENS RACING, INC.,
Defendant.

Case No. 92-C-106-B

JUDGMENT

Pursuant to the Court's Order, entered on August 26, 1992, judgment is hereby entered in favor of Defendant, STEPHENS RACING, INC., and against Plaintiff, MITCHELL PRICE, III. Costs are awarded to Defendant, providing timely application is made pursuant to Local Rule 6. Each side is to pay its respective attorney's fees.

IT IS SO ORDERED this 26th day of August, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 8-26-92

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

F I L E D

AUG 25 1992

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

LILLIAN GRAHAM,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,

Defendant.

Case No. 86-C-516-C

ORDER OF DISMISSAL WITH PREJUDICE

On the 20 day of August, 1992, the parties' Stipulation and Dismissal With Prejudice came before me, the undersigned Judge of the United States District Court, Northern District of Oklahoma. Having reviewed the Stipulation and premises considered, the Court finds that the instant action is dismissed with prejudice. American Airlines, Inc. retains the right to proceed against Craig R. Tweedy with any claims, legal actions, judgments and orders, including but not limited to American's claims for sanctions against Craig R. Tweedy. This Court's Judgment of August 11, 1989 remains in effect, as the final adjudication on the merits of this action.

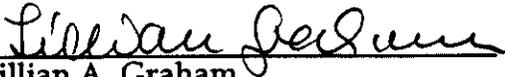
IT IS SO ORDERED.

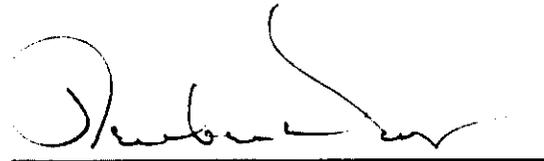
DATED THIS 20 DAY OF AUGUST, 1992.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:


Lillian A. Graham
Lillian A. Graham
Plaintiff



Reuben Davis
Frederic N. Schneider III
Boone, Smith, Davis, Hurst
& Dickman
500 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
(918) 587-0000

Attorneys for
American Airlines, Inc.

ENTERED ON DOCKET

DATE 8/26/92

CLOSED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THE UNITED STATES OF AMERICA,
Plaintiff,

-vs.-

No. 92 C 432 B

CHARLES E. LEWIS, II;
KIM R. LEWIS, formerly
KIM R. MOFFETT;
THELMA L. GONZALES, formerly
THELMA L. BAIN;
J. GEORGE GONZALES;
THE STATE OF OKLAHOMA, ex rel.
OKLAHOMA TAX COMMISSION;
CITY OF BROKEN ARROW, OKLAHOMA,
a municipal corporation;
COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma;
Defendants.

FILED

AUG 25 1992

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

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25th day
of Aug., 1992. The plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Mikel K. Anderson, Special Assistant United
States Attorney; the defendants, Charles E. Lewis, II, and Kim
R. Lewis appear by Richard H. Reno; the defendant State of
Oklahoma, ex rel Oklahoma Tax Commission appears by M. Diane
Allbaugh, Assistant General Counsel; the defendant City of
Broken Arrow, Oklahoma, appears by Michael R. Vanderburg, City
Attorney; the defendants Tulsa County Treasurer and Board of
Tulsa County Commissioners appear by J. Dennis Semler,
Assistant District Attorney, Tulsa County, Oklahoma; and the

Defendants Thelma L. Gonzales and J. George Gonzales appear not, but make default.

The Court, being fully advised and having examined the file, finds as follows:

1. The defendant Thelma L. Bain Gonzales acknowledged receipt of Summons and Complaint. While she failed to enter the date she signed the acknowledgment form, such form was received by the plaintiff via mail on June 9, 1992. The defendant J. George Gonzales acknowledged his receipt of Summons and Complaint on May 18, 1992. Both of such defendants have failed to answer or otherwise plead and are therefore currently in default. All other defendants in this lawsuit filed timely answers.

2. This is a lawsuit based upon a note which was secured by a mortgage covering land located with the Northern Judicial District of Oklahoma.

3. On December 29, 1982, the defendants Charles E. Lewis, II and Kim R. Moffett executed and delivered to Liberty Mortgage Company a note in the amount of \$53,950.00, payable in monthly installments, with interest thereon at the rate of twelve percent per annum.

4. As security for the payment of such note, the defendants Charles E. Lewis, II and Kim R. Moffett, then both single persons, executed and delivered to Liberty Mortgage Company a mortgage covering the following described property:

Lot Thirty-Eight (38), Block Nine (9), LEISURE PARK II, an addition to the City of Broken Arrow, Tulsa County, Oklahoma, according to the recorded plat thereof.

Such tract is referred to below as "the Property."

This mortgage was dated December 29, 1982, and was recorded with the Tulsa County Clerk December 30, 1982, in book 4659 at page 1409.

5. a) On March 31, 1986, Liberty Mortgage Company assigned such promissory note and the mortgage securing it to GMAC Mortgage Corporation of Iowa by an assignment recorded with the Tulsa County Clerk April 4, 1986, in book 4933 at page 3174.

b) On December 5, 1988, GMAC Mortgage Corporation of Iowa assigned such promissory note and the mortgage securing it to The Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns by an assignment recorded with the Tulsa County Clerk December 12, 1988, in book 5145 at page 98.

6. On April 21, 1988, Charles E. Lewis II and Kim R. Lewis, husband and wife, granted a general warranty deed to the defendants Thelma L. Gonzales and J. George Gonzales, husband and wife, but this deed was apparently never recorded with the Tulsa County Clerk. The Kim R. Lewis who subscribed such instrument is one and the same person as the former Kim R. Moffett who held title and who is named as a defendant in this lawsuit.

7. On November 9, 1988, the defendant Thelma L. Bain Gonzales entered into an agreement with the plaintiff lowering the amount of the monthly installments due under the note in exchange for the plaintiff's forbearance of its right to

foreclose. Superseding agreements were reached between these same parties on December 30, 1988, and on August 10, 1990.

8. The defendants **Thelma L. Bain Gonzales** and **J. George Gonzales** have defaulted under the terms of the note, mortgage and forbearance agreements due to their failure to pay installments when due and due to their abandonment of the Property. Because of such default the defendants **Thelma L. Bain Gonzales** and **J. George Gonzales** are indebted to the plaintiff in the amount of **\$82,203.79**, plus interest at the rate of twelve percent per annum from May 1, 1992, until the date of this judgment, plus interest thereafter at the legal rate until fully paid; plus the costs of this action in the amount of **\$225.00** for abstracting and **\$8.00** for recording the Notice of Lis Pendens.

9. The defendant **State of Oklahoma**, ex rel. **Oklahoma Tax Commission** has a lien on the Property by virtue of tax warrant number **MVX880005300** issued and sealed February 22, 1988, and filed February 29, 1988, in the amount of **\$595.17**, plus penalties and interest, but such lien is inferior to the lien of the plaintiff.

10. The defendant **City of Broken Arrow, Oklahoma**, has no right, title or interest in the Property except insofar as it is the holder of certain easements as shown on the duly recorded plat of **LEISURE PARK II** addition.

11. The defendants **Tulsa County Treasurer** and **Board of Tulsa County Commissioners** claim no right, title or interest in or to the Property.

12. Pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgage or or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED that the plaintiff have and recover judgment against the defendants Thelma L. Gonzales and J. George Gonzales, in the principal sum of \$82,013.13, plus interest at the rate of twelve percent per annum from May 1, 1992, until judgment, plus interest thereafter at the legal rate until paid, plus the costs of this action in the amount of \$233.00, plus any additional sums advanced or to be advanced or expended during this foreclosure action by the plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED that the defendant State of Oklahoma, ex rel, Oklahoma Tax Commission, have and recover judgment in the amount of \$595.17, plus penalties and interest.

IT IS FURTHER ORDERED that the defendant City of Broken Arrow, Oklahoma, has no right, title or interest in the Property except insofar as it is the holder of certain easements across the Property as shown on the duly recorded plat of LEISURE PARK II addition.

IT IS FURTHER ORDERED that the defendants Charles E. Lewis, II; Kim R. Lewis, formerly Kim R. Moffett; Tulsa County Treasurer; and Board of Tulsa County Commissioners claim no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of the defendants Thelma L. Gonzales and J. George Gonzales 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 the Property, according to plaintiff's election with or without appraisal and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action incurred by the plaintiff, including the costs of sale of the Property;

Second:

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

Third:

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

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

IT IS FURTHER ORDERED that there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED 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 M. BRETT

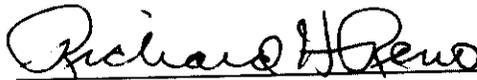
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



Mikel K. Anderson
Special Assistant United States Attorney
U.S. Dept. of Housing & Urban Development
1516 S. Boston, Ste. 110
Tulsa, Oklahoma 74119-4032
(918) 581-7434



Richard H. Reno
Attorney for defendants
Charles E. Lewis, II and
Kim. R. Lewis

M. Diane Allbaugh
Assistant General Counsel
Attorney for defendant
State of Oklahoma, ex rel
Oklahoma Tax Commission

Michael R. Vanderburg
City Attorney
Attorney for defendant
City of Broken Arrow, Oklahoma

J. Dennis Semler
Assistant District Attorney
Attorney for defendants
Tulsa County Treasurer and
Board of Tulsa County Commissioners

92 C 432 B

APPROVED:

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United States Attorney

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Diane Allbaugh #14267
M. Diane Allbaugh
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Attorney for defendant
City of Broken Arrow, Oklahoma

J. Dennis Semler
Assistant District Attorney
Attorney for defendants
Tulsa County Treasurer and
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APPROVED:

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J. Dennis Semler
Assistant District Attorney
Attorney for defendants
Tulsa County Treasurer and
Board of Tulsa County Commissioners

APPROVED:

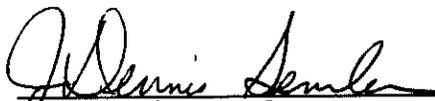
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City Attorney
Attorney for defendant
City of Broken Arrow, Oklahoma


J. Dennis Semler
Assistant District Attorney
Attorney for defendants
Tulsa County Treasurer and
Board of Tulsa County Commissioners

ENTERED

ENTERED ON DOCKET
DATE AUG 26 1992

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

RMP CONSULTING GROUP, INC.,
et al.,

Plaintiffs,

vs.

DATRONIC RENTAL CORPORATION,
an Illinois corporation,

Defendant and
Third-Party Plaintiff,

vs.

BANK OF OKLAHOMA, N.A.,
et al.,

Third-Party Defendants.

No. 91-C-295-E

FILED

AUG 25 1992

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

ORDER

The Court has for consideration several pending motions. The Court has reviewed the record, and the arguments of the parties in light of the relevant law and finds the issues can be expeditiously resolved without overweening reflecting.

The Court first finds that Datronic's Application for Citation of Contempt should be denied. The transgressions of the Plaintiff appear to be inadvertent.

The Court next finds that Datronic's Motion for Partial Summary Judgment on the issue of priority should be granted on the basis of the relevant sections of the Oklahoma Commercial Code cited by Datronic. The Court notes, parenthetically, that Plaintiffs, Bank of Oklahoma and Mr. Doss consent to the entry of judgment in favor of Datronic on that issue. The Court finds that

fy

Mr. Doss' Motion for Partial Summary Judgment against Datronic should be denied. Disputed facts of a material nature exist as to the issues of Mr. Doss' activities and relationship to the corporate entities.

So ORDERED this 24th day of August, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

ENTERED
FILED

AUG 25 1992

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

GENERAL ELECTRIC CAPITAL
CORPORATION,

Plaintiff,

vs.

No. 90-C-379-E

MYRON L. KING, et al.,

Defendants.

RECORDED ON DOCKET

DATE AUG 26 1992

ORDER

As the prevailing party in this foreclosure action Plaintiff seeks an award of attorney fees in the sum of \$10,230.75 (and asks for additional fees in preparing its brief in support of its application for the award). The Court has reviewed the evidence submitted in light of Burk, Hamilton, and Oliver Sports Center and finds the Application should be granted. State ex rel. Burk v. City of Oklahoma City, 598 P.2d 659 (Okla. 1979); Hamilton v. Telex Corporation, 625 P.2d 106 (Okla. 1981); Oliver Sports Center, Inc. v. National Insurance Company, 615 P.2d 291 (Okla. 1980).

IT IS THEREFORE ORDERED that Plaintiff be and it hereby is awarded an attorney fee of \$10,230.75. Further ordered that upon proper submission of evidence, an additional fee will be ordered for preparation of the application and brief.

ORDERED this 25th day of August, 1992.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

46

ENTERED

ENTERED ON DOCKET
DATE 8-26-92

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

COMMITTEE FOR THE FIRST AMENDMENT,)
an unincorporated association of)
students, faculty, and other)
members of the University commu-)
nity of Oklahoma State University,)
including the following individual)
members, et al.,)

Plaintiffs,)

vs.)

JOHN R. CAMPBELL, individually)
and in his official capacity)
as President of Oklahoma State)
University, et al.,)

Defendants.)

FILED

AUG 25 1992

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

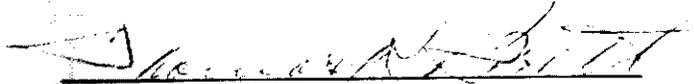
Case No. 89-C-830-B

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

In accordance with the Order entered herein on July 31, 1991, awarding attorneys fees and costs in favor of the Plaintiffs and against all Defendants except Defendants Ron Beer and Tom Keys, the Court hereby enters Judgment in favor of the Plaintiffs and against the Defendants John R. Campbell, H. Jerrell Chesney, Carolyn Savage, L.E. Stringer, Jack Craig, Austin Kenyon, Bill Braum, John W. Montgomery, Jimmie Thomas, Robert D. Robbins and Ed Malzahn, in their official capacities only, except no Judgment is entered against Defendants Ron Beer and Tom Keys, for attorneys fees in the amount of \$20,712.50 and costs of \$240.00, plus post-judgment interest on said sums at the rate of 6.26% (28 U.S.C. §1961) from the July 31, 1991, until paid.

89

DATED this 25 day of August, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED

ENTERED ON DOCKET

DATE AUG 26 1992

FILED

AUG 25 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

BAUCOM CONCRETE CONSTRUCTION, INC.,)
et al)
)
Plaintiffs,)
)
v.)
)
FLEMING BUILDING COMPANY INCORPORATED,)
et al)
)
Defendants.)

Case No. 89-C-1077-B ✓

ADMINISTRATIVE CLOSING ORDER

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

IF, within six (6) months of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 25th day of Aug, 1992.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

ENTERED ON DOCKET

DATE AUG 26 1992

FILED

AUG 25 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**

MARJORIE REED and TY LANE
PETERSON,

Plaintiffs,

vs.

CITY OF BROKEN ARROW and
DANNY DAVID,

Defendants.

No. 92-C-034-B

ORDER OF DISMISSAL WITH PREJUDICE

NOW before the Court for consideration is the Motion of Plaintiff Marjorie Reed and Defendants City of Broken Arrow and Danny David for an Order of Dismissal With Prejudice.

The Court being fully advised in the premises finds that the parties motion for Order of Dismissal With Prejudice should be granted.

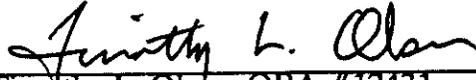
IT IS THEREFORE ORDERED that Marjorie Reed's claims are hereby dismissed with prejudice to re-filing of same.

SO ORDERED on the 25th day of August, 1992.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:



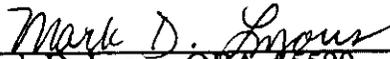
Timothy L. Olsen, OBA #12431
SAVAGE, O'DONNELL, SCOTT, McNULTY,
AFFELDT & GENTGES
Petroleum Club Building
601 South Boulder Ave., Ste. 1100
Tulsa, Oklahoma 74119
(918) 599-9000

Attorneys for Defendant City of Broken Arrow



Jon B. Comstock, OBA #1836
JON B. COMSTOCK & ASSOCIATES
412 Petroleum Club Building
601 S. Boulder Ave.
Tulsa, Oklahoma 74119

Attorneys for Defendant Danny David



Mark D. Lyons, OBA #5590
LYONS & CLARK
616 South Main, Suite 201
Tulsa, Oklahoma 74119

Attorneys for Plaintiff Marjorie Reed

CLOSED
ENTERED ON DOCKET
DATE AUG 26 1992

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

REGINALD LESTER PHILLIPS,

Plaintiff,

vs.

RON CHAMPION, Warden, et al.,

Defendants.

No. 91-C-293-E

FILED

AUG 25 1992

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

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate that Petitioner's \$2254 Petition for Writ of Habeas Corpus be denied. The Court has reviewed the Petitioner's Objection to the Report and Recommendation - and brief in support thereof - and his Amended and/or Supplemental Objection in light of the relevant law. The Court finds the Magistrate Report and Recommendation should be affirmed. A recitation of pivotal case law on the issues which distinguish Petitioner's case from the authorities he cites in support of his position should suffice to show that the conclusion of the Magistrate must stand.

The gravamen of Mr. Phillips' Petition is an ineffectiveness of counsel claim. He asserts that the failure of his attorney to challenge a warrantless search and search of his personal effects followed by his warrantless arrest deprived him of a fair trial. Applying the standards of strickland - first, that counsel's assistance was defective and second, that the ineffectiveness worked to deprive the Petitioner of a fair trial, the Magistrate found that Petitioner had failed to establish his entitlement to a

writ of habeas corpus. Strickland v. Washington, 466 U.S. 668 (1984). A review of the case law relevant to the specific issues of unreasonable search and seizure and illegal arrest compel a finding that the Magistrate's Report and Recommendation should be affirmed. Indeed, buttressed by the binding authority of United States v. Matlock, 415 U.S. 164, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974); Illinois v. Rodriguez, ___ U.S. ___, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990); and U.S. v. McAlpine, 919 F.2d 1461 (1990) the Magistrate's analysis of the unreasonable search and seizure must stand. Similarly, the Magistrate's finding that the officers had probable cause to arrest Petitioner is persuasive when viewed in the light of relevant authority. See, Beck v. Ohio, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964); Karr v. Smith, 774 F.2d 1029 (10th Cir. 1988); U.S. v. Maher, 919 F.2d 1482 (10th Cir. 1990).

IT IS THEREFORE ORDERED that the Report and Recommendation of the United States Magistrate is affirmed; the Petitioner's \$2254 Petition for Writ of Habeas Corpus is denied.

ORDERED this 25th day of August, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
AUG 26 1992
DATE

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

CLOSED

ORIN B. BROWN,
Plaintiff,

vs.

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

Defendant.

No. 91-C-135-E

FILED

AUG 23 1992

Richard M. LAWRENCE, JR.
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER AND JUDGMENT

Comes now before this Court for its consideration the Report and Recommendation ("Report") of the Magistrate Judge to affirm the Secretary's decision. After review of the record and for good cause shown, the Court finds the Secretary's decision should be affirmed.

The issue before the Court is whether substantial evidence supported the Administrative Law Judge's ("ALJ") decision denying Plaintiff Social Security disability benefits. The Court finds Plaintiff's argument regarding the lack of substantial evidence to support the ALJ decision unpersuasive based on the evidence in the record; moreover, the Court concurs with the Report of the Magistrate Judge that Plaintiff has failed to meet the disability requirements of the Social Security Act.

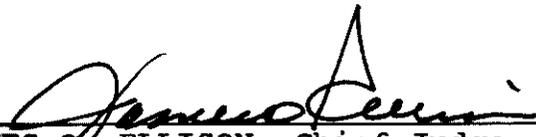
Plaintiff's contention that, Dr. Fish's report was not considered by the ALJ is also without merit. Here, the "treating physician's" report ("physician's report"), as viewed by the Appeals Council, lacks reference to any evidence of actual

17

disability of Plaintiff during the relevant time period. Accordingly, said physician's report, standing alone, is insufficient to establish error by the ALJ; or that there is a basis to remand this cause to reconsider the ALJ decision.

IT IS THEREFORE ORDERED that the Secretary's decision denying Plaintiff Social Security disability benefits is hereby affirmed.

ORDERED this 25th day of August, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

AUG 26 1992

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

DONALD W. LAWSON,
Plaintiff,
v.
DAVID M. HENKEL,
Defendant.

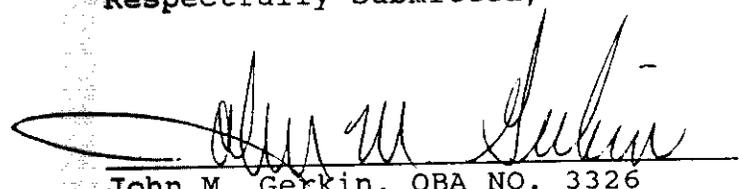
Case No. 91-C-373-E

ENTERED ON DOCKET
DATE AUG 26 1992

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

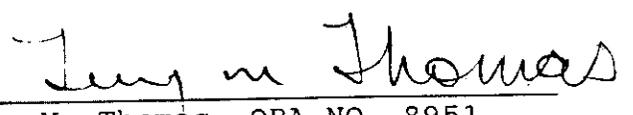
The parties to this action, Donald W. Lawson and David M. Henkel, pursuant to Federal Rule of Civil Procedure 41(a)(1), stipulate that this matter may be dismissed without prejudice, each party to bear his own costs and fees.

Respectfully submitted,



John M. Gerkin, OBA NO. 3326
P. O. Box 691
Jenks, OK 74037

Attorney for Defendant,
David M. Henkel



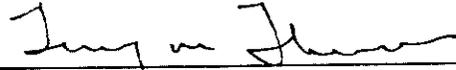
Terry M. Thomas, OBA NO. 8951
MOYERS, MARTIN, SANTEE,
IMEL & TETRICK
320 S. Boston Building, Suite 920
Tulsa, Oklahoma 74103
(918) 582-5281

Attorneys for the Plaintiff,
Donald W. Lawson

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 1992, a true and correct copy of the **STIPULATION FOR DISMISSAL WITHOUT PREJUDICE** was sent to the following by depositing said copy in the United States Mail with proper postage thereon fully prepaid:

John M. Gerkin, Esq.
P. O. Box 691
Jenks, OK 74037



Terry M. Thomas

2886dsml .wop/kd

CLOSED

ENTERED ON DOCKET

DATE AUG 26 1992

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

FILED

AUG 26 1992

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

JACK DOUGLAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CIVIL ACTION NO. 92-C-114-E

ORDER

This matter comes on before the court upon the stipulation of all parties and the court being fully advised in the premises, orders, adjudges and decrees that all claims asserted herein by plaintiff, Jack Douglas, against the United States of America are hereby dismissed with prejudice.

Dated this 25 day of August, 1992.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO CONTENT AND FORM:



PHIL PINNELL, OBA # 7169
Assistant United States Attorney
3900 U.S. Courthouse
333 West 4th Street
Tulsa, OK 74103
(918) 581-7463
Attorney for the Defendant



EUGENE ROBINSON, OBA# 10119
Attorney at Law
1515 South Boulder
P. O. Box 2619
Tulsa, OK 74101
(918) 584-3391
Attorney for Plaintiff

ENTERED ON DOCKET

DATE 8-26-92

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

FILED

AUG 25 1992

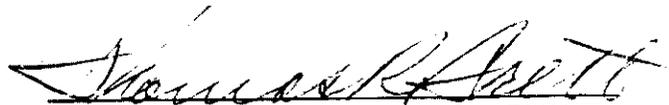
CATHERYN HORACEK,)
)
Plaintiff,)
)
v.)
)
HOMELAND STORES, INC.,)
and DAYLE O'DELL,)
)
Defendants.)

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

Case No. 91-C-883-B

ORDER

Now on this 25th day of August, 1992, pursuant to the Stipulation of Dismissal filed by the parties, it is hereby ORDERED, ADJUDGED AND DECREED that all claims and causes of action filed in this case are hereby dismissed with prejudice, with all parties to bear their own costs and attorney's fees.


UNITED STATES DISTRICT JUDGE

112.92B.GB

CLOSED

ENTERED ON DOCKET

DATE 8-26-92

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

FILED

AUG 25 1992

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

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

Plaintiff,

vs.

Case No. 91-C-0692-B

RANDY WALLIS and CONNIE WALLIS,
husband and wife; JOHN C. FLUD,
SR. and MARILYN FLUD, husband and
wife; JOHN C. FLUD, JR. and
JANTHA K. FLUD, husband and wife;
RICHARD L. ATKINSON and ROBBIE L.
ATKINSON, husband and wife; BETTY
B. HESS; LAKELAND REAL ESTATE
DEVELOPMENT, INC.; JAMES M. HENRY
and KARIEN HENRY a/k/a KARIEN L.
HENRY, husband and wife; QUINTON
R. DODD and VICKIE E. DODD,
husband and wife,

Defendants.

**JOURNAL ENTRY OF JUDGMENT
AND DECREE OF FORECLOSURE**

Now on this 25th day of Aug., 1992, this matter comes on before the undersigned United States District Judge, upon the Renewed Motion for Summary Judgment and Decree of Foreclosure filed herein on April 24, 1992 by Plaintiff Resolution Trust Corporation, as Conservator for Cimarron Federal Savings Association (the "RTC/Conservator"). The Court has jurisdiction over all parties and the subject matter of this action. The Court has reviewed the RTC/Conservator's Renewed Motion for Summary Judgment and Decree of Foreclosure filed herein, as well as the evidentiary materials filed in support thereof. Defendants have not controverted the material facts contained in the Brief in Support of Plaintiff's Renewed Motion for Summary Judgment and Decree of

Foreclosure. The Court therefore finds that there is no controversy as to any material fact and that the RTC/Conservator is entitled to judgment as a matter of law as hereinafter set forth.

The Court further finds that:

1. Defendants Randy Wallis and Connie Wallis, husband and wife, John C. Flud, Sr. and Marilyn Flud, husband and wife, John C. Flud, Jr. and Jantha K. Flud, husband and wife, Richard L. Atkinson and Robbie L. Atkinson, husband and wife, and Betty B. Hess, a single person, have all entered their appearances herein.

2. Claims against Defendants Lakeland Real Estate Development, Inc., James M. Henry, Karein Henry a/k/a Karein L. Henry, Quinton Dodd and Vickie E. Dodd have been dismissed without prejudice.

3. The Court has acquired jurisdiction over the parties. The Court has jurisdiction over the subject matter of this action by virtue of 28 U.S.C. § 1331 and 12 U.S.C. § 1441a(1)(1).

4. Defendants Randy Wallis, John C. Flud, Sr. and Marilyn Flud, John C. Flud, Jr. and Jantha K. Flud, Richard L. Atkinson and Robbie L. Atkinson, and Betty B. Hess executed the notes which are the subject of this action in favor of Phoenix Federal Savings and Loan, a federally chartered savings and loan association ("Phoenix"). Defendants Randy Wallis and Connie Wallis, husband and wife, John C. Flud, Sr. and Marilyn Flud, husband and wife, John C. Flud, Jr. and Jantha K. Flud, husband and wife, Richard L. Atkinson and Robbie L. Atkinson, husband and wife, and Betty B. Hess, a single person executed the mortgage which is the subject of this action in favor of Phoenix.

5. On August 31, 1988, the Federal Home Loan Bank Board ("FHLBB") declared Phoenix insolvent, and pursuant to 12 U.S.C. § 1464(d)(6)(A), the Federal Savings and Loan Insurance Corporation ("FSLIC") was appointed Receiver of the insolvent savings and loan association's assets and its liabilities. As Receiver of Phoenix, the FSLIC became the holder in due course of the insolvent association's assets, including the items which are the subject matter of this case. The FSLIC, in its capacity as Receiver of Phoenix, had the duty to realize the assets of said closed insolvent savings and loan association. As part of realizing said assets, the FSLIC assigned all right, title and interest in and to the instruments and related documents which are the subject matter of this case, to Cimarron Federal Savings and Loan Association on August 31, 1988, as more particularly set forth in resolutions of the Federal Home Loan Bank Board.

6. On April 19, 1991, pursuant to § 5(d)(2) of the Home Owners Loan Act of 1933 [as amended by § 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), as enacted on August 9, 1989], the Director of the Office of Thrift Supervision (the "Director") issued Order No. 91-212 (the "Order") and placed Cimarron Federal Savings and Loan Association (the "Association") in receivership and assumed exclusive custody and control of the property and affairs of the Association. The Director, pursuant to the Order, appointed the RTC as Receiver of the Association, to have "all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any

other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act and any other provisions of law."

7. The Director, through the Order, also organized Cimarron Federal Savings Association ("New Cimarron"), a new federally chartered mutual savings association. The Director, pursuant to the Order, appointed the RTC as conservator of New Cimarron, to have "all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act and any other provisions of law."

8. Subsequently, certain assets of the Association were sold and transferred by the RTC as the Receiver of the Association to New Cimarron, by and through its Conservator, the RTC.

9. New Cimarron, by and through its Conservator, the RTC, purchased those certain assets that are involved in this cause of action.

10. New Cimarron, by and through its Conservator, the RTC, has succeeded to certain rights and interests of the Association and is accordingly the proper party to bring this action as a matter of law.

11. The RTC/Conservator should be granted a judgment in its favor against Randy Wallis in the amount of \$40,307.43 as of March 10, 1992, together with interest thereafter at a per diem rate of \$6.13 until the date of this judgment and thereafter at the

annual rate of 3.51% until paid, and such other continuing expenses of suit as have been alleged in this action, including reasonable attorneys' fees (all such fees and costs to be determined upon application by the RTC/Conservator).

12. The RTC/Conservator should be granted a judgment in its favor against John C. Flud, Sr. and Marilyn Flud, and each of them, in the amount of \$40,307.43 as of March 10, 1992, together with interest thereafter at a per diem rate of \$6.13 until the date of this judgment and thereafter at the annual rate of 3.51% until paid, and such other continuing expenses of suit as have been alleged in this action, including reasonable attorneys' fees (all such fees and costs to be determined upon application by the RTC/Conservator).

13. The RTC/Conservator should be granted a judgment in rem in its favor against John C. Flud, Jr. and Jantha K. Flud, and each of them, in the amount of \$40,319.51 as of March 10, 1992, together with interest thereafter at a per diem rate of \$6.13 until the date of this judgment and thereafter at the annual rate of 3.51% until paid, and such other continuing expenses of suit as have been alleged in this action, including reasonable attorneys' fees (all such fees and costs to be determined upon application by the RTC/Conservator).

14. The RTC/Conservator should be granted a judgment in its favor against Richard L. Atkinson and Robbie L. Atkinson, and each of them, in the amount of \$40,307.44 as of March 10, 1992, together with interest thereafter at a per diem rate of \$6.13 until the date of this judgment and thereafter at the annual rate of

3.51% until paid, and such other continuing expenses of suit as have been alleged in this action, including reasonable attorneys' fees (all such fees and costs to be determined upon application by the RTC/Conservator).

15. The RTC/Conservator should be granted a judgment in its favor against Betty B. Hess in the amount of \$40,307.43 as of March 10, 1992, together with interest thereafter at a per diem rate of \$6.13 until the date of this judgment and thereafter at the annual rate of 3.51% until paid, and such other continuing expenses of suit as have been alleged in this action, including reasonable attorneys' fees (all such fees and costs to be determined upon application by the RTC/Conservator).

16. The RTC/Conservator holds a valid mortgage lien in the aggregate amount of the judgments granted herein on the following described real property and all improvements thereon situated in Mayes County, Oklahoma:

LOT NUMBERED ONE (1), IN BLOCK NUMBERED TWO (2), OF THE VILLAS OF LAKELAND, A SUBDIVISION IN MAYES COUNTY, STATE OF OKLAHOMA ACCORDING TO THE OFFICIAL SURVEY AND PLAT FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY AND STATE (the "Mortgaged Property"),

which is a prior and superior lien in, to and against the Mortgaged Property, prior and superior to any claim, right, title, interest, lien or right or equity of redemption of all Defendants herein, and each of them, and of all persons claiming by, through or under any of the Defendants since the recording of the Notice of Lis Pendens filed herein, and all parties should be, from and after the date of

the confirmation of the marshal's sale or sheriff's sale hereinafter ordered by the Court, barred, restrained and enjoined from ever having or asserting any claim, right, title, interest, lien or right or equity of redemption in, to or against the Mortgaged Property, adverse to the right and title of the purchaser at said sale.

17. All counterclaims alleged by the Defendants are barred as against the RTC/Conservator and judgment should be entered in favor of the RTC/Conservator and against the Defendants as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that judgment be entered in favor of the RTC/Conservator against Randy Wallis in the amount of \$40,307.43 as of March 10, 1992, together with interest thereafter at the rate of \$6.13 per diem until the date of this judgment, and thereafter at the annual rate of 3.51% until paid, the RTC/Conservator's reasonable attorneys' fees and all costs incurred herein and accruing hereafter (all such fees and costs to be determined upon application by the RTC/Conservator), for all of which let execution issue forthwith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that judgment be entered in favor of the RTC/Conservator against John C. Flud, Sr. and Marilyn Flud, and each of them, in the amount of \$40,307.43 as of March 10, 1992, together with interest thereafter at the rate of \$6.13 per diem until the date of this judgment, and thereafter at the annual rate of 3.51% until paid, the RTC/Conservator's reasonable attorneys' fees and all costs incurred herein and accruing hereafter (all such fees and costs to

be determined upon application by the RTC/Conservator), for all of which let execution issue forthwith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that judgment in rem be entered in favor of the RTC/Conservator against John C. Flud, Jr. and Jantha K. Flud, and each of them, in the amount of \$40,319.51 as of March 10, 1992, together with interest thereafter at the rate of \$6.13 per diem until the date of this judgment, and thereafter at the annual rate of 3.51% until paid, the RTC/Conservator's reasonable attorneys' fees and all costs incurred herein (all such fees and costs to be determined upon application by the RTC/Conservator), for all of which let execution issue forthwith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that judgment be entered in favor of the RTC/Conservator against Richard L. Atkinson and Robbie L. Atkinson, and each of them, in the amount of \$40,307.44 as of March 10, 1992, together with interest thereafter at the rate of \$6.13 per diem until the date of this judgment, and thereafter at the annual rate of 3.51% until paid, the RTC/Conservator's reasonable attorneys' fees and all costs incurred herein and accruing hereafter (all such fees and costs to be determined upon application by the RTC/Conservator), for all of which let execution issue forthwith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that judgment be entered in favor of the RTC/Conservator against Betty B. Hess in the amount of \$40,307.43 as of March 10, 1992, together with interest thereafter at the rate of \$6.13 per diem until the date of this judgment, and thereafter at the annual rate

of 3.51% until paid, the RTC/Conservator's reasonable attorneys' fees and all costs incurred herein and accruing hereafter (all such fees and costs to be determined upon application by the RTC/Conservator), for all of which let execution issue forthwith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the RTC/Conservator's Mortgage, recorded in Book 653 at Pages 656-659 of the records of the Mayes County Clerk, is a valid, prior and superior lien upon the Mortgaged Property in the aggregate amount of the judgments entered herein, prior and superior to any claim, right, title, interest, lien or right or equity of redemption of all Defendants herein and each of them, and of all persons claiming by, through or under any of such Defendants since the recording of the Notice of Lis Pendens in this cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that in the event the judgments herein granted to the RTC/Conservator, with interest, attorneys' fees and costs not be satisfied in full, a special execution and order of sale shall issue out of the office of the Court Clerk of the United States District Court for the Northern District of Oklahoma (the "Northern District Court Clerk"), directed, at the option of the RTC/Conservator, to either the United States marshal or to the sheriff of Mayes County, Oklahoma, commanding the marshal or the sheriff to advertise for sale, according to law, as upon special execution, with appraisal, the Mortgaged Property free, clear and discharged of and from any and all rights, titles, interests, liens, claims and rights of redemption of all Defendants herein, and all persons claiming by, through or under them since the filing of the Notice of Lis Pendens

herein; and that the Mortgaged Property be sold at a marshal's sale or sheriff's sale accordingly; and further that the proceeds of such sale be immediately transmitted to the Northern District Court Clerk, and that said clerk be, and is hereby ordered and directed to pay: first, the costs of this action, including marshal's or sheriff's costs and other costs of sale; second, the aggregate amount of the judgments granted to the RTC/Conservator herein, including interest, attorneys' fees and other costs or advances; and third, that the balance, if any, be retained by the Northern District Court Clerk pending further order of the Court; that from and after the confirmation of the marshal's or sheriff's sale of the Mortgaged Property, all Defendants herein and all persons claiming by, through or under them since the recording of the Notice of Lis Pendens in this case, be and they are hereby barred, restrained and enjoined from having or asserting any right, title, interest, claim or lien or right or equity of redemption in, to or against the Mortgaged Property or any part thereof, adverse to the right and title of the purchaser at said sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that upon confirmation of said sale, the marshal or the sheriff who conducted the sale should execute and deliver a good and sufficient deed to the Mortgaged Property to the purchaser thereof, which deed shall convey all the right, title, interest, equity and right of redemption of any and all parties herein, and each of them, in and to the Mortgaged Property, and that upon application of the purchaser, the Northern District Court Clerk shall issue a writ of assistance to the marshal or sheriff who conducted the sale, who

shall forthwith place the Mortgaged Property in the full and complete possession and enjoyment of such purchaser.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the counterclaims asserted in this action may not be maintained against the RTC/Conservator and judgment is therefore entered in favor of the RTC/Conservator and against the Defendants, on all counterclaims asserted by any Defendant.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:



Gary R. McSpadden, OBA # 6093
Dana L. Rasure, OBA # 7421
Barbara J. Eden, OBA # 14220
BAKER & HOSTER
800 Kennedy Building
321 South Boston
Tulsa, Oklahoma 74103
(918) 592-5555

Attorneys for Resolution Trust
Corporation, as Conservator for
Cimarron Federal Savings Association

ENTERED ON DOCKET

DATE 8-26-92

FILED

AUG 24 1992

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

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

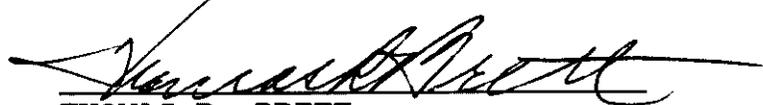
ALBERT J. WATKINS,)
)
 Plaintiff,)
)
 vs.)
)
 UNITES STATES PURCHASING)
 EXCHANGE,)
)
 Defendant.)

Case No. 92-C-22-B

JUDGMENT

In keeping with the order sustaining Defendant's Motion for Summary Judgment entered August 20, 1992, judgment is entered in favor of United States Purchasing Exchange, Defendant, and against Albert J. Watkins, Plaintiff, and Plaintiff's claim is hereby DISMISSED. Costs are awarded to Defendant, if timely applied for pursuant to Local Rule 6, and the parties are to pay their respective attorney fees.

Dated this 24th day of August, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DATE AUG 25 1992

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 92 C 421 B

O. WYNN WOZOBSKI;
BETTE Z. WOZOBSKI;
ALAN H. FORD;
BRANDY CHASE OWNERS ASSOCIATION,
an Oklahoma corporation;
COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

AUG 25 1992

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

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Housing and Urban Development, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Mikel K. Anderson, Special Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that this action shall be dismissed without prejudice.

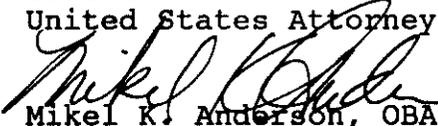
Dated this 25th day of August, 1992.

S/ THOMAS R. BRETT,

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney


Mikel K. Anderson, OBA 12195
Special Asst. U. S. Attorney
U.S. Department of H.U.D.
1516 S. Boston, Ste. 110
Tulsa, Oklahoma 74119-4032
(918) 581-6896

CLOSED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED ON DOCKET
DATE AUG 26 1992

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 O. WYNN WOZOBSKI;)
 BETTE Z. WOZOBSKI;)
 BRANDY CHASE OWNERS ASSOCIATION, INC.)
 an Oklahoma corporation;)
 COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

No. 92 C 420 E

FILED

AUG 25 1992

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

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Housing and Urban Development, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Mikel K. Anderson, Special Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that this action shall be dismissed without prejudice.

Dated this 25 day of August, 1992.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

Mikel K. Anderson, OBA 12195
Special Asst. U. S. Attorney
U.S. Department of H.U.D.
1516 S. Boston, Ste. 110
Tulsa, Oklahoma 74119-4032
(918) 581-6896

DATE 8-26-92

FILED

AUG 24 1992

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN F. HARRISON-FLORES)
)
 Defendant.)

CIVIL ACTION NO. 92-C-321-B

AGREED JUDGMENT

This matter comes on for consideration this 24th
day of August, 1992, the Plaintiff appearing by Tony M. Graham,
United States Attorney for the Northern District of Oklahoma,
through Kathleen Bliss Adams, Assistant United States Attorney,
and the Defendant, JOHN F. HARRISON-FLORES, appearing by and
through his attorney, Todd Alexander.

The Court, being fully advised and having examined the
court file, finds that the Defendant, JOHN F. HARRISON-FLORES,
acknowledged receipt of Summons and Complaint on July 23, 1992.
The Defendant has not filed an Answer but in lieu thereof has
agreed that JOHN F. HARRISON-FLORES is indebted to the Plaintiff
in the amount alleged in the Complaint and that judgment may
accordingly be entered against JOHN F. HARRISON-FLORES in the
principal amount of \$3,421.83, plus administrative costs in the
amount of \$-0-, plus accrued interest in the amount of \$2,032.62
as of March 6, 1992, plus interest thereafter at the rate of 7%
per annum until judgment, plus interest thereafter at the legal
rate until paid, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the
Plaintiff have and recover judgment against the defendant in the

eth

principal amount of \$3,421.83 plus administrative costs in the amount of \$-0-, plus accrued interest in the amount of \$2,032.62 as of March 6, 1992, plus interest thereafter at the rate of 7% per annum until judgment, plus interest thereafter at the current legal rate of 3.51 percent per annum until paid, plus the costs of this action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

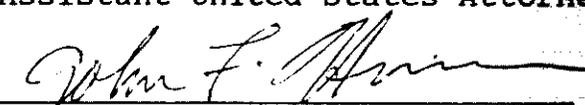
APPROVED;

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney



KATHLEEN BLISS ADAMS OBS #13625
Assistant United States Attorney



JOHN F. HARRISON-FLORES

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

DATE 8-26-92

UNITED STATES OF AMERICA,

Plaintiff,

v.

SEVEN PARCELS OF REAL
PROPERTY, WITH ALL BUILDINGS,
APPURTENANCES, AND IMPROVEMENTS,
AND ALL WITHIN THE CITY OF TULSA,
TULSA COUNTY, STATE OF OKLAHOMA,
KNOWN AS FOLLOWS:

- 1) 2022 EAST 12TH STREET;
and
 - 2) 2207 NORTH ATLANTA;
and
 - 3) 2553 NORTH NORFOLK;
and
 - 4) 822 NORTH GARY PLACE;
and
 - 5) 1347 NORTH TROOST;
and
 - 6) 1013 & 1015 NORTH ROCKFORD;
and
 - 7) 1207 SOUTH QUAKER;
- Defendants.

CIVIL ACTION NO. 92-C-298-B

FILED

AUG 24 1992

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

JUDGMENT OF FORFEITURE

This cause having come before this Court upon the Stipulation for Forfeiture executed by and between Plaintiff, the United States of America, and Brian Maurice Fuller, a/k/a Kevin

Clay Felts, Kevin Felts, and Clay Felts, the owner of said real properties and the person from whom they were seized; and the Court, being fully apprised in the premises, finds as follows:

That the Complaint for Forfeiture In Rem was filed in this action on the 10th day of April 1992, alleging that the defendant real properties, with buildings, appurtenances, and improvements are subject to forfeiture pursuant to Title 18 U.S.C. § 981 because they are properties involved in a transaction(s), or attempted transaction(s), in violation of 18 U.S.C. §§ 1956 and 1957, or are properties traceable to such property.

That a Warrant of Arrest and Notice In Rem was issued on the 13th day of April, 1992, by the Honorable Thomas R. Brett, United States District Judge for the Northern District of Oklahoma, as to the defendant real properties, buildings, appurtenances, and improvements.

That the United States Marshals Service served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest and Notice In Rem on the defendant real properties, with buildings, appurtenances, and improvements, as indicated below, to-wit:

2022 East 12th Street
Tulsa, Oklahoma

June 10, 1992

2207 North Atlanta
Tulsa, Oklahoma

June 5, 1992

2553 North Norfolk Tulsa, Oklahoma	June 5, 1992
822 North Gary Place Tulsa, Oklahoma	June 4, 1992
1013 and 1015 North Rockford Tulsa, Oklahoma	June 4, 1992
1207 South Quaker Tulsa, Oklahoma	June 10, 1992

That the United States Marshals Service personally served all persons having an interest in the following-described real properties, as well as the County Treasurer of Tulsa County, Oklahoma, as to any pending ad valorem taxes, as follows:

BRIAN MAURICE FULLER, a/k/a KEVIN CLAY FELTS, KEVIN FELTS, and CLAY FELTS	May 26, 1992
---	--------------

COUNTY TREASURER OF TULSA COUNTY, OKLAHOMA	June 12, 1992
---	---------------

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

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

That no individuals have filed Claims to the defendant real properties hereinafter described, however, an Answer to Plaintiff's Complaint was filed by John F. Cantrell, Tulsa County Treasurer, on July 2, 1992, stating that as such County Treasurer he claims no right, title, or interest in and to the subject real properties.

That the Board of County Commissioners of Tulsa County, Oklahoma, likewise filed only an Answer to Plaintiff's Complaint, on July 2, 1992, stating that it (the Board of County Commissioners) does not claim any right, title, or interest in the subject real properties.

That no individuals or other entities have filed Claims and Answers to the defendant real properties hereinafter described.

That the United States Marshals Service gave public notice of this action and arrests to all persons and entities by advertisement in the Tulsa Daily Commerce and Legal News, Tulsa, Oklahoma, on June 25 and July 2 and 9, 1992, and that Proof of Publication was filed of record on August 12, 1992.

That no other claims, answers, or other defenses have been filed by the defendant real properties hereinafter described or any persons or entities having an interest therein.

That the Plaintiff and Brian Maurice Fuller, a/k/a Kevin Clay Felts, Kevin Felts, and Clay Felts, have entered into

a Stipulation for Forfeiture, setting forth the agreement between them, wherein Brian Maurice Fuller, a/k/a Kevin Clay Felts, consents to the forfeiture of the defendant real properties hereinafter described, and that such Stipulation for Forfeiture was filed in this cause of action on May 12, 1992.

That on April 17, 1992, Brian Maurice Fuller, a/k/a Kevin Clay Felts, Kevin Felts, and Clay Felts, executed a Quit-Claim Deed to the United States of America of all of his interest in and to the hereinafter-described real properties, and that such Quit-Claim Deed was duly recorded in the office of the County Clerk of Tulsa County, Oklahoma, on May 21, 1992, in Book 5406 at Page 1859, as Instrument No. 92 043710.

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

TRACT 1:

Lot 1, Block 2, REGINA ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof, a/k/a 2022 East 12th Street, Tulsa, Oklahoma.

TRACT 2:

Lot 117, Block 11, TULSA HEIGHTS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat

thereof, a/k/a 2207 North Atlanta,
Tulsa, Oklahoma.

TRACT 3:

Lot 22, Block 1, EMERSON ADDITION,
an Addition to the City of Tulsa,
Tulsa County, State of Oklahoma,
according to the last recorded
Plat thereof, a/k/a 2553 North
Norfolk, Tulsa, Oklahoma.

TRACT 4:

Lot 2, Block 1, HORTENSE PLACE
ADDITION, an Addition to the City
of Tulsa, a resubdivision of Lot
8, and Lot 9 of GARDEN ACRES, a
Subdivision of the NE/4 of the
SE/4 of Section 22, Township 20
North, Range 13 East, Tulsa
County, Oklahoma, according to the
recorded Plat thereof, a/k/a 822
North Gary Place, Tulsa, Oklahoma.

TRACT 6:

Lot 17, Block 2, CRUTCHFIELD
ADDITION to the City of Tulsa,
Tulsa County, State of Oklahoma,
according to the recorded Plat
thereof, a/k/a 1013 and 1015 North
Rockford, Tulsa, Oklahoma.

TRACT 7:

Unit 109 in the CREST
CONDOMINIUMS, together with an
undivided 4.1294 percentage
ownership interest in and to the
common elements appertaining and
appurtenant thereto, according to
the Declaration of Unit Ownership

Estates for the Crest Condominiums recorded in Book 4655 at Page 201, et seq., in the office of the County Clerk of Tulsa County, Oklahoma, covering the following-described property: Lots 35 through 42, inclusive, Block 6, Orchard Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof, a/k/a 1207 South Quaker, No. 109, Tulsa, Oklahoma;

and that the real properties above-described be, and they hereby are, forfeited to the United States of America for disposition by the United States Marshal according to law, and that no right, title, or interest shall exist in any other party.

Entered this 24 day of Aug., 1992.

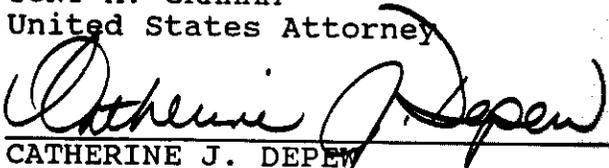
S/ THOMAS R. BRETT

THOMAS R. BRETT, Judge of the
United States District Court
for the Northern District of
Oklahoma

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


CATHERINE J. DEPEW
Assistant United States Attorney

CJD/ch

N:\UDD\CHOOK\FC\FELTS\02307

ENTERED ON DOCKET
DATE AUG 26 1992

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

FILED
AUG 25 1992

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

HARTFORD FIRE INSURANCE COMPANY,

Plaintiff,

v.

RAMSEY INDUSTRIES INC.,

Defendant.

Case No. 92-C-0205-B ✓

ADMINISTRATIVE CLOSING ORDER

The Parties having entered into a settlement agreement, it is hereby ordered that the Clerk administratively terminate this action in his records, ~~without~~ prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, by March 31, 1993, the Parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 25th day of Aug, 1992.


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

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

4

CLOSED

ENTERED ON DOCKET
AUG 26 1992

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

UNITED STATES OF AMERICA,)	
)	
)	Plaintiff,
-vs-)	
)	
HARVEY R. RAMSEY,)	
444-56-6563)	
)	
)	Defendant,
)	
)	<u>CONSENT JUDGMENT</u>

CIVIL NO. 92-C-546 E

FILED

AUG 26 1992

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

The Court, having been advised by the parties of their desire to enter into a consent judgment, finds:

1. The Court has jurisdiction over the subject matter and the parties to this litigation.

2. The parties have agreed on the entry of judgment in favor of the plaintiff, United States of America, against defendant, Harvey R. Ramsey, as follows:

3. Defendant, Harvey R. Ramsey, is indebted or liable to the plaintiff in the principal amount of \$1,403.21, accrued interest and costs through May 15, 1992, in the amount of \$594.19, and interest thereafter on the principal amount at the rate of 6% per annum to the date of this judgment and thereafter at the rate of 3 1/2% until paid and the costs of this action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED.

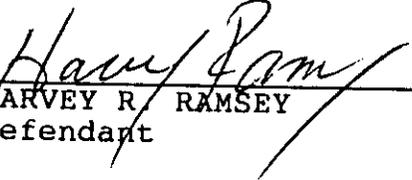
DATED this 25 day of August, 1992.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVAL AND CONSENT
TO ENTRY OF JUDGMENT
CLIFTON R. BYRD
District Counsel


CLIFTON R. BYRD
Department of Veterans Affairs
Office of District Counsel
125 South Main Street
Muskogee, OK 74401
(918)687-2191


HARVEY R. RAMSEY
Defendant

ENTERED

ENTERED ON DOCKET
DATE AUG 25 1992

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 91-C-0091-E

FOUR HUNDRED FIFTY THOUSAND
FOUR HUNDRED FORTY-FIVE AND
91/100 DOLLARS (\$450,445.91)
IN UNITED STATES CURRENCY,
and
THIRTEEN ITEMS OF JEWELRY,

Defendants.

FILED

AUG 25 1992

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

NOTICE OF PARTIAL DISMISSAL

Plaintiff, the United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, hereby gives notice that, pursuant to Plea Agreement entered into by and between the Plaintiff and ARNOLD D. BURLESON, Defendant in Case No. 91-CR-56-E on May 4, 1992, and KATHERINE M. BURLESON, Defendant in Case No. 92-CR-53-B, on April 1, 1992, the following-described jewelry is dismissed from this cause of action, to-wit:

Thirteen (13) items of jewelry seized from the residence of Arnold and Katherine Burleson, Tulsa, Oklahoma, consisting of the following:

- 1) One ladies gold and diamond pendant;

30

- 2) One ladies fashion Rolex watch with diamonds;
- 3) One ladies diamond and cubic zirconia ring;
- 4) One ladies diamond ring with marquises and baguette shaped diamonds;
- 5) One ladies pear shaped cubic zirconia fashion ring;
- 6) One ladies cubic zirconia pendant necklace;
- 7) One ladies pearl necklace;
- 8) One ladies diamond pendant necklace;
- 9) One men's Rolex style fashion ring;
- 10) One ladies diamond presidential style Rolex watch;
- 11) One ladies fashion watch;
- 12) One ladies cubic zirconia fashion watch;
- 13) One ladies free-form diamond pendant.

Plaintiff advises the Court that the Petitioners Arnold and Katherine Burleson's Petition for Remission was denied by the United States Department of Justice on November 20, 1992, and that no application for reconsideration was made. Plaintiff

further advises that no claim and answer was filed by any party as to the defendant thirteen items of jewelry.

DATED this 25 day of August 1992.

Respectfully submitted,

TONY M. GRAHAM
United States Attorney



CATHERINE J. DEPEW, OBA #3836
Assistant United States Attorney
3900 United States Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the within and foregoing Notice of Dismissal has been mailed this 25 day of August, 1992, with postage fully prepaid thereon, to the following:

GARY L. RICHARDSON
Attorney at Law
5727 South Lewis, Suite 320
Tulsa, Oklahoma 74105
Attorney for Arnold D. Burleson

TERRY P. MALLOY
Attorney at Law
1924 South Utica
Tulsa, Oklahoma 74104
Attorney for Katherine M. Burleson


CATHERINE J. DEPEU

CJD/ch

N:\UDD\CHOOK\FC\BURLESON\02261

ENTERED

ENTERED ON DOCKET
DATE AUG 25 1992

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

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

Plaintiff,)

v.)

C. L. MAYBERRY; WILLIAM E.)
BECKMAN, JR.; DELOITTE & TOUCHE,)
a partnership; and DELOITTE)
HASKINS AND SELLS, a partnership,)

Defendants.)

Case No. 91-C-679-B

FILED

AUG 25 1992

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

ORDER

Before the Court is the motion of third-part defendants Barry Beasley ("Beasley") and Huffman Arrington Kihle Gaberino & Dunn, Inc., a Professional Corporation ("Huffman Arrington") and the motion of the Federal Deposit Insurance Corporation ("FDIC") to dismiss the "Cross Petition and Counter Claim" of defendant William E. Beckman ("Beckman"). The motion was filed on November 20, 1991. No response by Beckman being filed within the time required by Local Rule 15(A), movants asked the Court that the motion be deemed confessed. Beckman filed a "motion to deny" such confession on January 30, 1992, but did not address the merits. The Court concludes that the motion is deemed confessed, but nevertheless has independently reviewed the record.

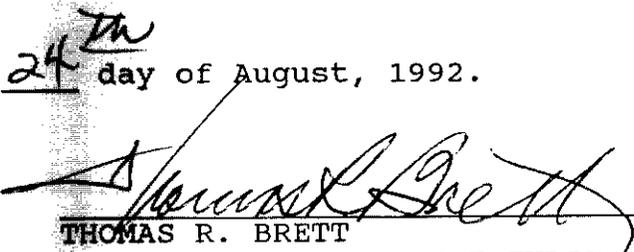
This is an action by the FDIC against two former officers and the accountants of Phoenix Federal Savings and Loan Association of Muskogee, Oklahoma. The Complaint alleges against the former officers, of whom Beckman is one, various breaches of legal duty.

The FDIC is represented by Beasley and by Huffman Arrington in this action.

In his "cross petition and counterclaim", Beckman appears to allege slander as to Beasley, arising out of remarks Beasley allegedly made at a cocktail party on August 31, 1991 and malicious prosecution as to Huffman Arrington and the FDIC for the bringing of this action. As movants note, a third-party action is only proper against a party who may be liable in some way as regards plaintiff's original claim. See Lambert v. Inryco, Inc., 569 F. Supp. 908, 911 (W.D. Okla. 1982). A claim for slander against Beasley does not fall within that category. Accordingly, that claim is dismissed without prejudice. Further, a claim for malicious prosecution requires a termination of the former proceedings in favor of the original defendant. Empire Oil & Refining Co. v. Williams, 86 P.2d 291, 292 (Okla. 1939). The present proceedings are still ongoing and thus any claim for malicious prosecution is premature. It also shall be dismissed without prejudice.

It is the Order of the Court that the motion of Barry Beasley and Huffman Arrington, Kihle Gaberino & Dunn, Inc. and the FDIC to dismiss are hereby granted for the reasons stated. The cross petition and counterclaim of William Beckman is dismissed without prejudice.

IT IS SO ORDERED this 24th day of August, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE AUG 25 1992

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

**CLOSED
ENTERED**

STEVEN C. EMBREE,
Petitioner,
vs.
RON CHAMPION, Warden,
Respondent.

No. 90-C-777-E

FILED

AUG 25 1992

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

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate that the Petition for Writ of Habeas Corpus filed herein pursuant to 28 U.S.C. §2254 be dismissed. The Court has studied the record and finds that Petitioner has failed to meet the tests set forth by the Gilbert Court for circumventing the procedural bar which confronts him. Gilbert v. Scott, 941 F.2d 1065 (10th Cir. 1991). Therefore the Magistrate's Report and Recommendation should be affirmed.

IT IS THEREFORE ORDERED that Petitioner's §2254 Petition is hereby dismissed.

ORDERED this 24th day of August, 1992.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

15

ENTERED ON DOCKET
DATE AUG 25 1992

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

CLOSED

CLYDE R. DURKEE,)
)
 Plaintiff,)
)
 v.)
)
 MOORE FUNERAL HOME, INC.,)
 an Oklahoma corporation,)
 and MOORE FUNERAL HOME, INC.,)
 MONEY PURCHASE PENSION PLAN,)
)
 Defendants.)

Case No. 91-C-834-B

FILED

AUG 24 1992

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

ORDER

Before the Court for decision is the Motion for Summary Judgment filed on behalf of Defendants, Moore Funeral Home, Inc. ("Moore") and Moore Funeral Home, Inc. Money Purchase Pension Plan ("Pension Plan"), pursuant to Fed.R.Civ.P. 56. The Defendants seek Summary Judgment against the Plaintiff, Clyde R. Durkee ("Durkee"), on his Employee Retirement Income Security Act claim ("ERISA").

The Defendants filed their Motion for Summary Judgment on May 19, 1992, asserting that there is no genuine issue as to any material fact and that Defendants are entitled to judgment as a matter of law. The Plaintiff responded June 3, 1992, arguing material facts were in dispute. The Defendants filed a reply brief June 18, 1992. The Court entered an Agreed Order on July 27, 1992, staying the Scheduling Order until the Court ruled on the Defendants' Motion for Summary Judgment.

Durkee went to work for Moore on September 19, 1983, as a part-time employee and became a full-time employee on June 16, 1986. Durkee alleges he was terminated in October, 1989, and the Defendants contend Durkee resigned on January 15, 1990.

Nevertheless, the time span that is relevant to this suit is the period in which Durkee was a part-time employee.

Durkee was employed by Moore as a driver and was covered by the provisions of successive collective bargaining agreements between Moore and the Service Employees Union, Local Number 245, AFL-CIO ("Union"). The collective bargaining agreements that were in force during Durkee's tenure at Moore required Moore to contribute 8% of each employee's salary each pay period into the Pension Plan.¹ Durkee claims he was a participant in the Pension Plan the entire time he was employed by Moore.² The Defendants contend that Durkee did not become a participant in the Pension Plan until July 1, 1987, and therefore is not entitled to pension benefits for wages earned prior to 1987. After the conclusion of his employment³ at Moore, Durkee received a check in the amount of \$6,768.49 as payment for his vested interest in the Pension Plan.

Durkee now alleges he is entitled to additional pension

¹. The pension provision of the collective bargaining agreements provides:

Effective May 1, 1979 the company will contribute five percent of each employee's salary each pay period into a bonafide pension plan designated by the union. Such payments shall be made to the pension plan with one week following each pay period. Effective May 1, 1980 the company contribution shall increase to eight percent (8%).

² The Plaintiff's complaint states (if not explicitly, then certainly implicitly) that Durkee was a participant of the Pension Plan the entire time he was employed by Moore. However, Durkee states in his deposition (p.15-16) that he did not become a participant in the Pension Plan until January 1, 1987, as the Defendants contend.

³ For the purposes of this lawsuit, the determination of whether Durkee resigned or was terminated has no significance.

benefits he earned while he was a part-time employee. Specifically, Plaintiff alleges he is "entitled to receive contributions made or which should have been made on his behalf to the plan, which contributions were not made, ... for the years until Plaintiff became 'full-time'."⁴ However, Durkee made no claim⁵ to these additional benefits until this suit was filed October 23, 1991. Plaintiff also prays for payment of a statutory penalty for Moore's alleged failure to produce a copy of the plan.

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." Where there is an absence of material issues of fact, then the movant 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); Commercial Iron & Metal Co. v. Bache & Co., 478 F.2d 39, 41 (10th Cir. 1973); and Ando v. Great Western Sugar Co., 475 F.2d 531, 535 (10th Cir. 1973).

Rather than dispute the merits of Durkee's claim, the Defendants argue that summary judgment is appropriate because Durkee is barred from raising a claim for additional pension benefits in this lawsuit. Defendants argue three separate grounds

⁴ The parties agree that Durkee has been completely compensated for the period after 1987.

⁵ As discussed below, Plaintiff does argue that his attorney attempted to get a copy of the Pension Plan in July of 1991 by requesting a copy on behalf of "several people who were union employees."

for dismissing this suit. First, Defendants contend Durkee's claims were settled pursuant to the terms of a settlement agreement between Moore and the Union. Next, it is argued this suit should be dismissed because Durkee failed to utilize the contract grievance procedure agreed upon by Moore and the Union. Finally, the Defendants argue Durkee's claim must be dismissed due to his failure to exhaust the remedies provided by the Pension Plan. The Court finds this final argument to be dispositive and thus does not reach the first two.

ERISA specifically mandates that every employee benefit plan afford a reasonable opportunity to any participant, whose claim for benefits has been denied, for a full and fair review by the appropriate named fiduciary of the decision denying the claim. 29 U.S.C. §1133(2). Although the Pension Plan in this case provided for such review, it is undisputed that Durkee failed to avail himself of the procedure in any fashion.⁶ In fact, the record does not even indicate that the Defendants were ever informed that Durkee felt he was entitled to additional pension benefits. Durkee never requested additional benefits or filed a claim for such benefits.

Allowing Durkee to by-pass the Pension Plan's review procedure would deprive the parties and the Court of the benefits arising from such review. The Plaintiff must avail himself of the procedures set forth in the Pension Plan before he can ask the

⁶ Pages 57-58 of the Pension Plan.

court to intercede on his behalf.

Congress' apparent intent in mandating these internal claims procedures was to minimize the number of frivolous ERISA lawsuits; promote the consistent treatment of benefit claims; provide a nonadversarial dispute resolution process; and decrease the cost and time of claims settlement. ... [T]he exhaustion requirement enables plan fiduciaries to efficiently manage their funds; correct their errors; interpret plan provisions; and assemble a factual record which will assist a court in reviewing the fiduciaries' actions.

Makar v. Health Care Corp. of Mid-Atlantic, 872 F.2d 80,83 (4th Cir. 1989).

The 10th Circuit recently joined several other Circuits in holding that "the exhaustion of administrative (company- or plan-provided) remedies is an implicit prerequisite to seeking judicial relief" in an ERISA action for pension benefits. Held v. Manufacturers Hanover Leasing Corp., 912 F.2d 1197,1205-1206 (10th Cir. 1990); Merritt v. Confederation Life Ins. Co., 881 F.2d 1034 (11th Cir. 1989); Makar, 872 F.2d 80. The Court concludes that Durkee did not exhaust his plan-provided remedies before filing this suit.

The Plaintiff correctly points out that there are two exceptions to the exhaustion doctrine. Taylor v. Bakery & Confectionary Union, Etc., 455 F.Supp. 816,820 (E.D.N.C. 1978). A plaintiff is not required to exhaust his administrative remedies if to do so would be futile, Glover v. St. Louis-San Francisco Railway Company, 393 U.S. 324,330-331 (1969), or if he is wrongfully denied meaningful access to the review procedures. Vaca v. Sipes, 386 U.S. 171,185 (1967). Durkee futilely argues that both exceptions apply in this case.

First, he argues that pursuing his administrative remedies would necessarily be futile because the Defendants have denied in this lawsuit that benefits are due and "because the Defendants are also the people who would carry out the administrative review." This is not an appropriate application of the futility exception. If it were, all Plaintiff's could bypass administrative proceedings, file a lawsuit, and claim that pursuing administrative remedies would be futile because the Defendants were contesting the lawsuit. The fact that the Defendant is also in charge of the ERISA review procedure does not alone constitute futility. Dale v. Chicago Tribune Co., 797 F.2d 458,467 (7th Cir. 1986).

Further, the Plaintiff's argument overlooks the fiduciary duties imposed upon the pension review board. ERISA imposes upon fiduciaries of an employee benefit plan the duty to act in the best interests of the participants and beneficiaries under the plan. 29 U.S.C. §1104. If this duty is violated, the Plaintiff can bring a civil action under ERISA to enforce his substantive rights.

Durkee further argues that administrative review should not be required because this "is not a situation where administrative review would need to gather evidence from outside third parties ... [n]or is this a situation where there is a need for administrative discretion to be exercised." These bare allegations simply are not sufficient to satisfy the "clear and positive showing of futility" required to suspend the exhaustion requirement. Makar, 872 F.2d at 83; Fizer v. Safeway Stores, Inc., 586 F.2d 182,183 (10th Cir. 1978). The Court concludes that there is no genuine issue of

material fact as to the futility of pursuing administrative remedies in this case.

Next, Durkee contends that the second exception to the exhaustion doctrine (wrongful denial of meaningful access to the review procedures) applies in this case. Durkee argues he was denied access to a copy of the pension plan and thus could not exhaust his administrative remedies. Durkee also seeks a statutory penalty for the Defendants failure to produce a copy of the pension plan.

A plan administrator's wrongful refusal to provide plan documents would deny a claimant meaningful access to review procedures and would excuse the claimant from the exhaustion requirement. Curry v. Contract Fabricators Incorporated Profit Sharing Plan, 891 F.2d 842,846 (11th Cir. 1990). In Curry, the Plaintiff personally tried to collect his benefits on two occasions and his attorney requested a copy of the plan. The administrator denied all requests and the court consequently excused the Plaintiff from the exhaustion requirement.

There is no merit to Durkee's claim that he was wrongfully denied a copy of the pension plan. Durkee admitted in his deposition that he never made a request for a copy of the pension plan and further admitted that such a request was never made on his behalf by any union. In his response to the Defendant's Motion for Summary Judgment, Durkee does contend that:

"A request for a copy of the pension plan was made on Plaintiff's behalf by Plaintiff's counsel. Plaintiff's counsel was assured that the documents would be forthcoming. However, they were not forthcoming."

In support of this contention, Plaintiff provides Unsworn Statements Under Penalty of Perjury of James E. Frasier ("Frasier") and Steven R. Hickman ("Hickman"). Hickman states that prior to July 1, 1991, he had been "contacted" by Durkee and others with regard to pension benefits due them. He also states that he "mentioned" to Carl D. Hall, Jr. ("Hall"), attorney for Defendants, prior to July 1, 1991⁷, that he "had some people who were interested in their benefits under the pension plan and asked him if there would be a problem getting a copy of that plan." Hickman states that Hall responded that he did not think there would be a problem.

Frasier states that "for some time this firm has represented Plaintiff herein ... with regard to potential claims against Moore." He also states that he sent two letters to Hall at Hickman's request attempting to obtain a copy of the pension plan. The first letter, dated July 11, 1991, states:

[T]his office has been contacted by several people who were union employees prior to the strike that occurred in the Fall, 1989. ... Could you please forward a copy of that Plan as it existed in the Fall, 1989, to me for review."

Hall responded with a letter dated July 15, 1991, which stated:

I have received your letter of July 11, 1991 relative to the Moore Funeral Home Pension Plan. I am not aware of any claims by anyone concerning the Pension Plan and I cannot recall Steve Hickman ever asking me for a

⁷ Although Plaintiff uses the date July 1, 1992, the Court concludes from the surrounding text that this was a typographical error and should have been July 1, 1991. However, the accurateness of this date is immaterial to the Court's holding.

copy of the Plan.

If you will be more specific with respect to your inquiry, I will try to be of more assistance to you.

Finally, Frasier states that he sent the following response to Hall, dated August 5, 1991:

As I indicated to you in my previous letter, we represent several people who were part of the bargaining unit in this matter. All they are requesting at this point is a copy of the Plan. Certainly, it should be a simple enough proposition for you to forward a copy of same to me.

Plaintiff contends that these three letters constitute an attempt by Durkee to get a copy of the pension plan and use the administrative process. Durkee argues that by refusing to comply with this anonymous request, the Defendants wrongfully denied him meaningful access to the review procedures.

The Court concludes that the statements of Frasier and Hickman do not create a genuine issue as to whether Durkee attempted to get a copy of the plan and use the review process. Neither Hickman nor Frasier state that they were attempting to obtain a copy of the plan on behalf of Durkee. The bare claim in the pleading that the request was on behalf of Durkee is insufficient to create a genuine issue as to this fact.

Allowing Durkee to make his initial claim for pension benefits by filing a lawsuit would undermine the policies underlying the exhaustion requirement. Meza v. General Battery Corp., 908 F.2d 1262,1279 (5th Cir. 1990). The Court concludes that Durkee was not denied meaningful access to the review procedure and thus is required to exhaust his administrative remedies.

Durkee's claim for a statutory penalty is also without merit.

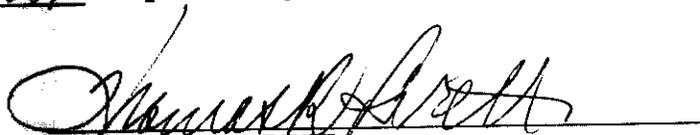
ERISA only requires the administrator to furnish a copy of the plan upon written request of a participant. 29 U.S.C. §1024(b)(4). The administrator is not required to provide a copy of the plan to any attorney claiming to be acting on behalf of "several people who were union employees before the strike." Therefore, Durkee is not entitled to a statutory penalty.

The Court's disposition of the Defendant's Motion for Summary Judgment eliminates the need to address the Defendants' Motion to Strike Plaintiff's Demand for Jury Trial.

Plaintiff asks the Court to stay these proceedings rather than dismissing the case in order to allow him to pursue his administrative remedies. Plaintiff argues that if the case is dismissed the statute of limitations "may even become a real hurdle." The Court sees no reason why these proceedings should not be dismissed. Administrative proceedings are not in progress and have never been initiated. The Court, however, is unable to determine from the record and thus does not rule on whether the Plaintiff will be barred by the Statute of Limitations from pursuing this matter any further.

The Court concludes the Defendants' Motion For Summary Judgment should be and the same is hereby SUSTAINED.

IT IS SO ORDERED this 24th day of August, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

CLOSED

ENTERED ON DOCKET
DATE AUG 25 1992

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SEQUOYAH FOX; MARTHA V. FOX;
FARMERS COOPERATIVE
ASSOCIATION, INC.; COUNTY
TREASURER, Delaware County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Delaware
County, Oklahoma,

Defendants.

CIVIL ACTION NO. 92-C-347-E

FILED

AUG 24 1992

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

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 24 day
of August, 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, Delaware County,
Oklahoma, and Board of County Commissioners, Delaware County,
Oklahoma, appear by Wes E. Combs, Assistant District Attorney,
Delaware County, Oklahoma; and the Defendants, Sequoyah Fox,
Martha V. Fox and Farmers Cooperative Association, Inc., appear
not, but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Sequoyah Fox, acknowledged
receipt of Summons and Complaint on May 6, 1992; the Defendant,
Martha V. Fox, acknowledged receipt of Summons and Complaint on
May 6, 1992; the Defendant, Farmers Cooperative Association,
Inc., acknowledged receipt of Summons and Complaint on April 28,

1992; that Defendant, County Treasurer, Delaware County, Oklahoma, acknowledged receipt of Summons and Complaint on April 30, 1992; and that Defendant, Board of County Commissioners, Delaware County, Oklahoma, acknowledged receipt of Summons and Complaint on May 4, 1992.

It appears that the Defendants, County Treasurer, Delaware County, Oklahoma, and Board of County Commissioners, Delaware County, Oklahoma, filed their Answer on May 6, 1992 and an Amended Answer on May 14, 1992; and that the Defendants, Sequoyah Fox, Martha V. Fox and Farmers Cooperative Association, Inc., 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 Delaware County, Oklahoma, within the Northern Judicial District of Oklahoma:

TRACT NO. 1: NE1/4 NE1/4 SE1/4, Section 3, Township 20 North, Range 24 East, Delaware County, Oklahoma.

TRACT NO. 2: E1/2 SE1/4 NE1/4; and W1/2 NE1/4 SE1/4 of Section 3, Township 20 North, Range 24 East, Delaware County, Oklahoma, LESS one acre in the Northeast Corner of the E1/2 SE1/4 NE1/4, more particularly described as follows: Commencing at the NE corner of the SE1/4 NE1/4 as point of beginning; thence West 210 Feet; thence South 210 feet; thence East 210 feet; thence North 210 feet to point of beginning.

ENCUMBRANCES, RESERVATIONS, EXCEPTIONS, AND DEFECTS:

SUBJECT TO, HOWEVER, ALL VALID OUTSTANDING EASEMENTS, RIGHT-OF-WAYS, MINERAL LEASES,

MINERAL RESERVATIONS, AND MINERAL CONVEYANCES
OF RECORD.

The Court further finds that on March 10, 1980, the Defendants, Sequoyah Fox and Martha V. Fox, executed and delivered to the United States of America, acting through the Farmers Home Administration, their mortgage note in the amount of \$116,700.00, payable in monthly installments, with interest thereon at the rate of 10 percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Sequoyah Fox and Martha V. Fox, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated March 10, 1980, covering the above-described property. Said mortgage was recorded on March 10, 1980, in Book 399, Page 682, in the records of Delaware County, Oklahoma.

The Court further finds that the Defendants, Sequoyah Fox and Martha V. Fox, 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, Sequoyah Fox and Martha V. Fox, are indebted to the Plaintiff in the principal sum of \$118,614.17, plus accrued interest in the amount of \$29,877.90 as of December 6, 1991, plus interest accruing thereafter at the rate of \$32.4184 per day until judgment, plus interest thereafter at the legal rate until fully 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, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$276.17, plus penalties and interest. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$27.09. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Sequoyah Fox, Martha V. Fox and Farmers Cooperative Association, Inc., 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 Defendants, Sequoyah Fox and Martha V. Fox, in the principal sum of \$118,614.17, plus accrued interest in the amount of \$29,877.90 as of December 6, 1991, plus interest accruing thereafter at the rate of 32.4184 per day until judgment, plus interest, plus interest thereafter at the current legal rate of 3.41 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, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, have and recover judgment in the amount of \$276.17, plus penalties and interest, for ad valorem taxes plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, have and recover judgment in the amount of \$27.09 for personal property taxes plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Sequoyah Fox, Martha V. Fox and Farmers Cooperative Association, Inc., 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, Sequoyah Fox and Martha V. Fox, 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 Defendants, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, in the amount of \$276.17, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of Defendants, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, in the amount of \$27.09, 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

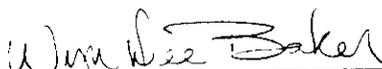
Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

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



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

Judgment of Foreclosure
Civil Action No. 92-C-347-E

WDB/esr

3. Defendant's Motion to Dismiss is GRANTED; and
4. Plaintiff's action is DISMISSED WITH PREJUDICE, and each party is responsible for its costs.

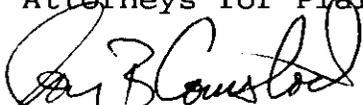
DATED this 24th day of August, 1992.

APPROVED AS TO FORM:



D. Gregory Bledsoe,
Laura Frossard,

Attorneys for Plaintiff.



Jon B. Comstock,

Attorney for Defendant.

1992 AUG 24 10 30 AM
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

The Honorable John Leo Wagner,
Magistrate Judge, United States
District Court, Northern
District of Oklahoma

CLOSED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE AUG 25 1992

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN P. FARMER; MEREDITH A.)
 FARMER; GREENWOOD TRUST)
 COMPANY; COUNTY TREASURER,)
 Pawnee County, Oklahoma;)
 BOARD OF COUNTY COMMISSIONERS,)
 Pawnee County, Oklahoma,)
)
 Defendants.)

FILED

AUG 24 1992

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

CIVIL ACTION NO. 92-C-438-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 24 day
of August, 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 Defendant, Greenwood Trust Company, a Delaware
Corporation, appears by its attorneys, Stephen L. Bruce, J.
Michael Morgan, and Clay P. Booth; the Defendants, County
Treasurer, Pawnee County, Oklahoma, and Board of County
Commissioners, Pawnee County, Oklahoma, appear through Alan B.
Foster, Assistant District Attorney; and the Defendants, John P.
Farmer and Meredith A. Farmer, appear not, but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, John P. Farmer,
acknowledged receipt of Summons and Complaint on May 26, 1992;
that the Defendant, Meredith A. Farmer, acknowledged receipt of
Summons and Complaint on May 26, 1992; that the Defendant,
Greenwood Trust Company, a Delaware Corporation, acknowledged

receipt of Summons and Complaint on May 28, 1992; that Defendant, County Treasurer, Pawnee County, Oklahoma, acknowledged receipt of Summons and Complaint on May 19, 1992; and that Defendant, Board of County Commissioners, Pawnee County, Oklahoma, acknowledged receipt of Summons and Complaint on May 20, 1992.

It appears that the Defendants, County Treasurer, Pawnee County, Oklahoma, and Board of County Commissioners, Pawnee County, Oklahoma, filed their Answer on June 12, 1992; that the Defendant, Greenwood Trust Company, a Delaware Corporation, filed its Answer on June 1, 1992; and that the Defendants, John P. Farmer and Meredith A. Farmer, 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 Pawnee County, Oklahoma, within the Northern Judicial District of Oklahoma:

A tract of land in the W/2 of the W/2 of the N/2 of the SW/4 of the NE/4, Section 21, Township 21 North, Range 8 E.I.M., more particularly described as beginning at a point 1419.25 feet North and 208.75 feet East of the SW corner of the NE/4 of Section 21-21N-8E; thence running South parallel with the West line of the NE/4 of Section 21 a distance of 476.75 feet; thence running East a distance of 50 feet; thence running North a distance of 476.75 feet; thence running West a distance of 50 feet to the point of beginning, containing 0.547 acres, more or less and,

A tract of land situated in the W/2 of the NE/4, Section 21, Township 21 North, Range 8 E.I.M., more particularly described as

beginning at a point on the West line of the W/2 of the NE/4, Section 21-21N-8E, a distance of 1647.5 feet North of the Center of said Section 21; thence running East parallel with the South line of the W/2 of the NE/4 of Section 21-21N-8E, a distance of 309 feet; thence running South parallel with the West line of the W/2 of the NE/4 of Section 21-21N-8E, a distance of 230 feet; thence running West parallel with the South line of the W/2 of the NE/4 of Section 21-21N-8E, a distance of 309 feet to the West line of the W/2 of the NE/4, Section 21-21N-8E; thence running North along the West line of the W/2 of the NE/4, Section 21-21N-8E, a distance of 230 feet to the point of beginning, containing 1.625 acres, more or less; Pawnee County, Oklahoma, subject, however, to all valid outstanding easements, rights-of-way, mineral leases, mineral reservations, and mineral conveyances of record.

The Court further finds that the Complaint is hereby ordered conformed to the evidence presented in this case such that the legal description of the subject property shall be as set forth in this judgment.

The Court further finds that on February 18, 1983, the Defendants, John P. Farmer and Meredith A. Farmer, executed and delivered to the United States of America, acting through the Farmers Home Administration, their mortgage note in the amount of \$34,500.00, payable in monthly installments, with interest thereon at the rate of 10.75 percent (10.75%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, John P. Farmer and Meredith A. Farmer, executed and delivered to the United States of America, acting through the Farmers Home

Administration, a mortgage dated February 18, 1983, covering the above-described property. Said mortgage was recorded on February 22, 1983, in Book 325, Page 794, in the records of Pawnee County, Oklahoma.

The Court further finds that on February 18, 1983, the Defendants, John P. Farmer and Meredith A. Farmer, 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 December 6, 1983, the Defendants, John P. Farmer and Meredith A. Farmer, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on November 28, 1984, the Defendants, John P. Farmer and Meredith A. Farmer, 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 December 2, 1985, the Defendants, John P. Farmer and Meredith A. Farmer, 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 December 12, 1986, the Defendants, John P. Farmer and Meredith A. Farmer, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on November 17, 1987, the Defendants, John P. Farmer and Meredith A. Farmer, 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 December 7, 1988, the Defendants, John P. Farmer and Meredith A. Farmer, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on June 7, 1989, the Defendants, John P. Farmer and Meredith A. Farmer, 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 March 30, 1990, the Defendants, John P. Farmer and Meredith A. Farmer, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on June 7, 1989, the Defendants, John P. Farmer and Meredith A. Farmer, executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date was made principal.

The Court further finds that the Defendants, John P. Farmer and Meredith A. Farmer, made default under the terms of the aforesaid note, mortgage, interest credit agreements and the reamortization and/or deferral agreement by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, John P. Farmer and Meredith A. Farmer, are indebted to the Plaintiff in the principal sum of \$41,172.67, plus accrued interest in the amount of \$4,679.85 as of November 22, 1991, plus interest accruing thereafter at the rate of 10.75 percent per annum or \$12.1262 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 \$13,549.38, plus interest on that sum at the legal rate from

judgment until paid, and the costs of this action in the amount of \$10.00 for recording the Notice of Lis Pendens.

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

The Court further finds that the Defendants, John P. Farmer and Meredith A. Farmer, are in default and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, Greenwood Trust Company, a Delaware Corporation, has a lien on the property which is the subject matter of this action by virtue of a judgment lien against Defendant, John P. Farmer, entered by the District Court of Tulsa County, Case No. CS-91-2285 and recorded in the records of Pawnee County, Oklahoma on July 19, 1991 in Book 435 at Page 414 in the amount of \$2,151.23 plus court costs and an attorney's fee, with interest on the principal amount at the rate of 19.8% per annum. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, John P. Farmer and Meredith A. Farmer, in the principal sum of \$41,172.67, plus accrued interest in the amount of \$4,679.85 as of November 22, 1991, plus interest accruing thereafter at the rate of 10.75 percent per annum or \$12.1262 per day until judgment, plus interest thereafter at the current legal rate of 3.41 percent per annum until paid, and the further sum due

and owing under the interest credit agreements of \$13,549.38, plus interest on that sum at the current legal rate of 3.41 percent per annum from judgment until paid, plus the costs of this action in the amount of \$10.00 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, John P. Farmer, Meredith A. Farmer, County Treasurer and Board of County Commissioners, Pawnee County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Greenwood Trust Company, A Delaware Corporation, have and recover judgment in the amount of \$2,151.23 plus court costs and an attorney's fee, with interest on the principal amount at the rate of 19.8% per annum.

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

First:

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

Second:

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

Third:

In payment of the judgment of Defendant, Greenwood Trust Company, a Delaware Corporation, in the amount of \$2,151.23 plus court costs and an attorney's fee, with interest on the principal amount at the rate of 19.8% per annum.

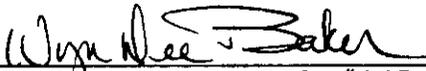
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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


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


STEPHEN L. BRUCE, OBA #1241
J. MICHAEL MORGAN, OBA #6391
CLAY P. BOOTH, OBA #11767
Attorneys for Defendant,
Greenwood Trust Company, a Delaware Corporation


ALAN B. FOSTER, OBA #3046
Assistant District Attorney
Attorney for Defendants, County Treasurer
and Board of County Commissioners,
Pawnee County, Oklahoma

Judgment of Foreclosure
Civil Action No. 92-C-438-E

WDB/esr

ENTERED ON DOCKET
DATE AUG 24 1992

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

FILED

FEDERAL DEPOSIT INSURANCE)
CORPORATION,)
)
Plaintiff,)
)
v.)
)
MIKE STRIPLING,)
)
Defendant.)

91-C-603-B

AUG 21 1992
Richard M. ... Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This Order addresses the following pending motions:

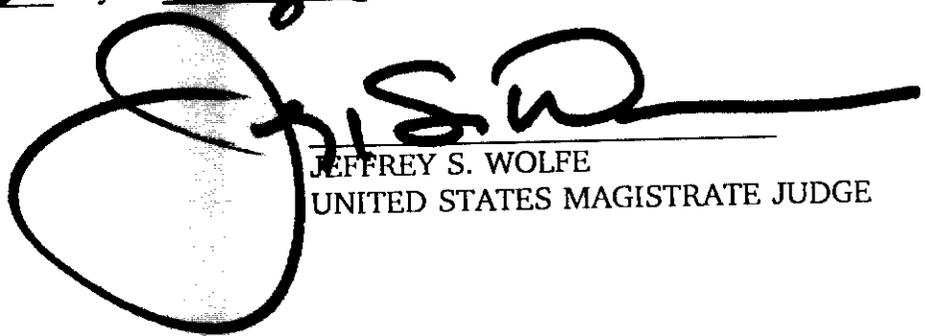
1. Defendant Mercury Mortgage Company's Motion for Deficiency Judgment (docket #42); and
2. Plaintiff F.D.I.C.'s Motion for Leave to Enter Deficiency Judgment (docket #45).

Appearing for Defendant Mercury Mortgage is Mr. Randy Francis while Mr. James Wilcoxon appears for Plaintiff F.D.I.C. No party appeared in opposition to the motion; and, indeed, no other party appeared at the time of hearing. Notice of the hearing was given all parties by reason of the Minute Order of July 22, 1992; later amended by the Minute Order of July 23, 1992. Further, F.D.I.C. filed its Affidavit of Mailing on August 14, 1992 (docket #47) indicating that "a true and correct copy of the Notice of Hearing on Motion for Leave to Enter Deficiency Judgment...[was mailed]...to the Defendants and present record owners of the real property..." on August 13, 1992.

Counsel further indicated that they had received no notices back by return mail, nor had they received any telephone calls from counsel, except from Mr. Bert McElroy, indicating he was representing Mrs. Stripling, stating she had no objection to entry of the deficiency judgment.

Upon review of the foregoing, together with the respective Motions, above, the undersigned finds that a Deficiency Judgment should be entered in favor of Plaintiff, F.D.I.C. and Defendant, Mercury Mortgage in accord with the respective Journal Entries of Judgment submitted by each party. Said Journal Entries are, accordingly, executed herewith.

So Ordered this 21st day of August, 1992.



JEFFREY S. WOLFE
UNITED STATES MAGISTRATE JUDGE

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

FEDERAL DEPOSIT INSURANCE CORPORATION)
in its corporate capacity for the)
NORTHSIDE STATE BANK, TULSA, OKLAHOMA,)
)
Plaintiff,)

-vs-

MIKE STRIPLING one and the same person)
as JAMES MICHAEL STRIPLING and as)
J. MICHAEL STRIPLING and as JAMES M.)
STRIPLING and MARGARET STRIPLING,)
husband and wife, et al.,)
)
Defendants.)

Case No. 91-C-603-B

JOURNAL ENTRY OF DEFICIENCY JUDGMENT

This matter coming before the Court on the 18th day of August, 1992, upon the Plaintiff's Motion for Leave to Enter Deficiency Judgment and the Plaintiff appears by and through its attorney, James G. Wilcoxon; Defendants, Mike Stripling one and the same person as James Michael Stripling and as J. Michael Stripling and Margaret Stripling, husband and wife, and J & A Investment Company, Inc., appear by and through their attorney, Steven W. Vincent; Defendant, Mercury Mortgage Co., Inc., appearing by and through its attorney, Joe Francis; Defendant, The Carpet Showroom, Inc., appearing by and through its attorney, J. Lyon Morehead; Defen-

dants, the County Treasurer of Tulsa County and The Board of County Commissioners, appearing by and through their attorney, J. Dennis Semlar, Assistant District Attorney; Defendant, United States of America, ex rel., Internal Revenue Service, appearing by and through its attorney, Wyn Dee Baker, Assistant United States Attorney; Defendants, Mill Creek Lumber & Supply Co. and Arrow Concrete Co., Inc., appearing by and through their attorney, Steven M. Harris.

The Court then proceeded to examine the file herein and hear the statements and arguments of counsel. After due deliberation, the Court **FINDS**:

That the Plaintiff's Motion for Leave to Enter Deficiency Judgment was properly filed pursuant to 12 O.S.A. Section 686 on the 12th day of August, 1992, said date being within ninety (90) days after the date of the sale of the real property and premises in this proceeding.

The Court further **FINDS** that the Defendants, Mike Stripling one and the same person as James Michael Stripling and as J. Michael Stripling and Margaret Stripling, husband and wife, against whom this deficiency judgment is sought, was afforded proper notice of these proceedings by mailing a copy of the Notice and Motion for Leave to Enter Deficiency Judgment.

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together with statutory interest thereon from the date of entry of such judgment and for all of which let execution issue as to Tract No. I.

Magistrate Judge

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

FILED

AUG 21 1992

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

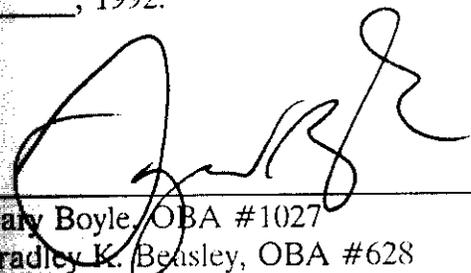
FRANK R. PANZER,)
)
Plaintiff,)
)
vs.)
)
THE PERMIAN CORPORATION,)
)
Defendant.)

Case No. 91-C-149-B

STIPULATED DISMISSAL WITH PREJUDICE

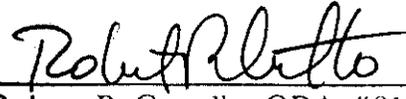
COMES NOW the Plaintiff, Frank R. Panzer, by and through his counsel, Gary Boyle, of Boesche, McDermott & Eskridge, and the Defendant, The Permian Corporation (now Scurlock Permian Corporation), by and through its counsel, Robert P. Costello, of McKenzie, Moffett & Sykora, and hereby stipulate that these proceedings be discontinued and that the Complaint filed in this action be dismissed with prejudice. It is stipulated by the parties that they shall each bear their own attorneys' fees and costs.

Dated this 21st day of August, 1992.



Gary Boyle, OBA #1027
Bradley K. Bessley, OBA #628
Boesche, McDermott & Eskridge
800 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
(918) 583-1777

COUNSEL FOR PLAINTIFF
FRANK R. PANZER



Robert P. Costello, OBA #012621
McKenzie, Moffett & Sykora
Two Leadership Square, Suite 1300
211 North Robinson
Oklahoma City, Oklahoma 73102-7114
(405) 232-3722

COUNSEL FOR DEFENDANT
SCURLOCK PERMIAN CORPORATION

286-0110715.007

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

ENTERED ON DOCKET

DATE AUG 24 1992

BAUCOM CONCRETE CONSTRUCTION,
INC., an Oklahoma corporation,

Plaintiff,

v.

FLEMING BUILDING COMPANY,
INCORPORATED, an Oklahoma
corporation, et al.,

Defendants.

v.

ELEVENTH AND MINGO DEVELOPMENT
COMPANY, an Oklahoma general
partnership, et al.,

Third Party Defendants.

FLEMING BUILDING COMPANY, INC.,
an Oklahoma corporation,

Plaintiff,

v.

ELEVENTH AND MINGO DEVELOPMENT
COMPANY, an Oklahoma corporation, et al.,

Defendants.

GASSER CONSTRUCTION COMPANY,
an Oklahoma corporation,

Plaintiff,

v.

ELEVENTH AND MINGO DEVELOPMENT
COMPANY; and FLEMING BUILDING
COMPANY, INC.,

Defendants.

CASE NO. 89-C-1077-B

FILED

AUG 20 1992

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

ORDER DISMISSING WITH PREJUDICE

COMES ON now before the Court for hearing the motion by Plaintiffs and Defendants herein for an Order dismissing the captioned case with prejudice, and the Court having reviewed the files and **finding** due cause therefor, hereby dismisses this action with prejudice.

IT IS SO ORDERED this 20th day of August, 1992.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Prepared by:
David W. Wulfers
Houston and Klein, Inc.
320 South Boston, Suite 700
Tulsa, Oklahoma 74103
(918) 583-2131

DATE AUG 20 1992

FILED
AUG 20 1992

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

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

JOSEPH ANGELO DICESARE,)
)
 Plaintiff,)
)
 v.)
)
 LARRY D. STUART, et al.,)
)
 Defendants.)

92-C-269-B

ORDER

This order pertains to Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (Docket #1)¹, the Motion for Summary Judgment of Defendants Stuart and Henry (#4), Plaintiff's Motion to Compel Defendants to Produce Documents or Special Report (#8), Plaintiff's Motion to Admit all of Plaintiff's Exhibits Into Evidence (#9), Defendant Osage County's Motion for Special Report (#17), Plaintiff's Objection to Defendants' Motion for Summary Judgment (#19), and the Motion to Hear Plaintiff's Complaint Under the Original Jurisdiction (#23).

Plaintiff is incarcerated at the Oklahoma State Reformatory in Granite, Oklahoma and claims that the Osage County District Attorney, an Osage County Assistant District Attorney, various unnamed county officials, and others violated his civil rights when thirteen horses which he allegedly owns were found to be neglected and sold to pay liens for the care of the animals. Plaintiff claims that this violated his constitutional rights and requests various types of relief, including declaratory relief, equitable relief, punitive damages, projected lost earnings of the horses, and the return of the thirteen horses.

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.

26

Defendants Stuart and Henry submit that they are entitled to summary judgment because they possess absolute and qualified immunity as prosecutors. Their actions in this case consisted of appearing on behalf of the Osage County Sheriff to seek an order directing care of the allegedly neglected horses and filing notice of the sale.

Prosecutors enjoy absolute immunity from damages liability for actions within the scope of their prosecutorial duties, because of concern that harassment by unfounded litigation would cause deflection of their energies from their public duties and might influence their decisions, instead of allowing the exercise of independent judgment required by the public trust. Imbler v. Pachtman, 424 U.S. 409, 423 (1976). However, they are subject to suit for equitable relief under § 1983. Supreme Court of Virginia v. Consumers Union of the United States, Inc., 446 U.S. 719, 736 (1980); Wilson v. Stocker, 819 F.2d 943 (10th Cir. 1987).

Defendants Stuart and Henry are absolutely immune from liability for Plaintiff's damages claims.

Defendants Stuart and Henry are not entitled to qualified immunity from Plaintiff's claims for equitable relief. "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Unlike other affirmative defenses, qualified immunity is not merely a defense to liability; it is also an immunity from suit. Qualified immunity protects a defendant from discovery, trial, and the other burdens of litigation. Pueblo Health Centers, Inc. v. Losavio, 847 F.2d 642, 645

(10th Cir. 1988). The immunity question is to be resolved at the earliest possible stage in litigation. Hunter v. Bryant, ___ U.S. ___, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991).

Following a plea of qualified immunity, the "court must allow the plaintiff . . . to come forward with any facts or allegations" showing that the defendant violated clearly established law. Pueblo Health Centers, Inc., 847 F.2d at 646. The court must then determine whether the complaint includes "all of the factual allegations necessary to sustain a conclusion that defendant violated clearly established law." Powell v. Mikulecky, 891 F.2d 1454, 1457 (10th Cir. 1989).

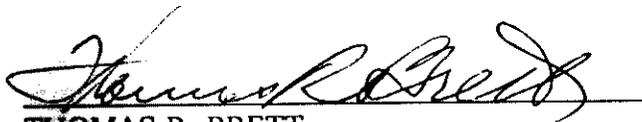
The court concludes that the Plaintiff's complaint, held to lesser standards than one drafted by an attorney under Haines v. Kerner, 404 U.S. 519, 520 (1972), includes allegations which, if true, sustain a conclusion that Defendants violated plaintiff's constitutional rights when they seized the horses and sold them. Plaintiff contends that defendants did not have a warrant to be on his property, did not notify him of the seizure for two months, and did not comply with the Oklahoma statute requiring proper notice to him of the foreclosure on the property.

The Motion for Summary Judgment of Defendants Stuart and Henry (#4) is granted as to Plaintiff's claims for damages and denied as to Plaintiff's claims for equitable relief. Plaintiff's Motion to Compel Defendants to Produce Documents or Special Report (#8), Plaintiff's Motion to Admit all of Plaintiff's Exhibits into Evidence (#9), and Defendant Osage County's Motion for Special Report (#17) are granted. It is ordered that an investigative report shall be filed no later than sixty (60) days from the date this order is filed. New motions are prohibited until the investigative report has been filed.

Officials responsible for the operation of the county department involved in the alleged civil rights violations are directed to undertake a review to ascertain the facts and circumstances of the alleged civil rights violations. Authorization is granted to interview all witnesses including the plaintiff and appropriate county officer(s) involved. Wherever appropriate, medical records of the animals shall be included in the written report.

The Motion to Hear Plaintiff's Complaint Under the Original Jurisdiction (#23) asks the court to disregard Plaintiff's conspiracy allegations under 42 U.S.C. § 1985(1), (2), and (3) and § 1986. The Motion to Hear Plaintiff's Complaint Under the Original Jurisdiction (#23) is granted. Plaintiff's complaint offers only vague and conclusory allegations of conspiracy, which will not suffice. Wise v. Bravo, 666 F.2d 1328, 1333 (10th Cir. 1981).

Dated this th 20 day of Aug, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

AUG 24 1992

Richard M. Lawton
U.S. DISTRICT
NORTHERN DISTRICT

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

IN RE:)
)
REPUBLIC FINANCIAL)
CORPORATION, an Oklahoma)
Corporation,)
)
Debtor,)
)
R. DOBIE LANGENKAMP,)
Successor Trustee,)
)
Plaintiff,)
)
vs.)
)
RALPH HERBERT LINDLEY, et al.,)
)
Defendants.)

Case No. 84-01460-W
(Chapter 11)

ENTERED ON DOCKET

DATE AUG 24 1992

District Court No.
91-C-212-E ✓

Adversary No. 85-309-C

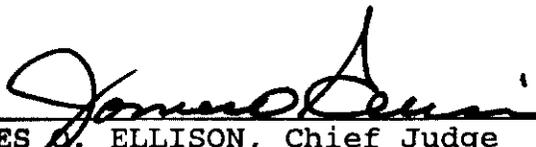
ORDER

Before the Court is Defendants' Motion for Withdrawal of Reference. The matter has been extensively briefed and the Court heard oral argument on the issue on May 7, 1992. Following the hearing the parties supplemented the record for the Court's edification. After copious review of the record the Court finds that R. H. Lindley was a co-owner as a matter of record on the disputed account and the Court concludes that, pursuant to Granfinancura, S.A. v. Norberg, 109 S.Ct. 2782 (1989); and Langenkamp v. Culp, 111 S.Ct. 330 (1990), Defendants are not entitled to withdrawal of reference, wherefore, Defendants' Motion should be denied.

13

C. J. Blevins

So ORDERED this 24th day of August, 1992.



JAMES C. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BARBARA ROCHELLE,

Defendant.

No. 91-C-269-E

FILED

AUG 24 1992

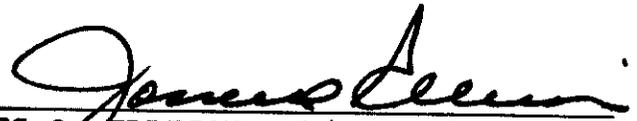
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER AND JUDGMENT

The Court has for consideration the Motion for Summary Judgment filed by the Government on May 11, 1992. The Court has reviewed the record and has determined that the undisputed material facts compel a finding that the Motion be granted.

IT IS THEREFORE ORDERED that the Government's Motion for Summary Judgment is granted and this matter is, accordingly dismissed.

ORDERED this 24th day of August, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

4

ENTERED ON DOCKET

DATE 8-24-92

FILED

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

AUG 21 1992

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

ADESCO, INC., an Oklahoma
corporation,

Plaintiff,

vs.

HERITAGE LIFE INSURANCE
COMPANY, an Arizona
corporation,

Defendant.

Case No. 87-C-827-C

STIPULATION OF DISMISSAL

COME NOW the Plaintiff, Adesco, Inc. and the Defendant, Heritage Life Insurance Company, pursuant to Federal Rule of Civil Procedure 41(a)(1), and stipulate to the dismissal with prejudice of the above captioned case and the claims, either asserted or unasserted, arising out of the transactions forming the subject matter of the action. Each party shall bear its own costs and attorney fees.

Respectfully submitted,



Joel L. Wohlgemuth
John E. Dowdell
NORMAN & WOHLGEMUTH
2900 Mid-Continent Tower
Tulsa, OK 74103
Attorneys for Plaintiff



Randall G. Vaughan
PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR
900 ONEOK Plaza
Tulsa, OK 74103
Attorneys for Defendant

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

ALBERT J. WATKINS,

Plaintiff,

vs.

UNITES STATES PURCHASING
EXCHANGE,

Defendant.

ORDER

Case No. 92-C-22-B ✓

FILED

AUG 20 1992

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

The Court has for its consideration the Defendant's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56.¹ Plaintiff seeks to recover \$100,000 in damages due to Defendant's failure to award him the fifty "fabulous items" which United States Purchasing Exchange ("USPE") allegedly promised to send him. The Court agrees that Plaintiff has failed to show any dispute of fact and grants Defendant's Motion.

Plaintiff was mailed a promotional packet from USPE which contained a catalog, selection certificate, and several pictures identifying various "prize categories." Each prize category picture also contained a code number in the lower left hand corner. This code number identified the exact number of bonus prizes that Watkins was eligible to receive. The promotional literature stated that if Watkins purchased an item from the catalog, he would be eligible to receive bonus prizes from one of

¹ Summary judgment is appropriate where the nonmoving party fails to show a genuine issue of fact that can be tried. Celotex v. Catrett, 477 U.S. 317, 322 (1986); Carey v. United States Postal Service, 812 F.2d 621, 623 (10th Cir. 1986). If the nonmoving party cannot show "the existence of an element essential to that party's case," then judgment should be entered as a matter of law against the party. Celotex, 477 U.S. at 322.

four "prize categories." (See Brief in Support, Exhibit A). In order to determine which prize category the bonus prizes would be selected from, Watkins had to open the "special tan envelope" which contained his selection certificate. The enclosed certificate noted the category from which Plaintiff's bonus prizes were selected. Watkins also had to rub off a concealed box on the picture which corresponded to his "prize category." This concealed box identified the upper range of the number of prizes which Watkins was eligible to receive. The instructions further provide that the upper limit is only available to those certificates containing a "red star."

Watson's selection certificate contained category 3489 and had a red star, and the concealed box revealed an upper range of fifty prizes. (Affidavit of Watkins, Part A). Watkins made his obligatory catalog purchase, returned his selection certificate along with \$1.99, and waited to receive his prizes. Id. This dispute arose, apparently, due to Plaintiff's misunderstanding of the admittedly complex selection procedure. Mr. Watkins believed that the "red star" on his selection certificate signified that he would in fact receive fifty prizes. (See Affidavit of Watkins, Part A). However, the rules make clear that a red star merely qualifies the customer for the maximum bonus; it does not guarantee that maximum bonus will be awarded.²

In fact, the page of the promotion entitled "HERE'S ALL YOU DO" described exactly which prizes Watkins would receive, even

² The brochure states that, "[o]nly those Certificates with a Red Star are eligible to receive the maximum number of items in their matching category." (emphasis in original).

before he returned his selection certificate. The print is small, but a little more than half down the page is the following statement: "If your category is #3489 and the code appearing in the matching category on this brochure is #3709 your items are Crystal Leaf Dish, Chrome Tray, Brass Key Holder, Trinkett Box, 110 Camera." The photocopied picture of Watkins' prize category page (which is category 3489), reveals that his code was in fact 3709. (See Notice of Removal, Exhibit A). In short, Mr. Watkins received the bonus items to which he was entitled.

Defendant responds to two possible theories embodied in the pleadings of Mr. Watkins.³ However, Plaintiff is unable to prove a triable dispute of fact on either the misrepresentation or breach of contract claim. The only possible obligation between USPE and Watkins, if any legally recognized promise exists at all, is that USPE will award the bonus items according to the rules set forth in the brochure. See Billet v. American Family Publishers, No. 86-2387 slip op. (9th Cir. June 24, 1987); Mobley v. Fred C. Shotwell, of American Family Publishers Million Dollar Sweepstakes, No. C-3-90-422, slip op. (S.D. Ohio July 12, 1991). USPE correctly distributed the bonus prizes to Watkins, as instructed by the brochure and overseen by independent auditors at Price Waterhouse. Any possible contractual

³ Watkins, a pro se plaintiff, is entitled to have his pleadings construed liberally in his favor. Hughes v. Rowe, 449 U.S. 5, 9 (1980); Reynoldson v. Shillinger, 907 F.2d 124 (10th Cir. 1990). It is understandable that his Complaint was inartfully constructed. Defendants, however, have done a good job distilling the legal issues embodied in Plaintiff's claim; it contains breach of contract elements and misrepresentation elements. Plaintiff's complaint will be treated by the Court as properly alleging these two claims.

obligation was thereby fulfilled.

Plaintiff likewise fails to show an issue of fact on the misrepresentation claim. The only evidence presented in this matter by Watson is the brochure that was sent to him. According to that brochure, the Defendant only represented that the Plaintiff was eligible to receive between five and fifty items. The brochure further indicated that Plaintiff was awarded only five items of the possible fifty, the same number which he in fact received. Plaintiff does not allege that his purchase was made in reliance on any representation of the Defendant, and there is no issue of fact on the claim.

The Court is wary to grant summary judgment against a pro se claimant. However, in the present case there is no issue on which Plaintiff can show a dispute of fact, even after construing the pleadings and evidence in a light most favorable to the Plaintiff. The Court is not using summary judgment in this matter to punish Mr. Watson, but merely to dispose of an insubstantial claim. While the Court is sensitive to Plaintiff's pro se status, summary judgment is nevertheless the appropriate remedy. See J.D. Pharmaceutical v. Save-On Drugs & Cosmetics, 893 F.2d 1201, 1209 (10th Cir. 1990).

For all the foregoing reasons, Defendant's Motion for Summary Judgment is hereby GRANTED.

Dated this 20th day of August, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE: 8 4 1992

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F. D. No. 91-C-950-B

AARON BURROWS,

Plaintiff,

THE CITY OF TULSA, OKLAHOMA,
Municipal Corporation, and

D. H. BURR and J. L. FLIPPIN,
and P.W. CALHOUN, D.H. SHELBY
and Officers WILCOXEN and BELLAMY

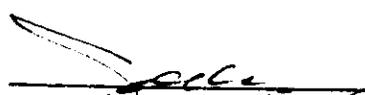
Defendants,

No. 91-C-950-B

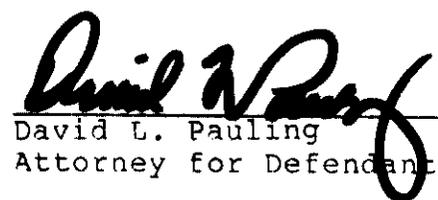
STIPULATION OF DISMISSAL OF THE DEFENDANTS
J. L. FLIPPIN, D. H. SHELBY and
OFFICER WILCOXEN AND OFFICER SHELBY

Pursuant to Federal Rules of Civil Procedure, Rule No. 41(a)(1), the parties stipulate to the Dismissal with Prejudice of the Plaintiff's causes of Action against J. L. FLIPPIN, D. H. SHELBY, Officer WILCOXEN and OFFICER BELLAMY. This Stipulation of Dismissal is made pursuant to an Agreement of the Parties.

DATED: 8/19/92



Joseph E. McKimney
Attorney for Plaintiff



David L. Pauling
Attorney for Defendants

DATE AUG 24 1992

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

BANCFIRST, an Oklahoma
banking corporation,

Plaintiff,

vs.

DELBERT N. HELM and DORIS
JEAN HELM, husband and wife,
et al.,

Defendants,

and

DELBERT N. HELM and DORIS
JEAN HELM, husband and wife,

Counter-Claimants and
Cross-Claimants,

vs.

BANCFIRST, an Oklahoma
banking corporation,

Counter-Defendant,

vs.

THE ADMINISTRATOR, SMALL
BUSINESS ADMINISTRATION, an
Agency and Instrumentality of
The United States of America,

Cross-Defendant.

No. 91-C-925-E

FILED

AUG 24 1992

PHILIP H. LOWERY, CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Washington County District
Court Case No. C-91-339

ORDER OF REMAND

Two matters pend herein: the Motion of Defendants/Counter and
Cross Claimants Helms for an order remanding the case to the
District Court for Washington County, Oklahoma and the Motion of
the Defendant/Claimant and Cross-Defendant Small Business

17

Administration (SBA) to Dismiss the cross-claims of the Helms. Because the Court finds that remand of this case is proper pursuant to 28 U.S.C. §1447(c) and §1441(a), the Court need not consider the SBA's motion.

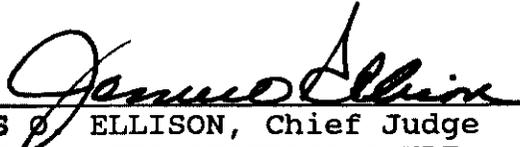
This case had its genesis in state court as a foreclosure action (District Court for Washington County, State of Oklahoma, case no. C-91-339) against the Helms and the SBA. The SBA cross-claimed for default on a Note and Mortgage on the subject property. The Helms counter-claimed and cross-claimed for slander and tortious interference. The SBA removed, citing 28 U.S.C. §§1441, 1442, 1446. The Helms seek remand, first arguing - as a preliminary matter - that §1441(a) can be the only applicable statute under the facts of the instant case. The court concurs. Section 1446 is procedural in nature and Section 1442 - affording a right of removal to officers of the United States who are sued "for any act under the color of such office or on account of any right ... claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue" is clearly inapplicable. (SBA's subsequent attempt to rely on §2679(d) is similarly flawed.)

Section 1441(a) provides, in pertinent part, that: "any civil action brought in a State Court of which the district courts of the United States have original jurisdiction, may be removed by the Defendant or the Defendants ..."

The great weight of authority favors a restrictive construction of the removal statute. See e.g., Rivera v.

Federacion de Musiccs de Puerto Rico, Inc., 369 F.Supp. 1169 (D. Puerto Rico 1974). Thus, remand is favored in doubtful cases. See e.g., Glenmede Trust Co. v. Dow Chemical Co., 384 F.Supp. 423 (D. Pa. 1974). And it is Defendant's burden to establish that removal is proper. Diaz v. Swiss Chalet, 525 F.Supp. 247 (D. Puerto Rico 1981). Section 1441(a) has been construed to require that for removal to be proper it must be sought by all Defendants. Tri-Cities Newspapers, Inc. v. Tri-Cities P.P. & A. Local 349, 427 F.2d 325 (5th Cir. 1970). In the instant case Defendant Helms seeks remand of the case removed by Defendant SBA. Under the case law cited above, it is clear that remand is proper and appropriate; therefore the Motion to Remand will be granted.

So ORDERED this 24th day of August, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,
v.
HELEN R. MINICK,
Defendant.

Civil Action No. 92-C-75-B

FILED

AUG 20 1992

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

DEFAULT JUDGMENT

This matter comes on for consideration this 20th day of August, 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, HELEN R. MINICK, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, HELEN R. MINICK, was served with Summons and Complaint on July 7, 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.

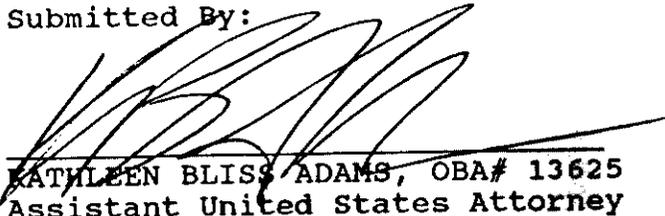
IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, HELEN R. MINICK, for the principal amount of \$1,461.25, plus administrative charges in the amount of \$15.00, plus accrued interest of \$216.40 as of October 8, 1991, plus interest thereafter at the rate of 3

percent per annum until judgment, a surcharge of 10% of the amount of the debt in connection with the recovery of the debt to cover the cost of processing and handling the litigation and enforcement of the claim for this debt as provided by 28 U.S.C. § 3011, plus interest thereafter at the current legal rate of 3.51 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT

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

DATE AUG 24 1992

FILED

~~AUG 20~~ 1992 KET

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

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

FRED LOWENSCHUSS ASSOCIATES
PENSION PLAN,

PLAINTIFF,

VS.

PHILLIPS PETROLEUM COMPANY,

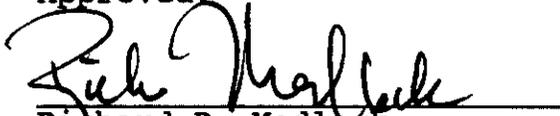
DEFENDANT.

CIVIL ACTION
NO. 92-C-314-B

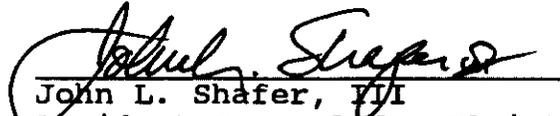
STIPULATION OF DISMISSAL

It is hereby stipulated that the above entitled action is hereby dismissed with prejudice, each party to bear its own costs.

Approved:



Richard R. Medlock
Attorney for Plaintiff
421 Main
P.O. Drawer 475
Arkadelphia, Arkansas 71923
PH. (501) 246-0303



John L. Shafer, VII
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Don Jemison
Attorney for Defendant
Room 1299, Adams Building
Phillips Petroleum Company
Bartlesville, Oklahoma 74004
PH. (918) 661-4743

ENTERED ON DOCKET

DATE 8/21/92

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

FILED
AUG 19 1992

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

STEPHAN D. WILLIS,

Plaintiff,

vs.

STANLEY GLANZ, *et al.*,

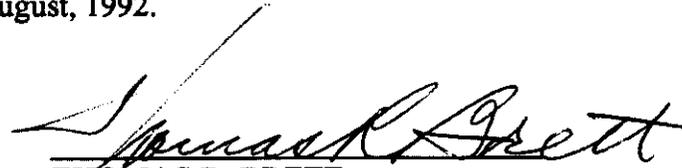
Defendants.

Case No. 91-C-842-B

ORDER

Now on this 19th day of August, 1992, this matter comes on for consideration of Defendants' Motion to Vacate Judgment entered herein on August 12, 1992, for the reason that a prior judgment had been entered herein on August 5, 1992. Since a prior judgment has been entered, this Court finds that the Judgment entered herein on August 12, 1992, should be and hereby is vacated.

It is so Ordered on this 19th day of August, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

TERRY A. JENKINS,
Plaintiff,

v.

GREEN BAY PACKAGING, INC., et al.,
Defendants.

No. 91-C-639-B
(Consolidated)

RICHARD. E. LOHMANN,
Plaintiff,

v.

GREEN BAY PACKAGING, INC., et al.,
Defendants.

LARRY B. KUNS,
Plaintiff,

v.

GREEN BAY PACKAGING, INC., et al.,
Defendants.

FILED
AUG 20 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Now before the Court for its consideration are the motions for summary judgment, pursuant to Rule 56, F.R.Civ.P., filed by all of the defendants and plaintiffs Jenkins and Kuns.

UNDISPUTED FACTS

The following facts are undisputed:

In 1972, defendants Green Bay Packaging, Inc. (Green Bay), R.P. Laster (Laster), E.D. Hamilton (Hamilton) and Lewis L. Narwold

(Narwold) entered into an agreement whereby Laster, Hamilton, and Narwold (hereinafter referred to collectively as the "Team") would manage and operate a wholly-owned subsidiary of Green Bay. That agreement provided that Green Bay would make capital available for the development of one or more facilities for the manufacture and sale of corrugated containers in Oklahoma, and the Team would develop the business and operate and manage the facilities. The 1972 agreement also provided for the execution of employment contracts with the Team and Green Bay, and outlined the base compensation and bonus incentives to be paid to the Team. South West Packaging, Inc. (South West) was formed pursuant to the 1972 agreement and the Team held the stock of South West as nominee for Green Bay.

At the heart of this lawsuit is one sentence contained in the 1972 Agreement, which stated: "Salaried employees will be covered under the Corporation's existing retirement, life insurance, and accident and health insurance plans for salaried employees." The agreement also provided that the cost of such coverage was to be considered part of South West's operational expenses.

At the time of the 1972 Agreement, and continuously since then, Green Bay has maintained a Retirement Plan for office and salaried employees of Green Bay and certain designated subsidiaries (the "Plan"). It is undisputed that South West was never designated as one of the participating subsidiaries by the plan.

South West never made any contributions to the Green Bay plan. Instead, for its employees who completed a year of service, South

West offered to contribute \$5.00 per month for every \$5.00 contributed by the employee to an IRA maintained at Sooner Federal Savings & Loan of Tulsa, Oklahoma.

Plaintiff Terry A. Jenkins ("Jenkins") was hired by South West on May 1, 1972. Plaintiff Richard E. Lohmann ("Lohmann") was hired by South West on February 1, 1974. Plaintiff Larry B. Kuns ("Kuns") was hired by South West in December, 1972. None of the Plaintiffs were parties to the 1972 Agreement.

In February, 1987, South West merged into Green Bay and South West ceased to exist as a separate entity. Since the date of that merger, plaintiffs were deemed employees of Green Bay and thus eligible to participate in the Green Bay Plan, according to Green Bay. Plaintiffs, however, claim eligibility for retirement benefits under the Green Bay Plan, based upon their years of employment with South West as well. Jenkins terminated his employment with Green Bay in 1987, and Lohmann and Kuns terminated their employment with Green Bay in 1988.

THE APPLICABLE LAW

The essential issue in this action is whether the plaintiffs can claim coverage, and thereby benefits, under the Green Bay retirement plan during the period of their employment by South West. Plaintiffs offer two lines of argument to support their theory of coverage under Green Bay's plan. Plaintiff Lohmann argues that the 1972 agreement constitutes a plan document under ERISA which was either a plan in itself or amended Green Bay's plan, making South West's employees participants in that plan.

Alternatively, plaintiffs argue that they are third-party beneficiaries to the 1972 agreement and thus have standing to enforce that agreement's statement that South West's "salaried employees will be covered" by the Green Bay plan. If plaintiffs are successful under either theory in showing entitlement to benefits under Green Bay's plan, they then present a claim for breach of fiduciary duty against the defendants for denial of those pension benefits.

In their motions for summary judgment, defendants argue that the 1972 agreement is not a plan document or a formal amendment to the Green Bay plan and that plaintiffs are not third-party beneficiaries to the 1972 agreement.

A. 1972 Agreement as a Plan Document Under ERISA.

1. Establishment of a "Plan".

An "employee pension benefit plan" and "pension plan" is defined to "mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization . . . to the extent that by its express terms or as result of surrounding circumstances such plan, fund or program . . . provides retirement income to employees." 29 U.S.C. §1002(2)(A)(i). In Donovan v. Dillingham, 688 F.2d 1367 (11th Cir. 1982),¹ the Eleventh Circuit stated that a "plan" is "established

¹ The plan at issue in Donovan was an "employee welfare benefit plan", defined at 29 U.S.C. §1002(1), as one "established for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance . . . medical, surgical, or hospital care or benefits" Although the plan in issue here concerns pension benefits, the definitions of both types of employment benefit plan use the "established or

if from the surrounding circumstances, a reasonable person can ascertain the intended benefits, a class of beneficiaries, the source of financing and procedures for receiving benefits." Id. at 1373.

Plaintiff Lohmann contends that the 1972 agreement established a pension plan for the salaried employees of South West, with its provision that those employees "will be covered" by the Green Bay plan. Lohmann's theory is that the 1972 agreement incorporated by reference the terms of the Green Bay plan, and thereby constitutes a "plan document" under ERISA. Lohmann argues that the Donovan test for establishment of a plan is met, in that a reasonable person can look to the 1972 agreement's provision of coverage for South West's salaried employees and ascertain those employees as beneficiaries, and then look to the Green Bay plan for the terms regarding benefits, financing and procedures for receiving benefits.

The Court finds, however, that Donovan provides grounds to reject Lohmann's theory of the establishment of a "plan" with the 1972 agreement as a "plan document."

A decision to extend benefits is not the establishment of a plan or program. Acts or events that record, exemplify or implement the decision will be direct or circumstantial evidence that the decision has become reality - e.g., financing or arranging to finance or fund the intended benefits, establishing a procedure for disbursing benefits, assuring employees that the plan or program exists - but it is the reality of a plan, fund, or program and not the decision to extend certain benefits that is determinative.

maintained" element.

Id. at 1373. Here, the plain language of the 1972 agreement is that the salaried employees "will be covered", which indicates at most a decision to provide benefits to those employees. Plaintiffs have not pointed to any actions or events by the defendants which thereafter implemented the agreement's provision to extend benefits under Green Bay's plan.² According to the Donovan decision, "no single act in itself necessarily constitutes the establishment of the plan, fund or program." Id. Lohmann's argument of the establishment of a plan is premised solely on the single act of the defendants in making the 1972 agreement.

A recent decision by the Tenth Circuit adopted Donovan's test for the establishment of a "plan, fund or program" under ERISA. In Peckham v. Gem State Mutual of Utah, 964 F.2d 1043 (10th Cir. 1992)³, the Tenth Circuit considered whether the employer had a plan which was sufficiently "established and maintained" to qualify as a benefit plan under ERISA. The court there noted that "[t]he

² Lohmann argues in his supplemental brief that South West was a party to the 1972 agreement because its Board of Directors was comprised of the same three individuals who signed that agreement as the "Team". A reading of that agreement shows that the formation of South West was contemplated in the making of that agreement, so that the "Team" could not have been acting in their later capacities as Directors for South West in making that agreement. Lohmann also argues that the Board of Directors of South West ratified the 1972 agreement in their meeting of November 20, 1972. However, an examination of the Minutes of that meeting shows that South West ratified the employment agreements of the Team members; the 1972 agreement was not even addressed in those Minutes.

³ The plan in issue in Peckham was also an employee welfare benefit plan, rather than a pension plan. However, that court's discussion of the establishment of a plan under ERISA is applicable here.

'established or maintained' requirement seeks to ascertain whether the plan is part of an employment relationship by looking at the degree of participation by the employer in the establishment or maintenance of the plan." Id. at 1049. As evidence of the participation by the employer in the plan, the court in Peckham noted the employer's joining of a trust to obtain insurance for its employees, the purchase of insurance for its employees and the listing of insurance as an employment benefit in the company manual. Id.

The Court finds that no actions were taken by South West with reference to the Green Bay plan on which it can be said that South West "established or maintained" that plan for its salaried employees. South West made no contributions to the Green Bay plan on behalf of its salaried employees. There is no dispute that South West employees were never offered coverage under Green Bay's plans during the time from 1972 to 1987. The facts show that South West specifically stated in its handbook given to employees that retirement pension benefits to the employees consisted only of South West's contributions to individual employees retirement accounts (IRAs) at a local bank, under specified conditions to be met by the employee.

2. 1972 Agreement as a Plan Amendment.

Under ERISA, every employee benefit plan must be established and maintained pursuant to a written instrument. 29 U.S.C. §1102(a)(1). Additionally, every employee benefit plan must provide a procedure for amending the plan and identify those who

have authority to amend the plan. 29 U.S.C. §1102(b)(3). "A written plan is required in order that every employee may, on examining the plan documents, determine exactly what his rights and obligations are under the plan." H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 4639, 5038, 5077-78.

Plaintiff Lohmann argues that the 1972 agreement qualifies as an amendment to the Green Bay plan. While Lohmann recognizes that the agreement is not labeled as a formal amendment, he argues that it satisfies the legal prerequisites to constitute an amendment of the Green Bay plan in that it was signed by two authorized officers of Green Bay. Lohmann contends that the 1972 agreement "was not an amendment as to the Green Bay employees who were already participating in the Green Bay plan", but "changed the Green Bay plan only to the extent that salaried employees of South West Packaging were then added as participants." Lohmann's Brief in Opposition to Motion for Summary Judgment, p. 14.

An employee benefit plan may not be amended orally, by informal written documents, or by any other means except as specified in the plan documents. Nachwalter v. Christie, 805 F.2d 956, 960 (11th Cir. 1986). "Where a plan has complied with ERISA by setting forth a method for accomplishing amendment, of course each putative amendment will be evaluated by reference to that method." Frank v. Colt Industries, Inc., 910 F.2d 90, 98 (3d Cir. 1990). In Frank, the employer's plan did not comply with ERISA in failing to provide an amendment procedure, causing the court there

to note that "[a]rguably, the benefit procedures of such of a plan cannot be amended unless and until an amendment procedure is added to the plan and complied with." Id.

In its plan, Green Bay reserved to itself the right to "alter, amend, modify, revoke or terminate" that plan. See Exhibit C to Defendant Green Bay's Motion and Brief in Support of Summary Judgment. As in Frank, the Green Bay plan did not set forth a procedure for amending the plan.⁴ However, Green Bay has amended its plan at various times and has used nearly the same written style and form to memorialize those amendments. See id., Exhibits A, B and C. Each of those amendments contains a formal statement of the intention to amend the plan, specifies the plan section to be amended, provides the newly amended language of that section, and is signed and attested to by the Green Bay corporate officers.

Lohmann argues that the 1972 agreement has the essential legal attributes similar to the other amendments to the plan made by Green Bay. Lohmann points to the fact that the corporate officers of Green Bay signed the 1972 agreement, and asserts that the agreement's statement that the salaried employees of South West "will be covered" by the Green Bay plan is equivalent to a statement of intent to amend the Green Bay plan.

After review and consideration of the 1972 agreement in

⁴ The Court's task of evaluating the 1972 agreement as an amendment would be easier if the Green Bay plan did have a specified procedure for amending that plan. In Frank, however, the similar lack of an amendment procedure did not prevent the court there from determining that the minutes of a meeting of the defendant's corporate officers did not qualify as an amendment to the plan in issue.

comparison with the amendments made to the plan by Green Bay, however, the Court finds that the 1972 agreement falls short of having the formalities of a plan amendment as contemplated under ERISA. The agreement contains no expression by Green Bay that its plan will be amended to conform to the agreement's statement that coverage will be provided to South West's salaried employees. Contrary to Green Bay's apparent practice in amending its plan, the agreement makes no indication of what sections or language in the plan would be changed if South West's employees were added. After making the agreement, Green Bay apparently made no formal amendment to add South West to other subsidiaries participating in the plan.

Additionally, the mere execution of the agreement by Green Bay's corporate officers is not enough to make the agreement an amendment. To hold that the 1972 agreement is a valid amendment of the plan on that ground invites the potential to consider every contract signed by a corporate officer that contains a reference to the company's benefit plan to constitute an amendment to that plan. ERISA's goals of certainty and reliability upon written benefits plans would be abrogated with such a ruling by this Court. The Court therefore finds that the 1972 agreement is not an amendment to the Green Bay plan.

B. Plaintiffs' Status as Third-Party Beneficiaries.

Plaintiffs claim to be third-party beneficiaries of the 1972 agreement and seek to enforce that agreement's provision that "salaried employees" of South West "will be covered" by Green Bay's retirement plan. Plaintiffs rely on §514 of ERISA, 29 U.S.C.

§1144, which provides that ERISA's preemptive sections do not "apply with respect to any cause of action which arose, or any act or omission which occurred before January 1, 1975." 29 U.S.C. §1144(b)(1). Plaintiffs argue that Oklahoma law establishes their claim to enforce the 1972 agreement as third-party beneficiaries, since the agreement was made before the enactment of ERISA.

Under Oklahoma law, a "contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it." Okla. Stat. tit. 15, § 29. However, even if it is assumed, arguendo, that the plaintiffs are third party beneficiaries of the 1972 agreement, their ability to enforce that agreement here is barred by Oklahoma's five year statute of limitations on actions upon written contracts. See Okla. Stat. tit. 12, §95(1). Under Oklahoma law, "a statute of limitations begins to run when a cause of action accrues, and a cause of action accrues at the time when a litigant first could have maintained his action to a successful conclusion." Sherwood Forest No. 2 Corp. v. City of Norman, 632 P.2d 368, 370 (Okla. 1980). Here, plaintiffs' cause of action for breach of the 1972 agreement accrued when South West decided to provide benefits to its salaried employees which did not include coverage under the Green Bay benefit plans. That decision, according to defendants Narwold's and Harrison's affidavit occurred more than five years before plaintiffs filed this action.⁵

⁵ The limitations period is not tolled because the plaintiffs were unaware of the 1972 agreement. "Mere ignorance of the existence of a cause of action or facts constituting such on the

Conclusion

Having found that the 1972 agreement neither established a plan under ERISA nor amended the Green Bay plan to make the plaintiffs participants in that plan, the Court concludes that plaintiffs have no standing to bring a cause of action under 29 U.S.C. §1132(a). The Court also concludes that any claim the plaintiffs may make as third-party beneficiaries to the 1972 agreement is barred under Oklahoma law by the applicable statute of limitations. The Court therefore concludes that the defendants' motions for summary judgment should be GRANTED, and the motion for summary judgment of plaintiffs Jenkins and Kuns should be DENIED.

IT IS SO ORDERED this 20th day of August, 1992.


THOMAS R. BRETT
United States District Judge

part of the person in whom a cause of action lies will not toll the running of the statute of limitations." Moore v. Delivery Service, Inc., 618 P.2d 408, 409 (Okla. Ct. App. 1980).

ENTERED ON DOCKET

DATE 8-21-92

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

JERRY C. NOEL,
Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.,
Secretary of Health and
Human Services,

Defendant.

Case No. 91-C-258-B

FILED

AUG 20 1992

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

ORDER

The Court has for its consideration the objections of the Plaintiff, Jerry C. Noel, to the Report and Recommendation ("R & R") of the United States Magistrate Judge. Plaintiff seeks review of the decision of the Secretary of Health and Human Services, who denied him disability benefits, pursuant to 42 U.S.C. § 405(g). The matter was referred to the Magistrate Judge who entered his R & R on May 13, 1992. He recommends to affirm the Secretary's decision. (R & R, p. 8).

The Social Security Act ("Act") entitles every individual who "is under a disability" to disability benefits. 42 U.S.C.A. § 423(a)(1)(D) (1983). A person is disabled if he is unable to engage in any substantial gainful activity due to a medically determinable impairment. Id. § 423(d)(1)(A). The claimant bears the burden of proving a disability, as defined by the Act, which prevents him from engaging in his prior work activity. Reyes v. Bowen, 845 F.2d 242, 243 (10th Cir. 1988); 42 U.S.C. § 423(d)(5) (1983). Once a disability is established, the Secretary must show that the claimant retains the ability to do other work activity and that jobs the claimant could perform exist in the

national economy. Reyes, 845 F.2d at 243; Williams v. Bowen, 844 F.2d 748, 751 (10th Cir. 1988); Harris v. Secretary of Health and Human Services, 821 F.2d 541, 544-45 (10th Cir. 1987). The Secretary meets this burden if the decision is supported by substantial evidence.¹

The Secretary has established a five-step process for evaluating a disability claim. See Bowen v. Yuckert, 482 U.S. 137, 107 S.Ct. 2287, 96 L.Ed.2d 119 (1987). The five steps, as set forth in Reyes v. Bowen, 845 F.2d at 243, proceed as follows:

- (1) A person who is working is not disabled. 20 C.F.R. § 416.920(b).
- (2) A person who does not have an impairment or combination of impairments severe enough to limit his ability to do basic work activities is not disabled. 20 C.F.R. § 416.920(c).
- (3) A person whose impairment meets or equals one of the impairments listed in the "Listing of Impairments," 20 C.F.R. § 404, subpt. P, app. 1, is conclusively presumed to be disabled. 20 C.F.R. § 416.920(d).
- (4) A person who is able to perform work he has done in the past is not disabled. 20 C.F.R. § 416.920(e).
- (5) A person whose impairment precludes performance of past work is disabled unless the Secretary demonstrates that the person can perform other work available in the national economy. Factors to be considered are age, education, past work experience, and residual functional capacity. 20 C.F.R. § 416.920(f).

¹ "Substantial evidence" requires "more than a scintilla, but less than a preponderance," and is satisfied by such relevant "evidence that a reasonable mind might accept to support the conclusion." Campbell v. Bowen, 822 F.2d 1518, 1521 (10th Cir. 1987); Brown v. Bowen, 801 F.2d 361, 362 (10th Cir. 1986).

The inquiry begins with step one, and if at any point the claimant is found to be disabled or not disabled, the inquiry ceases. Reyes, 845 F.2d at 242; Talbot v. Heckler, 814 F.2d 1456, 1460 (10th Cir. 1987); 20 C.F.R. §416.920 (1991).

Plaintiff here allegedly suffers from severe back pain. The present appeal focuses on the effects of his pain, and specifically whether it permits him to hold substantial gainful employment. Four physicians examined Plaintiff to understand the extent of his impairment. The ALJ found that, based on all the symptoms, Plaintiff's impairments did not meet the strictures of 20 C.F.R. § 404, subpt. P, app. 1, and thus he failed to satisfy the third section of the test. (Record on Appeal, p. 12). The ALJ further concluded that Noel's physical condition evidences no nonexertional impairment and allows him to perform "sedentary, light, and medium occupations." (Id., p. 18).

Plaintiff objects to the ALJ's evaluation of the medical evidence and the Magistrate Judge's recommendation to affirm that decision. Plaintiff believes that the ALJ's improper evaluation of the evidence and his subsequent failure to call a vocational expert, resulted in the incorrect conclusion that Noel can work on a regular basis. The Magistrate found error in neither the ALJ's evaluation of the medical evidence and the testimony of the Plaintiff, nor his failure to call a vocational witness. The Court agrees with the recommendation of the Magistrate Judge.

EVIDENCE OF DISABILITY

The Tenth Circuit gives substantial credence to the opinions of treating physicians on the subject of medical disability. A

treating physician's opinion is binding on the fact finder unless it is contradicted by "substantial evidence," and the opinion is entitled to extra weight due to the physician's greater familiarity with the claimant's medical situation. Kemp v. Bowen, 816 F.2d 1469, 1476 (10th Cir. 1987); Frey v. Bowen, 816 F.2d 508, 513 (10th Cir. 1987). Those conclusions can only be disregarded if specific, legitimate reasons are given by the ALJ. Byron v. Heckler, 742 F.2d 1232, 1235 (10th Cir. 1984).

Noel's first treating physician, Dr. Marino, felt that Noel was "disabled" and "unable to work" due to his back pain. (Record on Appeal, 13). Another physician, Dr. Yu, offered different evidence. Yu reported that, while the Plaintiff's problems were painful, he "manages fairly well with the use of a cane" and further commented that a job as a "lock-smith may be suitable for him with his physical limitations." (Id., 116). Another physician, Dr. Singh, also reported on Plaintiff's painful limitations, but cautioned that some of Noel's lack of strength may be due to "lack of effort" rather than pain. (Id., 137). Finally, the ALJ considered the report of Dr. Ferguson who, after examining Noel once, surprisingly was able to conclude that Plaintiff's condition was "unimproved with medication," leaving him totally disabled. (Id., 14). The ALJ considered the evidence of all the doctors, the testimony of Noel, and his own observations, and concluded that Plaintiff was not afflicted with a "disabling" impairment. The ALJ considered all the evidence and the Magistrate Judge correctly found that substantial evidence supported the ALJ's ruling.

SUBJECTIVE PAIN

Plaintiff also contends that the ALJ and the Magistrate Judge failed to properly weigh his subjective claims of pain. The Tenth Circuit requires that, where a pain-causing impairment is isolated, the court must consider all evidence relating to the extent of the pain in this particular plaintiff. Luna v. Bowen, 834 F.2d 161, 164 (10th Cir. 1987). In the present case, the ALJ considered Plaintiff's testimony and medical records, evaluating all the symptoms and treatments. (Record on Appeal, p. 11). The ALJ made the determination that, based on all the relevant facts and the credibility of all the testimony, Noel's pain is not disabling under the Act. This judgment is binding on the district court if there is substantial probative evidence to support it. See Richardson v. Perales, 402 U.S. at 399; Broadbent v. Harris, 698 F.2d 407, 413 (10th Cir. 1983). Noel's diary showed that he "runs errands for his wife, watches television, drives a son and daughter whenever they so request, feeds and waters dogs, visits with friends, and talks on the telephone," proving that his afflictions do not significantly affect his daily life. (Record on Appeal, 16). Substantial evidence supports the ALJ's conclusion that Plaintiff could participate in the national economy performing sedentary, light, or medium work.

FAILURE TO CALL VOCATIONAL WITNESS

Plaintiff claims that, since the nonexertional impairment "pain" was evident, a vocational expert should have testified. When the ALJ is able to make a conclusion based on the

Vocational-Medical guidelines, there is no need to call a vocational expert, because a decision is dictated by the grids.² Heckler v. Cambell, 461 U.S. 458, 461-62 (1982). The grids are properly referred to when a claimant has either exertional impairments alone or a combination of exertional and nonexertional impairments. 20 C.F.R. Pt. 404, Subpt. P, App. 2, §§ 200(e)(1)-(2); Ray v. Bowen, 865 F.2d 222, 225 (10th Cir. 1989). The ALJ here, after considering all the evidence in the record, found that Noel has a residual functional capacity which, when applied to the appropriate grid, directed a conclusion of "not disabled." Therefore no vocational expert was necessary. Since substantial evidence supported the ALJ's conclusion, no legal error was made and his decision stands.

The court agrees with and adopts the Magistrate Judge's Report and Recommendation, and orders that the decision of the Secretary be AFFIRMED.

IT IS SO ORDERED this 20th day of August, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

² Appendix 2 to § 404, subpt. P contains the Medical-Vocational Guidelines, commonly referred to as the "grids." The grids are used to determine if an individual's residual functional capacity directs a finding of "disabled" or "not disabled" as defined in the guidelines. If an individual has solely nonexertional impairments, the grids "do not direct factual conclusions of disabled or not disabled." Where an individual has both exertional and nonexertional impairments or solely exertional difficulties, the grids are used first and, if they do not permit a conclusion, further inquiry is required.

8/21/92

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

TERRY A. JENKINS,)
)
 Plaintiff,)
)
 v.)
)
 GREEN BAY PACKAGING, INC., et al.,)
)
 Defendants.)

No. 91-C-639-B
(Consolidated)

RICHARD. E. LOHMANN,)
)
 Plaintiff,)
)
 v.)
)
 GREEN BAY PACKAGING, INC., et al.,)
)
 Defendants.)

FILED
AUG 20 1992
Richard M. Lawrence, Clerk
U.S. District Court
Northern District of Oklahoma

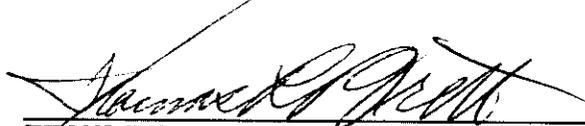
LARRY B. KUNS,)
)
 Plaintiff,)
)
 v.)
)
 GREEN BAY PACKAGING, INC., et al.,)
)
 Defendants.)

J U D G M E N T

In accordance with the Order entered August 20, 1992, granting summary judgment in favor of all the Defendants, Green Bay Packaging, Inc. and as Successor In Interest of Southwest Packaging, Inc., John Dauska, Plan Administrator For Pension and Retirement for Green Bay Packaging, Inc., Green Bay Packaging, Inc. Retirement Plan for Office and Salaried Employees, Lewis L.

Narwold, E.D. Hamilton and R.P. Laster and against the Plaintiffs Terry A. Jenkins, Richard E. Lohmann and Larry B. Kuns, Judgment is herewith entered in favor of all the Defendants, Green Bay Packaging, Inc. and as Successor In Interest of Southwest Packaging, Inc., John Dauska, Plan Administrator For Pension and Retirement for Green Bay Packaging, Inc., Green Bay Packaging, Inc. Retirement Plan for Office and Salaried Employees, Lewis L. Narwold, E.D. Hamilton and R.P. Laster and against the Plaintiffs Terry A. Jenkins, Richard E. Lohmann and Larry B. Kuns on all claims. Costs are assessed against the Plaintiffs. The parties are to pay their own respective attorneys' fees.

DATED this 20th day of August, 1992.


THOMAS R. BRETT
United States District Judge

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

FILED

APR 13 1992

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

JOHN G. TALCOTT, et al,)
)
 Plaintiff,)
)
 v.)
)
 PAUL M. MISCH, et al,)
)
 Defendants.)

92-C-273-B ✓

DISCOVERY ORDER

Now before this Court is Triad Bank's Motion to Quash. Plaintiffs John G. and Rosalin Talcott notified Triad Bank ("Triad") in Tulsa Oklahoma of an April 13, 1992 deposition where certain financial records would be needed. Triad subsequently filed this Motion, claiming that Talcott had not followed the Oklahoma Financial Privacy Act (6 O.S. §2202). The United States Magistrate Judge conducted a telephone hearing per Local rule 11(G) on April 10, 1992.

The Oklahoma Financial Privacy Act applies only to agencies of the State of Oklahoma -- not a federal district court. *See O.S. Tit. 6 §2202.*¹ Its counterpart, the Federal Right to Financial Privacy Act, also does not apply because it "provides no justification for a bank's noncompliance with a subpoena issued in a civil action." *Clayton Brokerage Co., Inc. v. Clement*, 87 F.R.D. 569, 570 (D.Md. 1980).² This is a civil case where Triad, a

¹ Triad cites an Oklahoma case for the proposition that Oklahoma law applies. See *Alva State Bank And Trust Co. v. Dayton*, 755 P.2d 635, 637 (Okla. 1988). However, see footnote 1, which appears to indicate that the Federal Right To Privacy Act would apply to a federal district court.

² The Federal Right to Financial Privacy Act begins at 12 U.S.C. §3401.

non-party bank, is challenging the subpoena.³

What does guide the Court on **this issue** is Fed.R.Civ.P. Rule 45(c)(3)(A), which allows a non-party to file a motion to **quash** a subpoena. Triad has not demonstrated any of the seven issues stated in Rule 45, **and, as a result**, the Motion To Quash as to Triad will be **DENIED**.

However, the public policy behind **the Federal Right to Financial Privacy Act** should be followed so that customers of **Triad**, whose records are sought as a result of this subpoena, can be notified that Talcott **is intending** to examine their financial records. *See 12 U.S.C. §§3407, 3410*. Counsel for the **Defendants** informed this Court they do not object to Talcott's subpoena. However, **counsel does not** represent all parties whose records are being sought. All of the non-parties **whose records** are sought also should be notified in advance of production.

Therefore, Talcott -- who has **subpoenaed** the records -- must notify all customers of which he seeks financial records **from Triad Bank** no later than April 17, 1992.⁴ The customers can then have the **opportunity** to file a Motion To Quash per Rule 45, Fed.R.Civ.P. if they so choose. Once **the notifications** are sent, and if no further motions to quash are filed, Triad must then **produce** the records requested in the subpoena on or before April 28, 1992. The **notifications shall** also contain a copy of this Order. If further motions to quash are filed, same will **be set down** for hearing, and Triad may withhold producing those records until the Motion to Quash has been decided.

³ *Triad is not a "customer" of a bank, nor is a "law enforcement agency" of the government attempting to secure records.*

⁴ *Talcott's counsel indicated that some of the financial records sought are from now defunct businesses. In these cases, counsel is instructed to notify the last registered service agent of each business.*

SO ORDERED THIS 13th day of April, 1992.

A large, stylized handwritten signature in black ink, appearing to read 'Jeffrey S. Wolfe', written over a horizontal line.

JEFFREY S. WOLFE
UNITED STATES MAGISTRATE JUDGE

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

BOBBY HUGH BRUCE,)
)
 Plaintiff,)
)
 v.)
)
 RON CHAMPION, et al,)
)
 Defendants.)

FILED
AUG 18 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
92-C-710-B

ORDER TO TRANSFER CAUSE

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

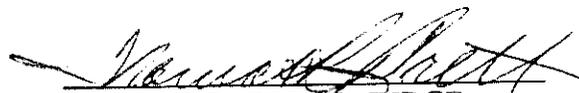
- (1) That the Petitioner was **convicted** in Oklahoma County, Oklahoma, which is located within the territorial jurisdiction of the Western District of Oklahoma.
- (2) That the Petitioner **demand**s release from such custody and as grounds therefore alleges he is being deprived of his liberty in violation 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.

Y

Dated this 18 day of aug, 1992.


THOMAS R. BRETT, JUDGE

UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
AUG 21 1992
DATE _____

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

FILED

AUG 20 1992

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

OKLAHOMA FEDERATED GOLD
AND NUMISMATICS, INC.,

PLAINTIFF,

VS.

MICHAEL W. BLODGETT,

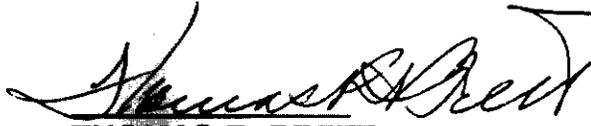
DEFENDANT.

CASE NO. 91-C-707-B

JUDGMENT

In accordance with the jury verdict rendered August 20, 1992, Judgment is hereby entered in favor of Plaintiff, Oklahoma Federated Gold and Numismatics, Inc., and against the Defendant, Michael W. Blodgett, in the amount of Seven Hundred and Fifty Thousand Dollars (\$750,000.00), plus pre-judgment interest at the rate of 9.58% per annum from September 11, 1991, and Judgment is hereby entered in favor of Plaintiff, Oklahoma Federated Gold and Numismatics, Inc., and against the Defendant, Michael W. Blodgett, in the amount of Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00), plus post-judgment interest on all sums at the rate of 3.51% per annum from the date hereof until paid. Costs are assessed against Defendant if timely applied for under Local Rule 6, with each party to pay their own respective attorneys fees.

DATED this 20th day of August, 1992.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett". The signature is written in black ink and is positioned above the printed name. A horizontal line is drawn to the right of the signature.

**THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE**

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

ALLEN MCKINNEY

Plaintiff,

VS.

THE CITY OF TULSA, OKLAHOMA
and TODD EVANS, C.W. JORDAN,
ROBERT CURRY and D. DELSO,
individuals, officers of the
Tulsa, Oklahoma, Police
Department,

Defendants.

CASE NO. 91-C-288-B

FILED

AUG 20 1992

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

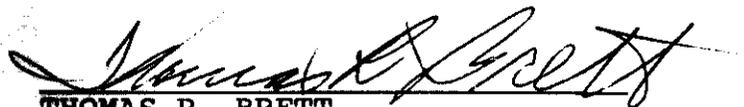
J U D G M E N T

In accordance with the jury verdict rendered August 19, 1992, Judgment is hereby entered in favor of Defendants Todd Evans, C.W. Jordan, Robert Curry and D. Delso, and against the Plaintiff, Allen McKinney, on all claims.

Further, in accordance with the Order entered August 12, 1992, granting summary judgment in favor of the Defendant, The City of Tulsa, Oklahoma, and against the Plaintiff, Allen McKinney, Judgment is hereby entered in favor of the Defendant, The City of Tulsa, Oklahoma, and against the Plaintiff, Allen McKinney, on all claims.

Costs are assessed against the Plaintiff, Allen McKinney, if timely applied for under Local Rule 6. The parties are to pay their own respective attorneys fees.

DATED this 19th day of August, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 8/20/92

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

FILED
AUG 18 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BOMBARDIER CAPITAL INC.,)
)
 Plaintiff,)
)
 v.)
)
 BUDGET VIDEO, INC., et al,)
)
 Defendants.)

92-C-603-B

ORDER

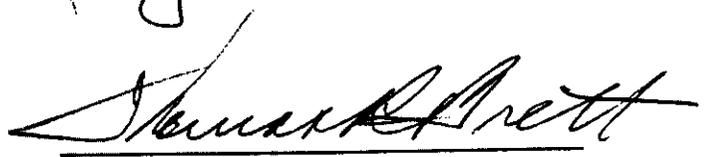
The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed July 21, 1992 in which the Magistrate Judge recommended that BCP's Motion for Temporary Restraining Order be denied.

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

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

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

SO ORDERED THIS 18th day of Aug, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED
AUG 19 1992
Richard M. Lawrence, Clerk
U.S. District Court
Northern District of Oklahoma

QUEST ENTERPRISES, INC., d/b/a)
MOUNTAIN VIEW MANUFACTURING,)
)
Plaintiff,)
)
v.)
)
CITY OF TULSA, et al,)
)
Defendants.)

90-C-1002-E

ENTERED ON DOCKET
DATE AUG 20 1992

ORDER AND JUDGMENT

The court has for consideration **the Report** and Recommendation of the Magistrate Judge filed July 28, 1992, in which **the Magistrate Judge** recommended that summary judgment be granted in favor of the **City of Tulsa** and the United States against plaintiff, Quest Enterprises, Inc. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of **the record** and the issues, the court has concluded that the Report and Recommendation of the **Magistrate Judge** should be and hereby is affirmed.

It is therefore Ordered that **summary judgment** is granted in favor of the City of Tulsa and the United States against **plaintiff**, Quest Enterprises, Inc., for the reasons set forth in the Report and Recommendation of U. S. Magistrate Judge filed July 28, 1992.

Dated this 19th day of August, 1992.



JAMES O. ELLISON, CHIEF
UNITED STATES DISTRICT JUDGE

2

ENTERED ON DOCKET
DATE AUG 20 1992

FILED

AUG 19 1992

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

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

JOHNNY E. TILLEY,)
)
 Plaintiff,)
)
 v.)
)
 RON CHAMPION,)
)
 Defendant.)

92-C-703-E

ORDER TO TRANSFER CAUSE

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

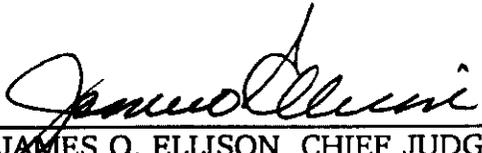
- (1) That the Petitioner was **convicted** in Seminole County, Oklahoma, which is located within the territorial jurisdiction of the Eastern District of Oklahoma.
- (2) That the Petitioner **demand**s release from such custody and as grounds therefore alleges he is being **deprived of his** liberty 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 Eastern **District** of Oklahoma.

IT IS THEREFORE ORDERED:

- (1) Pursuant to the authority **contained** in 28 U.S.C. §2241(d) and in the exercise of discretion allocated to the Court, **this cause** is hereby transferred to the United States District Court for the Eastern District of **Oklahoma** for all further proceedings.
- (2) The Clerk of this Court **shall mail** a copy of this Order to the Petitioner.

3

Dated this 18th day of August, 1992.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

FILED

AUG 20 1992

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

92-C-684-B

JACKIE ROY THOMAS,)
)
Plaintiff,)
)
v.)
)
DAN REYNOLDS and GARY A. MAYNARD,)
)
Defendants.)

ORDER

This order pertains to plaintiff's **Civil Rights** Complaint Pursuant to 42 U.S.C. § 1983. Plaintiff alleges violations of **his rights** by his transfer to, and conditions at, the Oklahoma State Prison in McAlester, **Oklahoma**, which is located within the territorial jurisdiction of the Eastern District of **Oklahoma**. Pursuant to 28 U.S.C. § 1391, a civil action such as this based on federal law **is to be** brought only in a judicial district where any defendant resides, if all defendants **reside** in the same state, in a judicial district in which a substantial part of the events or **omissions** giving rise to the claim occurred, or in a judicial district in which any defendant **may be** found, if there is no district in which the action may otherwise be brought. Defendant Dan Reynolds resides at the Oklahoma State Prison in McAlester, Oklahoma, in the **Eastern** District of Oklahoma, and defendant Gary A. Maynard resides in Oklahoma City, **Oklahoma**, in the Western District of Oklahoma.

For the convenience of parties **and** witnesses, in the interest of justice, a district court may transfer any civil action to **any other** district or division where it might be brought. 28 U.S.C. § 1404. In the **interest of justice**, this case should be and is transferred to the United States District Court for **the Eastern** District of Oklahoma, the district where the chief defendant resides and where **the events** giving rise to the claim arose.

Dated this 20 day of aug, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

AUG 18 1992



J. L. ...
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

J. C. BERRY,

Plaintiff,

v.

GARY D. MAYNARD, et al,

Defendants.

92-C-170-B ✓

ORDER

This order pertains to plaintiff's **Civil Rights** Complaint Pursuant to 42 U.S.C. § 1983 (Docket #2)¹, plaintiff's Motion to **Deny Stay** of Processing and Order for Summary Judgment (#6), plaintiff's Motion for **Summary Judgment** (#7), defendants' Motion to Dismiss (#8), which the court has, **sua sponte**, converted to a motion for summary judgment, the Report of Review of **Factual Basis** of Claims Asserted in Civil Rights Complaint Pursuant to U.S.C. Section **1983** (#10), and plaintiff's Motion of Response (#13).

Plaintiff alleges that defendants **have** violated his civil rights because he has been ordered to shave his face, although **he has** a medical exemption allowing him to keep his facial hair one-fourth inch in length. **He claims** this constitutes gross negligence and cruel and unusual punishment on the part of **defendants**.

The Special Report reveals that, **while** plaintiff has correctly stated that he was disciplined by defendants for the **failure to comply** with the prison grooming code, he had

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.

K

a moustache and goatee at the time he was disciplined which were in excess of the one-fourth inch permitted by the policy.

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).

To set forth a cause of action under § 1983, plaintiff must show that the conduct complained of was committed by a person acting under color of state law and that this conduct deprived plaintiff of some right, privilege, or immunity secured by the Constitution or laws of the United States. Gunkel v. City of Emporia, Kan., 835 F.2d 1302, 1303 (10th Cir. 1987). In addition, a prisoner who alleges cruel and unusual conditions of confinement under § 1983 must show that prison officials were deliberately indifferent to his rights. Wilson v. Seiter, ___ U.S. ___, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991).

The prohibition on cruel and unusual treatment prohibits conditions that involve the wanton and unnecessary infliction of pain or are grossly disproportionate to the severity of the crime. Rhodes v. Chapman, 452 U.S. 337, 347 (1981); Battle v. Anderson, 788 F.2d 1421, 1427 (10th Cir. 1986). To the extent that prison conditions are restrictive or even harsh, they are part of the penalty that criminal offenders pay for their offenses. Id.

In Turner v. Safley, 482 U.S. 78 (1987), the Supreme Court indicated that "a lesser standard of scrutiny is appropriate in determining the constitutionality of prison rules" and that great deference must be accorded to the administrative determinations of prison officials. Id. at 81, 85. The Court thus concluded that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests". Id.

To determine whether the prison action is "reasonably related to legitimate penological interests", the Turner Court erected a balancing test and directed lower courts to weigh the following factors. First, the lower court should inquire into whether there is a "valid, rational connection" between the prison action and the "legitimate government interest put forward to justify it". Id. at 89. Second, the lower court should determine whether "there are alternative means of exercising the right that remain open to prison inmates". Id. at 90. Third, the court should evaluate "the impact [that] accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally". Id. And finally, the court should look for the presence of "obvious, easy alternatives" to the disputed prison activity. Id.

In Hall v. Bellmon, 935 F.2d 1106, 1114 (10th Cir. 1991), the court upheld a policy at a temporary detention facility requiring that all new inmates receive haircuts, which was justified by the reasons that it prevented inmates from hiding weapons in long hair and from easily changing their appearance should they escape and it facilitated good hygiene.

The Tenth Circuit in Mosier v. Maynard, 937 F.2d 1521 (10th Cir. 1991), recognized that prisoners "have been singularly unsuccessful under Turner in challenging

grooming codes, as well as dress and personal property codes" and cited Hall and other cases involving rules related to facial hair, such as Friedman v. Arizona, 912 F.2d 328, 331-33 (9th Cir. 1990), sub nom. Naftel v. Arizona, cert. den., ___ U.S. ___, 111 S.Ct. 996, 112 L.Ed.2d 1079 (1991), and Solomon v. Zant, 888 F.2d 1579, 1581-82 (11th Cir. 1989). Id. at 1525, n.2.

The court notes the institution on January 14, 1992, of a new Department of Corrections ("DOC") grooming policy, providing new criteria for the granting of a religious exemption, in response to the decision by Judge David L. Russell in LeFors v. Maynard, No. CIV-91-1521-R (W.D.Okla., Jan. 7, 1992). Judge Russell discussed the interests behind the grooming policy and ruled that the no-exemption rule adopted by the DOC was an unconstitutional infringement of religious freedom. Plaintiff has not raised the issue of religious exemptions in his complaint.

Requiring plaintiff to keep his goatee and moustache at one-fourth inch length and disciplining him with segregation and fines for failure to comply does not constitute cruel and unusual punishment or negligence on the part of defendants. This aspect of the prison grooming code applies to all prisoners, so no racial discrimination is involved. Plaintiff has not claimed that he did not receive due process at the disciplinary hearing. The issue plaintiff raises concerning his medical exemption, which allowed him to keep his beard one-fourth inch long, is moot, since such an exemption is no longer required to keep facial hair the one-quarter inch length.

Plaintiff's complaint fails to state a claim which would entitle him to relief. Plaintiff's Motion to Deny Stay of Processing and Order for Summary Judgment (#6) and

Motion for Summary Judgment (#7) are denied. Defendants' Motion to Dismiss (#8) is granted.

Dated this 18th day of August, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE 8/20/92

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

JACK E. GREEN a/k/a JACK ELWIN)
GREEN; ANITA G. GREEN a/k/a)
ANITA GAIL GREEN; ROGER D.)
HUGHEY, Tenant; HELEN HUGHEY,)
Tenant; COUNTY TREASURER,)
Washington County, Oklahoma;)
and BOARD OF COUNTY)
COMMISSIONERS, Washington)
County, Oklahoma,)

Defendants.)

FILED

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

CIVIL ACTION NO. 92-C-178-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17th day
of Aug., 1992. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Wyn Dee Baker, Assistant United States
Attorney; and the Defendants, Jack E. Green a/k/a Jack Elwin
Green; Anita G. Green a/k/a Anita Gail Green; Roger D. Hughey,
Tenant; Helen Hughey, Tenant; County Treasurer and Board of
County Commissioners, Washington County, Oklahoma, appear not,
but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Jack E. Green a/k/a Jack
Elwin Green, acknowledged receipt of Summons and Complaint on
March 2, 1992; the Defendant, Anita G. Green a/k/a Anita Gail
Green was served with Summons and Amended Complaint on June 18,
1992, as shown on the U.S. Marshal's service; the Defendant,
Roger D. Hughey, Tenant, acknowledged receipt of Summons and

Complaint on March 9, 1992; the Defendant, Helen Hughey, Tenant, acknowledged receipt of Summons and Amended Complaint on June 9, 1992; the Defendant, County Treasurer, Washington County, Oklahoma, acknowledged receipt of Summons and Complaint on March 6, 1992; the Defendant, Board of County Commissioners, Washington County, Oklahoma, acknowledged receipt of Summons and Complaint on March 6, 1992.

It appears that the Defendants, Jack E. Green a/k/a Jack Elwin Green; Anita G. Green a/k/a Anita Gail Green; Roger D. Hughey, Tenant; Helen Hughey, Tenant; County Treasurer and Board of County Commissioners, Washington 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 Washington County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Five (5), Block One (1), BELLE MEAD
ADDITION to Bartlesville, Washington County,
State of Oklahoma, according to the Recorded
Plat thereof.

The Court further finds that on September 6, 1989, the Defendants, Jack E. Green and Anita G. Green, 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 \$8,200.00,

payable in monthly installments, with interest thereon at the rate of 7.5 percent (7.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Jack E. Green and Anita G. Green, 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 6, 1989, covering the above-described property. Said mortgage was recorded on September 7, 1989, in Book 854, Page 1711, in the records of Washington County, Oklahoma.

The Court further finds that the Defendants, Jack E. Green a/k/a Jack Elwin Green and Anita G. Green a/k/a Anita Gail Green, 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, Jack E. Green a/k/a Jack Elwin Green and Anita G. Green a/k/a Anita Gail Green, are indebted to the Plaintiff in the principal sum of \$8,104.57, plus interest at the rate of 7.5 percent per annum from February 1, 1991 until judgment, plus interest thereafter at the legal rate until fully 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, Jack E. Green a/k/a Jack Elwin Green; Anita G. Green a/k/a Anita Gail Green; Roger D. Hughey, Tenant; Helen Hughey, Tenant; County Treasurer and Board of County Commissioners, Washington 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 Defendants, Jack E. Green a/k/a Jack Elwin Green and Anita G. Green a/k/a Anita Gail Green, in the principal sum of \$8,104.57, plus interest at the rate of 7.5 percent per annum from February 1, 1991 until judgment, plus interest thereafter at the current legal rate of 3.51 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, Jack E. Green a/k/a Jack Elwin Green; Anita G. Green a/k/a Anita Gail Green; Roger D. Hughey, Tenant; Helen Hughey, Tenant; County Treasurer and Board of County Commissioners, Washington 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, Jack E. Green a/k/a Jack Elwin Green and Anita G. Green a/k/a Anita Gail Green, 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/ 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

Judgment of Foreclosure, 92-C-178-B
WDB/esr

DATE 8/20/92

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

KENNETH CORZINE,

Plaintiff,

vs.

ARROW SPEED WAREHOUSE OF
TULSA, INC.,

Defendant.

Case No. 91-C-976-B ✓

FILED

AUG 18 1992 *DK*

JUDGMENT

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

In accord with the Order filed August 18, 1992, granting Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of Defendant Arrow Speed Warehouse of Tulsa, Inc., and against the Plaintiff Kenneth Corzine. Costs are assessed against the Plaintiff and each party is to pay its respective attorney's fees.

Dated this 18th day of August, 1992.

Thomas R. Brett
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 8-20-92

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

AUG 20 1992

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

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

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

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

**NOTICE OF DISMISSAL OF THIRD PARTY DEFENDANT,
DESOTO, INC.**

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

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 20th day of August, 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.
1000 Atlas Life Building
415 S. Boston
Tulsa, OK 74103



Steven M. Harris
Michael D. Davis

ENTERED ON DOCKET
DATE AUG 20 1992

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHLOURIS L. WRIGHT; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 91-C-942-E

AUG 19 1992
MICHAEL M. LAWRENCE, CLERK
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT OF FORECLOSURE

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

The Court being fully advised and having examined the
court file finds that the Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on December 12, 1991; and that the Defendant, Board of County
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on December 12, 1991.

The Court further finds that the Defendant, Chlouris L.
Wright, was served by publishing notice of this action in the

Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning May 15, 1992, and continuing through June 19, 1992, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Chlouris L. Wright, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Chlouris L. Wright. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to

confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on January 3, 1992; that the Defendant, Chlouris L. Wright, 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-four (24), Block Ten (10), LAKE-VIEW HEIGHTS AMENDED ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded Plat thereof.

The Court further finds that Samuel A. Wright and Chlouris L. Wright became the record owners of the real property involved in this action by virtue of that certain Warranty Deed dated November 20, 1975, from Richard L. Roudebush as Administrator of Veterans Affairs to Samuel A. Wright and Chlouris L. Wright, husband and wife, as joint tenants, and not as tenants in common, with full right of survivorship, the whole estate to vest in the survivor in the event of the death of either, which Warranty Deed was filed of record on November 25, 1975, in Book 4192, Page 2238, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that on November 21, 1975, Samuel A. Wright and Chlouris L. Wright 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 \$7,900.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, Samuel A. Wright and Chlouris L. Wright executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated November 21, 1975, covering the above-described property. Said mortgage was recorded on November 25, 1975, in Book 4192, Page 2258, in the records of Tulsa County, Oklahoma.

The Court further finds that Samuel A. Wright died on June 17, 1979. Upon the death of Samuel A. Wright, the subject property vested in his surviving joint tenant, Chlouris L. Wright, by operation of law. On January 6, 1981, Chlouris L. Wright executed an Affidavit By Surviving Joint Tenant Relating To Termination Of Joint Tenancy, which affidavit terminated joint tenancy of Samuel A. Wright and Chlouris L. Wright and is recorded in Book 4523, Page 59 in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Chlouris L. Wright, 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, Chlouris L. Wright, is indebted to the Plaintiff in the principal sum of \$5,364.56, plus interest at the rate of 9 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 \$285.40 (\$285.40 publication fees).

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Chlouris L. Wright, in the principal sum of \$5,364.56, plus interest at the rate of 9 percent per annum from August 1, 1990 until judgment, plus interest thereafter at the current legal rate of 3.51 percent per annum until paid, plus the costs of this action in the amount of \$285.40 (\$285.40 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

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

First:

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

Second:

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

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

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

s/ JAMES O. ELLISON

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



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

Judgment of Foreclosure
Civil Action No. 91-C-942-E

KBA/css

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

FILED

AUG 20 1992

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

MARVIN R. WASHINGTON,)

Petitioner,)

v.)

92-C-563-B

RON CHAMPION,)

Respondents.)

ORDER

This order pertains to petitioner's Motion to Reconsider and Motion for Rehearing (Docket #3)¹. Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 was denied on July 15, 1992. He now asks the court to reconsider that order and rehear his entire case. He points out that his appeal is on file with the Oklahoma Court of Criminal Appeals, Case No. F-92-327, and thus he has exhausted all his state remedies as required by 28 U.S.C. § 2254. However, until the Oklahoma Court of Criminal Appeals has considered the issues raised in his appeal, he will not have exhausted that remedy.

Petitioner has submitted the order issued on April 22, 1992 by the Oklahoma Court of Criminal appeals denying his petition for a writ of habeas corpus and requiring him to seek an appeal out-of-time, if his appeal had not been timely filed, pursuant to Oklahoma's Post-Conviction Procedure Act, 22 Okla.Stat. § 1080 *et seq.*

Petitioner's Motion to Reconsider and Motion for Rehearing are denied.

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.

4

Dated this 20 day of Aug, 1992.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED
AUG 19 1992

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

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

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

v.

**NORDAM, an Oklahoma General
Partnership,**

Defendant.

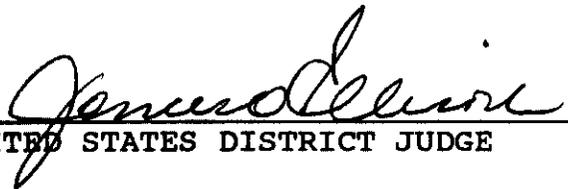
CIVIL ACTION NO.

91-C-457-E

**ENTERED ON DOCKET
DATE AUG 20 1992**

ORDER

Upon consideration of the Joint Stipulation of Dismissal with Prejudice filed by the parties to this action, it is hereby ordered that this case is dismissed with prejudice, with each side to pay its own costs and attorney's fees.


UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 8-19-92

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

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

91-C-766-B

F I L E D

AUG 17 1992

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

J U D G M E N T

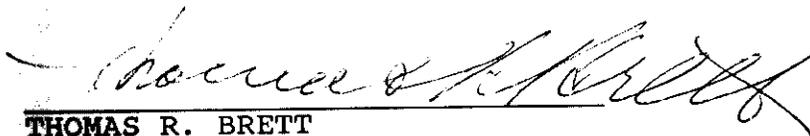
In an Order filed May 19, 1992, granting summary judgment in favor of the City of Tulsa and against the Plaintiff Charles A. Wilkins, the Court stated that entry of Judgment thereon would be deferred until disposition of the issues between Plaintiff and the remaining Defendant, Osage County, Oklahoma, acting through the Osage County Board of Commissioners.

It appears to the Court that, by Stipulation filed herein on August 3, 1992, the remaining Defendant has been dismissed without prejudice.

In accord with its Order of May 19, 1992, granting summary judgment in favor of the City of Tulsa and against the Plaintiff Charles A. Wilkins, Judgment is hereby entered in favor of the City of Tulsa and against the Plaintiff Charles A. Wilkins on all issues. Costs are assessed against Plaintiff and in favor of the

City of Tulsa if timely applied for pursuant to Local Rule 6. Each party is to bear its own attorneys' fees.

DATED this 17th day of August, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

ENTERED ON DOCKET
DATE AUG 19 1992

NINA JEAN HALLFORD,
Plaintiff,

vs.

EMPLOYEE BENEFIT PLANS OF
OKLAHOMA, INC., et al.,

Defendants,

vs.

HUGHES LUMBER COMPANY,

Third-Party Defendant.

No. 91-C-395-E

FILED

AUG 18 1992

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

ORDER

The Court has for consideration the Motion for Summary Judgment filed by Defendants Employee Benefit Plans of Oklahoma, Inc., (EBPO) and Robert M. Winchell. The material undisputed facts of this case compel a finding that the motion should be granted. The Court finds that this action is governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001 at §1144(a). See Pilot Life Insurance Company v. Dedeaux, 107 S.Ct. 1549 (1987) and Settles v. Golden Rule Insurance Co., 927 F.2d 505 (10th Cir. 1991). The Court adopts the position of the Fifth Circuit, in Light v. Blue Cross and Blue Shield of Alabama, 790 F.2d 1247, 1248-1249 (5th Cir. 1986), the Eleventh Circuit in Howard v. Parisian, Inc., 807 F.2d 1560, 1564 (11th Cir. 1986) and the Ninth Circuit, in Gibson v. Prudential Insurance Co., 915 F.2d 414 (9th Cir. 1990) that where, as here, the insurance company acts

35

as a non-fiduciary administrator, no ERISA claim will lie against it for allegedly wrongfully denied medical benefits; therefore the Motion for Summary Judgment of EBPO and Winchell should be granted.

So ORDERED this 17th day of August, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 8-19-92

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

FILED

AUG 17 1992

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

DOROTHY DEWITTY, EMANUEL PALMER,)
SAM ALLEN, GERALD DAVIS, STEVEN)
HERRIN, LORRAINE HAYNES, DWAYNE)
JOHNSON, and SAM PARKER,)

Plaintiff,)

vs.)

Case No. CIV-92-692B ✓

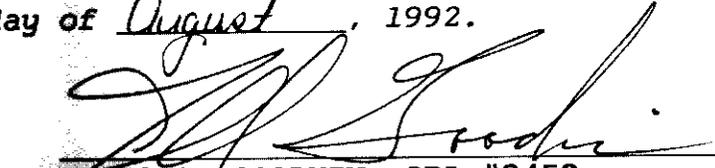
PLEAS THOMPSON, CHARLES RUBLE,)
RENEE CROOK, ELLOUISE COCHRANE,)
JERRY JENNINGS, and ZETTIE)
WILLIAMS,)

Defendants.)

DISMISSAL WITHOUT PREJUDICE
OF PLAINTIFFS' SECOND CAUSE OF ACTION

COME NOW the *Plaintiffs*, DOROTHY DEWITTY, EMANUEL PALMER,
SAM ALLEN, GERALD DAVIS, STEVEN HERRIN, LORRAINE HAYNES, DWAYNE
JOHNSON, and SAM PARKER, by and through their attorneys, GOODWIN &
GOODWIN, by James O. Goodwin, and dismiss without prejudice
Plaintiffs' Second Cause of Action against Defendants Pleas
Thompson, Jerry Jennings, and Zettie Williams.

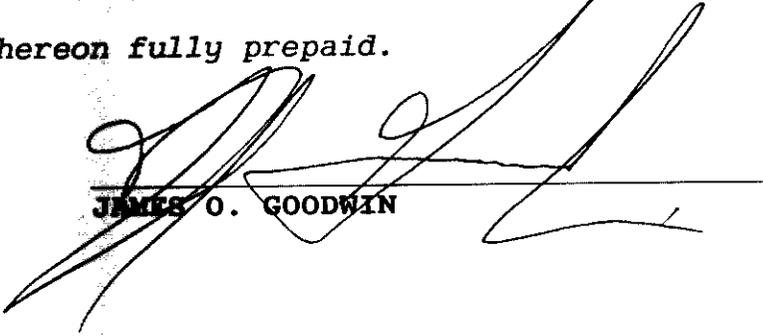
DATED this 17th day of August, 1992.



JAMES O. GOODWIN, OBA #3458
Attorney for Plaintiffs
GOODWIN & GOODWIN
P. O. Box 3267
Tulsa, Oklahoma 74101

CERTIFICATE OF MAILING

I, JAMES O. GOODWIN, hereby certify that I mailed a true and correct copy of the above and foregoing Dismissal Without Prejudice as to Plaintiffs' Second Cause of Action, to Ms. Jo Anne Deaton, 15 West 6th Street, Suite 2800, Tulsa, Oklahoma 74119-5430, with sufficient postage thereon fully prepaid.



JAMES O. GOODWIN

DATE 8-19-92

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

JAMES M. McNEIL,
Plaintiff,

vs.

LARRY FIELDS, in his official capacity
as DIRECTOR OF OKLAHOMA DEPARTMENT OF
CORRECTIONS, H.N. "SONNY" SCOTT,
as WARDEN OF THE JACKIE BRANNON
CORRECTIONAL FACILITY, in his
personal and official capacities,

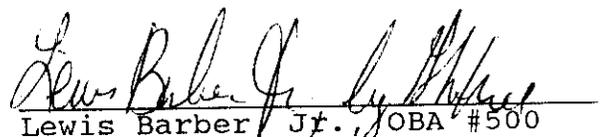
Defendants.

CIV NO. 92-C-698-B

FILED
1992 AUG 19
COURT

NOTICE OF DISMISSAL

Comes now plaintiff, James McNeil, by and through his attorney, Lewis Barber, Jr. pursuant to Rule 41 of the Federal Rules of Civil Procedure and informs the Court of his voluntary dismissal of the action filed on the 7th day of August, 1992. Plaintiff would show the court that no answer has been filed by any adverse party.


Lewis Barber, Jr., OBA #500
BARBER & MARSHALL, P.A.
1528 N.E. 23rd, Suite 410
Oklahoma City, OK 73111
(405) 424-5201

ENTERED ON DOCKET

DATE AUG 19 1992

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

ODELL FOX, et al.,
Plaintiffs,
vs.
DWIGHT W. MAULDING, et al.,
Defendants.

No. 91-C-341-E

FILED

AUG 18 1992

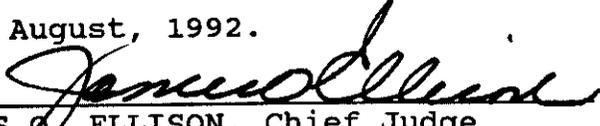
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

ORDER

Various motions pend herein. The Court will address Defendant Maulding's Motion to Dismiss, as Renewed, because it is dispositive. The Court finds it would be appropriate, under the Federal Rules of Civil Procedure, to convert the Motion to Dismiss to a Motion for Summary Judgment because the Court has reviewed the entire record herein. The Court further finds that this matter should be dismissed pursuant to the Colorado River Doctrine and, accordingly, grants the Defendant Maulding's motion. Colorado River Water Conservation District v. U.S., 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976). Finally, the Court declines to address the remaining Motions to Dismiss, because they are moot, and denies Plaintiffs' pending motions for sanctions and for default judgment.

This matter is dismissed with prejudice; parties shall bear their own costs herein.

So ORDERED this 17th day of August, 1992.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

9x

SEARCHED OR DOCKETED
AUG 18 1992

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

~~FILED~~
AUG 14 1992

DEBRA LYNN CRITTENDEN and
JIMMY JOE CRITTENDEN, JR.,

Plaintiffs,

vs.

WILLIAM B. MACOMBER,

Defendant.

Case No. 92 C 126E

~~FILED~~
AUG 17 1992

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

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 17th day of August, 1992, upon the Joint Motion to Dismiss With Prejudice filed herein by plaintiffs and defendant, and good cause shown, IT IS ORDERED that all causes of action filed herein are hereby dismissed with prejudice to refiling.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

TIMOTHY S. HARMON, OBA No. 11333
5800 E. Skelly Drive, Suite 300
Tulsa, OK 74135/(918) 665-0047
Attorney for Defendant

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

ENTERED ON DOCKET
DATE AUG 17 1992

VOGUE COACH COMPANY,

Debtor.

INDEPENDENCE NISSAN, INC.,

Plaintiff/Appellant,
vs.

VOGUE COACH COMPANY, and
ERNEST FOURMAN,

Defendants/Appellees.

Bankruptcy Case No. 90-03427-C
Adversary Case No. 90-0343-C

CIV NO. 92-C-104-E

FILED

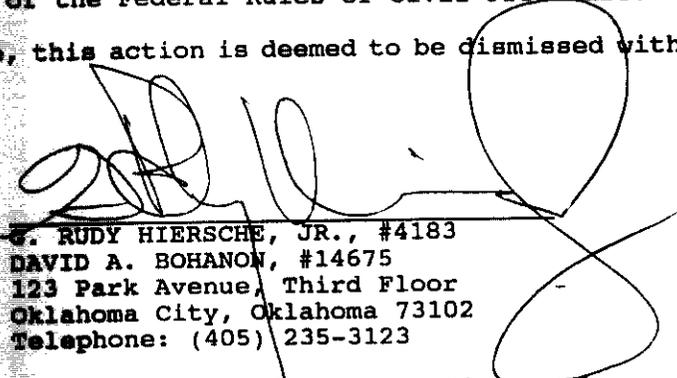
AUG 14 1992

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

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties to this action, Judi Beaumont as Trustee for Vogue Coach Company, and Independence Nissan, Inc., and acknowledge that an agreement has been reached in the above-referenced action. This is a final resoltuion of all issues between the parties, and therefore such action is dismissed with prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

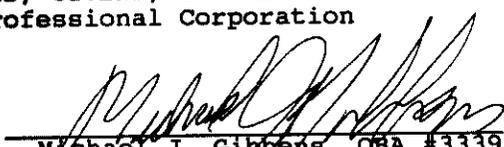
For the reasons set forth above, this action is deemed to be dismissed with prejudice.


R. RUDY HIERSCHE, JR., #4183
DAVID A. BOHANON, #14675
123 Park Avenue, Third Floor
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-3123

Attorneys for Independence Nissan, Inc.

JONES, GIVENS, GOTCHER & BOGAN
a Professional Corporation

by:


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

Attorneys for Judi E. Beaumont,
Trustee

FILE
AUG 17 1992

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

BRISTOL RESOURCES CORPORATION,)
)
 Plaintiff,)
)
 vs.)
)
 PRIMEENERGY CORPORATION,)
)
 Defendant.)

Case No. 92-C-380-E

ENTERED ON DOCKET
AUG 17 1992
DATE _____

STIPULATION ^{OF} FOR DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, Bristol Resources Corporation ("Bristol") and the Defendant, PrimeEnergy Corporation ("PrimeEnergy"), through their attorneys, and respectfully request this Court dismiss with prejudice Bristol's claims against PrimeEnergy. In support of this Stipulation, the parties show as follows:

1. Bristol brought its complaint against PrimeEnergy seeking compensation pursuant to the provisions of numerous operating agreements (the "Operating Agreements"), to which Bristol and PrimeEnergy are parties.
2. Bristol and PrimeEnergy have settled the disputes outstanding between them as to the claims for relief asserted by Bristol.

WHEREFORE, Bristol and PrimeEnergy stipulate to dismissal of any and all claims asserted by Bristol Resources Corporation against PrimeEnergy Corporation in this action with prejudice to the refileing of a future action arising out of the same facts and circumstances, with each party to bear its own costs and attorney's fees.

Respectfully submitted,



Kenneth F. Albright, OBA #181
Dale Joseph Gilsinger, OBA #10821
Gerald R. Shrader, OBA #13051
ALBRIGHT & GILSINGER
2600 Fourth Nat'l Bank Bldg.
15 West Sixth Street
Tulsa, Oklahoma 74119
(918) 583-5800

Attorneys for Plaintiff,
Bristol Resources Corporation

and



John N. Hermes
Stephen R. Welch
Michael F. Lauderdale
McAFEE & TAFT
10th Floor
Two Leadership Square
Oklahoma City, OK 73102

Attorneys for Defendant,
PrimeEnergy Corporation

CERTIFICATE OF MAILING

I, Gerald R. Shrader, hereby certify that on the 14th day of August, 1992, I caused a true and correct copy of the above and foregoing instrument to be placed in the United States mails in Tulsa, Oklahoma, with proper postage fully prepaid thereon, addressed to:

John N. Hermes
McAfee & Taft
10th Floor
Two Leadership Square
Oklahoma City, OK 73102


Gerald R. Shrader

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

FILED
AUG 17 1992

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

JOSEPH Q. ADAMS, Trustee of the :
Bankruptcy Estate of Morris Wayne :
Riley, SSN 547-64-3077, Northern :
District of Oklahoma No. 90-3109-C, :

Plaintiff, :

v. :

Case No. 92-C-156-E

MT. HAWLEY INSURANCE COMPANY, :

Defendant. :

ORDER OF DISMISSAL WITH PREJUDICE

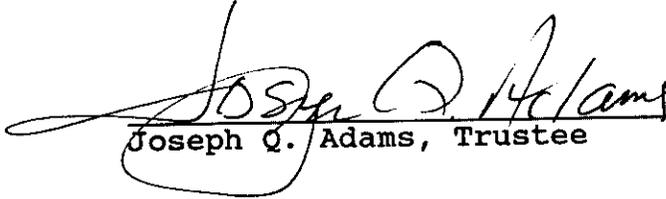
NOW on this 17th day of August, 1992, there comes on
for consideration the Joint Motion of the parties to dismiss the
above-styled action with prejudice. Having reviewed the Motion and
pleadings in this matter, the Court finds that the Motion should be
and is hereby granted.

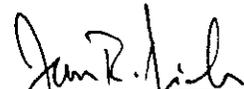
IT IS, THEREFORE, ORDERED, DECREED AND ADJUDGED that the
Plaintiff's Complaint be dismissed with prejudice, each party to
bear its own costs.

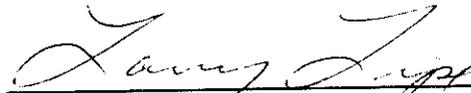
S/ JAMES O. ELLISON

UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM AND CONTENT:


Joseph Q. Adams, Trustee


James R. Hicks, OBA #11345
Reece B. Morrel, Jr., OBA #14784
Morrel, West, Saffa, Craige &
Hicks, Inc.
City Plaza West, Ninth Floor
5310 East 31st Street
Tulsa, Oklahoma 74135
918/664-0800
ATTORNEYS FOR PLAINTIFF


Larry Lipe
Lipe, Green, Paschal, Trump & Gourley, P.C.
2100 Mid-Continent Tower
401 South Boston Avenue
Tulsa, Oklahoma 74103
918/599-9400
ATTORNEYS FOR DEFENDANT

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

FILED

AUG 17 1992 A

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

UNITED STATES OF AMERICA,

vs.

ROBERT WALKER,

Defendant.

CIVIL ACTION NO. 91-C-~~588~~⁵⁵⁸-C ✓

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint, and the defendant, appearing through his attorney of record and having consented to the making and entry of this Judgment without trial, agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all of the parties. The Complaint states a claim upon which relief can be granted.

2. The defendant acknowledges and accepts service of the Complaint.

3. The defendant agrees to the entry of Judgment in the principal sum of \$3,230.16, plus accrued interest of \$1,589.49 as of July 31, 1992, plus administrative costs in the amount of \$67.00, plus interest thereafter at the rate of 3% per annum until judgment, and a surcharge of 10% of the amount of the debt in connection with the recovery of the debt as provided by 28 U.S.C. § 3011, plus interest thereafter at the legal rate until paid, plus costs of this action, until paid in full.

4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided it and the defendant's express

representation to Plaintiff, through his attorney of record, that he is unable to presently pay the amount of indebtedness in full immediately and the further representation of the defendant that he will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 15th day of August, 1992, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$100.00, and a like sum on or before the 15th day of September and \$250.00 on or before the 15th day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Financial Litigation Unit, 3900 U.S. Courthouse, 333 West 4th Street, Tulsa, Oklahoma 74103.

(c) Each said payment made by defendant shall be applied, first to the payment of costs, second to the payment of postjudgment interest accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

5. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

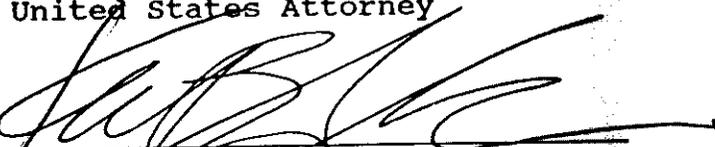
6. The defendant has the right of prepayment of this debt without penalty.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Robert Walker, in the principal amount of \$3,230.16, plus accrued interest in the amount of \$1,589.49 as of July 31, 1992, plus administrative costs in the amount of \$87.00, plus interest thereafter at the rate of 3% until judgment, and a surcharge of 10% of the amount of the debt in connection with the recovery of the debt as provided by 28 U.S.C. § 3011, plus interest thereafter at the current legal rate of 3.51% per annum until paid, plus the costs of this action.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

TONY M. GRAHAM
United States Attorney


KATHLEEN BLISS ADAMS
Assistant United States Attorney


Robert Walker

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

FILED

AUG 17 1992

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

TAMMY LYNN STARRITT,
Personal Representative of
the Estate of William Dan
Starritt, Deceased,

Plaintiff,

-vs-

S. P. E., INC., and
DORN ENTERPRISES, INC.,

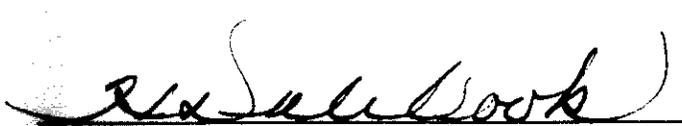
Defendants.

No. 91-C-006-C ✓

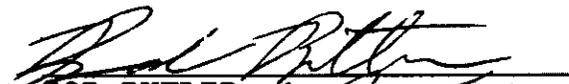
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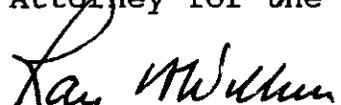
This action came on for trial before the Court and jury July 6, 1992. The issues having been duly tried and the jury having duly returned its verdict in favor of the Defendant,

IT IS ORDERED AND ADJUDGED that the Plaintiff take nothing and that Defendant, S.P.E., Inc., have judgment against the Plaintiff.


UNITED STATES DISTRICT JUDGE

Approval as to form:


BOB BUTLER,
Attorney for the Plaintiff


RAY H. WILBURN
DAVID K. ROBERTSON,
Attorneys for the Defendant