

ENTERED ON DOCKET
AUG 20 1993

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

FILED

GEORGE ROWE,)
)
Plaintiff,)
)
vs.)
)
NATIONAL EDUCATION CENTERS,)
INC., d/b/a SPARTAN SCHOOL)
OF AERONAUTICS,)
FRANK IABUCCI, DICK JAVES,)
and FRANK PENDERGRAS,)
)
Defendants.)

AUG 19 1993

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

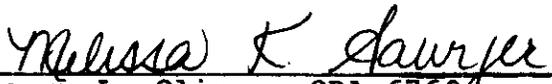
No. 93-C-20 B

JOINT STIPULATION OF DISMISSAL

COME NOW the parties, pursuant to Rule 41(a)(1) of the Fed.R.Civ.P., and hereby stipulate and agree that all claims against Frank Iabucci, Dick Javes, and Frank Pendergras, be dismissed without prejudice.

DATED this 12th day of August, 1993.

Respectfully submitted,


Larry L. Oliver, OBA 6769
Melissa K. Sawyer, OBA 14855
LARRY L. OLIVER & ASSOC., P.C.
2211 East Skelly Drive
Tulsa, Oklahoma 74105
(918) 745-6084
ATTORNEYS FOR PLAINTIFF

and


Randall G. Vaughan, OBA 11554
Kevin P. Doyle, OBA 18269
PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR
900 Oneok Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
(918) 584-4136
ATTORNEYS FOR DEFENDANTS

ENTERED ON DOCKET
DATE AUG 19 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 THELMA J. BELL, et al.,)
)
 Defendants.)

AUG 18 1993

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

CIVIL ACTION NO. 92-C-894-C

O R D E R

Upon the Motion of the United States of America, acting on behalf of the Secretary of Veterans Affairs, by F.L. Dunn, III, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that the Judgment of Foreclosure entered herein on the 2nd day of December, 1992, is vacated; that the note and mortgage sued upon in Plaintiff's Complaint are restored; and this action is dismissed without prejudice.

Dated this 17 day of Aug, 1993.

(Signed) N. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

F.L. DUNN, III
United States Attorney


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

KBA/esr

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

ENTERED ON DOCKET
DATE AUG 19 1993

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

FILED

AUG 18 1993

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

MARGARET M. DOWNEY, Personal
Representative for George S.
Deceased,

Plaintiff

Vs.

FIRST FIDELITY EXCHANGE CORPORATION,
a California corporation; WAYNE K.
RICHARDSON; and EUGENE HUNTER,

Defendants

No. 92 C 967 C

JOURNAL ENTRY OF DEFAULT JUDGMENT

The Court having reviewed the Motion for Default Judgment filed herein by plaintiff, the Entry of Default by Clerk and the file of this action finds that defendant, Eugene Hunter, has failed to respond to plaintiff's Complaint within the time allowed and is in default.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED That plaintiff, Margaret M. Downey, Personal Representative of the Estate of George S. Downey, deceased, be granted judgment against the defendant, Eugene Hunter in the amount of \$345,840.80 together with interest thereon.

Dated aug 17, 1993

M. S. Leach
JUDGE OF DISTRICT COURT

9

ENTERED ON LOG
DATE AUG 19 1993

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

JERRY ERNEST,)
)
Plaintiff,)
)
vs.)
)
ALEXANDER & ASSOCIATES, INC.,)
et al.,)
)
Defendants.)

No. 92-C-893-C ✓

FILED
AUG 18 1993

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

ORDER

Before the Court are the motion of the plaintiff to dismiss with prejudice and the motion of the defendants for sanctions pursuant to Rule 11 F.R.Cv.P. Plaintiff began this action in state court with a Petition alleging two causes of action (1) breach of contract and (2) age discrimination, arising out of plaintiff's discharge. Defendants removed the action to federal court. Defendants thereafter filed a motion to dismiss both causes of action. While this motion was pending, a scheduling order was entered in the case, establishing February 19, 1993, as the discovery cutoff date.

On February 18, 1993, the Court entered an Order which granted defendants' motion to dismiss as to the breach of contract cause of action, but denied it as to the age discrimination cause of action. The Order recites that at the scheduling conference plaintiff's counsel waived any federal claim, and sought to proceed under Burk v. K-Mart, 770 P.2d 24 (Okla. 1989). On March 1, 1993, plaintiff filed a motion to dismiss his remaining claim with prejudice. Defendants object, and move for sanctions.

As to defendants' objection, they seek the court to impose the condition that plaintiff

be barred from bringing any and all claims against these defendants arising out of his employment relationship with them. Rule 41(a)(1) provides that a court order is not necessary for dismissal when a notice is filed before service by the adverse party of an answer or of a motion for summary judgment. Neither has been filed in this case; therefore, the dismissal stands and defendants' objection is overruled.

Next, defendants argue for sanctions as to both plaintiff's causes of action, contending that they were without factual basis. The test is an objective one, whether a reasonable and competent attorney would believe in the merit of an argument. Dodd Ins. Serv. v. Royal Ins. Co., 935 F.2d 1152, 1155 (10th Cir. 1991). Looking at the first cause of action, plaintiff contended that he was induced by defendants' oral promises to move to Oklahoma from Texas under the pretense of giving plaintiff a job for a reasonable period of time in excess of one year. Defendants quote plaintiff's deposition, in which he testified that, in considering the alleged contract, he "really didn't dwell on ad infinitum and retirement." However, on the previous page of the deposition the following exchange appears:

- Q. So your testimony this morning is that when you came to Tulsa, you believed that you were here in Tulsa in this position for as long as you wanted to be?
- A. Under the terms of the contract, yes.

The full text of the deposition has not been provided, but there is insufficient evidence before the Court to conclude that the plaintiff's first cause of action was frivolous.

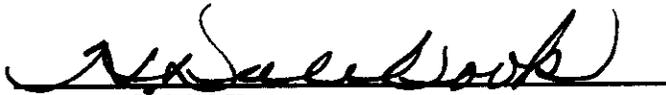
As to the second cause of action, plaintiff testified in his deposition that he had no factual information upon which to base a definite belief that he had been terminated because of his age. He testified that he "speculated" of age discrimination because he had

not been given a reason for his termination, and because he fell within the class protected by federal law. Attached to plaintiff's response to the motion for sanctions is plaintiff's affidavit stating that plaintiff was replaced in his job by a younger man. Of course, it is a rare employer who would state to an employee that the employee was being discharged because of his age. It seems to the Court that in alleged discrimination cases, while the edict of Rule 11 fully applies, some leeway must be given to enable plaintiff to discover proof for such difficult issues as motive or "pattern and practice." Regarding the fee-shifting statute under Title VII, the Supreme Court has noted that "[d]ecisive facts may not emerge until discovery or trial." Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421 (1978). The Seventh Circuit has held that "[i]f discovery is necessary to establish a claim, then it is not unreasonable to file a complaint so as to obtain the right to conduct that discovery." Kraemer v. Grant County, 892 F.2d 686, 690 (7th Cir. 1990). This Court does not adopt this principle as an absolute rule in every case, but is persuaded that its discretion is best exercised under these facts in denying the defendants' request.

It is the Order of the Court that the motion of the plaintiff to dismiss with prejudice is hereby granted.

It is the further Order of the Court that the motion of the defendants for sanctions is hereby denied.

IT IS SO ORDERED this 17th day of August, 1993.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE AUG 19 1993

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

JAMES E. WHITE,)
)
Plaintiff,)
)
vs.)
)
CLIFFORD HOPPER and)
STANLEY GLANZ,)
)
Defendants.)

No. 91-C-801-C

F I L E D

AUG 18 1993

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

J U D G M E N T

This matter came on for consideration of the motion for summary judgment of defendants. The issues having been duly considered and a decision having been duly rendered in accordance with the Order filed contemporaneously herewith,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered for defendants Clifford Hopper and Stanley Glanz, and against plaintiff, and that plaintiff take nothing by way of this action.

IT IS SO ORDERED this 17 day of August, 1993.



H. DALE COOK
UNITED STATES DISTRICT JUDGE

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

JAMES E. WHITE,)
)
 Plaintiff,)
)
 vs.)
)
 CLIFFORD HOPPER and)
 STANLEY GLANZ,)
)
 Defendants.)

No. 91-C-801-C ✓

FILED
 AUG 18 1993
 Richard M. Lawrence, Clerk
 U. S. DISTRICT COURT
 NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is the plaintiff's objection to the Report and Recommendation of the United States Magistrate Judge filed on February 3, 1993. The Magistrate Judge recommended the granting of defendants' motion to dismiss or in the alternative motion for summary judgment as to defendant Hopper, a state district judge. As to defendant Glanz, Sheriff of Tulsa County, the motion was held in abeyance pending supplemental filings, which are now before the Court.

Regarding that portion of the Report and Recommendation as to Judge Hopper, the Court affirms the same and adopts it as the findings and conclusions of the Court. The doctrine of judicial immunity is too well established to require detailed discussion.

Due to the passage of time which has elapsed, the Court hereby withdraws the reference to the Magistrate Judge as to Sheriff Glanz's motion and will determine it on its merits. The Court is persuaded that the limitations on defendant's outdoor exercise were

related to a legitimate incarceration concern. See Martin v. Tyson, 845 F.2d 1451, 1456 (7th Cir.), cert. denied, 488 U.S. 863 (1988). Further, the sheriff acted in an objectively reasonable manner in light of legal rules that were clearly established when the action was taken. Therefore, qualified immunity shields him from liability. See Anderson v. Creighton, 483 U.S. 635 (1987).

It is the Order of the Court that the motion of the defendants to dismiss or in the alternative for summary judgment is hereby granted.

IT IS SO ORDERED this 17th day of August, 1993.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE AUG 18 1993

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

FILED

AUG 17 1993

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

UNITED STATES OF AMERICA,)

Respondent,)

vs.)

DORIS MIDIRI,)

Movant.)

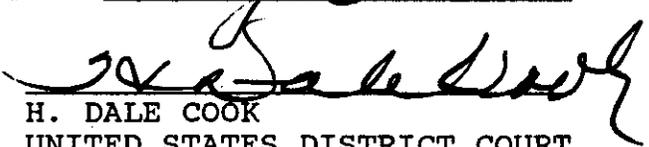
No. 93-C-335-C

ORDER

In the court's last order, Movant Doris Midiri was given twenty days to file her pleading on the proper court form. She was advised that failure to comply could result in the dismissal of her action. The twenty day deadline has long since past, and Midiri has not submitted a pleading to the court.

Accordingly, this action is hereby dismissed.

SO ORDERED THIS 17th day of August, 1993.


H. DALE COOK
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 8-18-93

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JIM R. McCORMICK a/k/a
JIMMIE RAY McCORMICK a/k/a
JIMMIE R. McCORMICK a/k/a
JIMMIE McCORMICK; RENA M.
McCORMICK a/k/a RENA McCORMICK
a/k/a RENA MAE McCORMICK; THE
UNKNOWN HEIRS, EXECUTORS,
ADMINISTRATORS, DEVISEES,
TRUSTEES, SUCCESSORS AND
ASSIGNS OF J. W. LIVECY,
Deceased; JOSEPHINE K. LIVECY;
EMPIRE CONSTRUCTION, INC., an
Oklahoma corporation;
AIC FINANCIAL, formerly known
as Citicorp Person to Person;
HILLCREST MEDICAL CENTER,
a corporation; TULSA ADJUSTMENT
BUREAU, INC., a corporation;
COUNTY TREASURER, Creek County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Creek County,
Oklahoma,

Defendants.

FILED

AUG 17 1993

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-490-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17 day
of August, 1993. The Plaintiff appears by F. L. Dunn,
III, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Creek County, Oklahoma, and
Board of County Commissioners, Creek County, Oklahoma, appear by
Wesley R. Thompson, Assistant District Attorney, Creek County,
Oklahoma; the Defendant, Josephine K. Livecy, appears by her

attorneys Margaret M. Perrault and Bryon D. Todd; the Defendant, L, H, H, & F, a Partnership, Successor-In-Interest to Empire Construction, Inc., an Oklahoma corporation, appears not, having previously filed its Disclaimer; the Defendant, AIC Financial, formerly known as Citicorp Person to Person, appears by its attorney Roger A. Long; the Defendant, Hillcrest Medical Center, a corporation, appears by its attorney Mark W. Dixon; the Defendant, Tulsa Adjustment Bureau, Inc., a corporation, appears not, having previously filed its Disclaimer; and the Defendants, Jim R. McCormick a/k/a Jimmie Ray McCormick a/k/a Jimmie R. McCormick a/k/a Jimmie McCormick; Rena M. McCormick a/k/a Rena McCormick a/k/a Rena Mae McCormick; and The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of J. W. Livecy, Deceased, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Jim R. McCormick a/k/a Jimmie Ray McCormick a/k/a Jimmie R. McCormick a/k/a Jimmie McCormick, acknowledged receipt of Summons and Complaint on June 20, 1992; that the Defendant, Rena M. McCormick a/k/a Rena McCormick a/k/a Rena Mae McCormick, acknowledged receipt of Summons and Complaint on June 22, 1992; that the Defendant, Josephine K. Livecy, acknowledged receipt of Summons and Complaint on June 18, 1992; that the Defendant, AIC Financial, formerly known as Citicorp Person to Person, acknowledged receipt of Summons and Complaint on June 10, 1992; that the Defendant,

Hillcrest Medical Center, a corporation, acknowledged receipt of Summons and Complaint on August 3, 1992; that the Defendant, Tulsa Adjustment Bureau, Inc., a corporation, acknowledged receipt of Summons and Complaint on June 15, 1992; that Defendant, County Treasurer, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on June 5, 1992.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of J. W. Livecy, Deceased, were served by publishing notice of this action in the Sapulpa Legal News, a newspaper of general circulation in Creek County, Oklahoma, once a week for six (6) consecutive weeks beginning April 15, 1993, and continuing through May 20, 1993, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of J. W. Livecy, Deceased, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the

last known addresses of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of J. W. Livecy, Deceased. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Small Business Administration, and its attorneys, F. L. Dunn, III, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, 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, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer on May 28, 1993; that the Defendant, Josephine K. Livecy, filed her Answer and Counterclaim on July 6, 1992; and that Defendant, L, H, H, & F, a Partnership, Successor-In-Interest to Empire Construction, Inc., an Oklahoma corporation, filed its Disclaimer on July 8, 1992; that the Defendant, AIC Financial, formerly known as Citicorp Person to

Person, filed its Answer and Cross-Petition on June 25, 1992; that the Defendant, Hillcrest Medical Center, a corporation, filed its Answer on August 5, 1992; that the Defendant, Tulsa Adjustment Bureau, Inc., a corporation, filed its Disclaimer on June 16, 1992; and that the Defendants, Jim R. McCormick a/k/a Jimmie Ray McCormick a/k/a Jimmie R. McCormick a/k/a Jimmie McCormick; Rena M. McCormick a/k/a Rena McCormick a/k/a Rena Mae McCormick; and The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of J. W. Livecy, Deceased, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that L, H, H, & F, a Partnership, is the Successor-In-Interest to the Defendant, Empire Construction, Inc., an Oklahoma corporation.

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

Lot Four (4), Block One (1), Oak Hills First, Creek County.

Lot Four (4), Block One (1), Oakhill Addition, an Addition in the NW/4 of Section 3, Township 18 North, Range 11 East, Creek County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on October 9, 1984, Rena M. McCormick executed and delivered to American Bank &

Trust Co. a promissory note in the amount of \$550,000.00, payable in monthly installments, with interest thereon at the rate of 14 percent per annum.

The Court further finds that as part and parcel of the same transaction and for the purpose of securing the payment of the above-described note, Jim R. McCormick and Rena M. McCormick executed and delivered to the United States of America, on behalf of the Small Business Administration, a Secured Guaranty dated October 9, 1984.

The Court further finds that as part and parcel of the same transaction and for the purpose of securing the payment of the above-described note, Jim R. McCormick and Rena M. McCormick executed and delivered to American Bank & Trust Company a real estate mortgage covering the above-described property, situated in the State of Oklahoma, Creek County. This mortgage was recorded on October 11, 1984, in Book 173, Page 1280, in the records of Creek County, Oklahoma.

The Court further finds that on March 6, 1985 and February 10, 1986, Rena M. McCormick, as President of Inland Construction, Inc., executed two certain Modification Agreements.

The Court further finds that on December 12, 1986, American Bank & Trust Co. assigned the above-described real estate mortgage to Small Business Administration. This Assignment was recorded on April 9, 1987, in Book 219, Page 363, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Jim R. McCormick a/k/a Jimmie Ray McCormick a/k/a Jimmie R. McCormick a/k/a Jimmie McCormick and Rena M. McCormick a/k/a Rena McCormick a/k/a Rena Mae McCormick, 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, Jim R. McCormick a/k/a Jimmie Ray McCormick a/k/a Jimmie R. McCormick a/k/a Jimmie McCormick and Rena M. McCormick a/k/a Rena McCormick a/k/a Rena Mae McCormick, are indebted to the Plaintiff in the principal sum of \$225,349.20, together with accrued interest of \$110,883.96 as of November 20, 1991, with interest thereafter at the daily rate of \$52.48, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$250.90 (\$240.90 publication fees, \$10.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek 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 \$3,455.39, plus penalties and interest, for the years 1990, 1991, and 1992. 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, Creek 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 \$312.96 which became a lien on the property as of 1990, 1991, and 1992. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of J. W. Livecy, Deceased, are in default and have no right, title or interest in the subject real property.

The Court further finds that Defendant, Josephine K. Livecy, has a lien on the property which is the subject matter of this action in the amount of \$1,107.91, with interest thereon at the rate of 10 percent per annum from the 8th day of August 1988, until paid, a reasonable attorney fee of \$375.00, and all costs of this action, by virtue of a Real Estate Mortgage, dated March 8, 1974, and recorded on March 14, 1974, in Book 23, Page 1963 in the records of Creek County, Oklahoma. Said lien is superior to the interest of Plaintiff, United States of America.

The Court further finds that Defendant, L, H, H, & F, a Partnership, Successor-In-Interest to Empire Construction, Inc., an Oklahoma corporation, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendant, AIC Financial, formerly known as Citicorp Person to Person, has a lien on the property which is the subject matter of this action in the amount of \$697.07, plus accrued interest of \$178.50 through June 10, 1992, together with interest at the rate of 17 percent per annum from June 10, 1992, the costs incurred for

preliminary title report, the costs of maintaining and preserving the property together with abstracting costs, an attorney's fee of \$300.00, and costs of this action, accrued and accruing, by virtue of a Real Estate Mortgage, dated December 23, 1977, and recorded on December 29, 1977, in Book 55, Page 2043 in the records of Creek County, Oklahoma. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds the Defendant, Hillcrest Medical Center, a corporation, has a lien on the property which is the subject matter of this action in the amount of \$626.45 plus interest, costs and attorney fees, by virtue of a Statement of Judgment in Case No. SC-88-04138, District Court, Tulsa County, Oklahoma, and recorded on July 18, 1988, in Book 237, Page 1010 in the records of Creek County, Oklahoma.

The Court further finds that the Defendant, Tulsa Adjustment Bureau, Inc., a corporation, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Internal Revenue Service has liens upon the property by virtue of a Notice of Federal Tax Lien No. 106952 in the amount of \$92,610.00, dated October 24, 1988, and recorded on November 2, 1988, in Book 241, Page 918 in the records of the Creek County Clerk, Creek County, Oklahoma; and by virtue of a Notice of Federal Tax Lien No. 739208191 in the amount of \$1,185.81, dated May 4, 1992, and recorded on May 13, 1992, in Book 291, Page 32 in the records of the Creek County Clerk, Creek County, Oklahoma. Inasmuch as government policy prohibits the joining of another federal agency

as party defendant, the Internal Revenue Service is not made a party hereto; however, by agreement of the agencies the liens will be released at the time of sale should the property fail to yield an amount in excess of the debt to the Small Business Administration.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, United States of America, acting on behalf of the Small Business Administration, have and recover judgment against Defendants, **Jim R. McCormick a/k/a Jimmie Ray McCormick a/k/a Jimmie R. McCormick a/k/a Jimmie McCormick and Rena M. McCormick a/k/a Rena McCormick a/k/a Rena Mae McCormick**, in the principal sum of \$225,349.20, together with accrued interest of \$110,883.96 as of November 20, 1991, with interest thereafter at the daily rate of \$52.48, until judgment, plus interest thereafter at the current legal rate of 3.58 percent per annum until fully paid, plus the costs of this action in the amount of \$250.90 (\$240.90 publication fees, \$10.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that L, H, H, & F, a Partnership, is the Successor-In-Interest to the Defendant, Empire Construction, Inc., an Oklahoma corporation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **County Treasurer and Board of County Commissioners, Creek County, Oklahoma**, have and recover judgment in the amount

of \$3,455.39, plus penalties and interest, for ad valorem taxes for the years 1990, 1991, and 1992, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **County Treasurer and Board of County Commissioners, Creek County, Oklahoma**, have and recover judgment in the amount of \$312.96 for personal property taxes for the years 1990, 1991, 1992, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **Josephine K. Livecy**, have and recover judgment in the amount of \$1,107.92, with interest thereon at the rate of 10 percent per annum from the 8th day of August 1988, until fully paid, a reasonable attorney fee of \$375.00, and all costs of this action, by virtue of a Real Estate Mortgage, dated March 8, 1974, and recorded on March 14, 1974, in Book 23, Page 1963 in the records of Creek County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **AIC Financial, formerly known as Citicorp Person to Person**, have and recover judgment in the amount of \$697.07, plus accrued interest of \$178.50 through June 10, 1992, together with interest at the rate of 17 percent per annum from June 10, 1992, the costs incurred for preliminary title report, the costs of maintaining and preserving the property together with abstracting costs, an attorney's fee of \$300.00, and costs of this action, accrued and accruing, by virtue of a Real Estate Mortgage, dated December 23, 1977, and recorded on December 29, 1977, in Book 55, Page 2043 in the records of Creek County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Hillcrest Medical Center, a corporation, have and recover judgment in the amount of \$626.45 plus interest, costs and attorney fees, by virtue of a Statement of Judgment in Case No. SC-88-04138, District Court, Tulsa County, Oklahoma, and recorded on July 18, 1988, in Book 237, Page 1010 in the records of Creek County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of J. W. Livecy, Deceased; L, H, H, & F, a Partnership, Successor-In-Interest to Empire Construction, Inc., an Oklahoma corporation; and Tulsa Adjustment Bureau, Inc., a corporation, 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, Jim R. McCormick a/k/a Jimmie Ray McCormick a/k/a Jimmie R. McCormick a/k/a Jimmie McCormick and Rena M. McCormick a/k/a Rena McCormick a/k/a Rena Mae McCormick, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

In payment of Defendant, **County Treasurer and Board of County Commissioners, Creek County, Oklahoma**, 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 Defendant, **Josephine K. Livecy**;

Fourth:

In payment of the judgment rendered herein in favor of the Defendant, **AIC Financial, formerly known as Citicorp Person to Person**;

Fifth:

In payment of the judgment rendered herein in favor of the Plaintiff, **United States of America, acting on behalf of the Small Business Administration**;

Sixth:

In payment of the judgment rendered herein in favor of the Defendant, **Hillcrest Medical Center, a corporation**;

Seventh:

In payment of Defendants, **County Treasurer and Board of County Commissioners, Creek County, Oklahoma**, for 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

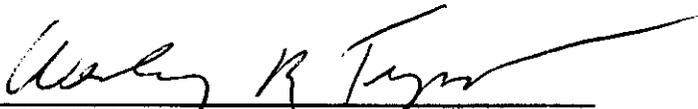
UNITED STATES DISTRICT JUDGE

APPROVED:

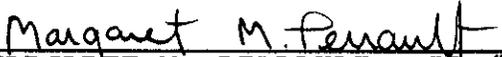
STEPHEN C. LEWIS
United States Attorney



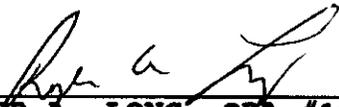
PHIL PINNELL, OBA #7169
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



WESLEY R. THOMPSON, OBA #8993
Assistant District Attorney
P.O. Box 1006
Sapulpa, Oklahoma 74067
(918) 224-3921
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Creek County, Oklahoma



MARGARET M. PERRAULT, OBA #
BRYON D. TODD, OBA #
3140 South Winston, Suite 19
Tulsa, Oklahoma 74135-2078
(918) 743-7836
Attorney for Defendant,
Josephine K. Livecy



ROGER A. LONG, OBA #11666
One Ten Occidental Place
110 West 7th Street, Suite 200
Tulsa, Oklahoma 74119
(918) 599-7755
Attorney for Defendant,
AIC Financial, formerly known as
Citicorp Person to Person;



MARK W. DIXON, OBA #2378

Mapco Plaza Building

1717 South Boulder, Suite 200

Tulsa, Oklahoma 74119

(918) 582-3191

Attorney for Defendant,

Hillcrest Medical Center, a corporation

Judgment of Foreclosure

Civil Action No. 92-C-490-E

PP/css

DATE 8/18/93

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

FILED

AUG 17 1993

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

JOANNE NOE,)
)
 Plaintiff,)
)
 v.)
)
 COLOR TILE, INC., et al.,)
)
 Defendants.)

CASE NO. 93-C-566-B ✓

**NOTICE OF DISMISSAL WITH PREJUDICE
PURSUANT TO F.R.CIV.PRO. 41(a)(1)(i)
OF DEFENDANT RANDY BROWNING**

COMES NOW the Plaintiff, Joanne Noe, by and through her counsel of record, Caffey & Oakley, and dismisses this action with prejudice as against Defendant Randy Browning, pursuant to F. R. Civ. Pro. 41(a)(1)(i), there having been no answer or motion for summary judgment served by Defendant Browning.

Respectfully submitted,



Kelly D. Caffey, OBA #14686
Jessie M. Oakley, OBA #14790
CAFFEY & OAKLEY
2617 East 21st Street, Suite 101
Tulsa, Oklahoma 74114-1721
(918) 743-1981
ATTORNEYS FOR PLAINTIFF

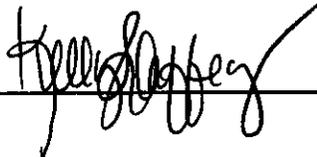
CERTIFICATE OF MAILING

I, the undersigned, certify that on the 10th day of August, 1993, a true and correct copy of the above and foregoing document was mailed by First Class, U.S. Mail to the following attorneys of record with sufficient postage prepaid thereon:

Fred C. Cornish, Esq.
Leslie Zieren, Esq.
Cornish & Viles, Inc.
321 South Boston, Suite 917
Tulsa, Oklahoma 74103-3321

Steven L. Rahhal, Esq.
McFall & Associates
460 Preston Commons
8117 Preston Road
Dallas, Texas 75225

Dennis C. Cameron, Esq.
Gable & Gotwals
15 West 6th Street, Suite 2000
Tulsa, Oklahoma 74119-5447



ENTERED ON DOCKET

DATE 8-17-93

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

MICKALEA R. HIGHT,)
)
Plaintiff,)
)
v.)
)
WITEL COMMUNICATIONS SYSTEMS,)
INC., Williams Telecommunications)
Group, Inc., and The Williams)
Companies, Inc., Delaware)
corporations, and Lester Fuller,)
David Lee and Dee MacGregor,)
individuals,)
)
Defendants.)

Case No. 92-C-1129E

FILED

AUG 16 1993

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER ALLOWING DISMISSAL WITH PREJUDICE

This matter came on before the Court this 16 day of August, 1993, upon the parties' Stipulation of Dismissal With Prejudice, and for good cause shown, it is therefore ORDERED, ADJUDGED AND DECREED, that Plaintiff's cause of action against the Defendants is hereby dismissed with prejudice with each side to bear its own costs and attorney fees.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

AUG 12 1993

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

DIANNA L. MOSIER,)	
)	
Plaintiff(s),)	
)	
v..)	93-C-0413-B
)	
CITY OF ADA, ET AL,)	
)	
Defendant(s).)	

ORDER

Now before the Court is a Motion To Dismiss For Lack Of Proper Venue (docket #2).
In the alternative, Defendants request a change of venue to the Eastern District of Oklahoma pursuant to 28 U.S.C. §1404(a), *Defendant's Reply, page 2* (docket #5).

Plaintiff, a resident of Ada, Oklahoma, filed a Complaint on May 5, 1993 under the American With Disabilities Act (42 U.S.C. §12112). The Complaint was filed in this Court pursuant to 42 U.S.C. §2000e-5(f)(3), which states that an action such as the one brought by Plaintiff can be "brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed."

Plaintiff alleges that Defendants, which include the City of Ada and officials working for that municipality, discriminated against her because she had a disability. Plaintiff had applied for a police dispatcher job with the Ada Police Department. Plaintiff's attorney is from Tulsa.

The issue is whether the case should be transferred pursuant to 28 U.S.C. §1404.
Part of that statute reads:

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 have been brought.

In *Lewis v. Madison County Board of Education*, 678 F.Supp. 1550 (M.D. Ala. 1988), the plaintiff brought a Title VII class action against defendants, who were located in the Northern District of Alabama. All of the contacts for the cause of actions also resided in the Northern District of Alabama, but the plaintiff's attorney filed the Title VII action in the Middle District of Alabama pursuant to 42 U.S.C. §2000(e)-5(f)(3). The court, however, transferred the case to the Northern District and stated:

It is illogical that Congress intended to place venue provisions of Title VII outside the purview of the transfer clause of 28 U.S.C. §1404...This Court can think of no consideration which would justify venue in this jurisdiction. *Id.* at 1552.

The circumstances in the case at bar are similar to those in *Lewis*. The alleged cause of action took place in Ada, which is located in the Eastern District of Oklahoma. Both Plaintiff and Defendants reside in Ada. It also appears (although not specifically addressed in the record) that many, if not all, of the witnesses in the case reside in the Eastern District. Therefore, in the interests of justice, this Court orders the case transferred to the Eastern District of Oklahoma.

SO ORDERED THIS 19th day of Aug, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 8-17-93

FILED

AUG 16 1993

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

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

DONNA L. COMPTON,
Plaintiff,

v.

INDEL-DAVIS, INC.,
a Delaware corporation,
Defendant.

Case No. 92-C-1152E

ORDER OF DISMISSAL

NOW on this 16th day of August, 1993, the Joint Motion to Dismiss, filed herein by Plaintiff Donna L. Compton and Defendant Indel-Davis, Inc. comes before the Court. Being fully advised in the premises, the Court finds that, for good cause shown, the Joint Motion to Dismiss should be and hereby is granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-captioned cause of action is dismissed with prejudice to the refiling of same.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

By:

Michael
J. Michael Medina, OBA #6113
Ellen E. Gallagher, OBA #14717
HOLLIMAN, LANGHOLZ, RUNNELS
& DORWART,
A Professional Corporation
Suite 700, Holarud Building
10 East Third Street
Tulsa, Oklahoma 74103
(918) 584-1471

Attorneys for Defendant,
Indel-Davis, Inc.

By:

Richard L. Blanchard
Richard L. Blanchard
Suite 1130
320 South Boston
Tulsa, OK 74103-4700

Attorney for Plaintiff,
Donna L. Compton

ENTERED ON DOCKET

DATE 8-17-93

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

FILED

AUG 16 1993

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

EARLINE BROWN,

Plaintiff

vs.

LOOMIS ARMORED, INC.

Defendant

§
§
§
§
§
§
§
§

CASE NUMBER

92-C-569-E

AGREED ORDER OF DISMISSAL

On this day came before the Court both Plaintiff and Defendant by and through their respective attorneys of record, and advised the Court that they had settled and compromised all of the issues in dispute between them and that each joined the other in moving for an order of dismissal with prejudice of the above referenced cause, and the Court finding that no further issues remain to be considered by this Court, it is:

ORDERED that the above captioned and numbered cause be and the same is hereby dismissed, with prejudice as to its later refileing, and all costs of court are taxed against the party incurring the same.

SIGNED this 13th day of August, 1993.

/S/ JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

United States District Judge

M.L.

Agreed to as to both form and content:



THOMAS BRIGHT
Attorney for Plaintiff



BOWEN L. FLORSHEIM
Attorney for Defendant

NICHOLS, WOLFE, STAMPER,
NALLY & FALLIS, INC.

Frank B. Wolfe III

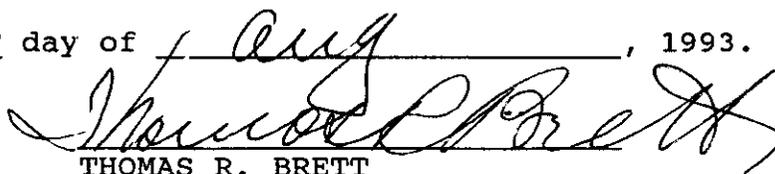
Frank B. Wolfe III, OBA No. 9825
S. M. Fallis, Jr., OBA No. 2813
Angelyn L. Dale, OBA No. 10773
400 Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103-5010
(918) 584-5182

properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter." Darr v. Burford, 339 U.S. 200, 204 (1950). Requiring exhaustion "serves to minimize friction between our federal and state systems of justice by allowing the State an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights." Duckworth v. Serrano, 454 U.S. 1, 3 (1981) (per curiam).

In Smith v. State, 611 P.2d 276 (Okl. Cr. 1980), the Oklahoma Court of Criminal Appeals set forth the proper state remedy for a person claiming they were denied a direct appeal. The proper procedure is to file a post-conviction application in the state district court, where findings of fact and conclusions of law should be made as to whether the applicant was denied a direct appeal through no fault of his own. If the post-conviction application is denied, the applicant should then appeal to the Court of Criminal Appeals.

In the interests of comity, the court finds Petitioner should follow the above procedure before further habeas review in federal court. By so doing, he will exhaust his claim he was denied a direct appeal. Accordingly, this action is hereby dismissed without prejudice, while Petitioner pursues an appeal out of time in the Oklahoma state courts.

SO ORDERED THIS 13 day of Aug, 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT COURT

DATE AUG 16 1993

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

FILED

AUG 16 1993

WILLIAM L. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

KIMBERLY R. WELTY,)
)
Plaintiff,)
)
v.)
)
MOORE FUNERAL HOME, INC.,)
et al.,)
)
Defendants.)

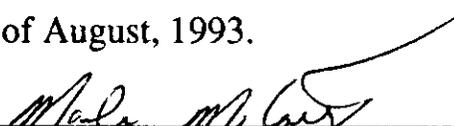
Case No. 92-C-911-C

JUDGMENT

Defendants having made an offer of judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure and Plaintiff having accepted same,

IT IS ORDERED AND ADJUDGED that the Plaintiff, Kimberly R. Welty, recover of the Defendants, Moore Funeral Home, Inc., and Darrell Pricer the sum of \$10,000.00 (which includes costs now accrued and attorneys' fees), with interest thereon at the rate of 3.58% as provided by law, and any costs of action hereafter accruing.

Dated at Tulsa, Oklahoma, this 16th day of August, 1993.



Clerk of Court

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

3. The Plaintiffs, Suzanne Laufer and Wilson Laufer, filed this action alleging negligence and products liability theories. Suzanne Laufer is claiming substantial loss of consortium damage due to the additional and numerous obligations of her that were required after the injury to Wilson Laufer (see attached affidavit marked as Exhibit "A"). Wilson Laufer was claiming damages for medical expenses and pain and suffering.

4. Mr. Wilson Laufer's spouse, Suzanne Laufer, filed an intestate probate action, following his death. Suzanne Laufer was appointed Personal Representative on August 5, 1993 by the Tulsa County District Court Judge in Case no. P 93-558 (see attached Order marked as Exhibit "B"). Suzanne Laufer has full authority by law to settle this lawsuit individually and as Personal Representative of the Estate of Wilson Laufer.

5. The Plaintiffs and the Defendant Electric Mobility have entered into a Settlement Agreement whereby the Defendant has agreed to pay the total sum of \$30,000.00, and Suzanne Laufer has agreed to execute a full release on behalf of herself individually and on behalf of the Estate of Wilson Laufer. The release is a release of any and all claims that may exist now, or in the future, against the Defendant, whether known or unknown. Suzanne Laufer, on behalf of both parties, has also agreed to Dismissal With Prejudice of all claims against the Defendant.

6. The proceeds of the settlement of \$30,000.00 are such that, after the deduction of attorneys' fees and expenses, the remainder to be paid to both Suzanne Laufer, individually, and Suzanne Laufer as Personal Representative of the estate of Wilson Laufer, is \$12,292.91.

7. Due to the relatively minor nature of the physical injury to Wilson Laufer, and due to the great loss of consortium on the part of Suzanne Laufer (see Exhibit "A" affidavit of Suzanne Laufer, attached), by agreement of all the parties, the Court orders that the division of the remainder of the settlement proceeds be as follows:

- 1) Suzanne Laufer, individually: \$11,192.91;
- 2) Estate of Wilson Laufer, by Suzanne Laufer as Personal Representative: \$1,100.00

8. The compromise settlement of the disputed claim between the Defendant and the Plaintiffs in this action is in no way to be construed as an admission of liability by the Defendant.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the division of the remainder of the settlement proceeds be such that Suzanne Laufer, individually, is entitled to \$11,192.91 of the \$12,292.91 net proceeds; that the Estate of Wilson Laufer by Suzanne Laufer as Personal Representative is entitled to \$1,100.00 of the net proceeds; that this case be Dismissed With Prejudice upon exchange of the proceeds for an executed release of claims by all Plaintiffs.

ENTERED this 13th day of August, 1993.

/S/ JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

United States Magistrate Judge

Approved as to form:

Suzanne Laufer
Suzanne Laufer, individually, Plaintiff

Suzanne Laufer
Suzanne Laufer, as Personal Representative
of the Estate of Wilson Laufer, deceased, Plaintiff

Richard A. Pizzo
R. Reid Young OBA # 11964
Richard A. Pizzo
Attorneys for Suzanne Laufer, individually, Plaintiff

Thomas M. Bingham
Thomas M. Bingham OBA # 796
Attorney for the Estate of
Wilson Laufer, deceased Plaintiff

William Perrine
William Perrine OBA # 11955
Benton Wheatley OBA # 14836
Rhodes, Hieronymus, Jones, Tucker & Gable
Attorneys for Electric Mobility, Defendant

EXHIBIT "A"

AFFIDAVIT

I, Suzanne Laufer, of legal age and sound mind, do hereby depose and state:

1. That I am the surviving spouse of Wilson Laufer, deceased.

2. That I am the Personal Representative of the Estate of Wilson Laufer.

3. That I approved the settlement of Wilson Laufer's claim and my personal claim against Electric Mobility Corporation for \$30,000.00.

4. That after Wilson Laufer was injured in July of 1991 by the "Rascal" wheelchair manufactured by Electric Mobility Corporation, I was required to spend an extraordinary amount of time caring for my husband, Wilson Laufer.

5. Wilson Laufer could not do the normal things he had done prior to the injury with the "Rascal" in July of 1991. His left wrist was not functional after the injury, due to the poor circulation in his wrist from arthritis.

6. His right wrist and hand were not usable prior to the "Rascal" incident in July of 1991, due to serious damage to them from an arthritic condition. Thus, the additional loss of the use of his left wrist as a result of the incident of July 1991 was especially debilitating, leaving him without use of both hands.

7. Wilson Laufer needed my constant and full attention to take care of his essential bodily functions, as well as

EXHIBIT "B"

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED
AUG - 5 1993
SALLY HOWE SMITH, COURT CLERK
STATE OF OKLAHOMA-TULSA COUNTY

In the Matter of)
the Estate of:)
WILSON E. LAUFER,)
Deceased.)

Case No. P-93-558

LETTERS OF ADMINISTRATION

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Suzanne L. Laufer is hereby appointed personal representative of the estate of Wilson E. Laufer, deceased.

WITNESS the undersigned Judge of the District Court for Tulsa County, State of Oklahoma, this 5th day of August, 1993.

EDWARD J. HICKS

JUDGE

I, Sally Howe Smith, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears on record in the Court Clerk's Office of Tulsa County, Oklahoma, this

OATH

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

AUG - 5 1993

By [Signature]
Deputy

I, Suzanne L. Laufer, do solemnly swear that I will perform according to law, and to the best of my ability, the duties of personal representative of the estate of Wilson E. Laufer, deceased, so help me God.

[Signature]
Suzanne L. Laufer

Subscribed and sworn to before me, this 5th day of August, 1993.

EDWARD J. HICKS

JUDGE

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

DONALD NEWMAN,)
)
 Plaintiff,)
)
 v.)
)
 STAR MOTORCARS, INC., an)
 Oklahoma corporation; ROBERT)
 CLARK; and the UNITED STATES)
 OF AMERICA,)
)
 Defendants.)

Case No. 93-C-298-B

FILED

AUG 13 1993

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

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

NOW on this 13 day of Aug., 1993, there comes on for hearing before me, the undersigned Judge of the above-entitled Court, the application of the Plaintiff and Defendants Star Motorcars, Inc. and Robert Clark for entry of an agreed order granting partial summary judgment.

WHEREUPON, after having examined the file and pleadings therein, and being fully advised in the premises, the court finds that said motion is well taken and should be and the same is hereby granted. The Court further finds as follows:

1. All of the material allegations of Plaintiff's Petition on file herein (this case having been originally filed in the District Court in and for Tulsa County, State of Oklahoma, and thereafter having been moved to this Court) are true and correct, except that this Court does not hereby make any determination with reference to the priority of Plaintiff's security interest and the lien claims of the United States of America ("IRS").

2. There is due and owing Plaintiff from the Defendants Star Motor Cars, Inc. ("Star") and Robert Clark ("Clark") the sum of \$492,600, together with interest accruing thereon from and after June 30, 1992, at the rate of 18% per annum until paid.

3. The sums due and owing Plaintiff are secured by a security interest in and to that certain collateral (the "Collateral") which is more fully described as follows, to wit:

All of Star Motorcars' accounts receivable, accounts, general intangibles, contracts, contract rights, inventory, equipment, machinery, furniture and fixtures, whether now owned or hereafter acquired by Debtor, together with all additions thereto, substitutions therefore and proceeds thereof, it being the intent of the foregoing that Secured Party has and shall have a security interest under the Oklahoma Uniform Commercial Code in and to all assets and property, of whatsoever nature, now owned or hereafter acquired by Debtor, together with all proceeds thereof, whether or not such property is included within the foregoing description; and certain automobiles described as follows:

- (a) 1991 Honda SE, VIN: JHM CB7682MC017723
- (b) 1988 Mercedes-Benz 190E, VIN: 0A2806JF417900
- (c) 1987 Mercedes-Benz 300E, VIN: EA3009NA558313
- (d) 1990 Acura, VIN: JH4KA3278LC013145
- (e) 1991 BMW, VIN: WBAHD6319MBJ61324.

Plaintiff's security interest in and to the Collateral is prior and superior to any right, title or interest therein asserted by Star or Clark.

4. The only question remaining to be litigated in this action is the priority of the perfected security interest of Plaintiff in and to the Collateral vis-a-vis the claim of the IRS. Said priority question is hereby expressly reserved for future

determination by the Court upon appropriate motion or proof as may be proper.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff have and recover judgment, in personam, against the Defendant Star, and in rem only against the Defendant Clark, in the sum of \$492,600, together with interest accruing thereon from and after June 30, 1992, at the rate of 18% per annum until paid, together with all of Plaintiff's costs incurred herein, whether accrued or accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff has a perfected security interest in and to all of the Collateral, and the Defendants Star and Clark shall be hereafter barred and enjoined from asserting, claiming, or exercising any right, title or interest in and to the Collateral.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that entry of this order resolves all pending issues between the parties save and except the issue of the priority of the claims of Plaintiff and the IRS in and to the Collateral, which priority issue shall be determined by the Court at some future date upon proper motion or proof.

S/ THOMAS R. BRETT,

THOMAS R. BRETT, UNITED STATES DISTRICT
JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs.-)	CASE NO. 92-C-441 B
)	
TOM E. CADDELL;)	
PAMELA L. CADDELL;)	
THE STATE OF OKLAHOMA, <u>ex rel.</u>)	
OKLAHOMA TAX COMMISSION;)	
CITY OF SAND SPRINGS, OKLAHOMA,)	
a municipal corporation;)	
COUNTY TREASURER,)	
Tulsa County, Oklahoma; and)	
BOARD OF COUNTY COMMISSIONERS,)	
Tulsa County, Oklahoma;)	
)	
Defendants.)	

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 12th day of Aug., 1993. The plaintiff appears by F. L. Dunn, III, United States Attorney for the Northern District of Oklahoma, through Mikel K. Anderson, Special Assistant United States Attorney; the defendant, Tom E. Caddell, appears not, but makes default; the defendant, Pamela L. Caddell, appears not, but makes default; the defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission appears by Kim D. Ashley, Assistant General Counsel; the defendant, City of Sand Springs, Oklahoma, appears by Ronald D. Cates, City Attorney; and the defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney.

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

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

1. (a) The defendant, **Tom E. Caddell**, was served a copy of the summons and complaint by certified mail, restricted delivery, return receipt requested on May 21, 1992, but has failed to appear and is in default;

(b) the defendant, **Pamela L. Caddell**, was served a copy of the summons and complaint by certified mail, restricted delivery, return receipt requested on May 21, 1992, but has failed to appear and is in default;

(c) The defendant, **City of Sand Springs, Oklahoma**, acknowledged receipt of a copy of the summons and complaint on April 12, 1993, and through its City Attorney contacted to plaintiff and reported that it claimed no interest in the Property. In lieu of a filed disclaimer or an entry of default, such defendant has agreed to the form of this judgment as evidenced by subscription.

(d) All other defendants, namely **The State of Oklahoma, ex rel., Oklahoma Tax Commission; County Treasurer, Tulsa County, Oklahoma; and Board of County Commissioners, Tulsa County, Oklahoma**, have filed timely answers in this action and have approved the form of this judgment as evidenced by their subscription.

2. This Court has jurisdiction according to 28 U.S.C. Section 1345 because the United States is the plaintiff; and venue is proper because this lawsuit is based upon a note

which was secured by a mortgage covering land located within the Northern Judicial District of Oklahoma.

3. On October 31, 1986, the defendants, Tom E. Caddell and Pamela L. Caddell, husband and wife, executed and delivered to First Security Mortgage Company a note in the amount of \$68,411.00, payable in monthly installments, with interest thereon at the rate of nine and one-half (9.5%) percent per annum.

4. As security for the payment of such note the defendants, Tom E. Caddell and Pamela L. Caddell, executed and delivered to First Security Mortgage Company a mortgage covering the following described property:

Lot One (1), Block Two (2), AMENDED CEDAR VIEW ACRES, an addition to the City of Sand Springs, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

Such tract is referred to below as "the Property." This mortgage was dated October 31, 1986, and was recorded with the Tulsa County Clerk November 10, 1986, in book 4981 at page 1467.

5. a) On March 23, 1987, First Security Mortgage Company assigned such promissory note and the mortgage securing it to Mortgage Clearing Corporation by an assignment recorded with the Tulsa County Clerk April 2, 1987, in book 5012 at page 1563.

b) On July 27, 1989, Mortgage Clearing Corporation 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 July 31, 1989, in book 5197 at page 2678 and re-recorded October 3, 1989, in book 5211 at page 1011.

6. On August 1, 1989, the defendants, Tom E. Caddell and Pamela L. Caddell, husband and wife, 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. A superseding agreement was reached between these same parties on September 1, 1990.

7. The defendants, Tom E. Caddell and Pamela L. Caddell, have defaulted under the terms of the note, mortgage and forbearance agreements due to their failure to pay installments when due. Because of such default the defendants, Tom E. Caddell and Pamela L. Caddell, are indebted to the plaintiff in the amount of \$96,395.31, plus interest at the rate of nine and one-half (9.5%) percent per annum from June 1, 1993, 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 \$315.00 for abstracting and \$8.00 for recording the Notice of Lis Pendens.

8. The defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission has a lien on the Property by virtue of tax warrant number ITI8901472500 dated August 24, 1989 and filed

August 30, 1989, in the amount of \$3,159.75, plus penalties and interest.

9. The defendant, City of Sand Springs, 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 AMENDED CEDAR VIEW ACRES addition.

10. The defendant, County Treasurer, Tulsa County, Oklahoma, and the defendant, Board of County Commissioners, Tulsa County Commissioners have no right, title or interest in or to the Property.

11. 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 mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED that the plaintiff have and recover judgment against the defendants, Tom E. Caddell and Pamela L. Caddell, in the principal sum of \$96,395.31, plus interest at the rate of nine and one-half (9.5%) percent per annum from June 1, 1993, until judgment, plus interest thereafter at the legal rate until paid, plus the costs of this action in the amount of \$323.00, 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 \$3,159.75, plus penalties and interest.

IT IS FURTHER ORDERED that the defendant, City of Sand Springs, 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 AMENDED CEDAR VIEW ACRES addition.

IT IS FURTHER ORDERED that the defendants, Tulsa County Treasurer; and Board of Tulsa County Commissioners have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of the defendants, Tom E. Caddell and Pamela L. Caddell, to satisfy the money judgment of the plaintiff, 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 the plaintiff's election with or without appraisalment 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.

Fourth:

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 Property, under and by virtue of this judgment and decree, all of the defendants and all persons claiming under them are forever barred and foreclosed of any right, title, interest or claim in or to the Property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

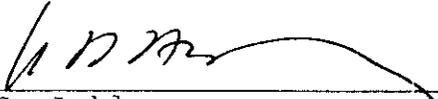
Judgment of Foreclosure
USA v. Caddell
Civil Action No. 92-C-441 B

APPROVED:

F. L. DUNN, III
United States Attorney



Mikel K. Anderson
Special Assistant United States Attorney
U.S. Dept. of Housing & Urban Development
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



Kim D. Ashley
Assistant General Counsel
Attorney for defendant
State of Oklahoma, ex rel
Oklahoma Tax Commission

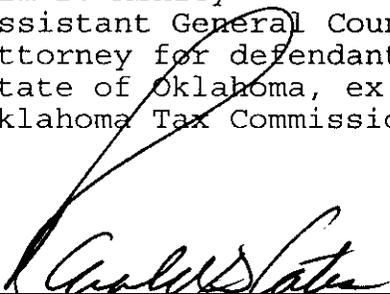
Ronald D. Cates
City Attorney for defendant
City of Sand Springs, Oklahoma
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525 S. Main
Tulsa, OK 74103

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

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State of Oklahoma, ex rel
Oklahoma Tax Commission



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City of Sand Springs, Oklahoma
Suite 680, ParkCentre
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Tulsa, OK 74103

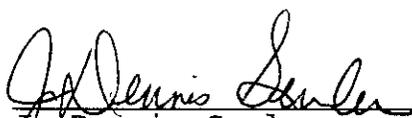
J. Dennis Semler
Assistant District Attorney
Attorney for defendants
Tulsa County Treasurer and
Board of Tulsa County Commissioners

F. L. DUNN, III
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Mikel K. Anderson
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Oklahoma Tax Commission

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Tulsa, OK 74103



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

ENTERED ON DOCKET
AUG 13 1993

DATE

FILED

AUG 12 1993

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

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

PAMELA GAIL KEY, an)
individual)
)
Plaintiff,)
)
vs.)
)
DILLON FAMILY & YOUTH)
SERVICES, d/b/a SHADOW)
MOUNTAIN INSTITUTE,)
a corporation,)
)
Defendant.)

Case No. 92-C-182-B

ORDER APPROVING JOINT STIPULATION
OF DISMISSAL WITH PREJUDICE

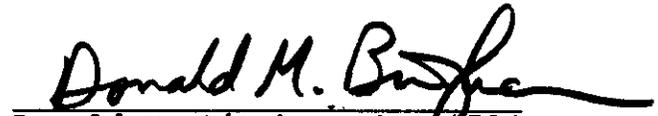
NOW, on this 12th day of August, 1993, the Court considers the Joint Stipulation of Dismissal with Prejudice filed by the parties, and finds that there is good cause to approve said Stipulation. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Joint Stipulation of Dismissal with Prejudice should be, the same hereby is, approved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the instant action in its entirety, including all collateral proceedings, should be, and hereby is, dismissed with prejudice.


Thomas R. Brett, United States
District Court Judge

APPROVED AS TO FORM AND CONTENT:


Thomas L. Bright, OBA #1131
7030 South Yale, Suite 408
Tulsa, Oklahoma 74136
(918) 492-0008
ATTORNEY FOR PLAINTIFF


Donald M. Bingham, OBA #794
502 West Sixth Street
Tulsa, Oklahoma 74119
(918) 587-3161
ATTORNEY FOR DEFENDANT

104

ROUTE TO: 412
08/04/93

DOC#: 25212
24370-2

ENTERED ON DOCKET
DATE AUG 13 1993

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 13 1993

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

GARY McKEE, Individually; HOLLY
McKEE, Individually; SHAKETHA
McKEE, a minor, by and through her
Parents and Next Friends, GARY
McKEE and HOLLY McKEE; GARY McKEE
and HOLLY McKEE, surviving Parents
and next of kin of KACEE McKEE, a
deceased minor, and GEORGE SHARP,
Individually,

PLAINTIFFS,

v.

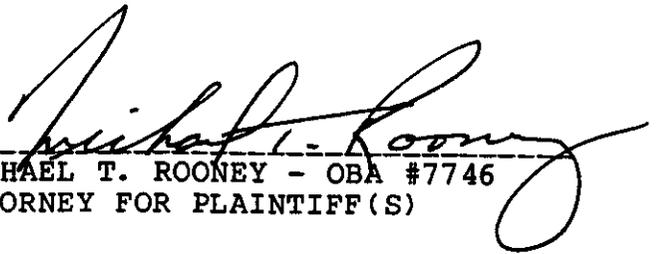
BRASS-CRAFT MANUFACTURING COMPANY,
a Michigan corporation; AMERICAN
GAS ASSOCIATION, a Delaware corpo-
ration; and GAS APPLIANCE MANUFAC-
TURERS ASSOCIATION, an Illinois
non-profit corporation,

DEFENDANTS.

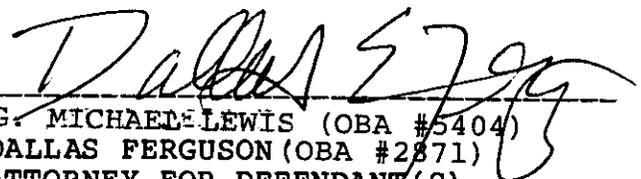
CASE NO. 93-C-0040E

STIPULATION OF DISMISSAL

COME NOW the Parties, through their respective counsel,
pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure,
and stipulate to the dismissal of the above-styled and numbered action
in its entirety, with prejudice, with each party to bear its own
costs.


MICHAEL T. ROONEY - OBA #7746
ATTORNEY FOR PLAINTIFF(S)


ARTHUR SCHMIDT - OBA #7960
STEPHEN M. MORRIS - OBA #10909
ATTORNEYS FOR DEFENDANT
BRASS-CRAFT MANUFACTURING CO.


G. MICHAEL LEWIS (OBA #5404)
DALLAS FERGUSON (OBA #2871)
ATTORNEY FOR DEFENDANT(S)
AMERICAN GAS ASSOCIATION


PHIL R. RICHARDS
RICHARD E. WARZYNSKI
ATTORNEYS FOR DEFENDANT(S)
GAS APPLIANCE MANUFACTURERS ASSOC.

DATE AUG 12 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 THE UNKNOWN HEIRS, EXECUTORS,)
 ADMINISTRATORS, DEVISEES,)
 TRUSTEES, SUCCESSORS AND ASSIGNS)
 OF BENJAMIN F. MCKINNEY, JR.)
 a/k/a BENJAMIN FRANKLIN MCKINNEY,)
 JR., Deceased; LAURA LEONA)
 MCKINNEY; DANIELLE ELAINE)
 MCKINNEY; DAVID LEE MCKINNEY;)
 JOHN ROSS MCKINNEY; STATE OF)
 OKLAHOMA ex rel. OKLAHOMA TAX)
 COMMISSION; COUNTY TREASURER,)
 Osage County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Osage County, Oklahoma,)
)
 Defendants.)

FILED

AUG 18 1993

[Handwritten signature]

CIVIL ACTION NO. 92-C-381-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 12th day
 of August, 1993. The Plaintiff appears by F. L. Dunn,
 III, United States Attorney for the Northern District of
 Oklahoma, through Wyn Dee Baker, Assistant United States
 Attorney; the Defendants, County Treasurer, Osage County,
 Oklahoma, and Board of County Commissioners, Osage County,
 Oklahoma, appear by John S. Boggs, Jr., Assistant District
 Attorney, Osage County, Oklahoma; the Defendant, State of
 Oklahoma ex rel. Oklahoma Tax Commission, appears not, having
 previously filed its Disclaimer; and the Defendants, The Unknown
 Heirs, Executors, Administrators, Devisees, Trustees, Successors
 and Assigns of Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin
 McKinney, Jr., Deceased; Laura Leona McKinney; Danielle Elaine

NOTE: THIS DOCUMENT IS NOT TO BE FILED IN THE PUBLIC RECORDS AND
 PRO SE LITIGANTS IMMEDIATELY
 UPON RECEIPT.

McKinney; David Lee McKinney; and John Ross McKinney, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Laura Leona McKinney, was served with Summons and Complaint on June 23, 1992; that the Defendant, Danielle Elaine McKinney, was served with Summons and Complaint on June 23, 1992, through her guardian ad litem, Laura Leona McKinney; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on May 7, 1992; that the Defendant, County Treasurer, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on May 7, 1992; and that the Defendant, Board of County Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on May 7, 1992.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr., Deceased; David Lee McKinney; and John Ross McKinney, were served by publishing notice of this action in the Pawhuska Journal-Capital, a newspaper of general circulation in Osage County, Oklahoma, once a week for six (6) consecutive weeks beginning February 27, 1993, and continuing through April 3, 1993, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts

of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr., Deceased; David Lee McKinney; and John Ross McKinney, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr., Deceased; David Lee McKinney; and John Ross McKinney. 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, F. L. Dunn, III, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the 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, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer on May 8, 1992; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Disclaimer on June 3, 1992; and that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr., Deceased; Laura Leona McKinney; Danielle Elaine McKinney; David Lee McKinney; and John Ross McKinney, 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 Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

The West Seventy (70) feet of Lots Seven (7) and Eight (8), in Block Twenty (20) in the Original Townsite of Fairfax, Osage County, State of Oklahoma, according to the Official Plat thereof.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr. and of judicially determining the heirs of Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr.

The Court further finds that Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr. (hereinafter referred to by either of these names) became the record owner of the real property involved in this action by virtue of that certain Warranty Deed dated June 30, 1983, from the Administrator of Veterans Affairs to Benjamin F. McKinney, Jr., a single person, which Warranty Deed was filed of record on July 5, 1983, in Book 0638, Page 361, in the records of the County Clerk of Osage County, Oklahoma.

The Court further finds that Benjamin Franklin McKinney, Jr. died on February 12, 1991, while seized and possessed of the real property being foreclosed. The Certificate of Death issued by the Oklahoma State Department of Health certifying Benjamin Franklin McKinney, Jr.'s death was attached as Exhibit "A" of Plaintiff's Complaint.

The Court further finds that on July 1, 1983, Benjamin F. McKinney, Jr., now deceased, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$29,200.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Benjamin F. McKinney, Jr., now deceased, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a real

estate mortgage dated July 1, 1983, covering the above-described property, situated in the State of Oklahoma, Osage County.

The Court further finds that on May 8, 1992, Laura Leona McKinney was appointed guardian ad litem of Danielle Elaine McKinney for the purpose of acting on her behalf in the subject foreclosure action.

The Court further finds that Benjamin F. McKinney, Jr., now deceased, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, and that by reason thereof Plaintiff alleges that there is now due and owing under the note and mortgage, after full credit for all payments made, the principal sum of \$27,897.39, plus interest at the rate of 11.5 percent per annum from January 1, 1991 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$258.85 (\$6.00 fees for service of Summons and Complaint, \$244.85 publication fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that Plaintiff is entitled to a judicial determination of the death of Benjamin Franklin McKinney, Jr. and to a judicial determination of the heirs of Benjamin Franklin McKinney, Jr.

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

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees,

Successors and Assigns of Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr., Deceased; Laura Leona McKinney; Danielle Elaine McKinney; David Lee McKinney; and John Ross McKinney, are in default and have no right, title, or interest in the subject real property.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, claim no right, title or interest in the subject real property since all taxes on the subject property have been paid.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Veterans Affairs, have and recover judgment in rem against all named and unnamed Defendants in the principal sum of \$27,897.39, plus interest at the rate of 11.5 percent per annum from January 1, 1991 until judgment, plus interest thereafter at the current legal rate of 3.58% percent per annum until paid, plus the costs of this action in the amount of \$258.85 (\$6.00 fees for service of Summons and Complaint, \$244.85 publication fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the death of Benjamin Franklin McKinney, Jr. be and the same is hereby judicially determined to have occurred on February 12, 1991, in the City of Fairfax, County of Osage, State of Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the only known heirs of Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr. are Laura Leona McKinney, Danielle Elaine McKinney, David Lee McKinney, and John Ross McKinney, and that despite the exercise of due diligence by Plaintiff and its counsel no other known heirs of Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr., Deceased, have been discovered and it is hereby judicially determined that Laura Leona McKinney, Danielle Elaine McKinney, David Lee McKinney, and John Ross McKinney are the only known heirs of Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr., Deceased, and that Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr., Deceased, has no other known heirs, executors, administrators, devisees, trustees, successors and assigns, and that the Court approves the Certificate of Publication and Mailing filed by Plaintiff regarding said heirs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Benjamin F. McKinney, Jr. a/k/a Benjamin Franklin McKinney, Jr., Deceased; Laura Leona McKinney; Danielle Elaine McKinney; David Lee McKinney; John Ross McKinney; State of Oklahoma ex rel. Oklahoma Tax Commission; and County Treasurer and Board of County Commissioners, Osage 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 named and unnamed Defendants to satisfy the in rem

judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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


UNITED STATES DISTRICT JUDGE

APPROVED:

F. L. DUNN, III
United States Attorney

Wyn Dee Baker

WYN DEE BAKER, OBA #465
Assistant United States Attorney
3900 U.S. Courthouse
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John S. Boggs

JOHN S. BOGGS, OBA #0920
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Osage County Courthouse
Pawhuska, Oklahoma 74056
(918) 287-1510
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Osage County, Oklahoma

Judgment of Foreclosure
Civil Action No. 92-C-381-E

WDB/css

ENTERED ON DOCKET

DATE ~~AUG 12 1993~~

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLES WILKENS a/k/a CHARLES)
 JUNIOR WILKENS; RUBY J. WILKENS)
 a/k/a RUBI JANETTE WILKENS;)
 COMMERCIAL CREDIT PLAN)
 INCORPORATED; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

FILED

AUG 11 1993

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

CIVIL ACTION NO. 92-C-326-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 11 day
of Aug., 1993. The Plaintiff appears by F.L. Dunn,
III, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, and Board of County
Commissioners, Tulsa County, Oklahoma, appear not, having
previously filed an Answer claiming no right, title or interest
in the subject property; the Defendants, Charles Wilkens a/k/a
Charles Junior Wilkens and Ruby J. Wilkens a/k/a Rubi Janette
Wilkens, appear by their attorney, Sheldon E. Morton; and the
Defendant, Commercial Credit Plan Incorporated, appears not, but
makes default.

The Court being fully advised and having examined the
court file finds that the Defendants, Charles Wilkens a/k/a
Charles Junior Wilkens and Ruby J. Wilkens a/k/a Rubi Janette
Wilkens, acknowledged receipt of Summons and Complaint on

April 30, 1992; that the Defendant, Commercial Credit Plan Incorporated, was served with Summons and Complaint on September 11, 1992; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 23, 1992; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 23, 1992.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on May 14, 1992; that the Defendants, Charles Wilkens a/k/a Charles Junior Wilkens and Ruby J. Wilkens a/k/a Rubi Janette Wilkens, filed their Answer on April 30, 1992; and that the Defendant, Commercial Credit Plan Incorporated, has failed to answer and its default has therefore been entered by the Clerk of this Court.

The Court further finds that on September 28, 1990, Charles Junior Wilkens and Rubi Janette Wilkens filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-02876-C. On January 14, 1991, a Discharge of Debtor was entered releasing debtors from all dischargeable debts. On March 13, 1991, Bankruptcy Case No. 90-02876-C, United States Bankruptcy Court, Northern District of Oklahoma, was closed.

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

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

Lot Thirty (30), Block Seven (7), MEADOW VALLEY, an Addition to the City of Sand Springs, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on June 13, 1978, Charles Wilkens and Ruby J. Wilkens executed and delivered to Midland Mortgage Co. their mortgage note in the amount of \$33,650.00, payable in monthly installments, with interest thereon at the rate of 9.00 percent per annum.

The Court further finds that as security for the payment of the above-described note, Charles Wilkens and Ruby J. Wilkens executed and delivered to Midland Mortgage Co. a real estate mortgage dated June 13, 1978, covering the above-described property. Said mortgage was recorded on June 19, 1978, in Book 4335, Page 668, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 1, 1978, Midland Mortgage Co. assigned the above-described mortgage to Federal National Mortgage Association. This Assignment of Mortgage of Real Estate was recorded on September 18, 1978, in Book 4353, Page 1755, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 15, 1991, Federal National Mortgage Association assigned the above-described mortgage to the Secretary of Veterans Affairs. This Assignment of Mortgage of Real Estate was recorded on March 28, 1991, in Book 5311, Page 1801, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Charles Wilkens a/k/a Charles Junior Wilkens and Ruby J. Wilkens a/k/a Rubi Janette Wilkens, 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, Charles Wilkens a/k/a Charles Junior Wilkens and Ruby J. Wilkens a/k/a Rubi Janette Wilkens, are indebted to the Plaintiff in the principal sum of \$34,329.15, plus interest at the rate of 9.00 percent per annum from January 1, 1991 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$6.12 for service of Summons and Complaint.

The Court further finds that the Defendant, Commercial Credit Plan Incorporated, is in default and therefore has no right, title or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Charles Wilkens a/k/a Charles Junior Wilkens and Ruby J. Wilkens a/k/a Rubi Janette Wilkens, in the principal sum of \$34,329.15, plus interest at the rate of 9.00 percent per annum from January 1, 1991 until judgment, plus interest thereafter at the current legal rate of 3.58 percent per annum until paid, plus

the costs of this action in the amount of \$6.12 for service of Summons and Complaint, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Charles Wilkens a/k/a Charles Junior Wilkens and Ruby J. Wilkens a/k/a Rubi Janette Wilkens, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real 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.

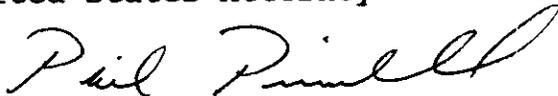
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

F.L. DUNN, III
United States Attorney



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

Judgment of Foreclosure
Civil Action No. 92-C-326-B

DATE ~~AUG 12 1993~~

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

FILED

AUG 18 1993 *pw*

KAREN WIDOWSKI,

Plaintiff,

-vs-

GREENWOOD FISHING CENTER, INC.,

Defendant.

No. 93-C-0070E

ORDER

NOW, on this 12th day of August, 1993, there came on for consideration by the Court the Plaintiff's Dismissal With Prejudice. The Court, being fully advised in the premises FINDS AND ORDERS that this matter is dismissed with prejudice.

James D. ...
UNITED STATES DISTRICT JUDGE

JMT/WIDOWSKI

22

DATE AUG 12 1993

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

REBECCA FINLEY,

Plaintiff,

v.

WESTBROOKE HOSPITALITY
CORPORATION, d/b/a
HOLIDAY INN IN TEMPLE,
TEXAS, and HOLIDAY INNS,
INC.,

Defendants.

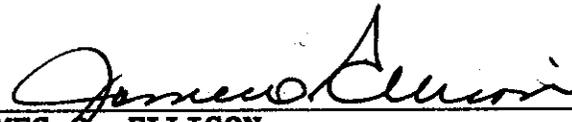
No. 93-C-537-E

FILED

AUG 12 1993

ORDER OF DISMISSAL

NOW ON this 12th day of August, 1993, pursuant to
Stipulation of Dismissal With Prejudice filed herein and approved by
counsel for all parties, the above captioned matter is hereby
dismissed with prejudice pursuant to Federal Rule of Civil
Procedure 41(A).



JAMES O. ELLISON
Judge of the United States District
Court

DATE 8-12-93

blc

OBA #5026

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

TIMOTHY MARCUS FRISBIE, VICKIE)
DIANNE FRISBIE, and MYRA JEAN)
FRISBIE, by and through her)
mother and next friend, VICKIE)
DIANNE FRISBIE,)

Plaintiffs,)

-vs-)

PEGGY J. JONES, O'JONES TRUCKING)
INC., a Missouri corporation, THE)
INTEGRAL INSURANCE COMPANY, and)
FARMERS INSURANCE COMPANY, INC.,)

Defendants.)

FILED
AUG 12 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

No. 92-C-1190 E

STIPULATION OF DISMISSAL

COMES NOW the defendant, Peggy J. Jones, O'Jones Trucking, Inc., and The Integral Insurance Company and the plaintiff, Timothy Marcus Frisbie, and pursuant to Federal Rule of Civil Procedure 41 stipulate that the Cross-Petition of Peggy J. Jones, O'Jones Trucking, Inc., and Integral Insurance Company, for contribution against Timothy Marcus Frisbie is dismissed with prejudice.

Respectfully submitted,

KNOWLES, KING & SMITH

By *Dennis King*
DENNIS KING - OBA # 5026
Attorney for Defendants,
Peggy Jones, O'Jones Trucking,
Inc., and Integral Insurance
Company

603 Expressway Tower
2431 East 51 Street
Tulsa, OK 74105
(918) 749-5566

WILBURN, MASTERSON & SMILING

By *Michael J. Masterson*

MICHAEL J. MASTERSON - OBA # 5769
Attorney for Plaintiff,
Timothy Marcus Frisbie

7134 South Yale
Suite 560
Tulsa, OK 74136-6337
(918) 494-0414

CERTIFICATE OF MAILING

^{AVS} I, DENNIS KING, hereby certify that on the 5th day of ~~July~~, 1993, I mailed a true and correct copy of the above and foregoing instrument with proper postage thereon fully prepaid to:

Mr. Charles W. Chestnut
Attorney at Law
34 First Avenue, N.E.
Miami, OK 74354

Mr. John P. Scott
601 South Boulder
Suite 1100
Tulsa, OK 74119-1333

Mr. Eugene Robinson
Attorney at Law
P. O. Box 2619
Tulsa, OK 74101-2619

Dennis King
DENNIS KING

ENTERED ON DOCKET

DATE 8-12-93

FILED

AUG 23 1993

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs.-)
)
 WHITAKER ALLEN III;)
)
 KIMBERLY A. CAZENAVE ALLEN;)
)
 COUNTY TREASURER,)
)
 Tulsa County, Oklahoma; and)
)
 BOARD OF COUNTY COMMISSIONERS,)
)
 Tulsa County, Oklahoma;)
)
 Defendants.)

CASE NO. 93-C-563E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 12 day of August, 1993. The plaintiff appears by F. L. Dunn, III, United States Attorney for the Northern District of Oklahoma, through Mikel K. Anderson, Special Assistant United States Attorney; the defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; the defendant, Whitaker Allen III, appears not, but makes default; and the defendant, Kimberly A. Cazenave Allen, appears not, but makes default.

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

1. (a) The defendant, **Whitaker Allen III**, acknowledged receipt of summons and complaint on June 25, 1993, but has failed to otherwise appear and is now in default;

(b) the defendant, **Kimberly A. Cazenave Allen**, acknowledged receipt of summons and complaint on June 25, 1993, but has failed to otherwise appear and is now in default;

(c) All other defendants, namely **County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma**, have filed timely answers in this action and have approved the form of this judgment as evidenced by their attorney's subscription.

2. This court has jurisdiction according to 28 U.S.C. Section 1345 because the United States is the plaintiff; and venue is proper because this lawsuit is based upon a note which was secured by a mortgage covering land located within the Northern Judicial District of Oklahoma.

3. On April 27, 1984, the defendants, **Whitaker Allen III**, an unmarried person, and **Kimberly A. Cazenave**, an unmarried person, executed and delivered to **Turner Corporation of Oklahoma, Inc.**, a mortgage note in the amount of \$34,670.00, payable in monthly installments, with interest thereon at the rate of thirteen (13%) percent per annum.

4. As security for the payment of the above described mortgage note, the defendants, **Whitaker Allen III**, an unmarried person, and **Kimberly A. Cazenave**, an unmarried person, executed and delivered to **Turner Corporation of Oklahoma, Inc.**, a mortgage dated April 27, 1984, covering the following described property:

A tract of land situated in the Southeast Quarter of the Northeast Quarter (SE/4 NE/4) of Section 18, Township 20 North, Range 13 East, Tulsa County, Oklahoma, being more particularly described as follows: Beginning at a point which lies 986.5' North and 308' West of the SE corner of the SE/4 NE/4; thence Northerly and parallel to the East line of the SE/4 NE/4 a distance of 165'; thence Westerly and parallel to the south line of the SE/4 NE/4 a distance of 135'; thence Southerly and parallel to the East line of the SE/4 NE/4 a distance of 163.5'; thence Easterly and parallel to the South line of the SE/4 NE/4 a distance of 135' to the point of beginning, and a 50' easement for utility purposes and roadway purposes, in the following described property: Beginning at a point 936.5' North of the SE corner of the SE/4 NE/4 of Section 18, Township 20 North, Range 13 East, thence West 443'; thence North 50'; thence South 50' to the point and place of beginning.

Such tract is referred to below as "the Property." This mortgage was recorded with the Tulsa County Clerk April 30, 1984, in book 4786 at page 727. The mortgage tax due thereon was paid

5. On December 27, 1988, Turner Corporation of Oklahoma, Inc. assigned the mortgage note and the mortgage securing it to The Secretary of Housing and Urban Development, its successors and assigns by an instrument recorded with the Tulsa County Clerk December 29, 1988, in book 5158 at page 1273.

6. On January 1, 1989, the defendants, Whitaker Allen III and Kimberly A. Cazenave Allen, husband and wife, 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.

7. The defendants, Whitaker Allen III and Kimberly A. Cazenave Allen, have defaulted under the terms of the note, mortgage and forbearance agreement due to their failure to pay installments when due. Because of such default, the defendants, Whitaker Allen III and Kimberly A. Cazenave Allen, are indebted to the plaintiff in the amount of \$53,898.83, plus interest at the rate of thirteen (13%) percent per annum from June 18, 1993, 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 \$220.00 for abstracting and \$8.00 for recording the Notice of Lis Pendens.

8. The defendant, County Treasurer, Tulsa County, Oklahoma, claims an interest in the Property by virtue of personal property taxes for: tax year 1991, indexed under number 91-03-4443540, in the amount of \$14.00; and tax year 1992, indexed under number 92-03-4481140, in the amount of \$10.00

9. The defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in or to the Property.

10. The defendant, Kimberly A. Cazenave Allen, is one and the same person as the Kimberly A. Cazenave who took title to the Property as a single person and subsequently married Whitaker Allen III and changed her name to Kimberly A. Allen. Any reference in this lawsuit to Kimberly A. Cazenave Allen shall be deemed a reference to such person.

11. 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 mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED that the plaintiff have and recover judgment against the defendants, Whitaker Allen III and Kimberly A. Cazenave Allen, in the principal sum of \$53,898.83, plus interest at the rate of thirteen (13%) percent per annum from June 18, 1993, until judgment, plus interest thereafter at the legal rate of _____ until paid, plus the costs of this action in the amount of \$228.00, 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 Property.

IT IS FURTHER ORDERED that the defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$24.00, plus penalties and interest.

IT IS FURTHER ORDERED that the defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in or to the Property.

IT IS FURTHER ORDERED that the defendant, Kimberly A. Cazenave Allen, is one and the same person as the Kimberly A. Cazenave who took title to the Property as a single person and subsequently married Whitaker Allen III and changed her name

to Kimberly A. Allen. Any reference in this lawsuit to Kimberly A. Cazenave Allen shall be deemed a reference to such person.

IT IS FURTHER ORDERED that upon the failure of the defendants, Whitaker Allen III and Kimberly A. Cazenave Allen, 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 the 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, County Treasurer, Tulsa County, Oklahoma.

Fourth:

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 Property, under and by virtue of this judgment and decree, all of the defendants and all persons claiming under them, be forever barred and foreclosed of any right, title, interest or claim in or to the Property or any part thereof.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

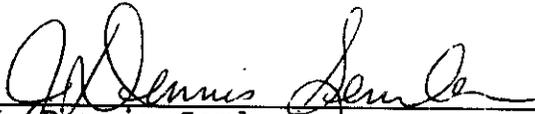
Judgment of Foreclosure
USA v. Whitaker Allen III, et al.
Civil Action No. 93-C-563E

APPROVED:

F. L. DUNN, III
United States Attorney



Mikel K. Anderson
Special Assistant United States Attorney
U.S. Dept. of Housing & Urban Development
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



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

ENTERED ON DOCKET

DATE 8-12-93

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 18 1993

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs.-)
)
 KHALIL ABBUS;)
 MATTIE D. ABBUS;)
 SOUTHMARK MORTGAGE CORPORATION)
 OF AMERICA;)
 COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma;)
)
 Defendants.)

CASE NO. 93-C-351E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 12 day of August, 1993. The plaintiff appears by F. L. Dunn, III, United States Attorney for the Northern District of Oklahoma, through Mikel K. Anderson, Special Assistant United States Attorney; the defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; the defendant, Khalil I. Abbas, appears not, but makes default; and the defendant, Mattie D. Abbas, appears not, but makes default. The defendant, Southmark Mortgage Corporation of America, now Nationsbanc Mortgage Corp., appears not having assigned its interest in and to the Property to the U.S. Secretary of Housing and Urban Development of Washington, D.C., his

successors and assigns, subsequent to the filing of the complaint herein.

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

1. (a) The defendant, **Khalil I. Abbas**, was personally served a summons and complaint on June 10, 1993, but has failed to otherwise appear and is now in default;

(b) the defendant, **Mattie D. Abbas**, was personally served a summons and complaint on June 10, 1993, but has failed to otherwise appear and is now in default;

(c) All other defendants, namely **County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma**, have filed timely answers in this action and have approved the form of this judgment as evidenced by their attorney's subscription.

(d) The defendant, Southmark Mortgage Corporation of America, now Nationsbanc Mortgage Corp., no longer holds an interest in or to the Property; is no longer a proper party defendant to this lawsuit, and should be dismissed.

2. This court has jurisdiction according to 28 U.S.C. Section 1345 because the United States is the plaintiff; and venue is proper because this lawsuit is based upon a note which was secured by a mortgage covering land located within the Northern Judicial District of Oklahoma.

3. On September 1, 1987, the defendants **Khalil I. Abbas** and **Mattie D. Abbas**, husband and wife, executed and delivered

to Commonwealth Mortgage Company of America, L.P., Limited Partnership, a mortgage note in the amount of \$53,924.00, payable in monthly installments, with interest thereon at the rate of Nine and One-half (9.5%) percent per annum.

4. As security for the payment of the above described mortgage note, the defendants Khalil I. Abbus and Mattie D. Abbus, husband and wife, executed and delivered to Commonwealth Mortgage Company of America, L.P., Limited Partnership, a mortgage dated September 1, 1987, covering the following described property:

Lot Five (5), Block Two (2), ELMDALE ADDITION to Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof,

Such tract is referred to below as "the Property." This mortgage was recorded with the Tulsa County Clerk September 4, 1987, in book 5049 at page 3098. The mortgage tax due thereon was paid

5. On September 16, 1988, Commonwealth Mortgage Company of America, L.P., assigned the mortgage note and the mortgage securing it to Southmark Mortgage Corporation of America, its successors and assigns by an instrument recorded with the Tulsa County Clerk on October 6, 1988, in book 5132 at page 2519.

6. On February 6, 1989, Southmark Mortgage Corp. of America, assigned the mortgage note and the mortgage securing it to The Secretary of Housing and Urban Development of Washington, D.C., its successors and assigns by an instrument

recorded with the Tulsa County Clerk February 10, 1989, in book 5166 at page 655. The defendant, Southmark Mortgage Corporation of America, was named as a defendant in this action to extinguish any right title or interest in and to the Property such defendant may have retained due to the failure of this assignment to comply with Oklahoma's corporate conveyancing statutes. Southmark Mortgage Corporation of America, now Nationsbanc Mortgage Corp., subsequently corrected this defective assignment by conveying all of their right, title and interest in and to the Property to the U.S. Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns, by an instrument recorded with the Tulsa County Clerk June 28, 1993, in book 5517 at page 169.

7. On January 1, 1990, the defendants, Khalil I. Abbas and Mattie D. Abbas, husband and wife, 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.

8. The defendants, Khalil I. Abbas and Mattie D. Abbas, have defaulted under the terms of the note, mortgage and forbearance agreement due to their failure to pay installments when due. Because of such default, the defendants, Khalil I. Abbas and Mattie D. Abbas, are indebted to the plaintiff in the amount of \$70,153.38, plus interest at the rate of nine and one-half (9.5%) percent per annum from April 19, 1993,

until the date of this judgment, plus interest thereafter at the legal rate of until fully paid; plus the costs of this action in the amount of \$200.00 for abstracting and \$8.00 for recording the Notice of Lis Pendens.

9. The defendant, County Treasurer, Tulsa County, Oklahoma, claims an interest in the Property by virtue of personal property taxes for tax years: 1991, in the amount of \$23.00; 1986, in the amount of \$3.00; and 1985, in the amount of \$3.00.

10. The defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in or to the Property.

11. 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 mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED that the plaintiff have and recover judgment against the defendants, Khalil I. Abbas and Mattie D. Abbas, in the principal sum of \$70,153.38, plus interest at the rate of nine and one-half (9.5%) percent per annum from April 16, 1993, until judgment, plus interest thereafter at the legal rate of 3.58 % until paid, plus the costs of this action in the amount of \$208.00, 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 Property.

IT IS FURTHER ORDERED that the defendant, Southmark Mortgage Corporation of America, now Nationsbanc Mortgage Corp., has no right, title or interest in the Property and is hereby dismissed as a party defendant.

IT IS FURTHER ORDERED that the defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$29.00, plus penalties and interest.

IT IS FURTHER ORDERED that the defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in or to the Property.

IT IS FURTHER ORDERED that upon the failure of the defendants, Khalil I. Abbas and Mattie D. Abbas, 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 the 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, County Treasurer, Tulsa County, Oklahoma.

Fourth:

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 Property, under and by virtue of this judgment and decree, all of the defendants and all persons claiming under them, be forever barred and foreclosed of any right, title, interest or claim in or to the Property or any part thereof.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Judgment of Foreclosure
USA v. Khalil I. Abbas, et al.
Civil Action No. 93-C-351E

APPROVED:

F. L. DUNN, III
United States Attorney



Mikel K. Anderson
Special Assistant United States Attorney
U.S. Dept. of Housing & Urban Development
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



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

DATE AUG 1 1993

FILED

AUG 11 1993

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

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

CATHIE LYNN ELSHEIMER)
)
 Plaintiff,)
)
 vs.)
)
 HOBART CORPORATION)
)
 Defendant)

Case No. CIV 92-C-560-B

ORDER

NOW on this 11th day of August, 1993, the Plaintiff's Motion to Dismiss comes on by motion and the Court finds as follows:

- 1) The Parties have settled the above captioned matter;
- 2) Monies have been disbursed to the Plaintiff and the Workers' Compensation Carrier; and
- 3) All parties stipulate that the above captioned matter should be dismissed with prejudice.

IT IS THEREFORE ADJUDGED, ORDERED and DECREED that the Plaintiff's Motion to Dismiss is hereby granted.

IT IS SO ORDERED, this 11th day of August, 1993

S/ THOMAS R. BRETT,

JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING

I hereby certify that on this _____ day of August, 1993, a true and correct copy of the above and foregoing was mailed to the following attorney of record, with sufficient postage thereon: Mr. Robert D. Tomlinson, 101 North Broadway, Oklahoma City, Oklahoma 73102, Theodore Laszlo Thompson, Hine & Flory, 1100 National City Bank Building, 629 Euclid Avenue, Cleveland, Ohio 44114, and Wilson T. White, Attorney for Intervenor, 2800 Fourth National Bank Building, Tulsa, Oklahoma 74119.

C.L. "Cindy" McNeely

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

FILED

AUG 10 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

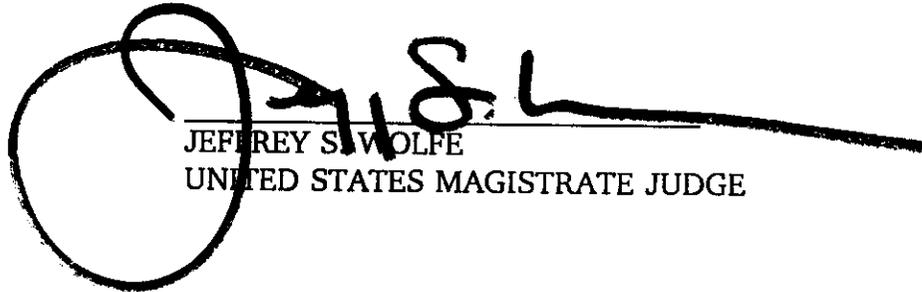
B. ELLEN BOSWORTH,)
)
 Plaintiff(s),)
)
 v.)
)
 FEDERAL BUREAU OF INVESTIGATION,)
)
 Defendant(s).)

93-C-0690-B ✓

ORDER

B. Ellen Bosworth, a Lawton resident, has filed a Complaint against Federal Bureau of Investigation agents that reside in Oklahoma City and Lawton, Oklahoma. As a result, pursuant to 28 U.S.C. §1404, the case shall be transferred to the United States District Court for the Western District of Oklahoma.

SO ORDERED THIS 10th day of Aug., 1993.


JEFFREY S. WOLFE
UNITED STATES MAGISTRATE JUDGE

4

ENTERED ON DOCKET
AUG 11 1993
DATE

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

FILED

AUG 10 1993

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

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY, a Minnesota
corporation,

Plaintiff,

vs.

No. 92-C-379-B

RYAN REALTY COMPANY d/b/a
SIMPLE SIMON'S PIZZA OF TURLEY,
an Oklahoma corporation; PIZZA
TRUST NO. 1, an Irrevocable
Trust created under the laws of
the State of Oklahoma d/b/a
SIMPLE SIMON'S PIZZA; CHARLOTTE
M. RYAN, as Trustee of Pizza
Trust No. 1; PHILLIP H. RYAN,
an individual; and KIM KING,
an individual,

Defendants.

O R D E R

Before the Court for decision is the Motion for Summary Judgment of the Plaintiff, St. Paul Fire and Marine Insurance Company ("St. Paul"), (Docket #14), and also of the Defendants, Ryan Realty Company d/b/a Simple Simon's Pizza of Turley, an Oklahoma corporation, Pizza Trust No. 1, an Irrevocable Trust created under the laws of the State of Oklahoma d/b/a Simple Simon's Pizza, Charlotte M. Ryan, as Trustee of Pizza Trust No. 1, and Phillip H. Ryan, an individual (Docket # 6 and # 8). (For ease of reference the Defendants will be referred to as the "Simple Simon's Defendants.")

The Standard of Fed.R.Civ.P. 56
Motion for Summary Judgment

Summary judgment pursuant to Fed.R.Civ.P. 56 is

appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

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

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986). The evidence and inferences therefrom must be viewed in a light most favorable to the nonmoving party. Conaway v. Smith, 853 F.2d 789, 792 n. 4 (10th Cir. 1988). Unless the Defendants can demonstrate their entitlement beyond a reasonable doubt, summary judgment must be denied. Norton v. Liddel, 620 F.2d 1375, 1381 (10th Cir. 1980).

A recent Tenth Circuit Court of Appeals decision in Committee for the First Amendment v. Campbell, 962 F.2d 1517 (10th Cir. 1992), concerning summary judgment states:

"Summary judgment is appropriate if 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.' . . . Factual disputes about immaterial matters are irrelevant to a summary judgment

determination. . . We view the evidence in a light most favorable to the nonmovant; however, it is not enough that the nonmovant's evidence be 'merely colorable' or anything short of 'significantly probative.' . . .

"A movant is not required to provide evidence negating an opponent's claim. . . . Rather, the burden is on the nonmovant, who 'must present affirmative evidence in order to defeat a properly supported motion for summary judgment.' . . . After the nonmovant has had a full opportunity to conduct discovery, this burden falls on the nonmovant even though the evidence probably is in possession of the movant. (citations omitted). *Id.* at 1521."

Undisputed Material Facts

The undisputed material facts that are reflected in the record are as follows:

1. Kim King, an employee of Simple Simon's Pizza of Turley on July 2, 1990, sued Phillip H. Ryan and Ryan Realty Company, d/b/a Simple Simon's Pizza of Turley, an Oklahoma corporation, in the District Court of Tulsa County, Oklahoma, Cause No. CJ-90-3149, for claims of alleged intentional tort and wrongful discharge. (Deft. Ex. 4). Ryan Realty Company was the general manager of the Simple Simon's restaurant, the sole asset of the Pizza Trust, and as general manager Ryan and Ryan Realty had operational authority over Simple Simon's restaurant. (Plff. Ex. 1).

Pizza Trust No. 1, an Irrevocable Trust d/b/a Simple Simon's Pizza of Turley, was added as a defendant to the Amended Petition filed by Kim King on March 27, 1992, in said Oklahoma state court action. The Simple Simon's restaurant is the sole asset of Pizza Trust No. 1. (Pizza Trust No. 1 Ex. 1).

2. The comprehensive general liability policy issued to Pizza Trust contains exclusions which excluded the claim asserted by Kim King (St. Paul Complaint, ¶ 11, attached as Pizza Trust No. 1 Ex. 2).

3. The Plaintiff, St. Paul Fire and Marine Insurance Company ("St. Paul"), first received notice of the King lawsuit on July 12, 1990.

4. On July 12, 1990, St. Paul's claims manager, William R. Tabor, questions "job-related injuries part of WC? (Workers Compensation) Have Ron Wood (attorney) handle the def. Is this a cov. loss? Employer's liab. excl. handle under R of Rs (Reservation of Rights Agreement)."

5. On July 13, 1990, St. Paul litigation referral form sets forth that "is coverage in order. No.?" The referral form instructed attorney Wood to "defend under reservation of rights."

6. On July 16, 1990, St. Paul writes letter to Pizza Trust acknowledging Summons and Complaint, assigning defense to Ron Wood and advising that punitive damages are covered "only if vicariously incurred."

7. On July 16, 1990, St. Paul sends its printed form Reservation of Rights Agreement to Pizza Trust, which provides as follows:

"The Company may investigate the cause and circumstances under which an accident or loss is stated to have occurred at or near 6206 North Peoria, Tulsa in the State of Oklahoma on or about the 25th day of May, 1990, and

may determine by investigation, independent appraisal or other means the damages resulting therefrom, and may investigate all matters relating thereto affecting its rights, directly or indirectly, present or remote, under its policy of insurance No. RR06603270 issued to Pizza Trust #1 dba Simple Simons Pizza c/o Ryan Realty of 6117 S. Mingo "G", Tulsa, Oklahoma, and may at its sole election prepare for defense and actually defend any Suit or Action arising out of said accident or loss,

all without prejudice to the Company, without admission of liability for claim or loss, and specifically reserving all claims and defenses under its policy." (Reservation of Rights Agreement attached as Exhibit "7").

The Reservation of Rights printed form was accompanied by a letter advising that the agreement was necessary for St. Paul to proceed with handling of the claim against Ryan and Ryan Realty in light of the questions of coverage. The Reservation of Rights Agreement was signed by Ryan after he was advised during a telephone conversation with Ken Custer that St. Paul was obtaining a coverage opinion. (Pizza Trust No. 1 Ex. 7, and St. Paul Ex. 12).

8. On July 18, 1990, St. Paul's attorney, Phil Richards, rendered an opinion that there was no coverage extended in reference to the Kim King claims by reason of insurance policy exclusions. (Pizza Trust No. 1 Ex. 3, and St. Paul Ex. 12).

9. On July 17, 1990, St. Paul decides that Ron Wood will defend by filing a motion to dismiss.

10. On July 20, 1990, Ryan Realty, only, executed the Reservation of Rights Agreement. (Pizza Trust No. 1 Ex. 7). Ryan Realty was, according to the testimony of Phillip Ryan,

contractually authorized and obligated to conduct and operate the business of Pizza Trust. (St. Paul Ex. 1).

11. On August 31, 1990, St. Paul denied coverage for exclusions and requested Pizza Trust to hire Ron Woods to continue the defense of the Kim King lawsuit or to hire another lawyer of its choice.

12. On August 31, 1990, and again on September 27, 1990, St. Paul advised Ryan and Ryan Realty that no coverage was afforded for the claims in the King lawsuit, and requested that other arrangements be made by Ryan Realty for the defense of the King case. In July 1991, eleven months after denying coverage, St. Paul is still trying to decide whether to withdraw its defense. The record reveals that, although requested, Ryan and Ryan Realty did not come forth with substitute counsel. (Pizza Trust Ex. 10 and St. Paul Ex. 12).

13. On September 24, 1991, thirteen months after denying coverage, St. Paul withdrew its defense and on September 30, 1991, ceased paying Ron Wood's attorney fees.

14. On October 14, 1992, approximately six months after Pizza Trust No. 1 had been added as a defendant to the Kim King Oklahoma state court case, the Oklahoma state court entered an order sustaining the Defendants' motion for summary judgment and judgment against the claims of the Plaintiff, Kim King. (St. Paul Ex. 20).

Legal Analysis and Conclusion

The Simple Simon's Defendants concede that the claims in the Kim King Oklahoma state court lawsuit are not covered by the St.

Paul insurance policy. However, they assert that they are entitled to coverage for these claims under theories of waiver and estoppel.

The facts not in dispute establish that St. Paul gave notice to Ryan and Ryan Realty that a coverage question existed, and that Phillip H. Ryan on behalf of Ryan Realty and the insured executed a Reservation of Rights Agreement prior to St. Paul undertaking the defense. One month later, on August 31, 1990, St. Paul advised the Simple Simon's Defendants in writing that coverage was not afforded for the King lawsuit under the St. Paul insurance policy. In the no coverage notice St. Paul requested the Simple Simon's Defendants to make arrangements to employ a lawyer to assume defense of the King lawsuit. St. Paul's continuation in the defense through its lawyer was simple as an accommodation to the Simple Simon defendants because they did not come forward and make arrangements for their own defense. The record does not reflect the Simple Simon's Defendants experienced prejudice as a result of this gratuitous accommodation on the part of St. Paul. Once it was determined after a reasonable investigation that coverage was not afforded Ryan and Ryan Realty regarding claims in the King lawsuit, St. Paul was entitled to withdraw from the defense as it was not contractually obligated to continue the defense. U.S. Fidelity & Guaranty Co. v. Briscoe, 239 P.2d 754, 758 (Okla. 1951), and Massachusetts Bay Ins. Co. v. Gordon, 708 F.Supp. 1232, 1234 (W.D. Okla. 1989).

It was only after St. Paul advised Ryan and Ryan Realty in September 1991, that it would no longer provide a defense that the

Simple Simon's Defendants had their own counsel take over the defense.

Under Oklahoma law circumstances can exist that can estop an insurance carrier from denying its policy provides coverage for the risk when "the insured has been led honestly to believe" that the risk was covered by the policy as a result of conduct of the insurer. Brawn v. Annesley, 936 F.2d 1105, 1110 (10th Cir. 1991); Gay & Taylor, Inc. v. St. Paul Fire & Marine Ins. Co., 550 F.Supp. 710, 714, 715 (W.D. Okl. 1981); and Security Ins. Co. of New Haven v. Greer, 437 P.2d 243, 245, 246 (Okl. 1968).

However, estoppel can be avoided if the insured gives a timely notice that a question of coverage exists and proceeds under a proper reservation of rights. Tri-State Casualty Ins. Co. v. McDuff, 134 P.2d 342, 343 (Okl. 1943), and Continental Casualty Co. v. Lolley, 140 P.2d 1014, 1016 (Okl. 1943). *Also see*, Appleman, Insurance Law and Practice, Vol. 16C, §9377, pp. 623, 628, 629 (West, 1981), and Leggett v. Home Indemnity Co., 461 F.2d 257, 260 (10th Cir. 1972).

Next, the Simple Simon's Defendants assert that the Reservation of Rights Agreement was not executed by the Pizza Trust No. 1. The record reflects at the time St. Paul assumed defense of the King lawsuit in the Oklahoma state court on July 30, 1990, neither the trust nor the Trustee were parties defendant. It was not until March of 1992, six months after the Simple Simon's Defendants concede that St. Paul had withdrawn from the defense of the King case, that the Trust was first joined as a party in the

King case.

Ryan and Ryan Realty acted as business manager on behalf of the Pizza Trust No. 1. Thus, Ryan Realty's signature on the Reservation of Rights Agreement would likewise have been on behalf of Pizza Trust No. 1 and the Trustee. In any event, St. Paul had denied coverage and actually ceased any representation of the insured in the King lawsuit six months before the Pizza Trust No. 1 was joined as a Defendant in the King lawsuit. Notice to the trust manager is clearly notice to the Trust and its Trustee. A. A. Murphy, Inc. v. Banfield, 363 P.2d 942, 946 (Okla. 1961). Further, the facts herein do not support the concept of waiver, i.e. the voluntary relinquishment of a known right. Barber v. Page, 390 U.S. 719, 725, 88 S.Ct. 1318, 1322, 20 L.Ed.2d 255; Dalton v. LeBlanc, 350 F.2d 95, 98-99 (10th Cir. 1965); Midwest Maintenance & Const. Co. v. Vela, 621 F.2d 1046 (10th Cir. 1980); Crowell v. Thoreau Center, Partnership, Okla., 631 P.2d 751, 752 (Okla. 1981).

For the above-stated reasons, the Court concludes the undisputed facts do not support that St. Paul either waived its right to assert no coverage or is estopped to assert no coverage of the Simple Simon's Defendants under St. Paul's policy of insurance No. RR06603270 regarding the claims in the Kim King Oklahoma state court case. St. Paul is not obligated to defend the Simple Simon's Defendants or pay any judgment awarded against the Simple Simon's Defendants as a result of said Kim King Oklahoma state court case. Thus, St. Paul's motion for summary judgment pursuant to Fed.R.Civ.P. 56 is hereby SUSTAINED, and the Simple Simon's

Defendants like motion is hereby OVERRULED. A separate judgment reflecting the Court's order herein shall be filed contemporaneous herewith.

DATED this 10 day of August, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

ENTERED ON DOCKET
DATE AUG 11 1993

FILED

AUG 10 1993

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

ST. PAUL FIRE AND MARINE)
INSURANCE COMPANY, a Minnesota)
corporation,)

Plaintiff,)

vs.)

No. 92-C-379-B

RYAN REALTY COMPANY d/b/a)
SIMPLE SIMON'S PIZZA OF TURLEY,)
an Oklahoma corporation; PIZZA)
TRUST NO. 1, an Irrevocable)
Trust created under the laws of)
the State of Oklahoma d/b/a)
SIMPLE SIMON'S PIZZA; CHARLOTTE)
M. RYAN, as Trustee of Pizza)
Trust No. 1; PHILLIP H. RYAN,)
an individual; and KIM KING,)
an individual,)

Defendants.)

J U D G M E N T

In keeping with the Court's Order entered this date sustaining the motion for summary judgment of the Plaintiff against the Defendants, Judgment is hereby entered in favor of St. Paul Fire and Marine Insurance Company against the Defendants, Ryan Realty Company d/b/a Simple Simon's Pizza of Turley, an Oklahoma corporation; Pizza Trust No. 1, an Irrevocable Trust created under the laws of the State of Oklahoma d/b/a Simple Simon's Pizza, Charlotte M. Ryan, as Trustee of Pizza Trust No. 1, Phillip H. Ryan, an individual, and Kim King, an individual. The Court hereby declares that the St. Paul Fire and Marine Insurance Company is not obligated to provide a defense to the Defendants or pay any prospective judgment in the case of Kim King, Plaintiff vs. Phillip H. Ryan, an individual, Ryan Realty Company, d/b/a Simple Simon's

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Pizza of Turley, an Oklahoma corporation, and Pizza Trust No. 1, Irrevocable Trust d/b/a Simple Simon's Pizza of Turley, in the District Court in and for Tulsa County, State of Oklahoma, Case No. CJ-90-3149, under St. Paul's insurance policy No. RR06603270. Costs are hereby assessed against the Defendants if timely applied for pursuant to Local Rule 6, and each party is to pay their own respective attorney's fees.

DATED this 10th Jay of August, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE AUG 11 1993

FILED

AUG 10 1993

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

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

ANTHONY HARRIS, et al.,)
)
Plaintiffs,)
)
vs.)
)
RON CHAMPION, et al.,)
)
Defendants.)

Nos. 90-C-448-B
90-C-475-B, etc.
as consolidated

J U D G M E N T

In accordance with Findings of Fact, Conclusions of Law, and Order entered simultaneously herein the Court enters Judgment denying Petitioner Anthony Harris' Petition for Habeas Corpus. Costs are to be borne by each party. Attorneys fees are subject to the Court's Orders herein.

IT IS SO ORDERED this 9th day of August, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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ENTERED ON DOCKET
DATE AUG 11 1993

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

ANTHONY HARRIS, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 RON CHAMPION, et al.,)
)
 Defendants.)

Nos. 90-C-448-B
90-C-475-B; etc.
as consolidated
92-C-165-B

FILED
AUG 10 1993

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

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER AS TO
DOYLE KENT KING

This matter came on for hearing on June 29, 1993, before the Honorable Thomas R. Brett for the purpose of conducting the individual hearing prescribed by the Findings of Fact, Conclusions of Law and Order filed by the three-judge panel in this action on May 6, 1993. The Petitioner was represented by counsel as were the defendants at the hearing. After carefully considering the pleadings, the testimony, the documentary and other evidence, as well as the briefs and arguments presented by counsel for the parties, and being fully advised in the premises, the Court enters the following Findings of Fact and Conclusions of Law.

1. The Court adopts the 18 Findings of Fact entered herein by the Three-Judge Panel on May 6, 1993.
2. Petitioner was convicted in the district court of Kay County, Oklahoma of:
Escape from a penal institution, after a former conviction; and,

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Assault and battery with intent to commit a felony, after a former conviction.

3. Both convictions occurred at a single jury trial.
4. Petitioner received a sentence of 25 years on each charge, enhancement imposed pursuant to 21 O.S. §51. The enhancement was based upon Petitioner's two prior rape convictions.
5. The concurrent sentences were imposed July 22, 1985; however, his judgments and sentences were filed on August 5, 1985.
6. Petitioner timely announced his intention to appeal his conviction.
7. Petitioner's appellate brief was filed September 26, 1986.
8. Appellee's brief was filed on October 22, 1986 by the Attorney General (hereafter "AG").
9. On July 22, 1992, Petitioner filed his petition in this court pursuant to 28 U.S.C. §2254 alleging appellate delay.
10. On April 23, 1993, the Oklahoma Court of Criminal Appeals (OCCA) affirmed the conviction by summary opinion. No timely request for rehearing was filed on petitioner's behalf so the affirmance is final.
11. The summary affirmance by OCCA in petitioner's case came two weeks after a hearing by the three-judge panel on April 9, 1993, which addressed delay by the OCCA generally, and specifically addressed the petitioner's case as an example.
12. The number of months from the date Mr. King received his sentence (August 5, 1985) to the described event is stated below after having been rounded to the last full month:

- (a) to the filing of his Appellant's brief by OIDS - 14 months;

- (b) to the filing of the Appellee's brief by the AG - 15 months
- (c) to the filing of the Summary Opinion by OCCA - 93 months.

13. As stated in the Three-Judge Panel's Conclusion of Law #14, in Oklahoma there are four levels of the state appellate process in a direct appeal criminal case:

- (a) Docketing the appeal, to be done within 6 months
- (b) Filing of the Appellant's brief, to be done within 60 days
- (c) Filing of the Appellee's brief, to be done within 60 days
- (d) Decision by the Oklahoma Court of Criminal Appeals (OCCA).

The Three-Judge Panel concluded that a six-month period for transcript and record preparation with one 60 day extension, 60 days for filing of an appellant brief with one 60 day extension, and 60 days for the filing of an appellee brief with one 60 day extension, totalling sixteen months, would satisfy constitutional concerns. Such total should be deducted from 12(b) above; therefore, in this case no inordinate delay is evident prior to the appeal being at issue. Any inordinate delay herein is ascribed to OCCA.

14. Petitioner did not begin to serve his escape and assault and battery convictions until January 24, 1992, as he was serving a prior felony conviction for robbery with a firearm and grand larceny, after former conviction of a felony. Petitioner was incarcerated awaiting trial on the robbery charge at the time of his escape.

15. For purposes of these findings only, conceding all good time credits, Petitioner would have to serve in excess of six years regarding his escape and assault and battery convictions before being considered eligible for release.

16. To the extent that these Findings of Fact constitute Conclusions of Law, they

should be so considered.

CONCLUSIONS OF LAW

1. The Court adopts the 33 Conclusions of Law entered herein by the Three-Judge Panel on May 6, 1993.

2. The Tenth Circuit Court of Appeals remanded Harris v. Champion, 938 F.2d 1063, 1071 (10th Cir. 1991) to the District Court ordering it to conduct a full hearing into possible systemic delays of the Oklahoma Appellate Public Defender's Office (now OIDS) in preparing and filing appellate briefs for their clients. Inquiry was also to take place as to whether an inmate's constitutional rights were violated by the delay in the filing of appellate briefs by OIDS. Delays by the AG or OCCA are also subject to review. (See Tenth Circuit Order of April 22, 1993, at 6-7).

3. In DeLancy v. Caldwell, 741 F.2d 1246, 1248 (10th Cir. 1984), the Court adopted a four-part balancing test from Barker v. Wingo, 407 U.S. 514 (1972), a case involving denial of a speedy trial. The factors to be balanced are as follows: (1) length of delay, (2) reasons for delay, (3) defendant's assertion of his right, and (4) prejudice to the defendant. Barker v. Wingo, at 530. In turn, the fourth DeLancy element of prejudice was detailed in three factors of (1) prevention of oppressive incarceration pending appeal, (2) minimization of anxiety and concern of those convicted awaiting the outcome of their appeals and (3) limitation of the possibility that a convicted person's grounds for appeal, and his or her defenses in case of reversal or retrial, might be denied. Barker specifically points out that no single one of the four factors necessarily indicates a finding of a deprivation of a speedy trial but may be considered with other relevant circumstances.

When applying the Barker and DeLancy analysis to habeas cases it is important to be mindful of two distinguishing factors: Barker concerned speedy trial, not an appeal after conviction and DeLancy involved a §1983 claim, not a habeas corpus action.

4. The reason for OCCA's delay presented to the Court is that three judges, a majority, could not agree on an opinion as a result of conflicts between the judges as to wording in the proposed opinion, and that ultimately agreement was reached after a change in court personnel. The Court concludes that none of the delay may be attributed to the petitioner.

5. Uncontroverted evidence has been presented that petitioner made frequent written inquiries as to the status of his appeal, and raised the issue of appellate delay in this action.

6. The fourth factor, prejudice to the petitioner, is keenly contested by the parties. Petitioner has testified to his anxiety and concern during his lengthy appeal.

7. In response, the defendant Wardens first point to the panel's statement in its May 6, 1993 Order:

18. Further, the panel agrees with the rationale of the Second Circuit that in instances where an appellate decision affirming the conviction has already been rendered, habeas corpus relief based solely on previous inordinate delay is not available. Muwwakkil v. Hoke, 968 F.2d 284 (2nd Cir. 1992), cert. denied, 113 S.Ct. 664 (1992) (appellate delay found did not warrant habeas corpus relief because the appeal was affirmed). The panel concludes the same would follow where an appellate decision was rendered reversing with prejudice to retrial.

(Order at 23)

8. Since the petitioner's conviction was affirmed, even after seventy-eight

months, defendant wardens contend no relief is available.

9. Petitioner also asks the Court to consider the manner of affirmance. Petitioners as a group have previously challenged OCCA's summary opinion format before the Tenth Circuit Court of Appeals. That court stated:

Summary procedures and opinions are not inherently bad, and their use may assist a court in reducing its backlog. While we understand petitioners' desire to be assured that OCCA will continue to give adequate consideration to the merits of each case, we note that a summary opinion only indicates that less time has been spent writing a decision, not that less time has been spent reviewing the merits and reaching that decision. Any constitutional error in the state court proceedings can be reviewed on habeas corpus pursuant to the standards set forth in 28 U.S.C. §2254(d). See Sumner v. Mata, 449 U.S. 539 (1981).

(April 22, 1993, Order at 10).

10. The Court concludes that summary opinions by OCCA are not constitutionally infirm.

11. Petitioner further contends that Delfrate v. State, 732 P.2d 900 (Ok. Cr. 1987) prohibited the enhancement of a sentence for an escape conviction under 21 O.S. §51. However, this Court finds that Hughes v. State, 815 P.2d 182 (Ok. Cr. 1991), clarified Oklahoma law, and held enhancement to be proper when the enhancement is not based upon the conviction being served at the time of escape. Hughes is implicit in OCCA's affirmance.

12. Plaintiff began serving his sentence on the escape and assault and battery AFC convictions January 24, 1992, by which time Plaintiff's direct appeal should reasonably have been concluded. Prior to January 24, 1992, the plaintiff was serving an unrelated armed robbery conviction.

13. The Court concludes inordinate delay attributable to OCCA is evident herein.

14. However, under the facts herein, Petitioner has presented no showing of prejudice entitling him to any relief because until January, 1992, Petitioner was serving an armed robbery sentence and the subsequent escape and assault and battery sentence, which Petitioner began to serve in January, 1992, had reached no available early release date by the time of OCCA's decision.

15. To the extent these Conclusions of Law constitute Findings of Fact, they should be so considered.

It is the Order of the Court that the petition for habeas corpus relief is hereby denied. A separate Judgment, in conformance with these Findings of Fact, Conclusions of Law, and Order, will be simultaneously entered herein.

IT IS SO ORDERED this 9th day of August, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE AUG 11 1993

FILED

AUG 10 1993

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

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

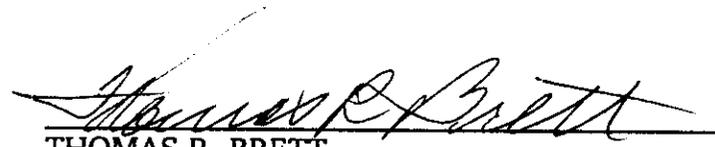
ANTHONY HARRIS, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 RON CHAMPION, et al.,)
)
 Defendants.)

Nos. 90-C-448-B
90-C-475-B, etc.
as consolidated
92-C-165-B

J U D G M E N T

In accordance with Findings of Fact, Conclusions of Law, and Order entered simultaneously herein the Court enters Judgment denying Petitioner Doyle Kent King's Petition for Habeas Corpus. Costs are to be borne by each party. Attorneys fees are subject to the Court's Orders herein.

IT IS SO ORDERED this 9th day of August, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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ENTERED ON DOCKET
DATE ~~AUG 11 1993~~

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

ANTHONY HARRIS, et al.,)
)
Plaintiffs,)
)
vs.)
)
RON CHAMPION, et al.,)
)
Defendants.)

Case No. 90-C-448-B,
90-C-475-B, etc.
as consolidated

FILED
AUG 10 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER AS TO
ANTHONY HARRIS

This matter came on for hearing on June 29, 1993, before the Honorable Thomas R. Brett for the purpose of conducting the individual hearing prescribed by the three-judge panel's Findings of Fact, Conclusions of Law and Order entered on May 6, 1993. The Petitioner was represented by counsel as were the defendants at the hearing. After carefully considering the pleadings, the testimony, the documentary and other evidence, as well as the briefs and arguments presented by counsel for the parties, and being fully advised in the premises, the Court enters the following Findings of Fact and Conclusions of Law:

1. The Court adopts the 18 Findings of Fact entered herein by the Three-Judge Panel on May 6, 1993.
2. Petitioner is attacking consecutive sentences from the district court of Washington County, Oklahoma, to-wit:

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Forcible Sodomy; and,

Assault and Battery with a Dangerous Weapon.

3. Both convictions occurred at a single jury trial.
4. Petitioner received a sentence of 15 years on the forcible sodomy conviction and a consecutive sentence of 5 years on the assault and battery with a dangerous weapon conviction, for a total of 20 years.
5. The sentences were imposed on September 29, 1988.
6. Petitioner timely announced his intention to appeal his conviction.
7. Through no fault of petitioner, his appeal was not timely initiated. On May 11, 1989, petitioner applied for leave to file an appeal out of time.
8. On May 18, 1989, the Oklahoma Court of Criminal Appeals ("OCCA") granted petitioner an appeal out of time.
9. The petition in error was filed November 20, 1989, by the Oklahoma Indigent Defense System (hereafter "OIDS") in its capacity as appellate counsel for petitioner.
10. On May 22, 1990, petitioner filed his petition pursuant to 28 U.S.C. §2254 in this court alleging appellate delay.
11. Mr. Harris' appellate brief was filed April 30, 1992 by OIDS.
12. Appellee's brief was filed on July 1, 1992, by the Attorney General (hereafter "AG").
13. On June 3, 1993, OCCA filed a "Summary Opinion" affirming both of petitioner's convictions.
14. On June 23, 1993, OIDS and petitioner simultaneously requested rehearings of the "Summary Opinion", which have now been denied.

15. The number of months from the date Mr. Harris received his sentence (September 29, 1988) to the described event is stated below after having been rounded to the last full month:

- (a) to the filing of his Appellant's brief by OIDS - 42 months;
- (b) to the filing of the Appellee's brief by the AG - 44 months;
- (c) to the filing of the Summary Opinion by OCCA - 55 months.

16. As stated in the Three-Judge Panel's Conclusion of Law #14, in Oklahoma there are four levels of the state appellate process in a direct appeal criminal case:

- (1) Docketing the appeal, to be done within 6 months
- (2) Filing of the Appellant's brief, to be done within 60 days
- (3) Filing of the Appellee's brief, to be done within 60 days
- (4) Decision by the Oklahoma Court of Criminal Appeals (OCCA).

The Three-Judge Panel concluded that a six-month period for transcript and record preparation with one 60 day extension, 60 days for filing of an appellant brief with one 60 day extension, and 60 days for the filing of an appellee brief with one 60 day extension, totalling sixteen months, would satisfy constitutional concerns. Such total should be deducted from 15(b) above, 44 months, resulting in a 28 month delay before becoming at issue.

17. On petitioner's sentence of 15 years, plus 5 years consecutive sentence, he could be paroled after a total of six years in custody if he earned all of the "good time" available to him.

18. Petitioner testified that during confinement he necessarily and reasonably

devoted so much time to his legal endeavors that he was unable to involve himself in work programs that would have allowed him to earn the maximum amount of "good time" available through such programs. He argues that he has thus been deprived of the opportunity to be released from the custody of the Department of Corrections ("DOC") at a time earlier than if he had not engaged in such legal endeavors. He contends that as a result of his legal endeavors, he lost the opportunity to earn approximately six years of "good time."

19. The prison law library records reflect that from October 22, 1988, to June '93, the Petitioner spent four hundred and six hours in the law library which is approximately fifty-one days of eight hour duration.

20. The Court had before it and examined the pro se pleadings filed by Petitioner from October 1988 to present.

21. The evidence was uncontroverted that if a prisoner had Court-imposed deadlines in his pro se legal matters, the prisoner could be excused from work without being penalized and arrangements would be made for the prisoner to have access to the law library. Petitioner never made any such request. The Court concludes Petitioner effectively had no appointed counsel for his appeal until January '92, so he felt compelled to represent himself. Petitioner lacked the training and experience to do so effectively.

22. The evidence was uncontroverted that Petitioner was able-bodied and was not physically prohibited from working while incarcerated.

23. The evidence was uncontroverted that Petitioner also spent time pursuing other inmates' legal matters in an informal paralegal role, rather than his own.

24. The evidence before the Court revealed that when Petitioner had a work assignment in the institution that he failed to show up for work, causing him to lose the job, and thus good time credits.

25. The evidence revealed that Petitioner was recently offered a job at his present institution in April or May, 1993, but refused it.

26. Testimony was presented that the hours for holding down a job at an institution and pursuing pro se legal matters are not exclusive of each other at the institutions where Petitioner was incarcerated. Plaintiff could, as do other inmates, do prison work and during non work hours such as evenings work in the law library.

27. It is not reasonable to find plaintiff spent all of his work time the past approximately three years, from September '88 to January '92, doing legal work on his case.

28. David Booth, counsel for Petitioner in this case was appointed to represent the Petitioner on January 2, 1992, so for the past one and a half years plaintiff has had effective counsel.

29. To the extent that these Findings of Fact constitute Conclusions of Law, they should be so considered.

CONCLUSIONS OF LAW

1. The Court adopts the 33 Conclusions of Law entered herein by the Three-Judge Panel on May 6, 1993.

2. In Harris v. Champion, 938 F.2d 1063, 1071 (10th Cir. 1991), the Tenth

Circuit Court of Appeals remanded this case to the District Court ordering it to conduct a full hearing into possible systemic delays of the Oklahoma Appellate Public Defender's Office (now OIDS) in preparing and filing appellate briefs for their clients. Inquiry was also to take place as to whether an inmate's constitutional rights to a speedy appeal were violated by the delay in the filing of appellate briefs by OIDS.

3. In DeLancy v. Caldwell, 741 F.2d 1246, 1248 (10th Cir. 1984), the Court adopted a four-part balancing test from Barker v. Wingo, 407 U.S. 514 (1972), a case involving denial of a speedy trial. The factors to be balanced are as follows: (1) length of delay, (2) reasons for delay, (3) defendant's assertion of his right and (4) prejudice to the defendant. Barker v. Wingo, at 530. In turn, the fourth DeLancy element of prejudice was detailed in three factors of (1) prevention of oppressive incarceration pending appeal, (2) minimization of anxiety and concern of those convicted awaiting the outcome of their appeals and (3) limitation of the possibility that a convicted person's grounds for appeal, and his or her defenses in case of reversal or retrial, might be denied. Barker specifically points out that no single one of the four factors necessarily indicates a finding of a deprivation of a speedy trial but may be considered with other relevant circumstances. When applying the Barker and DeLancy analysis to habeas cases it is important to be mindful of two distinguishing factors: Barker concerned speedy trial, not an appeal after conviction and DeLancy involved a §1983 claim, not a habeas corpus action.

4. In accordance with Harris and under the guidelines of DeLancy a hearing was held to determine if Petitioner's constitutional rights were violated by the failure of OIDS to timely perfect his appeal.

5. While Petitioner had a delay in the processing of his direct appeal prior to the appointment of OIDS, the time from the entry of judgment and sentence until the order granting an appeal out of time, while not attributable to the Petitioner, is equally not attributable to OIDS and its systemic delay problem which is the center of inquiry of this case on remand.

6. Petitioner's appeal was filed two years and three months past its original due date which constitutes a delay sufficient to trigger inquiry into the DeLancy balancing factors. The total length of delay is set out in paragraph 15, supra.

7. The cause of the delay is the alleged understaffing and underfunding of OIDS, the second DeLancy inquiry.

8. Petitioner has asserted his right to an appeal, a third DeLancy factor to be considered.

9. Petitioner carries the burden to show that he has suffered prejudice from the delay of his appeal.

10. Plaintiff's basic contention has been throughout that he is not guilty because it was simply his word against that of the victim. The record evidence was adequate to support the affirmance.

11. Petitioner has failed to sustain his burden to show prejudice in that he did not provide any evidence that he could not pursue his legal matters and work at the same time while incarcerated. Accordingly, petitioner has not demonstrated, by a preponderance of the evidence, prejudice either to his appeal or to himself personally.

12. Since January 2, 1992, Petitioner had appointed counsel and was not entitled

under the law to proceed both pro se and with counsel. Church v. Sullivan, 942 F.2d 1501 (10th Cir. 1991).

13. Petitioner has failed to carry his burden to show that the delay of his appeal required him to devote all of his available time proceeding in his cases pro se and thereby deny him opportunity to work and earn good time credits. Petitioner could and should have made himself available for "good time" activities as well as conduct law library activity at other available times.

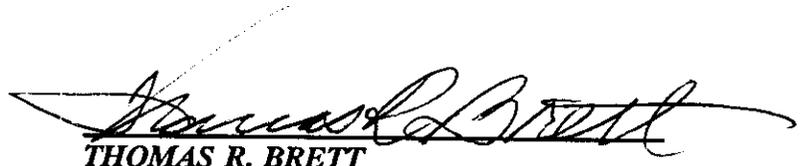
14. Petitioner's appeal has been affirmed and therefore, habeas corpus relief is not available because Petitioner is and has been incarcerated under a lawful conviction. Muwwakkil v. Hoke, 968 F.2d 284 (2nd Cir. 1992), cert. denied, 113 S.Ct. 664 (1992).

15. From the date of Petitioner's convictions until the date of the appellate court affirmance is a total of four years and ten months. Even if Petitioner had earned all available "good time" credits, the earliest Petitioner could have been released from confinement is six years from the date of conviction. Thus, Petitioner experienced no prejudice from the delay herein.

16. To the extent that these Conclusions of Law constitute Findings of Fact, they should be so considered.

It is the Order of the Court that the petition for habeas corpus relief is hereby denied. A separate Judgment, in conformance with these Findings of Fact, Conclusions of Law, and Order, will be simultaneously entered herein.

IT IS SO ORDERED this 9th day of August, 1993.

A handwritten signature in black ink, appearing to read "Thomas R. Brett", written in a cursive style with a long horizontal flourish extending to the right.

THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 8-11-93

IN THE UNITED STATES DISTRICT COURT **F I L E D**
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AUG 10 1993

NEIL HUNSBERGER, LARRY B.)
POPE, EUNICE P. REEDER,)
JOHN W. FLORO,)
)
Plaintiffs,)
)
v.)
)
LOWRANCE ELECTRONICS, INC.,)
)
Defendant.)

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

Case No. 91-C-858-E

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes before the Court on the Joint Stipulation of Dismissal with Prejudice by the parties. The parties represent to the Court they have entered into an agreement for Order of Dismissal in this matter.

IT IS THEREFORE ORDERED that Plaintiffs' Neil Hunsberger, Larry B. Pope, Eunice P. Reeder and John W. Floro claims and this matter are dismissed with prejudice. Each party shall bear their own attorney's fees and costs.

/s/ JAMES O. ELLISON

JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE
FOR THE NORTHERN DISTRICT OF
OKLAHOMA

ENTERED ON DOCKET

DATE 8-11-93

IN THE UNITED STATES DISTRICT COURT **F I L E D**
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AUG 10 1993

SUPERIOR HARD-SURFACING CO., INC.,)
an Oklahoma corporation,)

Plaintiff,)

vs.)

EL PASO REFINING, INC.,)
a Delaware corporation,)

Defendant.)

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

Case No. 92-C-1132E

JUDGMENT

Following the Court's granting of Plaintiff's Motion for Summary Judgment during Pre-Trial Conference held July 26, 1993, Judgment is granted Superior Hard-Surfacing Co., Inc. against El Paso Refining, Inc. in the amount of \$55,183.57, together with interest at the rate specified in *Vernon's Ann. Civ. St.*, art. 5069-1.05.

DATED: Aug 9, 1993.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

DATE 8-11-93

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

NOWATA COUNTY RURAL WATER)
DISTRICT #7,)

Plaintiff,)

v.)

SHETLAR GRIFFITH SHETLAR, P.A.,)
a Kansas corporation, and)
PURKEYPILE CONSTRUCTION CO.,)
INC., a Kansas corporation,)

Defendants.)

AND)

PURKEYPILE CONSTRUCTION CO.,)
INC., a Kansas corporation,)

Third Party)
Plaintiff,)

v.)

SCRIVNER'S FARM SERVICE, INC.,)
a Missouri corporation,)

Third Party)
Defendant.)

Case No. 90-C-768-E

FILED

AUG 10 1993

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

JUDGMENT ON JURY VERDICT

This action came on for trial before the Court and a jury,
Honorable James O. Ellison, District Judge, presiding, and the
issues having been duly tried and the jury having duly rendered its
general verdict in the amount of \$602,829,

IT IS ORDERED AND ADJUDGED:

J.P.
That the Plaintiff, Nowata County Rural Water District #7, recover of the Defendant, Purkeypile Construction Co., Inc., the sum of \$377,829, that sum representing the general verdict returned by the jury, after deduction of settlement proceeds already received by the Plaintiff, Nowata County Rural Water District #7, from the Defendant, Shetlar Griffith Shetlar, together with its costs and with, ^{POST JUDGMENT} interest at the rate of 3.58 percent, as provided by law. The Court expressly reserving for ruling by the Court the amount of the attorneys' fee award.

Dated this _____ day of August, 1993.

JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:

[Signature]

Logan & Lowry
Richard W. Lowry, O.B.A. #5552
Donna L. Smith, O.B.A. #12865
Attorney for Plaintiff
Nowata County Rural Water
District #7

[Signature]

Covington & Poe
James E. Poe, O.B.A. #7198
Emily D. Poe, O.B.A. #13844
Attorney for Defendant
Purkeypile Construction Co., Inc.