ENTERED ON DOCKET
DATE NOV 30 1993

FILED
NOV 30 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

ATLANTIC RICHFIELD COMPANY, Plaintiff, v. AMERICAN AIRLINES, INC., et al., Defendants. AND CONSOLIDATED ACTIONS	Consolidated Case Nos. 89-C-868 B 89-C-869 B 89-C-859 B

ORDER OF DISMISSAL WITHOUT PREJUDICE

Upon consideration of the agreement of the parties in open Court on November 15, 1993, and Stipulation of Dismissal Without Prejudice executed by Defendants Norton E. Shannon and Shannon Drum Service Inc., and Defendant, James Miller, the Court finds, adjudges and orders that all claims asserted and deemed filed by Defendants Norton E. Shannon and Shannon Drum Service, Inc., and James Miller against each other are dismissed without prejudice to any future action upon such claims, and Norton E. Shannon and Shannon Drum Service, Inc., and James Miller shall bear and be responsible for its own costs, expenses and attorneys fees incurred in this case.

Dated this 30th day of November, 1993.

UNITED STATES DISTRICT JUDGE

Approved as to form and content:

DEFENDANT JAMES MILLER

RICHARD C. FORD, OBA # 3028
MARK B. McDANIEL, OBA # 14275
CROWE & DUNLEVY A P.C.
1800 Mid-America Tower
20 North Broadway
Oklahoma City, OK 73102

By: _____
Attorneys for Defendant
James Miller and Miller Truck
Lines, Inc.

DEFENDANTS NORTON E. SHANNON AND SHANNON DRUM SERVICE, INC.

JAMES L. HARGROVE
115 West Pine
Post Office Box 31
El Dorado, KS 67042-0031

By: _____
Attorneys for Defendants
Norton E. Shannon and
Shannon Drum Service, Inc.

187.93B.MBM

DATE NOV 30 1993

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY, Plaintiff, v. AMERICAN AIRLINES, INC., ET AL. Defendants.	)	Consolidated Case Nos. 89-C-868-B 89-C-869-B 90-C-859-B

FILED
NOV 30 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER FOR DISMISSAL WITHOUT PREJUDICE

Now on this 30 day of ~~September~~ Nov, 1993, upon presentation of the Stipulation for Dismissal Without Prejudice executed by Plaintiff Atlantic Richfield Company and Defendant W.E. Howell, the Court finds and adjudges that all claims of Atlantic Richfield Company set forth herein against W.E. Howell should be and are hereby dismissed without prejudice to any future action upon such claims and that each of these parties shall bear and be responsible for its own costs and expenses incurred herein.

Thomas R. Brett
Judge

Approved as to form and content:

Gary A. Eaton, Attorney for
Atlantic Richfield Company

William E. Howell
William E. Howell

AXA93C98.SEL

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOV 30 1993
FILED
NOV 30 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,	)	Consolidated Cases
Plaintiff,	)	89-C-868-B
	)	89-C-869-B
v.	)	90-C-859-B
	)	
AMERICAN AIRLINES, INC., ET AL.	)	
	)	
Defendants.	)	

ORDER FOR DISMISSAL WITHOUT PREJUDICE

Now on this 30th day of ~~September~~ Nov, 1993, upon presentation of the Stipulation for Dismissal Without Prejudice executed by Plaintiff Atlantic Richfield Company and Defendant Robert Gibson, the Court finds and adjudges that all claims of Atlantic Richfield Company set forth herein against Robert Gibson should be and are hereby dismissed without prejudice to any future action upon such claims and that each of these parties shall bear and be responsible for its own costs and expenses incurred herein.

Thomas R. Brett
Judge

Approved as to form and content:

Gary A. Eaton, Attorney for
Atlantic Richfield Company

Robert F. Morgan, Jr.
Attorney for Robert Gibson

AXA93C92.SEL

ENTERED ON DOCKET

DATE 11-30-93

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

FILED

NOV 30 1993

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

EARNEST EUGENE PADILLOW,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 92-C-721-E
	)	
RON CHAMPION, et al.,	)	
	)	
Respondent.	)	

ORDER

Before the Court are a Petition for a writ of habeas corpus, a response pursuant to Rule 5, and Petitioner's motion for an evidentiary hearing and for appointment of counsel. In support of his motion, Petitioner submits copies of his trial transcript and post-conviction-appellate brief. The Court determines that an evidentiary hearing is not necessary, as the issues can be resolved on the basis of the record. See Townsend v. Sain, 372 U.S. 293, 318 (1963).

In this proceeding, Petitioner attacks his conviction in Case No. CRF-88-3417, District Court of Tulsa County, where a jury found him guilty of Kidnapping and Feloniously Pointing a Weapon, After Former Conviction of Two or More Felonies. The court sentenced Petitioner to twenty years imprisonment on each count, the sentences to run consecutively. The Oklahoma Court of Criminal Appeals affirmed the conviction. Petitioner then raised ineffective assistance of appellate counsel in his post-conviction petition. The state court denied Petitioner's application, and in April 1993, the Oklahoma Court of Criminal Appeals affirmed.

The trial transcript reveals that on August 18, 1988, Larthee Johnson stopped his car in a Tulsa neighborhood to make a phone

18

call. After Johnson returned to his car, he observed Petitioner walk away from a large group of men and approach his car. Petitioner asked Johnson to get out of his car. When Johnson refused, Petitioner asked Johnson to open the door. When Johnson again refused, Petitioner produced a handgun, pointed it at Jonson's face and told him to get out of the car. Johnson instead opened a rear door and Petitioner climbed in the car and ordered Johnson to drive away. During the drive, Petitioner told Johnson that he was being chased by an angry gang because he had just shot one of its members. Petitioner eventually relinquished the gun and the police was called to the scene.

In his amended petition, Petitioner alleged insufficiency of the evidence as to his conviction for Feloniously Pointing a Weapon, and ineffective assistance of appellate counsel for failing to raise on direct appeal trial counsel's error and insufficiency of the evidence as to prior felony convictions.

Respondent argues the evidence at trial was sufficient to sustain Petitioner's conviction for Feloniously pointing a weapon, Petitioner's appellate counsel provided effective assistance of counsel, and the Attorney General is not a proper party.

A. SUFFICIENCY OF THE EVIDENCE

Petitioner argues the evidence supporting his conviction for Feloniously Pointing a Weapon was insufficient because the State failed to prove that the handgun which he pointed at the victim was capable of discharging a projectile. In rejecting this claim on

direct appeal, the Oklahoma Court of Criminal Appeals stated:

> In the instant case, appellant's gun was introduced into evidence and Mr. Johnson identified the same as the weapon appellant pointed at him. The jury was informed that Mr. Johnson first observed the gun after appellant walked away from a group of people and that appellant claimed to have just shot a member of the group. We find that any rational trier of fact could have found beyond a reasonable doubt that the gun in appellant's hand was capable of discharging a projectile.

(Docket #14, ex. B at 2-3.)

Sufficient evidence exists to support a conviction if any rational trier would accept the evidence as establishing each essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979). In reviewing a sufficiency claim, the court must not weigh conflicting evidence or consider witness credibility. United States v. Davis, 965 F.2d 804, 811 (10th Cir. 1992), cert. denied, 113 S. Ct. 1255 (1993). Instead the Court must view the evidence in the light most favorable to the prosecution, Jackson, 443 U.S. at 319, and "accept the jury's resolution of the evidence as long as it is within the bounds of reason." Grubbs v. Hannigan, 982 F.2d 1483, 1487 (10th Cir.1993). Additionally in federal habeas proceedings, a state court's findings on the sufficiency issue are entitled to a presumption of correctness unless challenged by convincing evidence that the factual determination in the state court was erroneous. 28 U.S.C. § 2254(d); Sumner v. Mata, 455 U.S. 591, 597 (1982).

Petitioner has not demonstrated that any of the seven exceptions to the presumption of correctness set forth in section 2254(d)(1)-(7) apply to this case, or that the factual

determinations made by the Oklahoma Court of Criminal Appeals are not fairly supported by the evidence in the state court record. Petitioner merely contends that the State should have brought forward a witness to testify as to the caliber of the gun, the design of the gun, or its firing capability. (Docket #15.) Thus, the Court of Appeal's findings of fact are entitled to a presumption of correctness.

Based on these findings, a reasonable juror could have found the evidence sufficient to show that the firearm came within the statutory definition of "pistol," and was capable of discharging a projectile. Okla. Stat. Ann. tit 21, §§ 1289.3 and 1289.16 (1983); see Jennings v. State, 643 P.2d 643, 644 (Okla. Crim. App. 1982). Accordingly, Petitioner's first ground for relief lacks merit.

B. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

To establish ineffective assistance of counsel, a petitioner must show that counsel performed deficiently, and that counsel's deficient performance prejudiced him. Strickland v. Washington, 466 U.S. 668, 687 (1984). Deficient performance requires a petitioner to establish that counsel performed below the level expected from a reasonably competent attorney. Id. at 687-88. A court must "judge . . . counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690. The prejudice component requires a petitioner to show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

proceeding would have been "fundamentally unfair or unreliable." Lockhart v. Fretwell, 113 S. Ct. 838, 842-44 (1993).

For the reasons stated below, Petitioner's ineffective assistance claims lack merit.

(1) Double Jeopardy

As his first grounds of ineffective assistance of counsel, Petitioner alleges appellate counsel did not raise on direct appeal that his trial counsel failed to argue double jeopardy at trial. Petitioner asserts that the crimes of Kidnapping and Feloniously Pointing a Weapon were "incident to, and part of, one objective criminal act," citing pages 137-159 of the trial transcript.

The Double Jeopardy Clause "protects against multiple punishments for the same offense." North Carolina v. Pearce, 395 U.S. 711, 717 (1969). "[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not." Blockburger v. United States, 284 U.S. 299, 304 (1932). "This test emphasizes the elements of the two crimes. 'If each requires proof of a fact that the other does not, the Blockburger test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes.'" Brown v. Ohio, 432 U.S. 161, 166 (1977) (quoted case omitted).

Although this Court is not bound by the state court's findings on the ineffective-assistance claim, see Strickland, 466 U.S. at 698 (performance and prejudice components of ineffectiveness

inquiry are mixed questions of law and fact, not subject to the section 2254(d) deference requirement), this Court should defer to the state law interpretation of the Oklahoma Court of Criminal Appeals in determining whether an incident constitutes one or more than one offense for double jeopardy purposes. See Mansfield v. Champion, 992 F.2d 1098, 1100 (10th Cir. 1993).

Here, the Oklahoma Court of Criminal Appeals concluded that the crimes of Kidnapping (Okla. Stat. tit. 21, § 741 (1981)) and Feloniously Pointing a Weapon (id. § 1289.16) consisted of different elements, and that "the crime of Feloniously Pointing a Weapon was completed and proven in this case without requiring evidence that [Petitioner] climbed into the car and kidnapped the victim." (Docket #14, ex. A at 3.) Contrary to Petitioner's assertion, pages 137-159 of the transcript, support the Court of Appeals interpretation of state law. Accordingly, because the double-jeopardy claim lacks merit, Petitioner was not prejudiced by his appellate counsel's failure to raise it on direct appeal.

(2) Instructions regarding Second Stage Enhancement Proceeding

Next Petitioner alleges appellate counsel provided ineffective assistance because he did not raise on direct appeal trial counsel's failure to object to the instructions during the second stage enhancement proceeding. Petitioner argues the jury should have been instructed that it could find him guilty of having been convicted of one prior felony, instead of two or more felonies.[1]

[1]The Oklahoma Court of Criminal Appeals rejected this claim on the ground that appellate counsel had raised this issue on direct appeal. Appellate counsel, however, argued the trial court erred

The Oklahoma Court of Criminal Appeals has held that upon request a jury should be instructed as to the alternative of finding guilt of only one of two prior convictions alleged, and should be provided verdict forms accordingly. Fogle v. State, 700 P.2d 208 (Okla. Crim. App. 1985); Dean v. State, 502 P.2d 358, 360 (Okla. Crim. App. 1972).

Even if appellate counsel performed below the level expected from a reasonably competent attorney when he failed to argue on direct appeal that Petitioner's trial counsel failed to object to the instruction during the second stage enhancement proceeding, Petitioner has not proven prejudice. Petitioner has not presented any evidence to controvert the Judgment and Sentences introduced of his prior felony convictions. There appears no reason to believe that any of them is invalid for enhancement purposes. Nor is there a reasonable possibility that the jury would have imposed a reduced sentence if properly instructed. See Fogle, 700 P.2d at 212 (failure to instruct jury that it could find appellant had only one prior felony conviction was harmless where appellant had adduced no evidence to controvert the judgment and sentences introduced of his prior felony convictions). Accordingly, Petitioner is not entitled to relief on this ground.

(3) Insufficient Evidence of Prior Felony Convictions

As his third ground of ineffective assistance of appellate counsel, Petitioner asserts appellate counsel should have raised on

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in failing to instruct the jury that Petitioner could be found guilty of one former conviction.

direct appeal that copies of Judgment and Sentences of the three prior felony convictions were insufficient proof that Petitioner had committed those prior convictions. The Oklahoma Court of Criminal Appeals dismissed this claim because "Appellant notes that birth dates were introduced as evidence to establish that the former convictions were his." [Docket #14, ex. A at 4.] The record does not reflect that the State introduced birth dates for identification purposes.

At the time of Petitioner's direct appeal, "identity of name [was] prima facie evidence of the identity of person, and it [was] sufficient in absence of rebutting testimony." Henager v. State, 716 P.2d 669, 676 (Okla. Crim. App. 1986) (declining to adopt the position taken by the Tenth Circuit in Gravatt v. United States, 260 F.2d 498 (10th Cir. 1958), that identity of names does not establish defendant's prior convictions). Following the ruling on Petitioner's direct appeal, the Oklahoma Court of Criminal Appeals held that in proving prior felony convictions the State has the burden of establishing more than mere identity of name between the accused and the person listed as the defendant on the prior judgment and sentence. Cooper v. State, 810 P.2d 1303, 1306 (Okla. Crim. App. 1991). "In addition to identity of name, there must be other facts and circumstances for the jury to consider in reaching their verdict." Id. For example, commonness or unusualness of the name, the character of the former crime, and the place of its commission. Battenfield v. State, 826 P.2d 612, 614 (Okla. Crim. App. 1991), cert. denied, 112 S. Ct. 1491 (1992).

In this case, even if appellate counsel performed below the level expected from a reasonably competent attorney when he failed to argue on direct appeal that the Judgment and Sentences introduced were insufficient to prove Petitioner's prior felony convictions, Petitioner has not established prejudice. Petitioner has not presented any evidence that there was any discrepancy in the way his name was typed on the form. See Cooper, 810 P.2d at 1306. Nor has the Petitioner argued that his name was so common that it raised questions about his identity. See Battenfield, 826 P.2d at 614 (holding prosecutor's failure to introduce other supporting evidence to connect defendant with prior conviction, in addition to judgment and sentence bearing defendant's name, was harmless error due to the uniqueness of defendant's name). Accordingly, Petitioner was not prejudiced by his appellate counsel's failure to raise this issue on direct appeal.

IT IS HEREBY ORDERED that:

(1) The Attorney General of Oklahoma is **dismissed** as a party in this case. See Rule 2(A) of the Rules Governing Section 2254 Cases.

(2) Petitioner's motions for order requiring response, for evidentiary hearing, and for appointment of counsel [docket #12 and #15] are **denied.**

(3) The petition for a writ of habeas corpus is **denied.**

SO ORDERED THIS 30th day of November, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 11-30-93

FILED

NOV 30 1993

Richard M.

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

SANDRA ELNORA WILLIAMS,	)	
Petitioner,	)	
vs.	)	No. 93-C-1038-E
DRUG ENFORCEMENT AGENCY,	)	
Respondent.	)	

ORDER

Before the Court is Petitioner's application for a writ of habeas corpus by a person in federal custody pursuant to 28 U.S.C. § 2241.

The Court notes that the petition is signed by Rodney Mitchell rather than by Petitioner. Fed. R. Civ. P. 11 states that all papers must be signed by the party's attorney, if the party is represented by counsel, or by the party, if he or she is not represented by an attorney. Rodney Mitchell is not an attorney, and cannot act as an attorney for Petitioner. Petitioner is proceeding pro se, and must sign all her own papers.

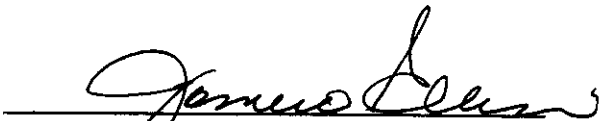
The Court also notes that Petitioner is not a prisoner. She states that "there has been no conviction," and that "[s]he was deported as an illegal alien by the United States and then unlawfully returned by the Drug Enforcement Agency for the purposes of committing crimes." (Petition at 1, 5.) Petitioner is not entitled to relief under 28 U.S.C. § 2241 unless she is a prisoner.

3

See 28 U.S.C. § 2241 (c).[1]

ACCORDINGLY, IT IS HEREBY ORDERED that Petitioner's application for a writ of habeas corpus is **denied.**

SO ORDERED THIS 29th day of November, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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[1]Section 2241(c) provides in pertinent part:

The writ of habeas corpus shall not extend to a prisoner unless--

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court there of; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order of sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations;

(5) It is necessary to bring him into court to testify or for trial.

ENTERED ON DOCKET

DATE 11-30-93

IN THE UNITED STATES DISRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 30 1993

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

VARRY WHITE MUSIC, et. al.,	)
PLAINTIFFS,	)
v.	)
BRIAN K. MARTINDALE and JUNIOR F. MARTINDALE,	)
DEFENDANTS.	)

92-C-31-E

NOTICE OF DISMISSAL

COME NOW the plaintiffs, by and through their counsel of record, and hereby dismiss their claims in the above styled and numbered case as against defendant, Brian K. Martindale, a party upon whom the plaintiffs were unable to secure service of process.

PIERCE COUCH HENDRICKSON
BAYSINGER & GREEN

Peter L. Wheeler

Hugh A. Baysinger (000617)
Peter L. Wheeler (012929)
P.O. Box 26350
Oklahoma City, OK 73126
(405) 235-1611

Attorneys for Plaintiffs

NOV 30 1993

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

NEW YORK LIFE INSURANCE COMPANY, a New York Corporation,	)	
PLAINTIFF,	)	
v.	)	CASE NO. 93-C-1049-B
RAMCO HOLDING CORPORATION, a Delaware corporation, DOUBLE R CORP., an Oklahoma corporation, THE RAM GROUP, LTD., an Oklahoma corporation, RAMCO OIL & GAS, INC., a Delaware corporation, RAM ASSET MANAGEMENT CO., an Oklahoma corporation, RAM RESERVE CONSOLIDATION, INC., a Delaware corporation, and RB OPERATING COMPANY, an Oklahoma corporation,	)	
DEFENDANTS.	)	

FILED
NOV 29 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, New York Life Insurance Company, and pursuant to Fed.R.Civ.P. 41(a)(1)(i), hereby dismisses its Complaint against the Defendant, Double R Corp., an Oklahoma corporation.

PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR

By: _____

J. Warren Jackman, OBA #4577
Kevin M. Abel, OBA #104
900 Oneok Plaza
Tulsa, Oklahoma 74103
(918) 581-5500
(918) 581-5599 (Fax)

ATTORNEYS FOR NEW YORK LIFE

CERTIFICATE OF SERVICE

I, J. Warren Jackman, hereby certify that on the 29th day of November, 1993, I mailed a true and correct copy of the above and foregoing Notice of Dismissal unto:

RAMCO Holding Corporation
c/o Mr. William Talley, II
100 N.W. 63rd Street, Suite 300
Oklahoma City, Oklahoma 73116

Double R Corp.
c/o Ruth Thomas
202 South Mississippi
Atoka, Oklahoma 74525

The RAM Group, Ltd.
c/o Mr. William Talley, II
100 N.W. 63rd Street, Suite 300
Oklahoma City, Oklahoma 73116

RAMCO Oil & Gas, Inc.
c/o The Corporation Trust Company
1209 Orange Street
Wilmington, Delaware 19801

RAM Asset Management
c/o Mr. William Talley, II
100 N.W. 63rd Street, Suite 300
Oklahoma City, Oklahoma 73116

RAM Reserve Consolidation, Inc.
c/o Mr. William Talley, II
100 N.W. 63rd Street, Suite 300
Oklahoma City, Oklahoma 73116

RB Operating Company
c/o Mr. Larry Lee
6120 South Yale, Suite 1700
Tulsa, Oklahoma 74136

J. Warren Jackman, OBA #4577

ENTERED ON DOCKET
DATE NOV 2 9 1993

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

THE CITY OF TULSA, a municipal corporation,	)	
Plaintiff,	)	
vs.	)	Case No. 93-C-843-B
LANDMARK LAND COMPANY OF OKLAHOMA, INCORPORATED, an Oklahoma corporation,	)	
Defendant.	)	

FILED
NOV 26 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This action arises from a breach of contract claim filed by the City of Tulsa (City) against Landmark Land Company of Oklahoma (Landmark). The action was originally filed in the District Court of Tulsa County in Tulsa, Oklahoma. Landmark removed the case to this court on September 17, 1993, pursuant to 28 U.S.C. §1452, based on this Court's original jurisdiction over bankruptcy matters established by 28 U.S.C. §1334.[1] The Court concludes that the case at bar is related to the bankruptcy proceedings in South Carolina.[2] Miscellaneous Order 128 of this Court states in pertinent part:

> Pursuant to Section 104 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, 28 U.S.C. § 157, this Court refers all cases

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[1] Landmark had previously filed its voluntary petition for relief under Chapter 11 of the United States Code in the United States District Court for the District of South Carolina. Landmark's bankruptcy case is still pending.

[2] A matter is "related to" a bankruptcy case if the outcome of the matter in question could conceivably have any effect upon the estate being administered in bankruptcy. In re Salem Mortgage Co., 783 F.2d 626, 634 (6th Cir. 1986)(quoting Mazur v. Air Duct Corp., 8 B.R. 848, 851 (Bankr. N.D. N.Y. 1981)).

O. transcodist.

> ... related to a case under Title 11, to the Bankruptcy Judge for the Northern District of Oklahoma, for consideration and resolution consistent with the law . . . (Emphasis added).

Therefore, the Court concludes that this matter should be and hereby is REFERED to the Bankruptcy Court for the Northern District of Oklahoma.

IT IS SO ORDERED THIS 24th DAY OF NOVEMBER, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 11-29-93

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

FILED

NOV 23 1993

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

MICHAEL HENRY MARTIN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 93-C-445-E
	)	
LARRY A. FIELDS, et al,	)	
	)	
Defendants.	)	

ORDER

Before the Court is Defendants' motion to dismiss filed on July 20, 1993. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

(1) Defendants' motion to dismiss [docket #4] is **granted** and the above captioned case is **dismissed without prejudice** at this time.

SO ORDERED THIS 23d day of November, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

6

ENTERED ON DOCKET

DATE 11-29-93

FILED

NOV 26 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

JESSE WATSON,	)	
Plaintiff,	)	
vs.	)	No. 93-C-947-E
TULSA POLICE DEPARTMENT, et al.,	)	
Defendants.	)	

ORDER

Before the Court is Plaintiff's civil rights action filed on October 25, 1993. The Court notes that on September 14, 1993, Plaintiff filed an identical civil rights action, Case No. 93-C-831-B. **ACCORDINGLY, IT IS HEREBY ORDERED that** the above captioned case, Case No. 93-C-947-E, is hereby **dismissed** as duplicitous.

SO ORDERED THIS 23d day of November, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 11-29-93

FILED

NOV 23 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

AMERICAN MEGATRENDS, INC.,	)	
Plaintiff,	)	
v.	)	Case No. 93-C-0190E
COMPUTERIZED AUTOMATION TECHNOLOGIES, INC., d/b/a PC DESIGNS,	)	
Defendant.	)	

ADMINISTRATIVE CLOSING ORDER

Plaintiff, American Megatrends, Inc., and Defendant, Computerized Automation Technologies, Inc., d/b/a/ PC Designs have settled this action pursuant to the terms of a Settlement and Release Agreement dated as of November 19, 1993. Under the terms of that Agreement, the Defendant has agreed to pay Plaintiff a sum of money over time. The Agreement gives the Plaintiff the right to move the Court for the entry of an Agreed Judgment in the future, if certain circumstances exist.

It is hereby Ordered that the Clerk administratively terminate this action in his records, without prejudice to the right of Plaintiff to reopen this action for the purpose of enforcing its rights under the terms of the Settlement and Release Agreement.

Each party is to pay its own costs and attorney fees.

IT IS SO ORDERED this 23rd day of November, 1993.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 11-29-93

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

FILED

NOV 26 1993

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

LARRY DON MAYNARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 93-C-494-E
	)	
BOBBY BOONE,	)	
	)	
Respondent.	)	

ORDER

Before the Court is Respondent's motion to dismiss Petitioner's application for a writ of habeas corpus. Respondent argues the Attorney General is not a proper party in this case, and the Petitioner has not exhausted his state remedies as his direct appeal from a conviction in Osage County is presently pending.

Petitioner does not dispute that his direct appeal is pending and that the Attorney General is not a proper party. He argues, however, that he has exhausted all available avenues for obtaining a transcript of an April 14, 1989 motion-to-dismiss hearing from Osage County, and for obtaining records and transcripts from a related case in Delaware County.

The records reveal that after filing his direct appeal from a conviction in Osage County, Petitioner filed two pro-se Petitions for Writ of Mandamus. Petitioner asserted that Osage County had failed to provide a copy of the transcript of the April 14, 1989 hearing, and that Delaware County had failed to provide copies of transcripts and records from a related case. Although, the Oklahoma Court of Criminal Appeals granted the writs, Petitioner has not received the requested transcripts and records. Delaware

18

County denied Petitioner's motion for records and transcript because he had not been determined to be an indigent in that court. The Osage County's records instead reveal that the transcript of the April 14, 1989 hearing was filed with the Oklahoma Court of Criminal Appeals on October 8, 1991.

Petitioner then filed the instant petition for a writ of habeas corpus, alleging grounds for relief related to the Delaware County case and not previously raised on direct appeal. In support of exhaustion, Petitioner stated that the denial of the above mentioned transcripts and records violated his right to a direct appeal. (Amended Petition, docket #9.)

The Supreme Court "has long held that a state prisoner's federal petition should be dismissed if the prisoner has not exhausted available state remedies as to any of his federal claims." Coleman v. Thompson, 111 S. Ct. 2546, 2554-55 (1991). To exhaust a claim, Petitioner must have "fairly presented" that specific claim to the Oklahoma Court of Criminal Appeals. See Picard v. Conner, 404 U.S. 270, 275-76 (1971). The exhaustion requirement is based on the doctrine of comity. 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).

While Petitioner may have exhausted all available avenues for

obtaining records and transcripts allegedly necessary to prosecute his direct appeal, he has not fairly presented all his grounds for relief to the Oklahoma Court of Criminal Appeals as his direct appeal is presently pending. See Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983) (even if the claim petitioner raises in federal court has been fairly presented once to the highest state court, petitioner has not exhausted his state remedies if he has a pending direct appeal in state court); Parkhurst v. State of Wyoming, 641 F.2d 775, 776 (10th Cir. 1981) (court properly denied habeas corpus relief for failure to exhaust state remedies because direct criminal appeal was pending). Therefore, Petitioner has not exhausted his state court remedies.

ACCORDINGLY, IT IS HEREBY ORDERED that:

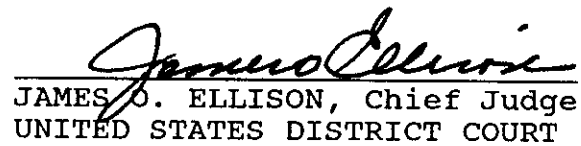
(1) Respondent's motion to dismiss [docket #15] is **granted.**

(2) Petitioner's motion for ruling [docket #14] is **denied** as moot.

(3) The Attorney General is **dismissed** as she is not a proper party in this case.

(4) The petition for a writ of habeas corpus is **dismissed.**

SO ORDERED THIS 26th day of November, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

Original

ENTERED ON DOCKET

DATE NOV 26 1993

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

FILED

NOV 19 1993

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

BIZJET INTERNATIONAL SALES & SUPPORT, INC.,	)	
Plaintiff,	)	
vs.	)	Case No. 91-C-904-B
PRATT & WHITNEY CANADA, INC.,	)	
and	)	
P&WC AIRCRAFT SERVICES, INC.,	)	
and	)	
AVIALL, INC.,	)	
Defendants.	)	

STIPULATION AND ORDER OF DISMISSAL WITH PREJUDICE OF ALL CLAIMS OF PLAINTIFF BIZJET INTERNATIONAL SALES AND SUPPORT, INC. AGAINST DEFENDANT PRATT & WHITNEY CANADA, INC., P&WC AIRCRAFT SERVICES, INC. AND AVIALL, INC.

Pursuant to Federal Rule of Civil Procedure 41(a)(1), the parties hereby stipulate that all of the claims of Plaintiff BizJet International Sales and Support, Inc. against Defendants Pratt & Whitney Canada, Inc., P&WC Aircraft Services, Inc., and Aviall, Inc., shall be dismissed with prejudice and without costs to any party.

238

Respectfully submitted,

Joel L. Wohlgemuth
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Attorneys for Pratt & Whitney
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Attorneys for Aviall, Inc.

FILED
NOV 23 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Dated: November 19, 1993

So Ordered:

Honorable Thomas R. Brett
UNITED STATES DISTRICT JUDGE

Date: 11-22-93

ENTERED ON DOCKET
DATE NOV 26 1993

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

FILED
NOV 23 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

LOYAL TAYLOR, d/b/a TAYLOR FREIGHT AGENCY, and UFO CONTRACTING,	)	
Plaintiff,	)	
vs.	)	Case No. 91-C-840-B
SUPERIOR EXPRESS SERVICE, INC., a foreign corporation, and TRANS-OHIO HAULERS, INC., a foreign corporation,	)	
Defendants.	)	

JOURNAL ENTRY OF JUDGMENT

This matter came on for jury trial this 15th day of November, 1993 before the undersigned Judge. Plaintiff, Loyal Taylor was represented by his attorneys, Brewster Shallcross & De Angelis by Richard A. Shallcross. Defendant, Superior Express Service, Inc. was represented by its attorneys, Jones, Givens, Gotcher & Bogan by C. Michael Copeland. The parties announced through their attorneys that a settlement of the plaintiff's claims had been agreed, and that pursuant to said settlement, judgment should be entered in favor of the plaintiff and against the defendant, Superior Express Service, Inc., on plaintiff's claims of contract breach in the sum of Ten Thousand Dollars ($10,000), and that said judgment shall not bear interest, and that each party shall bear their own costs and attorney fees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff, Loyal Taylor, have judgment against the defendant, Superior Express Service, Inc. on its claims of breach of contract in the sum of Ten

Thousand Dollars ($10,000); that said judgment shall not earn interest; and that each party shall bear their own costs, including attorney fees.

For all of which, let execution issue.

Thomas R. Brett
United States District Court Judge

AGREED:

BREWSTER SHALLCROSS & De ANGELIS

By _____
Richard A. Shallcross - OBA #10016
2021 S. Lewis, Suite 675
Tulsa, OK 74112
(918) 742-2021

Attorneys for Plaintiff,
Loyal Taylor

JONES, GIVENS, GOTCHER & BOGAN

By _____
C. Michael Copeland - OBA #13261
3800 First National Tower
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(918) 581-8200

Attorneys for Defendant,
Superior Express Service, Inc.

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ENTERED ON DOCKET
DATE NOV 26 1993

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

THRIFTY RENT-A-CAR SYSTEM, INC., an Oklahoma corporation, Plaintiff, vs. WILLIAM W. TIBBETTS, JR., an individual, WILLIAM W. TIBBETTS, III, an individual, PAUL RITCHIE, an individual, DEBBIE H. RITCHIE, an individual, RICHARD A. CAILLOUETTE, an individual, and JAMES LISTON, an individual, Defendants.	)	Case No. 93-C-473B

FILED

NOV 24 1993

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

NOTICE OF DISMISSAL

Pursuant to Fed. R. Civ. P. 41(a)(1), the plaintiff, Thrifty Rent-A-Car System, Inc., hereby voluntarily dismisses the above action, without prejudice, as to the defendants, William W. Tibbetts, Jr., and William W. Tibbetts, III, only, inasmuch as said defendants have not yet served an answer or motion for summary judgment on plaintiff. Plaintiff reserves all rights arising out of the transaction which is the subject of this action and which plaintiff may have against the remaining defendants or any other person or entity.

DATED this 24th day of November, 1993.

Jefferson E. Howeth

Michael J. Gibbens, OBA #3339
Jefferson E. Howeth, OBA #15261

- Of the Firm -

CROWE & DUNLEVY
A Professional Corporation
Suite 500
321 South Boston
Tulsa, Oklahoma 74103-3313
(918) 592-9800

ATTORNEYS FOR PLAINTIFF,
THRIFTY RENT-A-CAR SYSTEM, INC.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was mailed, postage prepaid, this 24th day of November, 1993, to:

Nathan W. Tarr, Esq.
200 E. Sandpointe, Suite 700
Santa Ana, California 92707

Attorney for Defendant William W. Tibbetts, Jr.

Franklin C. Adams, Esq.
370 West Sixth Street, Suite 110
San Bernadino, California 92401

Attorney for Defendant William W. Tibbetts, III

Paul Ritchie
P.O. Box 1382
Newport Beach, California 92659

Debbie H. Ritchie
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Newport Beach, California 92659

Mark S. Rains
Sheila K. Bryant
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525 South Main, Suite 300
Tulsa, Oklahoma 74103

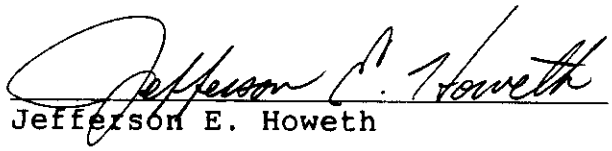
Attorneys for Defendant Richard A. Caillouette

Lawrence H. Nagler
Annette DeMichele
Nagler & Associates
9100 Wilshire Boulevard
Fifth Floor - West Tower
Beverly Hills, California 90212

-and-

Thomas A. Adelson
John Henry Rule
Gable & Gotwals
2000 Bank IV Center
15 West Sixth Street
Tulsa, Oklahoma 74119-5447

Attorneys for Defendant James Liston



Jefferson E. Howeth

236.93B.JEH

ENTERED ON DOCKET
DATE NOV 26 1993

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

H.R. NEAL, et al.,	)	
	)	
PlaintiffS,	)	
	)	
vs.	)	Case No. 93-C-365-B
	)	
THE STATE OF OKLAHOMA, EX REL. DEPARTMENT OF CORRECTIONS,	)	
	)	
Defendant.	)	

FILED
NOV 24 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STIPULATION OF DISMISSAL WITHOUT PREJUDICE AS TO ONE PLAINTIFF

COME NOW the parties, by and through their respective counsel of record, and stipulate to the dismissal without prejudice herein of the claim of Martin R. Honaker.

FRASIER & FRASIER

BY: _____

Steven R. Hickman OBA#4172
1700 Southwest Blvd, Suite 100
P. O. Box 799
Tulsa, OK 74101
918/584-4724
Attorneys for Plaintiff

and

Susan B. Loving, Attorney General
State of Oklahoma

BY: _____

Dan M. Peters
4545 N. Lincoln, Suite 260
Oklahoma City, OK 73105-3498
405/521-4274
Attorneys for Defendant

NOV 23 1993

NOV 23 1993

THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOV 23 1993

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

DERYL LARMAR FINLEY and MARCOE LAJAUN THERIOT, Plaintiffs,	)	
-vs-	)	CASE NO. 93-C0191-B
DILLARD DEPARTMENT STORES, INC. Defendant.	)	

ORDER OF DISMISSAL

THIS MATTER comes on this 23 day of November, 1993, the Plaintiffs having filed their motion for dismissal of the above styled matter, the Defendants being in agreement of the dismissal, the Court having reviewed the files and having been advised in the premises finds that this matter is dismissed without prejudice.

IT IS SO ORDERED.

S/ THOMAS R. BRETT

Judge of the District Court

ENTERED ON DOCKET
DATE NOV 23 1993

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

PATRICIA A. BURRIS, Plaintiff,	)	
vs.	)	Case No. 93-C-807B
UNIFIRST CORPORATION, a Massachusetts corporation, and FLOYD DENNIS JOHNSON, Defendants.	)	

FILED
NOV 23 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

STIPULATION for DISMISSAL WITH PREJUDICE

The undersigned, counsel for the parties to this action, hereby stipulate pursuant to Rule 14(a) of the Federal Rules of Civil Procedure to the dismissal of this action with prejudice and stipulate that no costs, expenses, or attorneys' fees shall be assessed against either party(s).

This 18th day of November, 1993.

By: _____
Ralph Simon, OBA No. 8254
5700 E. 61st., Suite 103
Tulsa, Oklahoma 74136-2700
(918) 496-8008
COUNSEL FOR PLAINTIFF

By: _____
Timothy A. Carney, OBA No. 11784
Gable & Gotwals
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 586-8383
COUNSEL FOR DEFENDANTS

IT IS SO ORDERED THIS 18th DAY OF November, 1993.

_____
UNITED STATES DISTRICT JUDGE

NOV 23 1993

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 23 1993

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

MUSEUM STEPS MUSIC; AGE TO AGE MUSIC, INC.; EDWARD GRANT, INC.; YELLOW ELEPHANT MUSIC; REALSONGS LEOSUN MUSIC; EMI APRIL MUSIC, INC.; THRILLER MILLER MUSIC; UNCLE RONNIE'S MUSIC COMPANY, INC.; MCA, INC.; JOBETE MUSIC CO., INC.; BILLY STEINBERG MUSIC; DENISE BARRY MUSIC; HIDEOUT RECORDS AND DISTRIBUTORS, INC.; NEBRASKA MUSIC; CASS COUNTY MUSIC COMPANY; RED CLOUD MUSIC COMPANY; SHAPIRO, BERNSTEIN & CO., INC.; MEADOWGREEN MUSIC COMPANY; BUG AND BEAR MUSIC; GRAND ILLUSION MUSIC; and HICKORY GROVE MUSIC, Plaintiffs,	No. 92-C-610-B
v.	
LEEMAY BROADCASTING SERVICES, INC.; LEEMAY BROADCASTING COMPANY, INC.; and JACK D. LEE, Defendants.	

JOURNAL ENTRY OF JUDGMENT

By Order dated and filed in the above styled cause on November 2, 1993, this Court granted summary judgment in favor of the plaintiffs and against the defendants, and each of them, as more fully set forth in said Order, a copy of which is attached hereto as Exhibit "A" and fully incorporated herein by reference; further, the Court scheduled a hearing for Friday, November 19, 1993 at 9:30 a.m. to hear evidence to assist the Court in determining the amount of damages the plaintiffs are entitled to recover from defendants.

The parties have signed and filed a joint Stipulation As To Amount Of Damages, a copy of which is attached hereto as Exhibit

"B" and fully incorporated herein by reference. Within the attached Stipulation, the parties agree that the plaintiffs are entitled to judgment against the defendants in the total sum of $31,000.00, representing all statutory damages for willful copyright infringements, investigation expenses, attorneys' fees and court costs. In view of the Stipulation between the parties, the evidentiary hearing set for November 19, 1993 is hereby stricken as moot.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of the plaintiffs, Museum Steps Music, et. al., and against each of the defendants, Leemay Broadcasting Company, Inc., Leemay Broadcasting Services, Inc. and Jack D. Lee, individually, jointly and severally, in the total sum of $31,000.00 (THIRTY ONE THOUSAND DOLLARS AND NO/100S), representing all statutory damages for willful copyright infringements, investigation expenses, attorneys' fees and court costs.

IT IS SO ORDERED this 22nd day of November, 1993.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE NOV 0 3 1993

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

FILED

NOV 2 1993

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

MUSEUM STEPS MUSIC; AGE TO AGE MUSIC, INC.; EDWARD GRANT, INC; YELLOW ELEPHANT MUSIC; REALSONGS LEOSUN MUSIC; EMI APRIL MUSIC, INC.; THRILLER MILLER MUSIC; UNCLE RONNIE'S MUSIC COMPANY, INC.; MCA, INC.; JOBETE MUSIC CO., INC.; BILLY STEINBERG MUSIC; DENISE BARRY MUSIC; HIDEOUT RECORDS AND DISTRIBUTORS, INC.; NEBRASKA MUSIC; CASS COUNTRY MUSIC COMPANY; RED CLOUD MUSIC COMPANY; SHAPIRO, BERNSTEIN & CO., INC.; MEADOWGREEN MUSIC COMPANY; BUG AND BEAR MUSIC; GRAND ILLUSION MUSIC; and HICKORY GROVE MUSIC,

Plaintiffs,

vs.

LEEMAY BROADCASTING SERVICES, INC.; LEEMAY BROADCASTING COMPANY, INC.; and JACK D. LEE,

Defendants.

Case No. 92-C-610-B

O R D E R

Now before the Court is Plaintiffs' Motion for Summary Judgment (Docket #13) pursuant to Rule 56 of the Federal Rules of Civil Procedure.

This is an action for willful copyright infringement, brought pursuant to 17 U.S.C. §501, alleging unauthorized public performance of plaintiffs' copyrighted musical compositions by broadcast over radio stations KVIN and KGND-FM, in Vinita, Oklahoma, on July 29-30, 1991, and March 6-7, 1991, respectively. Plaintiffs are members of the American Society of Composers, Authors and Publishers ("ASCAP") to which Plaintiffs have granted

the non-exclusive right to license non-dramatic performances of their copyrighted musical compositions. Defendants were the owners of radio stations KVIN and KGND-FM, in Vinita, Oklahoma, on the dates of the alleged copyright infringements.

The following facts are not in dispute:

1) Plaintiffs are the valid copyright owners of the fourteen (14) respective musical compositions upon which this action is based (Plaintiff's Brief in Support of Motion for Summary Judgment,[1] Ex. 1, ¶¶ 9, 10, 11 and 12; Ex. 3, Admission Nos. 2, 3; Ex. 4, Admission Nos. 2, 3; Ex. 5, Affidavit of Anthony Perretti, ¶ 3, attachments 5A-5N).

2) Defendant Leemay Broadcasting Services, Inc. (LBS) was and still is a corporation organized under the laws of the State of Oklahoma. At all material times, defendant LBS engaged in the business of operating a commercial radio station in Vinita, Oklahoma, known by the call letters KVIN-AM, under license granted by the Federal Communications Commission (Ex. 1, ¶ 4; Ex. 2, Defendants' Answer to Amended Complaint, ¶ 1).

3) Defendant LBS transferred all of its ownership interests in radio station KVIN-AM to a non-party on or about November 11, 1992, (Ex. 11, Affidavit of David S. Hochman, ¶ 13).

4) Defendant Leemay Broadcasting Company, Inc. (LBC) was and still is a corporation organized and existing under the laws of the State of Oklahoma. This defendant was, at all material times, and

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[1] Hereinafter, all exhibit citations will reference exhibits attached to Plaintiff's Brief in Support of Plaintiff's Motion for Summary Judgment.

still is, engaged in the business of operating a commercial radio station in Vinita, Oklahoma, known by the call letters KGND-FM, under license granted by the Federal Communications Commission (Ex. 1, ¶ 5; Ex. 2, ¶ 1).

5) Radio station KVIN-AM was, at all material times, operated for commercial purposes. Radio station KGND-FM has been and currently is operated for commercial purposes; further, in connection with the operation of these stations and as part of the programs regularly broadcast therefrom, musical compositions were and are publicly performed. (Ex. 1, ¶¶ 7, 8; Ex. 2, ¶ 1).

6) The uncontroverted affidavits of independent investigators Robert Lea (Ex. 7), June Anglen (Ex. 8) and Kenneth Ayden (Ex. 9), as well as the defendants' admissions, establish that among the songs publicly performed by defendants by broadcast over radio stations KVIN-AM and KGND-FM on March 6-7 and July 29-30, 1991, are the fourteen (14) musical compositions set forth on Schedule "A" of the Complaint (Ex. 3, Admission Nos. 6, 7; Ex. 4, Admission Nos. 6, 7).

7) On the dates of the infringements, defendant Jack D. Lee was the President and Director of corporate defendants LBS and LBC. He also was a shareholder of defendants LBS and LBC (Ex. 3, Admission No. 10; Ex. 4, Admission No. 10).

8) On the dates of the infringements, defendant Jack D. Lee was primarily responsible for the control, management, operations and maintenance of the affairs of defendants LBS and LBC, including the operations of radio stations KVIN-AM and KGND-FM, respectively.

Defendant Lee continues to be primarily responsible for the operations of radio station KGND-FM and currently serves as its General Manager (Ex. 3, Admission No. 11; Ex. 4, Admission No. 11).

9) Defendant LBS's License Agreement with ASCAP for radio station KVIN-AM was terminated on May 5, 1988, for nonpayment of past license fees owed to ASCAP (Ex. 11, ¶ 8).

10) Defendant LBC's License Agreement with ASCAP for radio station KGND-FM expired December 30, 1990, and was not thereafter extended or renewed (Ex. 11, ¶ 10).

11) On the dates of the infringements, the defendants were not licensed by ASCAP and did not obtain permission directly from any of the Plaintiffs to publicly broadcast any of the copyrighted songs involved in this suit (Ex. 11, ¶¶ 4, 8, 11; Ex. 3, Admission Nos. 13, 14; Ex. 4, Admission Nos. 13, 14).

12) Between December 1, 1987, and July 20, 1992, ASCAP repeatedly informed the defendants that permission from the plaintiffs or license from ASCAP was necessary to lawfully broadcast Plaintiffs' songs over Defendants' radio stations. However, Defendants failed to obtain permission or a license (Ex. 11, ¶¶ 6, 7, 8, 9, 10, 11 and 12; Ex. 3, Admission No. 17; Ex. 4, Admission No. 17).

13) Defendants willfully committed the copyright infringements on March 6-7 and July 29-30, 1991 (Ex. 11, ¶14; Ex. 3, Admission No. 18; Ex. 4, Admission No. 18).

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).

Analysis and Authorities

The copyright owner of a musical composition has the exclusive right to perform the copyrighted work publicly and/or to authorize others to perform the work publicly. 17 U.S.C. §106(4). Any unauthorized public performance of a copyrighted musical composition is an infringement of the copyright. 17 U.S.C. §501(a). To recover for an infringement of a copyrighted musical composition, the Plaintiffs must establish the following:

1. the originality and authorship of the compositions involved;
2. compliance with the formalities required to secure a copyright under Title 17, United States Code;

3. ownership of the copyrights of the relevant compositions;
4. defendants' public performance of the compositions; and
5. defendants' failure to obtain permission from the plaintiffs or their representatives for such performance.

Fermata International Melodies, Inc. v. Champions Golf Club, Inc., 712 F.Supp. 1257,1259 (S.D.Tex. 1989), aff'd, 915 F.2d 1567 (5th Cir. 1990); Almo Music Corp v. 77 East Adams, Inc., 647 F.Supp. 123, 124 (N.D.Ill. 1986).

The undisputed facts in the instant case establish as a matter of law all of the elements necessary to impose liability for infringement of Plaintiffs' copyrighted musical compositions. Nick-O-Val Music Co. v. P.O.S. Radio, Inc., 656 F.Supp. 826, 828 (M.D.Fla. 1987) and Boz Skaggs v. KND Corp., 491 F.Supp. 908, 913-14 (D.Conn. 1980). The only issues remaining to be resolved are the liability of Defendant Jack D. Lee in his personal capacity and the proper remedy to be afforded the Plaintiffs.

Defendant Lee asserts he should not be held personally liable for the copyright infringements because: (1) he was "thrust into the position of running" the defendant corporations after the other individual involved with the companies "bail[ed] out"; (2) he has spent significant personal finances on these companies to try to keep them afloat and is now on the "edge of bankruptcy"; (3) he has received no salary, compensation or other "financial benefit" in the past several years for management of the stations; and (4) he attempted to get the necessary licenses but was unable "to settle all the bills" owed by "these insolvent corporations."

"A corporate officer may be held vicariously liable (1) if the officer has a financial stake in the activity and (2) if the officer has the ability and right to supervise the activity causing the infringement." Fermata International Melodies, Inc. v. Champions Golf Club, Inc., 712 F.Supp. 1257, 1262 (S.D.Tex. 1989), aff'd, 915 F.2d 1567 (5th Cir. 1990); Meadowgreen Music Company v. Voice in the Wilderness Broadcasting, Inc., 789 F.Supp. 823, 826 (E.D.Tex. 1992); Boz Skaggs v. KND Corp., 491 F.Supp. 908, 913-14 (D.Conn. 1980)(citing Gershwin Publishing Corp. v. Columbia Artists Management, Inc., 443 F.2d 1159 (2nd Cir. 1971)). It is undisputed that Defendant Lee was the President, director and a shareholder[2] of corporate defendants LBS and LBC. It is also undisputed that on the dates of the infringements, defendant Lee was primarily responsible for the control, management, operations and maintenance of the affairs of defendants LBS and LBC, including the operations of radio stations KVIN and KGND-FM, respectively.

As a shareholder and officer of the defendant corporations, Lee had a direct "financial stake" in the actions of the radio stations. The fact that the radio stations were operating at a loss and that Lee was not receiving a salary does not alter the fact Lee had a financial stake in the activities of LBS and LBC.

As manager of the radio stations, Lee had "the ability and right" to supervise the music being played by the stations. It is

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[2] Lee asserts he is a co-shareholder of the two companies along with Bob May. Lee also states that initially "Bob May was the general manager, corporate officer, director and major shareholder" of the corporations but Lee was left to manage the radio stations after May "bailed out."

undisputed that Lee knew the defendant companies did not have permission to play the copyrighted music and yet he did not stop the broadcast of such music. Therefore, both elements necessary for finding individual liability of Defendant Lee have been satisfied. For these reasons, the Court concludes summary judgment against Defendant Lee in his individual capacity is appropriate.

The only other contested matter is the proper remedy. Plaintiffs seek injunctive relief, statutory damages, and costs, including a reasonable attorney's fee.

Defendants do not object to Plaintiffs' request for injunctive relief. Section 502(a) provides:

> Any Court having jurisdiction of a civil action arising under this title may ... grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

17 U.S.C. §502(a).

It is uncontested that the copyright infringements in this case have occurred over an extended period of time despite Plaintiffs' repeated requests to discontinue playing the copyrighted songs. Under such circumstances, the copyright proprietor is entitled to an injunction prohibiting further infringing performances. Famous Music Corp. v. Bay State Harness Horse Racing and Breeding Assoc., 423 F.Supp. 341 (D.Mass. 1976), aff'd, 554 F.2d 1213 (1st Cir. 1977); Boz Skaggs Music v. KND Corp., 491 F.Supp. 908 (D.Conn. 1980); Nick-O-Val Music Co. v. P.O.S. Radio, Inc., 656 F.Supp. 826 (M.D.Fla. 1987). The Court concludes an injunction is appropriate in the instant case and

Defendants are hereby permanently enjoined from broadcasting all copyrighted music compositions in the ASCAP repertory. Brockman Music V. Miller, 1990 Copyright L. Dec. (CCH) ¶26,602 (W.D.Mich. 1990).

The Copyright law also provides for statutory damages for copyright infringements as follows:

> (c) Statutory Damages --
> (1) Except as provided by clause (2) of this subsection, a copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than $500 or more than $20,000 as the court considers just.
> (2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than $100,000 ....

17 U.S.C. §504. This statute provides the trial court with a wide discretion to set damages within the statutory limits. Morley Music Co. v. Dick Stacey's Plaza Motel, Inc., 725 F.2d 1 (1st Cir. 1983). Factors to be considered include "the expenses saved and profits reaped by the defendants in connection with the infringements, the revenues lost by the plaintiffs as a result of the defendants' conduct, and the infringers state of mind -- whether willful, knowing, or merely innocent." Boz Skaggs Music v. KND Corp, 491 F.Supp. 908,914 (D.Conn. 1980).

Plaintiffs seek statutory damages in the amount of $2,750 per

infringement, for a total of $38,500. Plaintiffs offer no proof of actual damages but rather rely on an affidavit of David Hochman, ASCAP's Director of Radio Licensing, which states (1) the Defendants were not licensed to perform the copyrighted songs; (2) ASCAP repeatedly notified defendants of their infringing activities; and (3) if the radio stations had been properly licensed by ASCAP to date, defendants would owe approximately $20,600 in license fees. (Exhibit 11 to Plaintiffs' motion for summary judgment).

Defendant Lee objects to such an award as excessive. Lee states an award of $38,500 would force LBS and LBC into bankruptcy and would provide the Plaintiffs with a windfall. He also contends that according to his records the license fee would only total approximately $4,196.70.

In the case of willful infringement, an award of statutory damages sufficient to ensure that the Defendants are not better off than radio stations that comply with the copyright law is necessary in order to discourage future infringements. Badco Music, Inc. v. W.M.M., Inc., 1992 Copyright L. Dec. (CCH) ¶ 27,006 (W.D.Okla. 1992). In cases involving intentional copyright infringement, courts often award substantially more that the statutory minimum. E.g., Id. (awarding $1,500 per infringement); T.B. Harms v. Ramarine, CIV-89-367-C (E.D.Okl. 1989)($2,500 per infringement); Rogers v. Eighty Four Lumber Company, 623 F.Supp. 889 (W.D.Pa. 1985)($2,500 per infringement); Coolwell Music v. Richings, CIV-H-83-3898 (S.D.Tex. 1983)($5,000 per infringement).

In this case, the Defendants do not contest the fact that they did not have the necessary license or that they were aware they were infringing the copyrighted songs. Defendants simply contend they could not afford to purchase the needed licenses.

The determination of an appropriate amount of statutory damages "is an issue not determined by the preponderance of evidence but is rather resolved by a discretionary judgment to be resorted to in the absence of sufficient proof of profits, losses, etc." Morley Music Co. v. Dick Stacey's Plaza Motel, Inc., 725 F.2d 1 (1st Cir. 1983)(citing Sid & Marty Krofft Television v. McDonald's Corp., 562 F.2d 1157, 1178-79 (9th Cir. 1977)).

> It is true, however, that a trial court is not left completely to its own devices in determining damages. Although there need not be the kind of hearing required if factual damages were the issue, ... there must, we think, be either some hearing or sufficient affidavits to give the trial judge an adequate reference base for his judgment.

Morley Music Co. v. Dick Stacey's Plaza Motel, Inc., 725 F.2d 1, 3 (1st Cir. 1983)(citations omitted).

After considering the evidence presented in this case, along with the arguments of the parties and the relevant legal authority, the Court concludes statutory damages pursuant to §504(c)(1) are appropriate as to each of the Defendants. However, an evidentiary hearing is necessary to give the Court a sufficient foundation for determining an appropriate amount of damages per infringement.

The trial court is also given the discretion to award costs and attorneys fees to the prevailing party in a copyright infringement action. 17 U.S.C. §505. An award of attorneys' fees is

clearly warranted where the Defendant has deliberately violated the copyright law and has failed to come forward with any "colorable grounds" for a defense other than inability to pay. See Milene Music, Inc. v. Gotauco, 551 F.Supp. 1288,1298 (D.R.I. 1992). Under the facts of this case, the Court concludes Plaintiffs are entitled to costs and reasonable attorneys' fees pursuant to 17 U.S.C. §505.

For the reasons stated, Plaintiffs' Motion for Summary Judgment (Docket #13) should be and is hereby GRANTED to the extent set forth herein. A hearing on the issue of statutory damages is hereby set for November 19, 1993, at 9:30 a.m.[3]

IT IS SO ORDERED THIS 2nd DAY OF NOVEMBER, 1993.

DOCKETED

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

[3] In an Order filed October 7, 1993, this Court permitted Karl D. Jones of Hartley & Jones to withdraw as counsel of record for the Defendants, Jack D. Lee, LeeMay Broadcasting Services, Inc. and LeeMay Broadcasting Company, Inc. The October 7, 1993, Order also instructed LBS and LBC to secure other legal representation within 20 days and ordered Defendant Lee to secure other representation or appear *in propria persona* within twenty days. To date, no appearance has been entered on behalf of any of the Defendants.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

MUSEUM STEPS MUSIC; AGE TO AGE MUSIC, INC.; EDWARD GRANT, INC.; YELLOW ELEPHANT MUSIC; REALSONGS LEOSUN MUSIC; EMI APRIL MUSIC, INC.; THRILLER MILLER MUSIC; UNCLE RONNIE'S MUSIC COMPANY, INC.; MCA, INC.; JOBETE MUSIC CO., INC.; BILLY STEINBERG MUSIC; DENISE BARRY MUSIC; HIDEOUT RECORDS AND DISTRIBUTORS, INC.; NEBRASKA MUSIC; CASS COUNTY MUSIC COMPANY; RED CLOUD MUSIC COMPANY; SHAPIRO, BERNSTEIN & CO., INC.; MEADOWGREEN MUSIC COMPANY; BUG AND BEAR MUSIC; GRAND ILLUSION MUSIC; and HICKORY GROVE MUSIC,	)	
Plaintiffs,	)	
v.	)	
LEEMAY BROADCASTING SERVICES, INC.; LEEMAY BROADCASTING COMPANY, INC.; and JACK D. LEE,	)	
Defendants.	)	No. 92-C-610-B

STIPULATION AS TO AMOUNT OF DAMAGES

The parties in the above styled and numbered cause are expressly aware of the Court's Order of November 2, 1993, which, inter alia, (1) granted summary judgment in favor of the plaintiffs, Museum Steps Music, et. al., and against each of the defendants, Leemay Broadcasting Services, Inc., Leemay Broadcasting Company, Inc., and Jack D. Lee, jointly and severally, (2) permanently enjoined defendants from broadcasting all copyrighted music compositions in the ASCAP repertory, (3) awarded plaintiffs their attorneys' fees and costs in an amount to be subsequently

determined, and (4) awarded plaintiffs statutory damages as defined by 17 U.S.C. § 504 (C) for the defendants' willful infringements of the plaintiffs copyrighted music in an amount to be determined after an evidentiary hearing currently scheduled for Friday, November 19, 1993 at 9:30 a.m.

Based upon the Court's findings as set forth above and as more fully described in the Order of November 2, 1993, the parties hereby stipulate and agree that judgment may be entered in favor of the plaintiffs and against the defendants, and each of them, jointly and severally, in the total sum of $31,000.00 (THIRTY ONE THOUSAND DOLLARS AND NO/100S), as statutory damages for the defendants' willful infringement of the plaintiffs' copyrighted musical compositions, investigation expenses, attorneys' fees and court costs; further, the defendants hereby agree to immediately execute an ASCAP Blanket Radio License Agreement and to strictly comply with the terms and conditions of said License Agreement, including the timely remittance of all license fees due and becoming due thereunder.

PIERCE COUCH HENDRICKSON
BAYSINGER & GREEN

Peter L. Wheeler

Hugh A. Baysinger (000617)
Peter L. Wheeler (012929)
P.O. Box 26350
Oklahoma City, OK 73126
(405) 235-1611

Attorneys for Plaintiffs

LEEMAY BROADCASTING COMPANY, INC.
LEEMAY BROADCASTING SERVICES, INC.

Corporate Seal
Attest

Secretary

By: Jack D Lee
Jack D. Lee, President

Date: 11-16-93

Jack D Lee
Jack D. Lee, Individually

STATE OF OKLAHOMA)
) SS
COUNTY OF Craig)

Before me, a notary public in and for said county and state, on this 16th day of November, 1993, personally appeared Jack D. Lee, President of Leemay Broadcasting Services, Inc. and Leemay Broadcasting Company, Inc., to me known to be the identical person who executed the within and foregoing STIPULATION AS TO AMOUNT OF DAMAGES and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Barbara Crane
Notary Public

My Commission Expires:
3-18-95

FILED

NOV 23 1993

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

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

RESOLUTION TRUST CORPORATION, as CONSERVATOR for CIMARRON FEDERAL SAVINGS ASSOCIATION, Plaintiff,	)	
vs.	)	Case No. 91-C-0609-B
JIMMY M. SMITH; ROBERT D. MARSTERS; LONNIE E. SILER; LENA M. SILER; DONALD H. DINWIDDIE and MARY ANN DINWIDDIE, husband and wife; LAKELAND REAL ESTATE DEVELOPMENT, INC.; JAMES M. HENRY and KAREIN HENRY a/k/a KAREIN L. HENRY, husband and wife; QUINTON R. DODD and VICKIE E. DODD, husband and wife; UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Defendants.	)	

ORDER ENTERING DEFICIENCY JUDGMENT

Now on this 22 day of ~~October,~~ Nov 1993, the Motion for Entry of Deficiency Judgment filed herein by Resolution Trust Corporation, as Receiver for Cimarron Federal Savings Association ("RTC/Receiver"), comes on for regular hearing. The Court, having reviewed the pleadings herein and being well advised in the premises finds as follows:

The Motion for Entry of Deficiency Judgment has been withdrawn as to Defendant Robert D. Marsters. Defendants Donald H. Dinwiddie and Mary Ann Dinwiddie (collectively "the Dinwiddies") have been given notice of the Motion for Entry of Deficiency Judgment and notice of this hearing. The Court finds that the fair market value of the Mortgaged Property on or about June 16, 1993,

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

the day of the Sheriff's sale herein, was not in excess of $58,500.00, the sale price of the property, and therefore the value of the Dinwiddies' undivided 1/5 interest was not in excess of $11,700; that the amount of the judgment of the RTC/Receiver against the Dinwiddies, with interest through the date of sale, after being credited for application of certain receivership proceeds, amounted to $32,095.58, resulting in a deficiency of $20,395.58.

Certain funds remain in account of the Receiver appointed herein, one-fifth (1/5) of which should be credited against the judgment against the Dinwiddies upon distribution by the Receiver, provided that the Receiver's fees and costs, including the Receiver's attorney's fees, are paid first from the Receivership proceeds before such distribution is made.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the RTC/Receiver should be and is hereby granted judgment in its favor against Donald H. Dinwiddie and Mary Ann Dinwiddie, and each of them, in the amount of $20,395.58, plus interest thereon at an annual rate of 3.41% from and after June 16, 1993, until paid, plus attorney's fees and costs as are hereinafter determined by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court certain Receivership proceeds should be applied toward the judgment as set forth above.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the RTC/Receiver's Application for Attorney's Fees and Bill of

Costs should be submitted within fifteen (15) days of the entry of this Order to be considered by the Court.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

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

850008.060

FILED
NOV 23 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA Plaintiff, vs EDWIN C. BELL, Defendant.	))))))))	91-C-874-B

PAYMENT AGREEMENT

Plaintiff, the United States of America, having obtained its judgment herein, and the defendant, having consented to this Payment Agreement, hereby agree as follows:

1. Plaintiff's consent to this Payment Agreement is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay the amount of indebtedness in full and the further representation of the defendant that he will willingly and truly honor and comply with the Payment Agreement entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 25th day of November, 1993, the defendant shall tender to the United States a check or money order payable to the "**U. S. Department of Justice**", in the amount of $125.00 and a like sum on or before the 25th day of each following month until the entire amount of the Judgment, together with costs and accrued post judgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney's Office, Debt Collection Unit, 333 West 4th, 3460 U. S. Courthouse, Tulsa, OK 74103.

(c) Each said payment made by defendant shall be applied in accordance with the U. S. Rule, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. §1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

(d) The defendant shall keep the United States currently informed in writing of any material change in his financial situation or ability to pay, and of any change in his employment, place of residence or telephone number. Defendant shall provide such information to the United States Attorney at the address set forth in (b) above.

(e) The defendant shall provide the United States with current, accurate evidence of his assets, income and expenditures (including, but not limited to, his Federal income tax returns) within fifteen (15) days of the date of a request for such evidence by the United States Attorney.

2. Default under the terms of this Payment Agreement will entitle the United States to execute on the judgment without notice to the defendant.

3. The defendant has the right of prepayment of this debt without penalty.

4. The parties further agree that any Order of Payment which may be entered by the Court pursuant hereto may thereafter be modified and amended upon stipulation of the parties; or,

should the parties fail to agree upon the terms of a new stipulated Order of Payment, the Court may, after examination of the defendant, enter a supplemental Order of Payment.

S/ THOMAS R. BRETT
United States District Judge

APPROVED AS TO FORM:

STEPHEN C. LEWIS
United States Attorney

KATHLEEN BLISS ADAMS, OBA # 13625
Assistant U. S. Attorney
Attorney for Plaintiff

EDWIN C. BELL, Debtor

ENTERED ON DOCKET

DATE 11-23-93

FILED

NOV 23 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

LAWRENCE J. GOLDEN,	)	
Plaintiff,	)	
vs.	)	No. 93-C-753-E
DONALD RAY TUCKER and CARR & SONS, INC.,	)	
Defendant.	)	

STIPULATION OF DISMISSAL

COME NOW the Plaintiff, Lawrence J. Golden, and the Defendants, Donald Ray Tucker and Carr & Sons, Inc., by and through their respective attorneys, and in accordance with Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedures, hereby stipulate to the dismissal with prejudice of all claims and causes of action involved herein with prejudice for the reason that all matters, causes of action and issues in the case have been settled, compromised and released herein.

W. E. SPARKS

Attorney for Plaintiff

STEPHEN C. WILKERSON

Stephen C. Wilkerson

Attorney for Defendants

ENTERED ON DOCKET

DATE 11-23-93

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

FILED

NOV 23 1993

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

U S A FOR SUPERIOR STUCCO,INC,

PLAINTIFF,

v. Case No. 91-C-674-E

WILLIAM JOHNIE WEBB

,

DEFENDANT.

O R D E R

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

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

In the action herein, notice pursuant to Rule 35(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on APRIL 1, 1993. No action has been taken in the case within thirty (30) days of the date of the notice.

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

Dated this 22nd day of November, 1993.

United States District Judge

ENTERED ON DOCKET

DATE 11-23-93

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

FILED

NOV 23 1993

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

ANTONIO RDORIGUEZ ALMIRANTE,

PLAINTIFF,

v. Case No. 92-C-425-E

AIRFLEET CORPORATION
JIM BOURKE,

DEFENDANTS.

ORDER

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

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

In the action herein, notice pursuant to Rule 35(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on JUNE 29, 1993. No action has been taken in the case within thirty (30) days of the date of the notice.

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

Dated this 22d day of November, 1993.

United States District Judge

5

ENTERED ON DOCKET

DATE 11-23-93

FILED

NOV 23 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

CRAIG AVIATION, INC.,	)	
Plaintiff,	)	
vs.	)	Case No. 91-C-804-E
BIZJET INTERNATIONAL SALES AND SUPPORT, INC.,	)	
Defendants.	)	

JUDGMENT

The above-styled matter came on for determination on its merits after trial before the Court on the 2nd day of November, 1993. After careful consideration of all the evidence presented the Court announced its findings of fact and conclusions of law in open court on November 3, 1993. Those findings and conclusions are incorporated by reference herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is entered against Plaintiff, Craig Aviation, Inc., on its conversion claim and on all claims pursued against Defendant, BizJet International Sales and Support, Inc., AND that judgment is entered in favor of Defendant, BizJet International Sales and Support, Inc., on its quiet title counterclaim and all counterclaims against Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, BizJet International Sales and Support, Inc., is entitled to recover from Plaintiff, Craig Aviation, Inc., all costs and attorney fees incurred by defendant in this action as a result of the prosecution by plaintiff of a claim not well grounded in fact

nor warranted by existing law.

SO ORDERED this 19 day of November, 1993.

S/ JAMES O. ELLISON
JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

bjcr.o&j/lly

ENTERED ON DOCKET

FILED

NOV 22 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

SHEARSON LEHMAN BROTHERS INC.	)	
Plaintiff,	)	
vs.	)	Case No. 93-C-0174-B
BANK OF OKLAHOMA, N.A., a national banking association,	)	
Defendant.	)	

JOINT STIPULATION OF DISMISSAL

Comes now, Plaintiff, Shearson Lehman Brothers, Inc. ("Shearson"), and Defendant, Bank of Oklahoma, N.A. ("BOK"), pursuant to Rule 41 (a)(1)(ii) of the Federal Rules of Civil Procedure and by this Joint Stipulation of Dismissal, do hereby dismiss each and every claim contained in Shearson's Complaint and BOK's Counterclaim with prejudice to refiling of same.

ELLER AND DETRICH
A Professional Corporation

By: James C. Hodges
James C. Hodges, OBA #4254
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Paul A. Kane, OBA #14604
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HOLLIMAN, LANGHOLZ, RUNNELS & DORWART, A P.C.

By: Frederic Dorwart
Frederic Dorwart, Esq.
J. Michael Medina, Esq.
700 Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103
(918) 584-1471

ENTERED ON DOCKET

DATE 11-22-93

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

VICTOR CORNELL MILLER, Petitioner,	)	
vs.	)	No. 93-C-274
DAN REYNOLDS, Respondent.	)	

FILED

NOV 19 1993

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

ORDER

Before the Court is Respondent's motion to dismiss for failure to exhaust all state remedies.

Respondent asserts that Petitioner neither appealed his conviction nor pursued post-conviction relief. Petitioner does not dispute that he did not exhaust his state remedies. Rather he argues he should be excused from exhausting his state remedies because the Oklahoma Court of Criminal Appeals recently addressed in Eastham v. State, No. PC-83-279 (Okla. Crim. App. 1983), and Eastham v. State, No. PC-88-329 (Okla. Crim. App. 1988), the precise issues he raises in this petition. Petitioner, however, neither attaches a copy of the unpublished opinions in Eastham nor explains the issues decided therein.

The Supreme Court "has long held that a state prisoner's federal petition should be dismissed if the prisoner has not exhausted available state remedies as to any of his federal claims." Coleman v. Thompson, 111 S. Ct. 2546, 2554-55 (1991). To exhaust a claim, Petitioner must have "fairly presented" that specific claim to the Oklahoma Court of Criminal Appeals. See Picard v. Conner, 404 U.S. 270, 275-76 (1971). The exhaustion requirement is based on the doctrine of comity. Darr v. Burford,

15

339 U.S. 200, 204 (1950). "[E]xhaustion of state remedies is not required where the state's highest court has recently decided the precise legal issue that petitioner seeks to raise on his federal habeas petition." Goodwin v. State of Oklahoma, 923 F.2d 156, 157 (10th Cir. 1991).

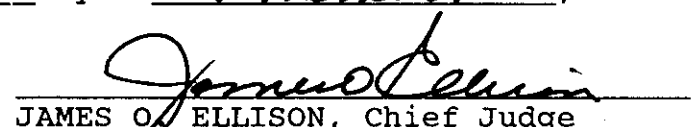
The Court cannot determine from the record before it whether Petitioner's claims are based on the same constitutional arguments that were rejected by the Oklahoma Court of Criminal Appeals in Eastham. Petitioner has neither provided a copy of the unpublished opinions nor explained the issues decided therein. Accordingly, exhaustion of state court remedies does not appear to be futile in this case. **THEREFORE, IT IS HEREBY ORDERED that**

(1) Respondent's motion to dismiss [docket #10] is **granted.**

(2) Petitioner's motion for expansion of record [docket #13] is **denied.**

(3) The petition for a writ of habeas corpus is **dismissed without prejudice** for failure to exhaust state remedies.

IT IS SO ORDERED this 18th day of November, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT