

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

FILED

JUN 29 1995

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

SETH ASARE,

Plaintiff,

VS.

MARTINAIRE OF OKLAHOMA, INC.

Defendant.

CASE NO. 94-C-1102-B

EXAMINED ON DOJ
JUN 30 1995

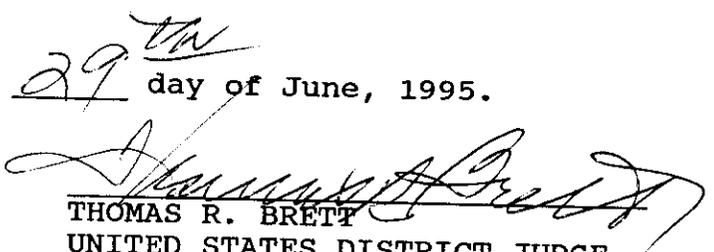
DATE

ORDER

The Complaint in this matter was filed November 30, 1994. The record fails to reflect any Return of Service indicating service upon the Defendant. The case is subject to dismissal without prejudice pursuant to Rule 4 (m), Federal Rules of Civil Procedure.

The Court concludes this matter should be and the same is hereby Dismissed without prejudice.

IT IS SO ORDERED this 29th day of June, 1995.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUN 29 1995

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

JOHN TOWNSHEND, personally and
derivatively for other minority
shareholders similarly situated,

Plaintiff,

vs.

SUNBURST MINING CORPORATION, a
Nevada corporation; GUTAPA, a
partnership; JERRY LONG; and
RICKY SHORES,

Defendants.

Case No. 95-C-230-B ✓

ENTERED ON DOCKET

DATE JUN 29 1995

ORDER

Before the Court for consideration is a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(3) and Fed.R.Civ.P. 12(b)(6) (Docket #9) filed by Defendants Sunburst Mining Corporation ("Sunburst"), Gutapa, Jerry Long ("Long") and Ricky Shores ("Shores").

Plaintiff John Townshend ("Townshend") alleges Defendants violated Section 10(b) of the Securities and Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §78j, and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5 (1995) by making material misrepresentations to the Plaintiff regarding certain actions of Sunburst Corporation and Gutapa, by failing to disclose a pending bond forfeiture in the State of Arkansas and by failing to disclose the potential loss of some of Sunburst's mining claims. Townshend further alleges he was defamed by Defendant Shores and that Defendant Shores unlawfully converted value of Sunburst shares by intentionally and falsely overvaluing the assets for which those shares were exchanged.

Defendants allege this action should be dismissed because this

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of the kind
by
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Court is not the proper venue for this claim. It is not the duty of a plaintiff to plead and prove proper venue. 15 CHARLES A. WRIGHT, ARTHUR MILLER & EDWARD H. COOPER §3826. The clear weight of authority states that when an objection to venue has been raised the burden is on the plaintiff to establish that the district he chose is the proper forum. *Id.*; See Monarch Normandy v. Normandy Square, 817 F. Supp. 899, 903 (D. Kan. 1993); General Bedding Corp. v. Echevarria, 714 F. Supp. 1142, 1144 (D. Kan. 1989). Townshend has submitted no response, affidavits or other documentary evidence to the Court in response to Defendants' Motion to Dismiss.

According to §27 of the Exchange Act, venue in securities cases may be laid where any act or transaction constituting the violation occurred, or "in the district wherein the defendant is found or is an inhabitant or transacts business." 15 U.S.C.A. §78aa (Supp. 1995). "The transaction of business requirement as stated in the statute demands that a defendant's activities in a particular venue constitute a substantial part of its ordinary business and be continuous and of some duration." Kansas City Power & Light Co. v. Kansas Gas and Electric Co., 747 F. Supp. 567, 572 (W.D. Mo. 1990). The sole reference Townshend makes to venue in his complaint declares 15 U.S.C.A. §78aa confers venue because "Sunburst's principal place of business is City of Tulsa, County of Tulsa, State of Oklahoma." (Townshend Petition p.2). Townshend has failed to come forth with any factual support for his allegation that Sunburst "does business" in Oklahoma. The only evidentiary support provided by Townshend consists of a Notice of Meeting of

Shareholders (Townshend's Exhibit B to Petition) which was prepared by Townshend and gives Townshend's home address as the site of the proposed meeting. No evidence was submitted to show that a meeting occurred or that any business was, in fact, transacted at that time. Affidavits submitted by Defendants Long and Shores deny Townshend's allegations and clearly assert neither they nor Sunburst have ever done business in Oklahoma. (Long's Declaration paragraphs 2, 4 and Shores' Declaration paragraphs 5, 5). Even without Defendants assertions to the contrary, Townshend's call for a Shareholder Meeting at his home does not constitute "a substantial part of its ordinary business," nor is it "continuous and of some duration." Id. Therefore, venue is not proper on this basis.

"Found" for the purposes of venue in securities cases, means "a presence and continuous local activity within the district." Wichita Federal Savings & Loan Assoc. v. Landmark, 674 F. Supp. 321, 328 (D. Kan. 1987); Kansas City Power, 747 F. Supp. 567. In this case Defendants both submit affidavits explicitly denying that they, Gutapa, and Sunburst have ever done business in Oklahoma, much less engaged in the requisite "continuous local activity...." (Declaration of Defendant Long paragraphs 2, 4 and Declaration of Defendant Shores paragraphs 5, 6).

Venue is also proper if a Defendant is an inhabitant of this District. As stated in the Defendants' uncontroverted affidavits, Defendants are inhabitants of Arkansas, not Oklahoma, so venue is unavailable on this basis as well. (Id. paragraphs 2, 3 and 3, 4

respectively).

Finally, venue is proper in any district in which any act or transaction constituting the violation occurred. Again, Townshend bore the burden of proof on the appropriateness of venue. He provided the Court with no evidence that any acts of the Defendants alleged to constitute the Section 10b-5 violation occurred in the Northern District of Oklahoma. Townshend simply makes no reference to the place of occurrence of any alleged misrepresentations. This Court finds Townshend has failed, following the objection to venue, to make the required showing that the Northern District of Oklahoma is the proper venue for this action.

Following a finding that venue in this District is improper, 28 U.S.C. §1406 applies. It provides,

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

The Court has the sole discretion to dismiss or transfer a case for improper venue. General Elec. Capital Corp. v. Selph, 718 F. Supp. 1495 (D. Kan. 1989). Since this Court finds Plaintiff has failed to state a claim upon which relief can be granted and Plaintiff has offered no reason why it would be in the interest of justice to transfer the case, the Court declines to transfer the case to another district and finds it proper to dismiss this case.

Townshend's first cause of action alleges that Defendants Gutapa and Shores violated Section 10b-5 of the Exchange Act. For Townshend to adequately plead Defendants Shores' and Gutapa's

liability under Section 10b-5 he must allege the elements of a 10b-5 claim: (1) that in connection with the purchase or sale of a security; (2) Defendants made an untrue statement of material fact or omission of material fact; (3) upon which Plaintiff justifiably relied; (4) causing a loss to Plaintiff. O'Connor v. R.F. Lafferty & Co., Inc., 965 F.2d 893, 897 (10th Cir. 1992); Farlow v. Peat, Marwick, Mitchell & Co., 956 F.2d 982, 986 (10th Cir. 1992). Additionally, to sustain his cause of action under Section 10(b) and Rule 10b-5, Townshend is required to allege Defendants acted with the requisite scienter ("intent to deceive, manipulate or defraud"). Id.; Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193, 96 S.Ct. 1375, 1381, 47 L.Ed.2d 668 (1976) *rehearing denied*, 425 U.S. 986, 96 S.Ct. 2194, 48 L.Ed.2d 811 (1976).

To dismiss a complaint and action for failure to state a claim upon which relief can be granted, it must appear beyond doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41 (1957). Motions to dismiss under Rule 12(b), Fed.R.Civ.P., admit all well-pleaded facts. Jones v. Hopper, 410 F.2d 1323 (10th Cir. 1969), *cert. denied*, 397 U.S. 991 (1970). The allegations of the Complaint must be taken as true and all reasonable inferences from them must be indulged in favor of complainant. Olpin v. Ideal National Ins. Co., 419 F.2d 1250 (10th Cir. 1969), *cert. denied*, 397 U.S. 1074 (1970).

Taking all allegations in the Complaint as true for the purposes of this Motion, the Court finds the Complaint lacks language necessary to allege the requisite elements of a cause of

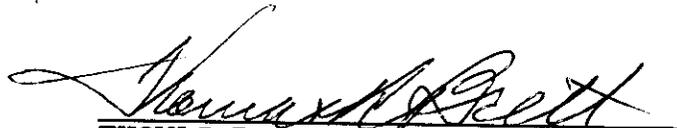
action under Section 10b-5. In his first paragraph of factual assertions, Plaintiff simply states that Defendant Gutapa made representations to Townshend about the New Mexico mineral leases that Townshend now alleges were false. In an effort to tie these statements to the sale of securities, Townshend claims that it was because of these representations that he decided to purchase Sunburst stock. Beyond this initial allegation, Townshend's Complaint does not go on to allege intent on the part of the partnership to deceive, defraud or manipulate the Plaintiff. He does not allege that he justifiably relied on partnership statements, nor does he allege a causal connection to any damages suffered by Plaintiff. In short, Townshend completely fails to allege any set of facts that would support a cause of action against Defendant Gutapa for violations of Section 10b-5.

Regarding Townshend's assertions concerning Defendant Shores, the Complaint fails to allege that Defendant Shores acted with the requisite scienter. Without allegations to establish the connection between Shores and the forfeiture action, Townshend has not alleged that Defendant Shores intentionally misrepresented facts to the Plaintiff. The Court cannot find, in any of Townshend's three claims, facts that, taken as true, would meet the requirements of pleading the essential elements of a Section 10b-5 claim. The Court finds Townshend has failed to carry his burden of pleading a valid cause of action against the Defendants. Defendants' Motion to Dismiss Plaintiff's Complaint is hereby GRANTED.

The Court also dismisses Townshend's pendent state law claims.

Clear language from the U.S. Supreme Court supports a refusal by this Court to hear Plaintiff's state law claims following a dismissal of the federal claim. "Certainly, if federal claims are dismissed before trial, even though not insubstantial..., the state claims should be dismissed as well." United Mine Workers v. Gibbs, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966). The Courts are given the power to retain jurisdiction over state law claims where considerations of fairness, judicial economy, comity and convenience suggest it would be in the interests of the Court and parties to do so. Id. at 726, 727. Further, the lower courts are instructed, "(w)hen the single federal-law claim in the action (is) eliminated at an early stage of the litigation, the District Court (has) a powerful reason to choose not to continue to exercise jurisdiction." Carnegie-Mellon University v. Cohill, 484 U.S. 343, 351, 108 S.Ct. 614, 619, 98 L.Ed. 2d 720 (1988). After considering the factors listed above, this Court concludes it would be inappropriate to retain jurisdiction over Townshend's pendent state law claims. Defendants' Motion to Dismiss based on improper venue and failure to state a claim is GRANTED without prejudice, if filed in the appropriate forum.

IT IS SO ORDERED THIS 29th DAY OF JUNE, 1995.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE JUN 30 1995

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

FILED

JUN 29 1995

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

BILLY F. POE,
Plaintiff,

vs.

KEN LASTER COMPANY, an Oklahoma
corporation,
Defendant.

Case No. 95-C-407E

ORDER

THIS MATTER comes on before this Court this 29 day of June, 1995, upon the Motion to Dismiss and Brief in Support ("Motion") filed herein by the Defendant Ken Laster Company on May 26, 1995. The Court finds that the Plaintiff, Billy F. Poe, has failed to respond to Defendant's Motion as required by Local Rule 7.1(c) of the Local Civil Rules for the United States District Court for the Northern District of Oklahoma and that the matter has therefore been confessed. The Court further finds that Plaintiff's claims must be dismissed because neither the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et seq*, nor the Oklahoma Anti-Discrimination Law, 12 O.S. §§ 1101 *et seq*, are applicable to this Defendant. Accordingly, this Court lacks subject matter jurisdiction pursuant to 29 U.S.C. § 626(c), and further that Plaintiff has failed to state a claim upon which relief may be granted pursuant to Fed. R. Civ. Pro. 12(b)(6).

Plaintiff's Complaint is hereby dismissed.

S/ JAMES O. ELLISON

The Honorable Judge James O. Ellison

Submitted by:
BARBER & BARTZ
Attorneys for Defendant
John M. Hickey, OBA #11100
One Ten Occidental Place
110 West Seventh Street, Suite 200
Tulsa, Oklahoma 74119
(918) 599-7755

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE ~~JUN 30 1995~~

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 LARRY D. GOWEN aka Larry Dale)
 Gowen; LYNN GOWEN aka Olga Lynn)
 Gowen; COUNTY TREASURER, Rogers)
 County, Oklahoma; BOARD OF)
 COUNTY COMMISSIONERS, Rogers)
 County, Oklahoma,)
)
 Defendants.)

FILED

JUN 28 1995

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

Civil Case No. 95-C 271K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day of June, 1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Rogers County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma, appear by Michele L. Schultz, Assistant District Attorney, Rogers County, Oklahoma; and the Defendants, LARRY D. GOWEN aka Larry Dale Gowen and LYNN GOWEN aka Olga Lynn Gowen, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, LARRY D. GOWEN aka Larry Dale Gowen, signed a Waiver of Summons and on April 21, 1995; that the Defendant, LYNN GOWEN aka Olga Lynn Gowen, signed a Waiver of Summons on April 21, 1995; that Defendant, COUNTY TREASURER, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on March 28, 1995,

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

by Certified Mail; and that Defendant, BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on March 28, 1995, by Certified Mail.

It appears that the Defendants, COUNTY TREASURER, Rogers County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma, filed their Answer on April 5, 1995; and that Defendants, LARRY D. GOWEN aka Larry Dale Gowen and LYNN GOWEN aka Olga Lynn Gowen, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, LARRY D. GOWEN, is one and the same person as Larry Dale Gowen, and will hereinafter be referred to as "LARRY D. GOWEN." The Defendant, LYNN GOWEN, is one and the same person as Olga Lynn Gowen, and will hereinafter be referred to as "LYNN GOWEN." The Defendants, LARRY D. GOWEN and LYNN GOWEN, are Husband and Wife.

The Court further finds that on July 20, 1992, LARRY DALE GOWEN and OLGA LYNN GOWEN, filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 92-02538-C. On November 3, 1992, the United States Bankruptcy Court for the Northern District of Oklahoma filed its Discharge of Debtor and the case was subsequently closed on March 25, 1993.

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

**LOT 10 IN BLOCK 5 OF ROLLING MEADOWS, A
SUBDIVISION IN SECTION 12, TOWNSHIP 21 NORTH,
RANGE 14 EAST OF THE I.B. & M., ROGERS COUNTY,
STATE OF OKLAHOMA, ACCORDING TO THE
RECORDED PLAT THEREOF.**

The Court further finds that on January 22, 1988, the Defendants, LARRY D. GOWEN and LYNN GOWEN, executed and delivered to PEOPLES FEDERAL SAVINGS AND LOAN, their mortgage note in the amount of \$64,418.00, payable in monthly installments, with interest thereon at the rate of Ten and One-Half percent (10.50%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, LARRY D. GOWEN and LYNN GOWEN, HUSBAND AND WIFE, executed and delivered to PEOPLES FEDERAL SAVINGS AND LOAN, a mortgage dated January 22, 1988, covering the above-described property. Said mortgage was recorded on January 25, 1988, in Book 777, Page 384, in the records of Rogers County, Oklahoma.

The Court further finds that on January 22, 1988, PEOPLES FEDERAL SAVINGS AND LOAN ASSOCIATION, assigned the above-described mortgage note and mortgage to MORTGAGE CLEARING CORPORATION. This Assignment of Mortgage was recorded on January 25, 1988, in Book 777, Page 389, in the records of Rogers County, Oklahoma. The Assignment was re-recorded on March 7, 1988, in Book 780, Page 157, in the records of Rogers County, Oklahoma, to show original mortgagee.

The Court further finds that on April 6, 1990, MORTGAGE CLEARING CORPORATION, assigned the above-described mortgage note and mortgage to SECRETARY OF HOUSING AND URBAN DEVELOPMENT. This Assignment of Mortgage was recorded on April 11, 1990, in Book 829, Page 60, in the records of Rogers County, Oklahoma.

The Court further finds that on March 22, 1990, the Defendants, LARRY D. GOWEN and LYNN GOWEN, 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 12, 1991.

The Court further finds that the Defendants, LARRY D. GOWEN and LYNN GOWEN, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, LARRY D. GOWEN and LYNN GOWEN, are indebted to the Plaintiff in the principal sum of \$101,807.42, plus interest at the rate of 10.50 percent per annum from January 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Rogers County, Oklahoma, has a claim on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$232.98 for 1994 property taxes. Said claim is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendants, LARRY D. GOWEN and LYNN GOWEN, are in default and have no right, title or interest in the subject real property.

The Court further finds that 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, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, LARRY D. GOWEN and LYNN GOWEN, in the principal sum of \$101,807.42, plus interest at the rate of 10.50 percent per annum from January 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5.53 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Rogers County, Oklahoma, have and recover judgment in the amount of \$232.98, plus costs and interest, for personal property taxes for the year 1994, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma, LARRY D. GOWEN and LYNN GOWEN, 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, LARRY D. GOWEN and LYNN GOWEN, 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;

Third:

In payment of Defendant, COUNTY TREASURER, Rogers County, Oklahoma, in the amount of \$232.98, 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 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.

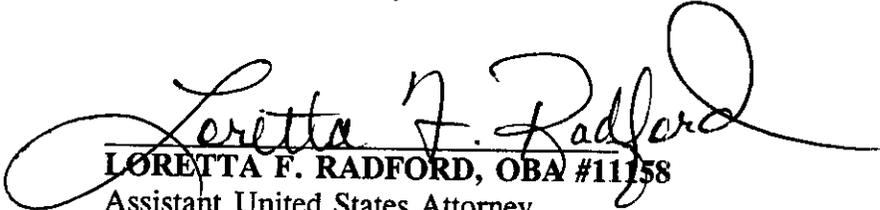
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

3460 U.S. Courthouse

Tulsa, Oklahoma 74103

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MICHELE L. SCHULTZ, OBA #13771

Assistant District Attorney

219 S. Missouri, Room 1-111

Claremore, Oklahoma 74017

(918) 341-3164

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Rogers County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-C 271K

LFR:flv

ENTERED ON DOCKET

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA DATE JUN 30 1995

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
HOWARD K. YEE; TREASIA A. YEE;)
CITY OF BROKEN ARROW, Oklahoma)
COUNTY TREASURER, Tulsa County,)
Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
Defendants.)

FILED

JUN 30 1995

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

Civil Case No. 94-C 1130K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day of June, 1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, City of Broken Arrow, Oklahoma, appears by City Attorney, Michael R. Vanderburg; and the Defendants, Howard K. Yee and Treasia A. Yee, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendants, Howard K. Yee and Treasia A. Yee, are husband and wife.

The Court being fully advised and having examined the court file finds that the Defendants, Howard K. Yee and Treasia A. Yee, were each served with process on

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

February 16, 1995; and that the Defendant, **City of Broken Arrow, Oklahoma**, acknowledged receipt of Summons and Complaint via Certified Mail on December 12, 1994.

It appears that the Defendants, **County Treasurer, Tulsa County, Oklahoma**, and **Board of County Commissioners, Tulsa County, Oklahoma**, filed their Answer on December 27, 1994; that the Defendant, **City of Broken Arrow, Oklahoma**, filed its Answer on January 23, 1995; and that the Defendants, **Howard K. Yee and Treasia A. Yee**, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on October 20, 1994, Howard K. Yee and Treasia Ann Yee, filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 94-03139-C. On May 24, 1995, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

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

**Lot Thirteen (13), Block Two (2), VANDEVER ACRES
4TH, an addition to the City of Broken Arrow, Tulsa
County, State of Oklahoma, according to the recorded Plat
thereof.**

The Court further finds that on April 21, 1987, the Defendants, Howard K. Yee and Treasia A. Yee, executed and delivered to FIRST SECURITY MORTGAGE COMPANY their mortgage note in the amount of \$67,262.00, payable in monthly installments, with interest thereon at the rate of eight and one-half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Howard K. Yee and Treasia A. Yee, Husband and Wife, executed and delivered to First Security Mortgage Company a mortgage dated April 21, 1987, covering the above-described property. Said mortgage was recorded on April 30, 1987, in Book 5019, Page 2910, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 21, 1987, FIRST SECURITY MORTGAGE COMPANY assigned the above-described mortgage note and mortgage to BANK OF OKLAHOMA, N.A. This Assignment of Mortgage was recorded on November 19, 1987, in Book 5065, Page 149, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 26, 1987, BANK OF OKLAHOMA, N.A. assigned the above-described mortgage note and mortgage to MORTGAGE CLEARING CORPORATION. This Assignment of Mortgage was recorded on November 19, 1987, in Book 5065, Page 150, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 24, 1988, MORTGAGE CLEARING CORPORATION assigned the above-described mortgage note and mortgage to the SECRETARY OF HOUSING AND URBAN DEVELOPMENT, its successors and assigns. This Assignment of Mortgage was recorded on November 14, 1988, in Book 5139, Page 1604, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 20, 1988, the Defendants, Howard K. Yee and Treasia A. Yee, 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 March 14, 1989, December 4, 1989, December 5, 1990, and December 5, 1991.

The Court further finds that the Defendants, Howard and Treasia A. Yee, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, **Howard K. Yee and Treasia A. Yee**, are indebted to the Plaintiff in the principal sum of \$82,377.53, plus interest at the rate of 8.5 percent per annum from August 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$925.00, plus penalties and interest, for the year of 1994. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$68.00 which became a lien on the property as of June 23, 1994; and a lien in the amount of \$26.00 which became a lien as of June 25, 1993. Said liens are inferior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendant, **City of Broken Arrow, Oklahoma**, has no right, title or interest in the subject real property except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat.

The Court further finds that the Defendants, **Howard K. Yee and Treasia A. Yee**, are in default, and have no right, title or interest in the subject real property.

The Court further finds that 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, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment in rem against the Defendants, **Howard K. Yee and Treasia A. Yee**, in the principal sum of \$82,377.53, plus interest at the rate of 8.5 percent per annum from August 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.53 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, have and recover judgment in the

amount of \$925.00, plus penalties and interest, for ad valorem taxes for the year 1994, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, have and recover judgment in the amount of \$94.00 for personal property taxes for the years 1992 and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **City of Broken Arrow, Oklahoma**, has no right, title or interest in the subject real property except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **Howard K. Yee, Treasia A. Yee, 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, **Howard K. Yee and Treasia A. Yee**, 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 Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$925.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$94.00, personal property taxes which are currently due and owing.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that 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.

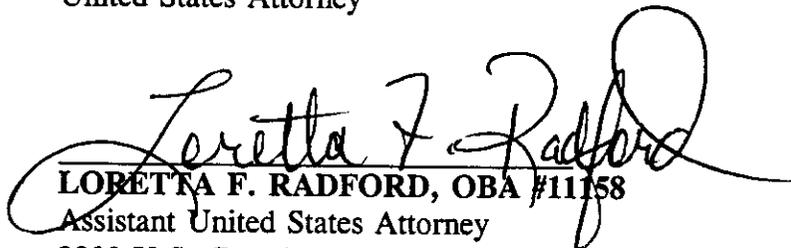
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

3900 U.S. Courthouse

Tulsa, Oklahoma 74103

(918) 581-7463



DICK A. BLAKELEY, OBA #852

Assistant District Attorney

406 Tulsa County Courthouse

Tulsa, Oklahoma 74103

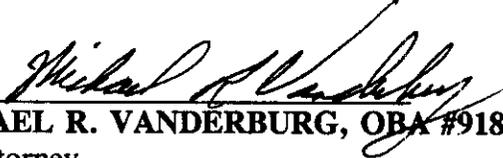
(918) 596-4841

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Tulsa County, Oklahoma


MICHAEL R. VANDERBURG, OBA #9180

City Attorney

P.O. Box 610

Broken Arrow, Oklahoma 74012

(918) 251-5311

Attorney for Defendant,

City of Broken Arrow, Oklahoma

Judgment of Foreclosure

Civil Action No. 94-C 1130K

LFR:lg

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

ENTERED ON DOCKET
DATE JUN 30 1995

JESSE BALFOUR,
Petitioner,
vs.
EDWARD EVANS,
Respondent.

No. 95-C-166-K

FILED

JUN 27 1995

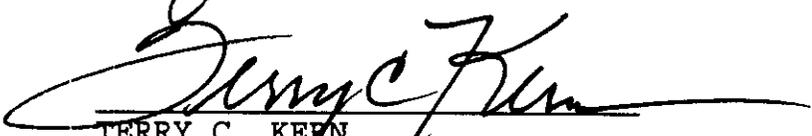
Richard M. Levi, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter comes before the Court on Petitioner's motion to dismiss this habeas corpus action without prejudice. (Docket #9.) Respondent has not objected.

Accordingly, Petitioner's motion to dismiss this habeas action is granted and this action is hereby dismissed without prejudice.

SO ORDERED THIS 28 day of June, 1995.


TERRY C. KEEN
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE JUN 30 1995

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

ERIC BANDURSKI and CHARLENE)
BANDURSKI, individually, DOUG)
MARTIN, individually, and)
MARK PERRY, d/b/a WINDWARD)
PROPERTIES,)

Plaintiffs,)

vs.)

JUNIOR REGIER, d/b/a REGIER)
FLYING SERVICE, ORVAL D.)
SMITH, d/b/a SMITH SALES,)
ANNA PITTS, JOSETTE KELTON,)
and UNITED STATES OF AMERICA,)
ex rel. DEPARTMENT OF)
INTERIOR, ex rel. BUREAU OF)
INDIAN AFFAIRS,)

Defendants.)

Case No. 95-C-386K

F I L E D

JUN 30 1995

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

ORDER OF DISMISSAL WITHOUT PREJUDICE

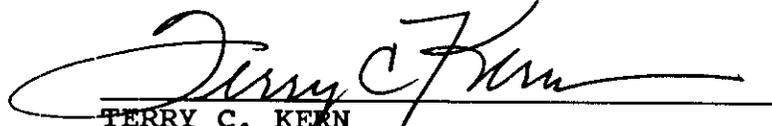
COMES NOW the Court, on this 28 day of June,
1995, and pursuant to Plaintiffs and Defendant Junior Regier, d/b/a
Regier Flying Service's Stipulation of Dismissal Without Prejudice,
and for good cause shown, orders that the above entitled cause be
dismissed without prejudice to the refiling of the same.

/ TERRY C. KERN

JUDGE OF THE DISTRICT COURT

Walter D. Haskins, OBA #3964
Michael R. Annis, OBA #15179
ATKINSON, HASKINS, NELLIS, BOUDREAUX,
HOLEMAN, PHIPPS & BRITTINGHAM
1500 Park Centre
525 South Main
Tulsa, Oklahoma 74103-4524
Telephone: (918) 582-8877
Facsimile: (918) 585-8096

ORDERED this 28 day of June, 1995.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

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

FILED

JUN 28 1995

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

MARY JANE ALEXANDER)
)
 Plaintiff,)
)
 vs.)
)
 REGIS CORPORATION,)
)
 Defendant.)

Case No. 94-C-886-B

ENTERED FOR RECORD
JUN 28 1995

JOINT STIPULATION FOR DISMISSAL

The Plaintiff Mary Jane Alexander and the Defendant Regis Corporation, jointly stipulate and agree that this case be dismissed with prejudice, each party to bear her or its own costs, expenses and attorneys' fees.

Attorney for Plaintiff

Jeff Nix, Esq.
2121 S. Columbia
Suite 710
Tulsa, OK 74114

Attorneys for Defendants

David E. Strecker, OBA #8687
Connie Lee Kirkland, OBA #14262
Strecker & Kirkland, P.C.
Petroleum Club Building
601 South Boulder, Suite 412
Tulsa, OK 74119





UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
AMYBETH MARIE KAUFFMAN;)
UNKNOWN SPOUSE OF Amybeth Marie)
Kauffman, if any;)
BILLY DOYLE KAUFFMAN;)
UNKNOWN SPOUSE OF Billy Doyle)
Kauffman, if any;)
CITY OF BIXBY, Oklahoma)
COUNTY TREASURER, Tulsa County,)
Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

FILED

JUN 27 1995

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

ENTERED
JUN 29 1995

Civil Case No. 95-C-0022-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27th day of June,

1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, appears by Kim D. Ashley, Assistant General Counsel; the Defendant, CITY OF BIXBY, Oklahoma, does not appear having previously filed a Disclaimer; and the Defendants, AMYBETH MARIE KAUFFMAN, UNKNOWN SPOUSE OF Amybeth Marie Kauffman, BILLY DOYLE KAUFFMAN, and UNKNOWN SPOUSE OF Billy Doyle Kauffman, appear not, but make default.

NOTE: BY THE COURT AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

The Court being fully advised and having examined the court file finds that the Defendant, AMYBETH MARIE KAUFFMAN, was served with process a copy of Summons and Complaint on February 13, 1995; that the Defendant, UNKNOWN SPOUSE of Amybeth Marie Kauffman, was served with process a copy of Summons and Complaint on February 13, 1995; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, was served a copy of Summons and Complaint on January 10, 1995, by Certified Mail; and that the Defendant, CITY OF BIXBY, Oklahoma, was served a copy of Summons and Complaint on January 10, 1995, by Certified Mail.

The Court further finds that the Defendants, BILLY DOYLE KAUFFMAN and UNKNOWN SPOUSE OF Billy Doyle Kauffman, if any, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 16, 1995, and continuing through April 20, 1995, 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, BILLY DOYLE KAUFFMAN and UNKNOWN SPOUSE OF Billy Doyle Kauffman, if any, 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 address of the Defendants, BILLY DOYLE KAUFFMAN and UNKNOWN SPOUSE OF Billy Doyle Kauffman, if any. 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 through the Department of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, 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 address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on January 19, 1995; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, filed its Answer on February 8, 1995; the Defendant, CITY OF BIXBY, Oklahoma, filed its Disclaimer on March 1, 1995; and that the Defendants, AMYBETH MARIE KAUFFMAN, UNKNOWN SPOUSE OF Amybeth Marie Kauffman, BILLY DOYLE KAUFFMAN, and UNKNOWN SPOUSE OF Billy Doyle Kauffman, if any, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

**LOT FOUR (4), BLOCK ONE (1), SHANNONDALE ADDITION
TO THE CITY OF BIXBY, TULSA COUNTY, STATE OF
OKLAHOMA, ACCORDING TO THE RECORDED PLAT
THEREOF.**

The Court further finds that on March 1, 1985, Lowell W. Meeks, Jr. and Melanie G. Meeks, executed and delivered to COMMONWEALTH MORTGAGE CORPORATION, their mortgage note in the amount of \$57,764.00, payable in monthly installments, with interest thereon at the rate of Twelve and One-Quarter percent (12.25%) per annum.

The Court further finds that as security for the payment of the above-described note, Lowell W. Meeks, Jr., and Melanie G. Meeks, husband and wife, executed and delivered to COMMONWEALTH MORTGAGE CORPORATION, a mortgage dated March 1, 1985, covering the above-described property. Said mortgage was recorded on March 6, 1985, in Book 4848, Page 1425, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 23, 1987, COMMONWEALTH MORTGAGE CORPORATION OF AMERICA (formerly known as Commonwealth Mortgage Corporation) assigned the above-described mortgage note and mortgage to COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P. This Assignment of Mortgage was recorded on June 4, 1987, in Book 5028, Page 870, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 22, 1988, COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P., assigned the above-described mortgage note and mortgage to the SECRETARY OF HOUSING AND URBAN DEVELOPMENT OF WASHINGTON, D.C., his successors and assigns. This Assignment of Mortgage was

recorded on July 12, 1988, in Book 5113, Page 2124, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 18, 1986, Lowell W. Meeks, Jr. and Melanie G. Meeks, husband and wife, granted a general warranty deed to Billy Doyle Kauffman and Amybeth Marie Kauffman, husband and wife. This deed was recorded with the Tulsa County Clerk on November 25, 1986, in Book 4985 at Page 487 and the Defendants, BILLY DOYLE KAUFFMAN and AMYBETH MARIE KAUFFMAN, then husband and wife, assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on June 10, 1988, the Defendants, BILLY DOYLE KAUFFMAN and AMYBETH MARIE KAUFFMAN, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on March 8, 1989, January 11, 1989, March 6, 1990, and between the Plaintiff and the Defendant, AMYBETH MARIE KAUFFMAN, on February 1, 1991.

The Court further finds that the Defendants, AMYBETH MARIE KAUFFMAN and BILLY DOYLE KAUFFMAN, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, AMYBETH MARIE KAUFFMAN and BILLY DOYLE KAUFFMAN, are indebted to the Plaintiff in the principal sum of \$118,171.07, plus interest at the rate of 12.25 percent per annum from

November 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$841.00, plus penalties and interest, for the year of 1994. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$47.00 which became a lien on the property as of June 25, 1993; a lien in the amount of \$48.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, has a lien on the property which is the subject matter of this action by virtue of state income taxes in the amount of \$1,344.26 which became a lien on the property as of March 1, 1994. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, AMYBETH MARIE KAUFFMAN, UNKNOWN SPOUSE OF Amybeth Marie Kauffman, BILLY DOYLE KAUFFMAN, and UNKNOWN SPOUSE OF Billy Doyle Kauffman, if any, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, CITY OF BIXBY, Oklahoma, Disclaims any right, title or interest in the real property.

The Court further finds that 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, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, AMYBETH MARIE KAUFFMAN and BILLY DOYLE KAUFFMAN, in the principal sum of \$118,171.07, plus interest at the rate of 12.25 percent per annum from November 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.53 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$841.00, plus penalties and interest, for ad valorem taxes for the year 1994, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$95.00, plus costs and interest, for personal property taxes for the years 1992 and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, have and

recover judgment In Rem in the amount of \$1,344.26, plus accrued and accruing interest, and costs, for state income taxes, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, CITY OF BIXBY, Oklahoma, AMYBETH MARIE KAUFFMAN, UNKNOWN SPOUSE OF Amybeth Marie Kauffman, BILLY DOYLE KAUFFMAN, and UNKNOWN SPOUSE OF Billy Doyle Kauffman, if any, 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, AMYBETH MARIE KAUFFMAN and BILLY DOYLE KAUFFMAN, to satisfy the judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$841.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$47.00, personal property taxes which are currently due and owing.

Fifth:

In payment of Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, in the amount of \$1,344.26, plus accrued and accruing interest and costs, state income taxes which are currently due and owing.

Sixth:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$48.00, personal property taxes which are currently due and owing.

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

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

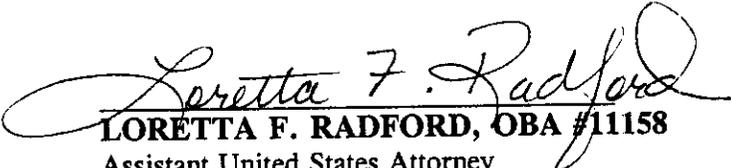
and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



DICK A. BLAKELEY, OBA #852

Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



KIM D. ASHLEY, OBA #14175

Assistant General Counsel
P.O. Box 53248
Oklahoma City, Oklahoma 73152-3248
(405) 521-3141
Attorney for Defendant,
State of Oklahoma, ex rel.
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 95-C-0022-B
LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
WILLIAM R. GRUNDY)
aka William Grundy)
aka William Ralph Grundy;)
PAMELA R. GRUNDY)
aka Pamela Grundy;)
RONNIE GRUNDY;)
CAROLYN GRUNDY;)
THE UNKNOWN HEIRS, EXECUTORS,)
ADMINISTRATORS, DEVISEES,)
TRUSTEES, SUCCESSORS AND)
ASSIGNS OF ESSIE LEE BOHANNON,)
Deceased;)
OKLAHOMA MORRIS PLAN COMPANY;)
STATE OF OKLAHOMA ex rel.)
Oklahoma Tax Commission;)
COUNTY TREASURER, Tulsa County,)
Oklahoma;)
BOARD OF COUNTY COMMISSIONERS,)
Tulsa County, Oklahoma;)
THE VAN GRACK CO.,)
)
Defendants.)

FILED

JUN 29 1995

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

ENTERED
DATE JUN 29 1995

CIVIL ACTION NO. 94-C-591-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28th day of June,
1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern
District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants,
County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners,
Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa
County, Oklahoma; that the Defendant, Pamela R. Grundy aka Pamela Grundy, appears

NOTE: THIS COURT IS OPEN TO THE PUBLIC AND
BY REQUESTING A COURT REPORTER TO IMMEDIATELY
PROCEED TO THE COURT REPORTER'S OFFICE

not, having previously filed her Disclaimer; that the Defendant, **State of Oklahoma ex rel. Oklahoma Tax Commission**, appears by its attorney Kim D. Ashley; that the Defendants, **William R. Grundy aka William Grundy aka William Ralph Grundy; Ronnie Grundy; Carolyn Grundy; The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Essie Lee Bohannon, Deceased; Oklahoma Morris Plan Company; and The Van Grack Co.**, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, **William R. Grundy aka William Grundy aka William Ralph Grundy**, executed a Waiver of Service of Summons on July 1, 1994 which was filed on July 18, 1994 and was served with Summons and Amended Complaint on October 11, 1994 by the United States Deputy Marshal; that the Defendant, **Pamela R. Grundy aka Pamela Grundy**, executed a Waiver of Service of Summons on or before March 22, 1995 which was filed on March 23, 1995; that the Defendant, **Ronnie Grundy**, executed a Waiver of Service of Summons on July 19, 1994 which was filed on July 21, 1995; that the Defendant, **Carolyn Grundy**, executed a Waiver of Service of Summons on July 19, 1994 which was filed on July 21, 1995; that the Defendant, **State of Oklahoma ex rel. Oklahoma Tax Commission**, was served with Summons and Complaint on June 13, 1994 by certified mail, return receipt requested, delivery restricted to the addressee; that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, was served with Summons and Complaint on June 10, 1994 by certified mail, return receipt requested, delivery restricted to the addressee; that the Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, was served with Summons and Complaint on June 10, 1994 by certified mail, return receipt requested, delivery restricted to the addressee.

The Court further finds that the Defendants, **The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Essie Lee Bohannon, Deceased; Oklahoma Morris Plan Company; and The Van Grack Co.**, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning January 11, 1995, and continuing through February 15, 1995, 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 Essie Lee Bohannon, Deceased; Oklahoma Morris Plan Company; and The Van Grack Co.**, 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 Essie Lee Bohannon, Deceased; Oklahoma Morris Plan Company; and The Van Grack Co.** 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, Stephen C. Lewis, 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, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma**, filed their Answers on July 26, 1995; that the Defendant, **State of Oklahoma ex rel. Oklahoma Tax Commission**, filed its Answer on or about September 20, 1994; that the Defendant, **Pamela R. Grundy aka Pamela Grundy**, filed her Disclaimer on March 29, 1995; and that the Defendants, **William R. Grundy aka William Grundy aka William Ralph Grundy; Ronnie Grundy; Carolyn Grundy; The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Essie Lee Bohannon, Deceased; Oklahoma Morris Plan Company; and The Van Grack Co.**, 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 note and for foreclosure of a mortgage upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirty-eight (38), Block Eight (8), MEADOWBROOK ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that this a suit brought for the further purpose of judicially determining the death of Essie Lee Bohannon and judicially determining the heirs of Essie Lee Bohannon.

The Court further finds that Essie Lee Bohannon became the record owner of the real property involved in this action by virtue of that certain Quit Claim Deed dated January 30, 1979, from William Grundy to Essie Lee Bohannon, her heirs and assigns, forever, all right, title, interest, and estate, both at law and in equity of, in and to the above-described real estate, which Quit Claim Deed was filed of record on February 14, 1979, in Book 4382, Page 8, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that Essie Lee Bohannon died on September 21, 1979, in the City of Tulsa, Tulsa County, State of Oklahoma. Upon the death of Essie Lee Bohannon, the subject property vested in her surviving heirs by operation of law. A copy of Certificate of Death No. 19401 issued by the Oklahoma State Department of Health certifying Essie Lee Bohannon's death was attached as Exhibit "A" in Plaintiff's Amended Complaint and incorporated.

The Court further finds that on October 22, 1984, William R. Grundy and Pamela R. Grundy executed and delivered to the United States of America, acting through the Small Business Administration, their note in the amount of \$16,000.00, payable in monthly installments, with interest thereon at the rate of 8 percent per annum.

The Court further finds that as security for the payment of the above-described note, William Grundy aka William R. Grundy and Pamela R. Grundy, husband and wife, executed and delivered to the United States of America, acting through the Small Business Administration, a real estate mortgage dated October 22, 1984, covering the above-described property, situated in the State of Oklahoma, Tulsa County. This mortgage was recorded on October 23, 1984, in Book 4824, Page 1626, in the records of Tulsa County, Oklahoma.

The Court further finds that **William R. Grundy aka William Grundy aka William Ralph Grundy and Pamela R. Grundy aka Pamela Grundy** 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 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 \$6,282.01, plus accrued interest in the amount of \$1,285.17 as of May 30, 1995, plus interest accruing thereafter at the rate of 8 percent per annum or \$1.38 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$375.71 (\$9.48 fees for service of Summons and Complaint and \$366.23 publication fees).

The Court further finds that Plaintiff, United States of America, is entitled to a judicial determination of the death of Essie Lee Bohannon and to a judicial determination of the heirs of Essie Lee Bohannon.

The Court further finds that the Defendant, **Pamela R. Grundy aka Pamela Grundy**, disclaims any right, title or interest in the subject real property.

The Court further finds that the Defendant, **State of Oklahoma ex rel. Oklahoma Tax Commission**, has a lien on the property which is the subject matter of this action in the amount of \$1,441.22 together with interest and penalty according to law, by virtue of Tax Warrants Nos. STS94000507-01 and STS94000507-02, dated March 18, 1994, and recorded on March 23, 1994, in Book 5607, Page 0847 in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, has liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$17.88, plus costs and interest, which became liens on the property as of 1992 (\$9.12) and 1993 (\$8.76). Said liens are inferior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendants, **William R. Grundy aka William Grundy aka William Ralph Grundy; Ronnie Grundy; Carolyn Grundy; The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Essie Lee Bohannon, Deceased; Oklahoma Morris Plan Company; and The Van Grack Co.**, are in default and therefore have no right, title or interest in the subject real property.

The Court further finds that the Internal Revenue Service has a lien upon the property by virtue of a Notice of Federal Tax Lien dated October 1, 1981, and recorded on October 14, 1981, in Book 4574, Page 1832 in the records of the Tulsa County Clerk, Tulsa 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 lien 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 death of Essie Lee Bohannon be and the same hereby is judicially determined to have occurred on September 21, 1979 in the City of Tulsa, Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the only known heirs of Essie Lee Bohannon, Deceased, are **William R. Grundy aka William Grundy aka William Ralph Grundy and Ronnie Grundy**, and that despite the exercise of due diligence by Plaintiff and its counsel, no other known heirs of Essie Lee Bohannon, Deceased, have been discovered and it is hereby judicially determined that **William R. Grundy aka William Grundy aka William Ralph Grundy and Ronnie Grundy** are the only known heirs of Essie Lee Bohannon, Deceased, and that Essie Lee Bohannon,

Deceased, has no other known heirs, executors, administrators, devisees, trustees, successors and assigns; and the Court approves the Certificate of Publication and Mailing filed on June 12, 1995 regarding said heirs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting through the Small Business Administration, have and recover judgment against Defendants, **William R. Grundy aka William Grundy aka William Ralph Grundy and Pamela R. Grundy aka Pamela Grundy**, in the principal sum of \$6,282.01, plus accrued interest in the amount of \$1,285.17 as of May 30, 1995, plus interest accruing thereafter at the rate of 8 percent per annum or \$1.38 per day until judgment, plus interest thereafter at the current legal rate of 5.53 percent per annum until fully paid, plus the costs of this action in the amount of \$375.71 (\$9.48 fees for service of Summons and Complaint and \$366.23 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property, plus any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$1,441.22 together with interest and penalty according to law, by virtue of Tax Warrants Nos. STS94000507-01 and STS94000507-02, dated March 18, 1994, and recorded on March 23, 1994, in Book 5607, Page 0847 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the

amount of \$17.88, plus costs and interest, for personal property taxes which became liens on the property as of 1992 (\$9.12) and 1993 (\$8.76).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **William R. Grundy aka William Grundy aka William Ralph Grundy; Pamela R. Grundy aka Pamela Grundy; Ronnie Grundy; Carolyn Grundy; The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Essie Lee Bohannon, Deceased; Oklahoma Morris Plan Company; The Van Grack Co.; and Board of County Commissioners, Tulsa County, Oklahoma,** have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

Third:

In payment of the judgment rendered herein in favor of the Defendant, County Treasurer, Tulsa County, Oklahoma;

Fourth:

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

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

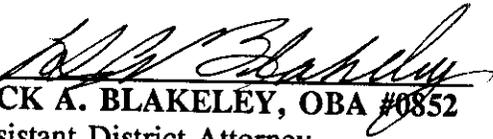
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney

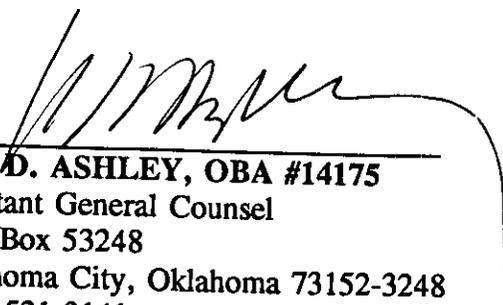


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Judgment of Foreclosure
USA v. William R. Grundy, et al.
Case No. 94-C-591-B
PP:css



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State of Oklahoma ex rel. Oklahoma Tax Commission

Judgment of Foreclosure

USA v. William R. Grundy, et al.

Case No. 94-C-591-B

PP:css

JUN 21 1995

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

FILED

JUN 27 1995

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

MCLOUTH STEEL PRODUCTS CORPORATION,)
)
)
Plaintiff,)
)
v.)
)
JUDSON W. WEBB, III,)
aka Tag Webb,)
)
Defendant.)

NO. 94-CV-921-B

ENTERED ON DOCKET
DATE JUN 29 1995

ORDER

Before the Court for decision is an appeal from the United States Bankruptcy Court for the Northern District of Oklahoma. Plaintiff, McLouth Steel Products Corporation, (McLouth) appeals the Bankruptcy Court's Judgment dismissing McLouth's Complaint which alleged that the debt of Judson W. Webb, III, aka Tag Webb, (Webb) to McLouth was non-dischargeable under 11 U.S.C.A. § 523(a)(2)(B). The Bankruptcy Court's order dismissing McLouth's complaint and the judgment in favor of Webb were filed September 23, 1994. McLouth properly perfected its appeal in this Court. This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 158.

McLouth brings two issues for determination on this appeal:

1. Did the Bankruptcy Court err in its ruling that McLouth did not actually or reasonably rely upon the Defendant's financial statements in its determination to extend credit to TRI Container, Inc. (TRI) in October, 1991?
2. Did the Bankruptcy Court err in its determination that Defendant did not publish said financial statement with the intent to deceive McLouth?

Despite not filing a cross-appeal, Webb proposes an additional issue for review. The issue proposed by Webb is whether the Bankruptcy Court properly found that Defendant Webb had presented McLouth a financial statement which was materially false.

STATEMENT OF FACTS

The evidence before the Bankruptcy Court established that McLouth, a steel manufacturer, had been selling its products to TRI since approximately 1984. Webb owned 50% of the stock in TRI. During this period of time a growing indebtedness had accrued from TRI to McLouth which, by 1991, had grown to in excess of One Million Dollars. Because of the increasing debt the parties restructured TRI's indebtedness to McLouth pursuant to an agreement dated October 7, 1991. The agreement provided that McLouth would receive a security interest in the receivables of TRI, it established a lock box and blocked account arrangement as a method of collecting TRI's receivables, it granted McLouth a second mortgage on Webb's residence and Webb provided McLouth an unlimited personal guarantee of TRI's debt. Webb's personal guarantee was supported by a financial statement dated January 31, 1991 which Webb provided to McLouth. McLouth presented evidence and testimony to the Bankruptcy Court that the financial statement was materially false in several respects and resulted in the substantial overstatement of Webb's net worth. McLouth also presented testimony that it would not have entered into the restructuring of the debt had it known of Webb's true financial condition.

The Bankruptcy Court concluded that the financial statement in question was materially false. However, the Bankruptcy Court found that the debt was dischargeable based upon the Bankruptcy Court's conclusion that McLouth did not rely on the financial statement in entering into the restructuring agreement and that Webb did not deliver the financial statement to

McLouth with the intent to deceive.

STANDARD OF REVIEW

Both the District Court and the Court of Appeals employ the same standard when reviewing the decisions of the Bankruptcy Court. In *In re Wes Dor, Inc.*, 996 F.2d 237, 241 (10th Cir.1993), the 10th Circuit set forth the standards as follows:

"In reviewing a bankruptcy court decision, we apply the same standards of review as those governing appellate review in other cases." *In re Perma Pacific Properties*, 983 F.2d 964, 966 (10th Cir. 1992) (citation omitted). Accordingly, "we review the bankruptcy court's legal determinations *de novo*, and its factual findings under the clearly erroneous standard." *Id.* (quoting *In re Davidovich*, 901 F.2d 1533, 1536 (10th Cir. 1990)). Moreover, "[o]n the mixed question of whether the facts satisfy the proper legal standard, we conduct a *de novo* review if the question primarily involves the consideration of legal principles and apply the clearly erroneous standard if the question is primarily a factual inquiry." *Useton v. Commercial Lovelace Motor Freight, Inc.*, 940 F.2d 564, 572 (10th Cir.) (citation omitted), *cert. denied*, ___ U.S. ___, 112 S.Ct. 589, 116 L.Ed.2d 614 (1991).

When reviewing factual findings, an appellate court is not to weigh the evidence or reverse the finding because it would have decided the case differently. *In re Branding Iron Motel, Inc.*, 798 F.2d 396 (10th Cir.1986). In order to find that the Bankruptcy Court's factual findings are clearly erroneous, and therefore reverse those findings, the reviewing court must on the entire evidence be left with the definite and firm conviction that a mistake has been committed. *In re Joyner*, 132 B.R. 436 (D.Kans. 1991); *Anderson v. City of Bessemer City*, 470 U.S. 564, 105 S.Ct. 1504 (1985).

DISCHARGE UNDER 11 U.S.C.A. § 523

A central purpose of the Bankruptcy Code "is to provide a procedure by which certain insolvent debtors can reorder their affairs, make peace with their creditors and enjoy a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt". However, this policy is intended for the "honest but unfortunate debtor". *Grogan v. Garner*, 498 U.S. 279, 286, 111 S.Ct. 654, 659 (1991). Thus, the Bankruptcy Code contains provisions to prevent a debtor who has committed fraud from discharging debts arising from such fraud. The burden falls on the creditor to prove, by a preponderance, that a debt falls within a statutory exception to discharge. *Id.*

The applicable statutory exception is found at 11 U.S.C. § 523 which provides, in relevant part:

(a) A discharge under section 727, 1141, 1228(a) 1228(b) or 1328(b) of this title does not discharge an individual debtor from any debt--

* * *

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by--

* * *

(B) use of a statement in writing--

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive...

The only two requirements of the statute at issue in this appeal are reasonable reliance (iii) and

intent to deceive (iv), although the Court will also address Webb's contention that the question of the material falsity of the written statement is also at issue on appeal.

WEBB'S ASSERTION OF MATERIAL FALSITY AS AN ADDITIONAL ISSUE

Webb has attempted to raise the Bankruptcy Court's finding that the financial statement in question was materially false as an issue on appeal. The Court concludes that the Bankruptcy Court's finding that the financial statement in question was materially false is not properly before this Court. The relevant portion of Bankruptcy Rule 8006 provides that "if the appellee has filed a cross-appeal, he may file a statement of issues he intends to present on the cross-appeal". The language of the rule and the relevant case law clearly demonstrate that in order to present additional issues for appeal, the appellee is required to file a cross-appeal setting forth those issues. *In re Interstate Agency, Inc.*, 760 F.2d 121 (6th Cir.1985); *Brookfield Production Credit Association v. Borron*, 36 B.R. 445 (E.Mo. 1983). In *Brookfield*, the Court stated, "[b]oth the language of the Rule and the case law governing cross-appeals support a construction which precludes plaintiff from raising the additional issue it designates without first filing a cross-appeal". *Brookfield*, 36 B.R. at 447. The court discusses the disagreement among the circuits as to whether this rule is jurisdictional in nature or simply a rule of practice and concludes that the better view is that the rule, while not jurisdictional, is a rule of practice and should only be deviated from in the interest of justice. *Id.*

Based upon the substantial evidence before the Bankruptcy Court to support its finding of material falsity and Webb's failure to offer any reason for his failure to file a cross-appeal, consideration of the Bankruptcy Court's finding that the financial statement was materially false would not be in the interest of justice. Therefore, this Court will not consider that issue.

THE RELIANCE ISSUE

As set forth above, one factual finding the Bankruptcy Court must make under §523 in determining the dischargeability of a debt is whether the creditor "reasonably relied" on the statement in writing. Although McLouth argues in its brief that the reliance issue is somehow a question of law subject to the *de novo* standard of review, this Court concludes that the reliance issue is a factual determination which this Court will not disturb unless clearly erroneous. *In re Watson*, 958 F.2d 977 (10th Cir.1992). Despite this conclusion, the Court will employ the *de novo* standard of review to determine if the proper legal principles were applied. *Uselton v. Commercial Lovelace Motor Freight, Inc.*, 940 F.2d 564 (10th Cir.1991).

McLouth asserts that the Bankruptcy Court applied the wrong legal standard to determine the reliance issue by requiring McLouth to prove that it relied either on the financial statement or the other aspects of the restructuring agreement, i.e., the lock-box transaction, the subordination agreements, the blocked accounts, and the second mortgage on the homestead. In this regard, in announcing its findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, the Court stated, "This court must determine whether or not the plaintiff relied upon these particular concessions, as set forth above, or the financial statement executed by Mr. Webb to Guaranty Bank in January, 1991, yet also put into circulation for the purposes of obtaining benefits in October, 1991 to this plaintiff" [*Dkt.3, pg.165 ln.25 - pg.166 ln.6*]. As this quotation demonstrates, the Bankruptcy Court did, in fact, employ an either/or analysis with regard to the issue of what McLouth relied upon in engaging in this restructuring transaction. While 11 U.S.C.A. § 523(a)(2)(B)(iii) clearly requires that the creditor rely on the statement in

writing in extending credit, sole reliance is not required as partial reliance will support non-dischargeability.

The 10th Circuit rule concerning the sufficiency of partial reliance is stated in *In re Liming*, 797 F.2d 895 (10th Cir. 1986), as follows:

Liming contends that because Central National took a security interest in a tractor worth twice the amount of its loan, it cannot fairly be said to have relied on figures he provided. See 11 U.S.C. § 523(a)(2)(B)(iii). But § 523(a)(2)(B) does not require that a creditor rely exclusively on the false financial statement. *In re Garman*, 625 F.2d 755, 756 n.1 (7th Cir. 1980) (citing *Carini*, 592 F.2d 378), *cert. denied*, 450 U.S. 910, 101 S.Ct. 1347, 67 L.Ed.2d 333 (1981). Partial reliance is enough. *Id.* A lender easily can rely on a financial statement and a security interest in making a loan. See *In re Slohm*, 10 F.Supp. 351, 354 (W.D.N.Y. 1935). Such reliance is justified; as the facts demonstrate here, "excess" security can vanish rapidly. *Id.* at 897-8.

While a finding of partial reliance could easily be supported on this record, based upon the submission of the financial statement and McLouth's requirement of additional backup documentation concerning the entries on the financial statement, the Bankruptcy Court did not address the factual issues of McLouth's alleged partial reliance on the financial statement nor the reasonableness of any such partial reliance. A district court considering an appeal from a Bankruptcy Court may not decide factual issues not addressed by the bankruptcy court. *In re Robinson*, 987 F.2d 665, 669 (10th Cir. 1993), citing *In re Love*, 957 F.2d 1350, 1361 (7th Cir. 1992). Accordingly, the Court is required to remand this matter to the Bankruptcy Court for a determination of McLouth's partial reliance on the financial statement and the reasonableness thereof.¹

¹ This remand is necessary despite the fact that, in its rulings, the Bankruptcy Court made the following findings: "...and accordingly, this Court finds that the plaintiff did not rely upon said financial statement for the purpose of this particular transaction. It is more believable to this court that in an attempt to improve the position of the plaintiff, the

INTENT TO DECEIVE

Despite the finding by the Bankruptcy Court that the financial statement at issue was materially false, the Bankruptcy Court found that Webb did not provide the financial statement to McLouth with intent to deceive. This finding, therefore, rendered the debt dischargeable for failure to satisfy 11 U.S.C.A. § 523(a)(2)(B)(iv). As with the reliance issue, McLouth again urges that the finding on the intent issue is an issue of law. Again the Court determines otherwise and will apply the clearly erroneous standard of review. *In re Liming*, 797 F.2d at 897. Likewise, the Court will employ the *de novo* standard with regard to issues of law. *Uselton, supra*.

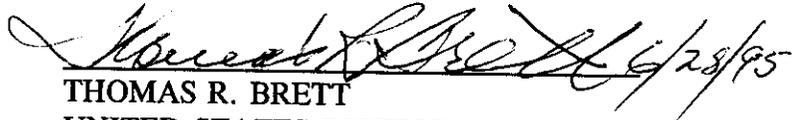
In making its ruling the Bankruptcy Court framed the issue as follows: "Did Mr. Webb, by giving this financial statement to the plaintiff, intend to deceive the plaintiff? Did Mr. Webb, by putting this into circulation, attempt to beat, cheat, defraud the plaintiff concerning these transactions?" However, the Bankruptcy Court did not address the issue of whether Webb either knowingly or recklessly provided the financial statement to McLouth.

It is not necessary that Webb possessed a subjective intent to deceive. "The requisite intent to deceive may be inferred from a sufficiently reckless disregard of the accuracy of the

lock-box transaction, the subordination agreements, the blocked accounts, the personal guarantee from the defendant, and the second mortgage on the homestead were what the plaintiff relied upon in the October, 1991 transaction." (emphasis added) As the quotation demonstrates, the Court did find reliance on the personal guarantee from the defendant which personal guarantee was supported by the financial statement. Thus, it could be argued that by finding reliance on the personal guarantee, the court implicitly found, at least some, reliance on the financial statement. However, in light of the authorities cited above, the court believes that the better practice is to remand the matter for further consideration by the Bankruptcy Court.

facts." *In re Black*, 787 F.2d 503, 506 (10th Cir. 1986),² See also *In re Reeds*, 145 B.R. 703 (Bankr. N.D. Okla. 1992) (where the false representation is knowingly or recklessly made, the intent to deceive may be inferred). The Bankruptcy Court resolved the issue of Webb's subjective intent, a finding this Court determines is not clearly erroneous. However, the Bankruptcy Court did not make a factual finding regarding whether Webb knowingly or recklessly provided the financial statement at issue to McLouth. Again, it is not appropriate for the District Court to make such a factual finding on appeal. *In re Robinson*, *supra*. Consequently, the Court will remand this matter to the Bankruptcy Court for further factual findings concerning whether the financial statement evinces a reckless disregard of the facts such that an intent to deceive can be inferred.

This case is REMANDED to the Bankruptcy Court for further consideration in accordance with this Order.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

² *Opinion abrogated on unrelated grounds concerning the burden of proof to establish fraud under the Bankruptcy Code, Grogan v. Garner*, 498 U.S. 279, 111 S.Ct. 654 (1991).

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 28 1995

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JERRY THOMAS aka Jerry Joe Thomas)
aka Jerry J. Thomas; UNKNOWN)
SPOUSE OF Jerry Thomas aka Jerry Joe)
Thomas aka Jerry J. Thomas, if any;)
ZEDIA L. BUFORD fka Zedia Lavone)
Thomas fka Zedia L. Thomas;)
UNKNOWN SPOUSE OF Zedia L.)
Buford fka Zedia Lavone Thomas fka)
Zedia L. Thomas; STATE OF)
OKLAHOMA, ex rel. DEPARTMENT)
OF HUMAN SERVICES; COUNTY)
TREASURER, Tulsa County, Oklahoma;)
BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

Civil Case No. 95-C 0085 B

ENTERED ON CLERK'S OFFICE
JUN 29 1995

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day of June,

1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, appears by its Attorney, Rodney B. Sparkman; and the Defendants, JERRY THOMAS AKA JERRY JOE THOMAS AKA JERRY J. THOMAS, UNKNOWN SPOUSE OF JERRY THOMAS AKA JERRY JOE

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

THOMAS AKA JERRY J. THOMAS, IF ANY, ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, AND UNKNOWN SPOUSE OF ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, IF ANY, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, JERRY THOMAS aka Jerry Joe Thomas aka Jerry J. Thomas, was served with process a copy Summons and Complaint on March 1, 1995; that the Defendant, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, was served a copy of Summons and Complaint on January 27, 1995, by Certified Mail.

The Court further finds that the Defendants, UNKNOWN SPOUSE OF JERRY THOMAS AKA JERRY JOE THOMAS AKA JERRY J. THOMAS, IF ANY, ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, AND UNKNOWN SPOUSE OF ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, IF ANY, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning April 10, 1995, and continuing through May 15, 1995, 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, UNKNOWN SPOUSE OF JERRY THOMAS AKA JERRY JOE THOMAS AKA JERRY J. THOMAS, IF ANY, ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, AND UNKNOWN SPOUSE OF ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, IF ANY, 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 abstractor filed herein with respect to the last known addresses of the Defendants, UNKNOWN SPOUSE OF JERRY THOMAS AKA JERRY JOE THOMAS AKA JERRY J. THOMAS, IF ANY, ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, AND UNKNOWN SPOUSE OF ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, IF ANY. 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 through the Department of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on February 9, 1995; that the Defendant, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, filed its Answer on February 8, 1995; and that the Defendants, JERRY THOMAS AKA JERRY JOE THOMAS AKA JERRY J. THOMAS,

UNKNOWN SPOUSE OF JERRY THOMAS AKA JERRY JOE THOMAS AKA JERRY J. THOMAS, IF ANY, ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, AND UNKNOWN SPOUSE OF ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, IF ANY, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, JERRY THOMAS, is one and the same person as and sometimes referred to as Jerry Joe Thomas and Jerry J. Thomas, and will hereinafter be referred to as "JERRY THOMAS." The Defendant, ZEDIA L. BUFORD, is formerly known as and sometimes referred to as Zedia Lavone Thomas and Zedia L. Thomas, and will hereinafter be referred to as "ZEDIA L. BUFORD." The Defendants, JERRY THOMAS and ZEDIA L. THOMAS, were Divorced in Tulsa County, Oklahoma, Case No. FD-92-5906, filed in District Court on October 1, 1992, in Tulsa County, Oklahoma. The Defendant, ZEDIA L. THOMAS was restored to her former name of ZEDIA L. BUFORD.

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 Nineteen (19), in Block Five (5), AMENDED PLAT OF VAN ACRES ADDITION, a Subdivision to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on September 27, 1985, Walter Harold Moore and Lois Eleanor Moore, executed and delivered to INVESTORS UNIVERSAL SERVICE

CORP., their mortgage note in the amount of \$48,832.00, payable in monthly installments, with interest thereon at the rate of Eleven and One-Half percent (11½%) per annum.

The Court further finds that as security for the payment of the above-described note, Walter Harold Moore and Lois Eleanor Moore, husband and wife, executed and delivered to INVESTORS UNIVERSAL SERVICE CORP., a mortgage dated September 27, 1985, covering the above-described property. Said mortgage was recorded on October 2, 1985, in Book 4896, Page 1701, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 21, 1985, Investors Universal Service Corp., assigned the above-described mortgage note and mortgage to Security Pacific Mortgage Corporation. This Assignment of Mortgage was recorded on December 19, 1985, in Book 4913, Page 2470, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 10, 1987, SECURITY PACIFIC MORTGAGE CORPORATION, assigned the above-described mortgage note and mortgage to FLEET REAL ESTATE FUNDING CORP. This Assignment of Mortgage was recorded on April 11, 1988, in Book 5092, Page 1934, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 23, 1992, FLEET REAL ESTATE FUNDING CORP., assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on January 27, 1992, in Book 5376, Page 0708, in the records to Tulsa County, Oklahoma. A Corrected Assignment dated April 15, 1992, was recorded on May 4, 1992, in Book 5402, Page 0159, in the records of Tulsa County, Oklahoma to show the signature of Vice President.

The Court further finds that on May 10, 1991, Walter Harold Moore and Lois Eleanor Moore, husband and wife, granted a general warranty deed to JERRY J. THOMAS

and ZEDIA L. THOMAS, then husband and wife. This deed was recorded with the Tulsa County Clerk on May 15, 1991, in Book 5321 at Page 1811 and the Defendants, JERRY J. THOMAS and ZEDIA L. THOMAS, assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on January 2, 1992, the Defendants, JERRY THOMAS and ZEDIA L. THOMAS, 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.

The Court further finds that the Defendants, JERRY THOMAS and ZEDIA L. BUFORD, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreement, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, JERRY THOMAS and ZEDIA L. BUFORD, are indebted to the Plaintiff in the principal sum of \$67,651.49, plus interest at the rate of 11½ percent per annum from November 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$18.00 which became a lien on the property as of June 25, 1993, and a lien in the amount of \$18.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, has a lien on the property which is the subject

matter of this action by virtue of judgment in the amount of \$2,867.00 which became a lien on the property as of June 12, 1992. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, JERRY THOMAS AKA JERRY JOE THOMAS AKA JERRY J. THOMAS, UNKNOWN SPOUSE OF JERRY THOMAS AKA JERRY JOE THOMAS AKA JERRY J. THOMAS, IF ANY, ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, AND UNKNOWN SPOUSE OF ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, IF ANY, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that 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, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendants, JERRY THOMAS and ZEDIA L. BUFORD, in the principal sum of \$67,651.49, plus interest at the rate of 11½ percent per annum from November 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.53 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$36.00, plus costs and interest, for personal property taxes for the years 1992 and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, have and recover judgment in the amount of \$2,867.00 for its judgment, plus the costs and interest.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, JERRY THOMAS AKA JERRY JOE THOMAS AKA JERRY J. THOMAS, UNKNOWN SPOUSE OF JERRY THOMAS AKA JERRY JOE THOMAS AKA JERRY J. THOMAS, IF ANY, ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, AND UNKNOWN SPOUSE OF ZEDIA L. BUFORD FKA ZEDIA LAVONE THOMAS FKA ZEDIA L. THOMAS, IF ANY 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, JERRY THOMAS and ZEDIA L. BUFORD, to satisfy the judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

Third:

In payment of the Defendant, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, in the amount of \$2,867.00, for its judgment.

Fourth:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$36.00, personal property taxes which are currently due and owing.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that 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 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

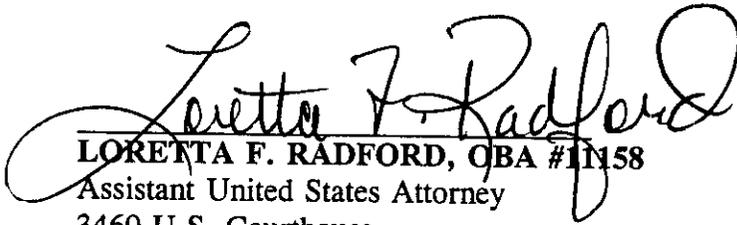
Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

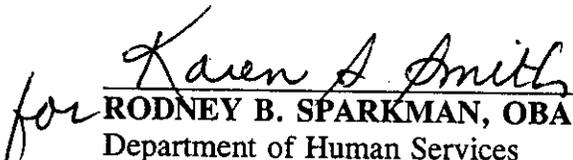
STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



DICK A. BLAKELEY, OBA #852
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406 Tulsa County Courthouse
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(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



for **RODNEY B. SPARKMAN, OBA FIRM #44**
Department of Human Services
Tulsa District Child Support Ofc.
P.O. Box 3643
Tulsa, OK 74101
(918) 581-2203
Attorney for Defendant,
State of Oklahoma, ex rel.
Department of Human Services

Judgment of Foreclosure
Civil Action No. 95-C 0085 B

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 H. PHILLIP THOMPSON aka PHIL)
 THOMPSON; PAULA THOMPSON;)
 SERVICE COLLECTION)
 ASSOCIATION, INC.; BANK OF)
 OKLAHOMA, NA;COUNTY)
 TREASURER, Tulsa County, Oklahoma;)
 BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)

F I L E D

JUN 28 1995

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

Civil Case No. 95-C 208B

Defendants.

ENTERED ON DOCKET

JUN 29 1995

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day of June, 1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, **County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma**, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, **Service Collection Association, Inc.**, appears by its attorney Daniel M. Webb; the Defendant, **Bank of Oklahoma, NA**, appears by its attorney E.J. Raymond; and the Defendants, **H. Phillip Thompson aka Phil Thompson and Paula Thompson**, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, **H. Phillip Thompson aka Phil Thompson**, waived service of Summons on March 22, 1995; that the Defendant, **Paula Thompson**, waived service of Summons on

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

March 22, 1995; and that the Defendant, **Bank of Oklahoma, NA**, acknowledged receipt of Summons and Complaint via Certified Mail on March 8, 1995.

It appears that the Defendants, **County Treasurer, Tulsa County, Oklahoma**, and **Board of County Commissioners, Tulsa County, Oklahoma**, filed their Answer on March 17, 1995; that the Defendant, **Service Collection Association, Inc.**, filed its Answer on March 17, 1995; that the Defendant, **Bank of Oklahoma, NA**, filed its answer on April 6, 1995; and that the Defendants, **H. Phillip Thompson aka Phil Thompson and Paula Thompson**, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, **H. Phillip Thompson aka Phil Thompson** will hereinafter be referred to as **H. Phillip Thompson**. **H. Phillip Thompson and Paula Thompson** are husband and wife.

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 Eighteen (18), Block Thirty-nine (39), A
RESUBDIVISION OF BLOCKS 32, 33, 34 & 39 OF
CHIMNEY HILLS SOUTH BLOCKS 32 THRU 39, an
Addition to the City of Tulsa, Tulsa County, State of
Oklahoma, according to the recorded Plat thereof.**

The Court further finds that on December 30, 1985, **Raymond L. Thompson** and **Zelma M. Thompson**, executed and delivered to **FIRST SECURITY MORTGAGE COMPANY** their mortgage note in the amount of \$69,150.00, payable in monthly installments, with interest thereon at the rate of ten and one-half percent (10.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Raymond L. Thompson and Zelma M. Thompson, husband and wife, executed and delivered to First Security Mortgage Company a mortgage dated December 30, 1985, covering the above-described property. Said mortgage was recorded on January 15, 1986, in Book 4918, Page 2195, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 25, 1986, FIRST SECURITY MORTGAGE COMPANY assigned the above-described mortgage note and mortgage to Mortgage Clearing Corporation. This Assignment of Mortgage was recorded on December 30, 1986, in Book 4991, Page 2334, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 9, 1989, MORTGAGE CLEARING CORPORATION assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development. This Assignment of Mortgage was recorded on January 11, 1989, in Book 5160, Page 2103, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, H. Phillip Thompson and Paula Thompson, are the current title owners of the property by virtue of a General Warranty Deed dated March 18, 1986, and recorded March 18, 1986 in Book 4930, Page 1497, in the records of Tulsa County, Oklahoma. The Defendants, H. Phillip Thompson and Paula Thompson are the current assumptors of the subject indebtedness.

The Court further finds that on December 21, 1988, the Defendants, H. Phillip Thompson and Paula Thompson, 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 January 26, 1990, March 19, 1991, November 19, 1991, and August 24, 1992.

The Court further finds that the Defendants, **H. Phillip Thompson and Paula Thompson**, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, **H. Phillip Thompson and Paula Thompson**, are indebted to the Plaintiff in the principal sum of \$97,564.84, plus interest at the rate of 10.5 percent per annum from August 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$68.00 which became a lien on the property as of June 23, 1994; a lien in the amount of \$69.00 which became a lien on June 25, 1993; a lien in the amount of \$72.00 which became a lien as of June 26, 1992. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **Service collection Association, Inc.**, has a lien on the property which is the subject matter of this action by virtue of a judgment in the amount of \$709.61, plus interest accrued and accruing since the date of judgment, which was July 10, 1991 and filed on July 12, 1991. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **Bank of Oklahoma, NA**, has a lien on the property which is the subject matter of this action by virtue of a judgment in the

amount of \$380.48, plus interest, attorney fees, and costs, dated May 6, 1994, and filed on May 10, 1994. Said lien is inferior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendants, **H. Phillip Thompson and Paula Thompson**, are in default, and have no right, title or interest in the subject real property.

The Court further finds that 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, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendants, **H. Phillip Thompson and Paula Thompson**, in the principal sum of \$97,564.84, plus interest at the rate of 10.5 percent per annum from August 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.53 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, have and recover judgment in the

amount of \$209.00 for personal property taxes for the years 1991-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **Service Collection Association, Inc.**, have and recover judgment in the amount of \$709.61, plus penalties and interest, for a judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **Bank of Oklahoma, NA**, have and recover judgment in the amount of \$380.48, plus penalties and interest, for a judgment.

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

First:

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

Second:

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

Third:

In payment of the Defendant, Service Collection Association, Inc., in the amount of \$709.61, plus accrued and accruing interest for a judgment.

Fourth:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$141.00, personal property taxes which are currently due and owing.

Fifth:

In payment of Defendant, Bank of Oklahoma, NA, in the amount of \$380.48, plus interest, fees, and costs, for a judgment.

Sixth:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$68.00, personal property taxes which are currently due and owing.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that 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.

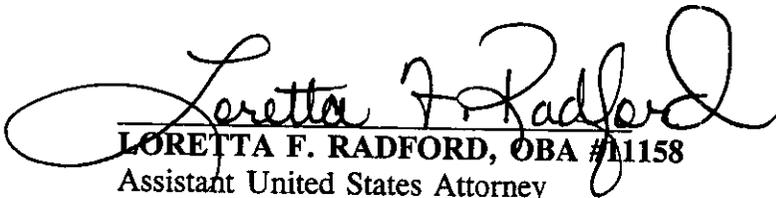
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

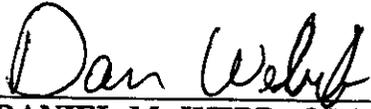
STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158
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(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



DANIEL M. WEBB, OBA #11003

Works & Lentz, Inc.

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Tulsa, Oklahoma 74119

(918) 582-3191

Attorney for Defendant,

Service Collection Association, Inc.



E. J. RAYMOND, OBA #7442

Drummond, Raymond & Hinds

1924 South Utica, Suite 1000

Tulsa, Oklahoma 74101

(919) 749-7378

Attorney for Defendant,

Bank of Oklahoma, NA

Judgment of Foreclosure

Civil Action No. 95-C 208B

LFR:lg

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

FILED

JUN 28 1995

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

WILLIAM HAROLD WANLESS, JR.,)
)
Plaintiff,)
)
v.)
)
SAMUEL PARKS JR. and,)
MARGARET RUTH PARKS,)
)
Defendants.)

Case No. 95-CV-303-H

ENTERED ON DOCKET

DATE JUN 29 1995

O R D E R

Before the Court for consideration is the Report and Recommendation of the United States Magistrate Judge.

In accordance with 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b), any objections to the Report and Recommendation must be filed within ten (10) days of the receipt of the report. The time for filing objections to the Report and Recommendation has expired, and no objections have been filed.

Based on a review of the Report and Recommendation of the Magistrate Judge, the Court hereby adopts the Report and Recommendation (docket #5) dismissing the case under 28 U.S.C. § 1915(d).

IT IS SO ORDERED.

This 27TH day of JUNE, 1995.


Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CATHERINE L. HARRIS aka
Catherine L. Jones; LEONARD P.
JONES; FIDELITY FINANCIAL
SERVICES, INC.; STATE OF
OKLAHOMA, *ex rel.* OKLAHOMA TAX
COMMISSION; COUNTY TREASURER,
Tulsa County, Oklahoma; BOARD OF
COUNTY COMMISSIONERS, Tulsa
County, Oklahoma,

Defendants.

FILED

JUN 28 1995

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

Civil Case No. 95-C 425H

ENTERED ON DOCKET

DATE JUN 29 1995

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Housing and Urban Development, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that this action shall be dismissed without prejudice.

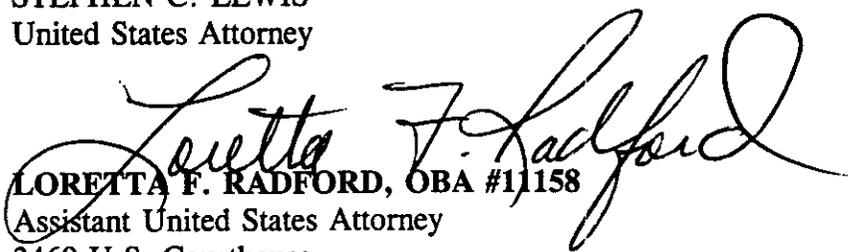
Dated this 27th day of June, 1995.

S/ SVEN ERIK HOLMES

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

A large, stylized handwritten signature in black ink, reading "Loretta F. Radford". The signature is written in a cursive style with a large initial "L" and a prominent flourish at the end.

LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

LFR:flv

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

F I L E D

JUN 28 1995

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

MINNIE P. CRAIG,)
)
 Plaintiff,)
)
 v.)
)
 OKLAHOMA EMPLOYMENT SECURITY)
 COMMISSION, WAYNE WINN and)
 DAVE MURRIE,)
)
 Defendants.)

No. 94-CV-516-H

ENTERED ON DOCKET

DATE JUN 29 1995

ORDER

Coming before the Court is the Joint Motion of the parties for an Order of final disposition of the issues in the above entitled cause of action. After reviewing the court file and the pleadings of the parties, the Court finds it to be in the best interest of the parties that an Order of final disposition be issued in this case.

IT IS THEREFORE ORDERED that the Oklahoma Employment Security Commission shall fund and pay all amounts required for the reinstatement of the full retirement benefits of Ms. Minnie P. Craig from July 15, 1992, until September 1, 1995, as if she had never been terminated from employment. The Plaintiff, Minnie P. Craig, will not be required to fund or pay for any amount of the reinstatement of the retirement. The Defendant, Oklahoma Employment Security Commission, is hereby directed to file all documents and make all payments to accomplish the reinstatement of the retirement benefits to the Oklahoma Public Employees Retirement

System as of no break in service or employment had occurred, and Ms. Minnie P. Craig shall be entitled to draw her full retirement benefit as of September 1, 1995, based on 26 years of credited service, a monthly salary amount of \$2,602.17, and an annual longevity payment of \$2,000.00. The Oklahoma Public Employees Retirement System is further ordered to reinstate the retirement benefits of Ms. Minnie P. Craig as set out above.

IT IS SO ORDERED this 28th day of June, 1995.

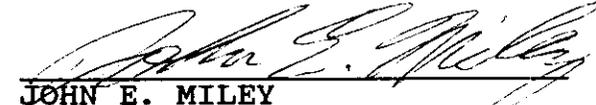
S/ SVEN ERIK HOLMES

UNITED STATES DISTRICT COURT
JUDGE SVEN ERIK HOLMES

Approved:



JOHN B. NICKS
ATTORNEY FOR PLAINTIFF



JOHN E. MILEY
ATTORNEY FOR DEFENDANTS

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

FILED

JUN 27 1995

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

PATRICIA BAKER,)
)
Plaintiff,)
)
v.)
)
PENWELL PUBLISHING COMPANY,)
an Oklahoma Corporation?,)
and JIM WEST,)
)
Defendants.)

No. 95-C-298-H

ENTERED ON DOCKET

DATE JUN 28 1995

O R D E R

This matter comes before the Court on a motion for remand by Plaintiff Patricia Baker ("Baker").

Plaintiff filed suit in the District Court of Tulsa County, Oklahoma, on March 1, 1995. Plaintiff was employed by Defendant Penwell Publishing Company ("Penwell") from December, 1992 until September, 1993. Plaintiff alleges that on September 13, 1993, a senior Penwell employee sexually harassed her. Plaintiff reported the incident to her supervisors. Additionally, Plaintiff filed a complaint with the Equal Employment Opportunities Commission ("EEOC"). Plaintiff's state court petition (the "Petition") states that as a result of her filing a complaint with the EEOC, Defendants retaliated against her. Plaintiff asserts claims of "intentional infliction of emotional distress," "negligent hiring, training and supervision" and "retaliatory discharge." Petition at 3-5. Defendants concede that Plaintiff's first two claims are controlled by state law. Response to Motion to Remand at 7. Therefore, the Court only considers the "retaliatory discharge"

claim.

Defendants removed this action on March 30, 1995, to this Court. As the basis for removal, Defendants claim that the action is controlled by 28 U.S.C. § 1331, which grants federal district courts original jurisdiction over claims "arising under the Constitution, laws, or treaties of the United States." Defendants' suggestion that this Court has original jurisdiction over this action is premised on Defendants' assertion that the retaliatory discharge claim is founded on a right arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3, which states in pertinent part:

it shall be an unlawful practice for an employer to discriminate against any of his employees... because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Defendants cite paragraphs 14, 15, 27, and 30 of Plaintiff's Petition "relating to claims of retaliatory discharge for filing a 'complaint with the EEOC'." Notice of Removal at 2. The four quoted paragraphs of the Petition all mention the fact that Plaintiff filed a complaint with the EEOC. Because Plaintiff's Petition mentions the EEOC, Defendants assert that Plaintiff has stated a federal claim under Title VII, and that the claim must be heard in federal court.

The record shows that Plaintiff did lodge a complaint with the EEOC, which is a prerequisite to obtaining a right to sue letter from the EEOC, which, in turn, is a prerequisite to filing a Title

VII claim. Review of a complaint by the EEOC "...is a predicate for litigation based on the federal statute." Yellow Freight System, Inc. v. Donnelly, 494 U.S. 820, 110 S. Ct. 1566, 1567-68 (1990). Presuming Plaintiff's compliance with the requirements for filing a suit under Title VII -- a fact not established in the record -- Plaintiff may have the option of filing a Title VII claim. A review of the Petition, however, establishes that Plaintiff has not pled a claim under Title VII. "For better or worse, under the present statutory scheme as it has existed since 1887, a defendant may not remove a case to federal court unless the plaintiff's complaint establishes that the case 'arises under' federal law." Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 103 S. Ct. 2840, 2847 (1983). Because Plaintiff has not alleged a violation of Title VII, federal question jurisdiction over this action does not exist.

Defendants argue that "Plaintiff's petition fails to allege any Oklahoma statute, public policy or common law to support her assertion that she has pled a state-based claim." Response to Motion for Remand at 7. Plaintiff addressed that issue in her Motion for Remand: "Oklahoma law provides a remedy for a litigant with a wrongful discharge cause of action when the wrongful discharge was in retaliation for a lawful act." Id. at 3. Support for Plaintiff's position can be found in Oklahoma law. See Tate v. Browning-Ferris, Inc., 833 P.2d 1218 (Okl. 1992) (state tort cause

of action pursuant to public policy is not precluded by the existence of state or federal statutes providing remedies for employment discrimination).¹

Defendants urge the Court to "adopt the uncharacteristic posture of looking beyond the letter of the complaint in order to assert federal question jurisdiction" to find an unasserted federal claim. Response to Motion to Remand at 4, quoting Wright, Miller & Cooper, 14A Federal Practice and Procedure § 3722, at 276 (1985). For an example of how the Court should "look beyond the letter of the complaint" in this case, Defendants quote a decision from the District Court for the Eastern District of Texas: "[t]he removal court should inspect the complaint carefully to determine whether a federal claim is necessarily presented, even if the plaintiff has couched his pleading exclusively in terms of state law." Grynberg Production Corp. v. British Gas, P.L.C., 817 F. Supp. 1338, 1354 (E.D. Tex. 1993) (citation omitted).

The instant action is distinguishable from Grynberg. Plaintiff has not made a claim that must "necessarily" be heard in federal court. In Grynberg, the court permitted removal upon

¹ The Court further notes that an Oklahoma Bar Journal article which analyzed the Oklahoma Supreme Court's Tate decision states:

It is also possible that a plaintiff may file a discrimination action in state court and avoid removal to federal court by asserting only the state common law claim and not a claim which would allow jurisdiction of the federal court based on a federal question.

David E. Strecker and Connie Lee Kirkland, Employers and Employees In Search of Equilibrium: Tate v. Browning-Ferris, 63 Okla. Bar J. 3135, 3138-39 (1992).

finding that the plaintiff's complaint included claims which involved substantial questions of international relations, which are the exclusive province of federal common law. Id. at 1355-56. In the instant action, Plaintiff has made a claim which, if she had met the prerequisites to filing a claim under Title VII, might have been heard in federal court.

The Supreme Court stated in 1990 that Title VII claims could be heard in either state or federal court. Yellow Freight System, Inc. v. Donnelly, 494 U.S. 820, 110 S. Ct. 1566, 1569-70. The Court did not express a forum preference, but, instead, left that decision to the parties:

It may be assumed that federal judges will have more experience in Title VII litigation than state judges. That, however, is merely a factor that the plaintiff may weigh when deciding where to file suit, or that may motivate a defendant to remove a case to federal court.

Id. at 1570. Another of the factors plaintiff may weigh in deciding where to file suit is whether to file a Title VII claim at all. Because Plaintiff's Petition exclusively lists state law claims, Defendants' removal of this action was improper.

Based on the foregoing, Plaintiff's Motion for Remand (docket #5) is granted. This action is hereby remanded to the District Court of Tulsa County, State of Oklahoma.

IT IS SO ORDERED.

This 27TH day of June, 1995.



Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE SUM OF NINETY THOUSAND)
ONE HUNDRED FIFTY-NINE)
DOLLARS (\$90,159.00) IN)
UNITED STATES CURRENCY)
AND OTHER ITEMS OF)
PERSONAL PROPERTY,)
INCLUDING CURRENCY, COINS,)
JEWELRY, AND KNIVES,)
)
Defendants.)

CIVIL ACTION NO. 94-C-370-K/H
ENTERED ON DOCKET

DATE JUN 29 1995

FILED

JUN 28 1995

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

JUDGMENT OF FORFEITURE

This cause having come before this Court upon the plaintiff's Motion for Judgment of Forfeiture as to the following-described defendant currency, knives, collectible currency and coins, and jewelry:

- 1) \$90,159.00 In United States Currency.
- 2) Set of two Buck Knives with Ivory Handles and one Kukuri Knife.
- 3) Collectible currency and coins as more fully set forth in Attachment "A," which is incorporated herein by reference.

- 4) Jewelry, as more fully set forth in Attachment " A , " which is incorporated herein by reference,

all entities and/or persons interested in the defendant currency and other property, the Court finds as follows:

The verified Complaint for Forfeiture In Rem was filed in this action on the 14th day of April 1994, alleging that the defendant currency and other property was subject to forfeiture pursuant to 18 U.S.C. § 981 because it was involved in a transaction, or attempted transaction(s), in violation of 18 U.S.C. § 1956, and pursuant to 18 U.S.C. § 1955 because it is property which was used in violation 18 U.S.C. § 1955, and pursuant to 26 U.S.C. § 7301 because the properties were removed or concealed in fraud of the internal revenue laws or with design to avoid payment of tax, and subject to seizure and forfeiture to the United States.

Warrant of Arrest and Notice In Rem was issued on the 18th day of April 1994, by the Clerk of this Court to the United States Marshal for the United States Marshal for the Northern District of Oklahoma for the seizure and arrest of the defendant currency and other property and for publication in the Northern District of Oklahoma.

On the 25th day of April 1994, the United States Marshals Service served a copy of the Complaint for Forfeiture In Rem, the

Warrant of Arrest and Notice In Rem, and the Order on the defendant currency and other property.

Caster Clyde Buck, Jr. and Tammy Buck were determined to be the only potential claimants in this action with possible standing to file claims to the defendant currency and other property.

USMS 285s reflecting the service upon the defendant currency and other property and all known potential claimants are on file herein.

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

No persons or entities upon whom service was effected more than thirty (30) days ago have filed a Claim, Answer, or other response or defense herein.

The United States Marshals Service gave public notice of this action and arrest to all persons and entities by advertisement in the Tulsa Daily Commerce & Legal News, Tulsa, Oklahoma, a newspaper of general circulation in the Northern District of Oklahoma, the district in which the defendant currency and other

property was seized, on June 23 and 30 and July 7, 1994. Proof of Publication was filed August 4, 1994.

No claims in respect to the defendant currency and other property have been filed with the Clerk of the Court, and no persons or entities have plead or otherwise defended in this suit as to said defendant currency and other property, and the time for presenting claims and answers, or other pleadings, has expired. Plaintiff's request for entry of default was filed September 29, 1994, and default was entered by the Clerk of the Court on September 30, 1994. Consequently, default exists as to the defendant currency and other property, and all persons and/or entities interested therein.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the following-described defendant currency and other property:

- 1) \$90,159.00 In United States Currency.
- 2) Set of two Buck Knives with Ivory Handles and one Kukuri Knife.
- 3) Collectible currency and coins as more fully set forth in Attachment "A," which is incorporated herein by reference.

- 4) Jewelry, as more fully set forth in Attachment "A," which is incorporated herein by reference,

be, and it hereby is, forfeited to the United States of America for disposition according to law.

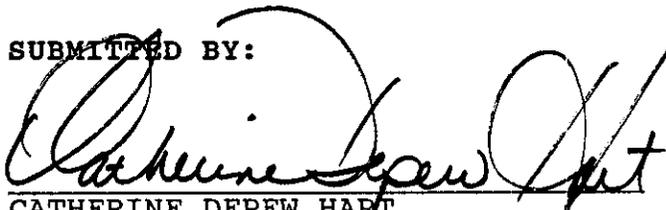
Entered this 27th day of June 1995.

S/ SVEN ERIK HOLMES

~~TERRY C. KERN~~

United States District Judge

SUBMITTED BY:



CATHERINE DEPEW HART
Assistant United States Attorney

N:\UDD\CHOOK\FC\BUCK\04665

Schober's Jewelry

8178-D S. Lewis, Tulsa, Oklahoma 74137-1207
918-298-2116

Appraisal of Fine Jewelry on behalf of Federal Bureau of Investigation

5100 E. Skelly Drive, Suite 950
Tulsa, Oklahoma 74135
Telephone: (918) 664-3300
Agent: Bart M. Lawrence

We herewith certify that since 1981 we have been engaged in the jewelry business and in the business of appraising jewelry, diamonds, precious stones, watches, coins, currency and related items of all descriptions. And, that we have, this day, carefully examined the following listed and described articles. The quantities and sizes stated are our best estimates of the stones in their mountings (unless specifically stated that the stones were loose or removed and graded). We estimate the value as listed for insurance or other purposes at the current retail value, excluding sales tax. The quality grades assigned to diamonds and gemstones have been established by the Gemological Institute of America and the American Gem Society. In making this appraisal, we do not agree to purchase or replace the articles. Item values, over one-hundred dollars, have been rounded to the nearest five dollars.

CASE # 49B-0C-53894

Item Descriptions:

1B5 (1 of 8):

1. Ring, 10 karat yellow gold, gent's, weighing 5.9 grams, Masonic.
Value: \$ 180.00.
2. Ring, 14 karat yellow gold, lady's, weighing 4.7 grams, half-dome wedding band, engraved: "June 8, 1916".
Value: \$ 165.00.
3. Ring, 18 karat yellow gold, lady's, weighing 3.3 grams, 5.5mm.
Value: \$ 185.00.
4. Ring, 10 karat yellow gold, gent's, weighing 2.3 grams, 5.0mm wedding band, two-tone diamond cut.
Value is: \$ 65.00.
5. Ring, 18 karat yellow gold, lady's, weighing 3.0 grams, Masonic double eagle.
Value: \$ 135.00.
6. Coin and Bezel, 14 karat yellow gold, weighing 3.0 grams, nugget style with \$5 gold piece.
Value: \$ 230.00.
7. Ring, base metal, faux, gent's, coin style.
Value: \$ 5.00.
8. Ring, 10 karat yellow gold, lady's, weighing 3.4 grams, two cubic zirconia, one synthetic sapphire.
Value: \$ 140.00.
9. Ring, 18 karat rose and white gold, lady's, weighing 4.4 grams, antique design, synthetic sapphire.
Value: \$ 195.00.

10. Bezel with diamond, 18 karat yellow gold, gent's, weighing 4.0 grams. Diamond weighs .15 carats; color J, clarity SI2.
Value: \$ 325.00.

11. Ring, with eleven diamonds, 10 karat yellow gold, gent's, weighing 5.8 grams. Diamonds are round brilliant cut diamonds set in an illusion plate setting, weighing .05 carat each; color J, clarity SI1. The total diamond weight is .55 carats.
Value: \$ 705.00.

12. Ring with seven diamonds, 10 karat yellow gold, gent's, nugget style, weighing 4.6 grams. Diamonds are 1 @ .02 carat and 6 @ .025 - .03 carat each; color K, clarity SI2. The total diamond weight is approximately .18 carats.
Value: \$ 270.00.

13. Pendant, cross, 10 karat yellow gold, weighing 2.4 grams.
Value: \$ 64.00.

14. Necklace, 14 karat yellow gold, 9.4 grams, King chain, 20"X2mm.
Value: \$ 220.00.

15. Wedding band, with three diamonds, gent's, 14 karat yellow gold, weighing 3.3 grams. Diamonds are single cut weighing .01 carat each; color I, clarity SI1. The total diamond weight is .03 carats.
Value: \$ 115.00.

16. Wedding band, with eight diamonds, 14 karat yellow gold, gent's, weighing 3.3 grams. Diamonds are single cut, weighing .01 carat each; color I clarity SI1. The total diamond weight is .08 carats.
Value: \$ 155.00.

17. Ring, black tiger eye and diamond, 10 karat yellow gold, gent's, weighing 5.6 grams, nugget style. Diamond is a .03 carat round brilliant cut diamond; color J, clarity, I2.
Value: \$ 160.00.

18. Ring, with three diamonds, 14 karat yellow gold, gent's, weighing 6.5 grams, nugget style. Diamonds are round brilliant cut diamonds weighing 2 @ .10 carats each and 1 @ .08 carats; color I-J, clarity SI2. The total diamond weight is .28 carats.
Value: \$ 475.00.

19. Ring, with eleven diamonds, 14 karat yellow gold, gent's, weighing 12.3 grams, nugget horseshoe, with diamonds set in 14 karat white gold plate. Diamonds are round brilliant cut diamonds weighing .02 carat each; color K, clarity I1. The total diamond weight is .22 carats.
Value: \$ 610.00.

1B5 (2 of 8):

All coins and currency are in circulated, average condition unless otherwise noted. Average condition currency pieces have generally lost crispness and may be soiled, or a newer piece that, regardless of condition, is valued at face value. Average condition coins correspond to grades VF-30 and VF-20, American Numismatic Association; moderately worn, but all major features remain sharp.

1. 1, Currency, U. S. One Dollar bill, 1926-A,
Value: \$ 8.00

2. 5, Currency, U. S. One Dollar bill, two are 1957, two are 1957-B, one is 1957-A.
Value: \$ 1.25 each, \$6.25 collectively.

3. 4, Currency, U. S. One Dollar bill, one each of 1935, 1935-D, 1935-E, 1935-F, 1935-G.
Value: \$ 2.00 each, \$8.00 collectively.

4. 47, Currency, U. S. Two Dollar bill, 1976, assorted mint marks,
Value: \$ 2.80 each, \$131.60 collectively.

5. 12, Currency, U. S. One Dollar bill, 1963-A.
Value: \$ 1.50 each, \$ 18.00 collectively.

6. 23, Currency, U. S. One Dollar bill, 1963-B.
Value: \$ 1.30 each, \$29.90 collectively.

7. 50, Currency, U. S. One Dollar bill, 1969.
Value: \$ 1.00 each, \$ 50.00 collectively.

8. 5, Currency, U. S. One Dollar bill, 1985.
Value: \$ 1.00, \$ 5.00 collectively.

9. 1, Currency, U. S. One Dollar bill, 1988.
Value: \$ 1.00

10. 1, Currency, U. S. Two Dollar bill, 1928-G.
Value: \$ 2.10

11. 1, Currency, U. S. Two Dollar bill, 1963-A.
Value: \$ 3.50.

12. 1, Currency, U. S. Two Dollar bill, 1963, very fine condition.
Value: \$ 6.30.

13. 1, Currency, U. S. Two Dollar bill, 1953, red seal, very fine condition.
Value: \$ 6.30.

14. 1, Currency, U. S. Two Dollar bill, 1953-A, very fine condition.
Value: \$ 2.40.

185 (3 of 8):

1. 1, Coin, U. S. Morgan Silver Dollar, 1879-O.
Value: \$ 10.50.

2. 1, Coin, U. S. Morgan Silver Dollar, 1886.
Value: \$ 9.25.

3. 1, Coin, U. S. Morgan Silver Dollar, 1921-S.
Value: \$ 8.65.

4. 2, Coin, U. S. Morgan Silver Dollar, 1921-D.
Value: \$ 8.50 each, \$ 17.00 collectively.

5. 3, Coin, U. S. Morgan Silver Dollar, 1923-S.
Value: \$ 7.30, \$ 21.90 collectively.

6. 3, Coin, U. S. Morgan Silver Dollar, 1922.
Value: \$ 6.40, \$ 19.20 collectively.

7. 2, Coin, U. S. Morgan Silver Dollar, 1922-S.
Value: \$ 7.20 each, \$ 14.40 collectively.

8. 1, Coin, U. S. Morgan Silver Dollar, 1926-S.
Value: \$ 8.00.

9. 85, Coin, U. S. Peace Portrait Silver Dollar, 1926.

Value: \$ 1.00, \$ 85.00 collectively.

10. 2, Coin, U. S. Silver Dollar, 1987.
one uncirculated. Value is: \$ 6.00
one about uncirculated. Value is: \$ 1.00
Total value of the two coins is \$ 7.00.

11. 3, Coin, U. S. Silver Dollar, 1988.
one uncirculated. Value is: \$ 7.50
two about uncirculated. Value is: \$ 1.00
Total value of the two coins is \$ 9.50.

12. 2, Coin, U. S. Silver Dollar, 1989, uncirculated.
Value is: \$ 7.50 each, \$ 15.00 collectively.

13. 1 Coin, U. S. Silver Dollar, 1990, about uncirculated.
Value is: \$ 1.00.

1B5 (4 of 8):

1. 235, Coin, U. S. Kennedy Half Dollar.
Value is: \$.50 each, \$117.50 collectively.

1B5 (5 of 8):

1. Coin Collection book, U. S.
Value is: \$ 210.00 collectively.

1B5 (6 of 8):

1. 1, Twenty Dollar United States Note, large size, 1914B.
Value is: \$ 35.00.

2. 1, One Dollar United States Note, large size, 1923.
Value is: \$ 14.00.

3. 1, Two Dollar United States Note, 1963, uncirculated.
Value is: \$ 7.00.

4. 1, Two Dollar United States Note, 1953, uncirculated.
Value is: \$ 8.00.

5. 1, Twenty Dollar United States Note, large size, 1862, good condition.
Value is: \$ 425.00.

6. 1, Twenty Dollar United States Note, 1880, large size, very fine condition.
Value is: \$ 175.00.

7. 1, Twenty Dollar United States Note, 1914, large size, extra fine condition.
Value is: \$ 50.00.

8. 1, Ten Dollar United States Note, 1901, Bison, large size, fine condition.
Value is: \$ 150.00.

9. 1, Ten Dollar United States Federal Reserve Note, 1918, Boston, White-Mellon, Type 1.
Value is: \$ 20.00.

10. 1, Ten Cents United States Fractional Currency, Fifth-Issue, 1874, fine condition.
Value is: \$ 8.00.

11. 1, One Dollar United States Silver Certificate, 1923, large size, uncirculated.
Value is: \$ 60.00.

12. 1, One Dollar United States Silver Certificate, 1899, large size, uncirculated.
Value is: \$ 160.00.

13. 1, One Dollar United States Silver Certificate, 1934A, small size, uncirculated.
Value is: \$ 26.00.

14. Collection of three notes with sequenced serial numbers:
14-A. 1, One Dollar United States Silver Certificate, Star Note, 1957B, uncirculated.
14-B. 1, One Dollar United States Silver Certificate, Star Note, 1957B, uncirculated
14-C. 1, One Dollar United States Silver Certificate, Star Note, 1957B, uncirculated
Value is: \$ 4.00 each, \$ 12.00. collectively.

15. 1, One Dollar United States Silver Certificate, 1957B.
Value is: \$ 1.00.

16. Collection of two One-Hundred-Dollar United States Federal Reserve Notes:
16-A. 1, 1934, very fine condition.
16-B. 1, 1934, very fine condition.
Value is: \$ 125.00 each, \$250.00 collectively.

17. 1, Twenty Dollar United States Federal Reserve Note, 1934D,
Value is: \$ 22.00.

18. Collection of two Five Dollar United States Federal Reserve Notes:
18-A. 1, 1934D.
18-B. 1, 1934D.
Value is: \$ 6.00 each, \$12.00 collectively.

19. 1, One-Hundred Dollar Federal Reserve Note, 1950.
Value is: \$ 100.00

20. 1, One Dollar United States Silver Certificate, 1935D, without motto, wide design, uncirculated.
Value is: \$ 10.00.

21. 1, One Dollar United States Silver Certificate, 1935F, without motto, wide design, uncirculated.
Value is: \$ 4.00.

22. 1, One Dollar United States Silver Certificate, 1935E, without motto, wide design, uncirculated.
Value is: \$ 5.00.

185 (8 of 8):

1. 1, Two Dollar United States Note, 1917, large size, very fine to extra-fine condition.
Value is: \$ 50.00.

2. 1, One Dollar United States Silver Certificate 1923, large size, Speelman-White, very fine condition.
Value is: \$ 17.00.

3. 1, Ten Dollar United States Federal Reserve Note, 1934G, Julian-Morgenthau.
Value is: \$ 15.00.

4. 1, Ten Dollar Confederate States of America, 1861. "B. Duncan, Columbia S.C."
Value is: \$ 15.00.

5. 1, Ten Cents, United States Fractional Currency, Fifth-Issue, 1874-1876.

Value is: \$ 8.00.

6. 1, Fifty Cents, United States Fractional Currency, Fifth-Issue, 1875.

Value is: \$ 15.00.

7. 1, Twenty-five Cents, United States Fractional Currency, Fifth-Issue, 1874.

Value is: \$ 10.00.

8. 33, Coin, U. S. Silver Dollar, 1979, Susan B. Anthony, Thirty are "D", one is "P", two are "S".

Value is: \$ 1.00 each, \$33.00 collectively.

9. 5 sets, Coin collection, U.S. Coins:

Fifty-Cents, 1903, Liberty Head Portrait. Value is: \$ 8.00.

Twenty-five Cents, 1908, Liberty Head Portrait. Value is: \$ 3.00.

Ten Cents, 1857, Seated Liberty Portrait. Value is: \$ 4.00.

Five Cents, 1905, Liberty Head Portrait. Good condition. Value is: \$.75.

Indian Head Penny, 1906 good condition, Value is: \$ 1.00.

Value of the set is \$ 16.75.

Fifty-Cents, 1941-D, Walking Liberty Portrait, Value is: \$ 2.50.

Twenty-five Cents, 1928, Standing Liberty Portrait. Value is: \$ 3.00.

Ten Cents, 1941, Mercury Portrait. Value is: \$ 0.40.

Five Cents, 1934, Buffalo Portrait, fine condition. Value is: \$ 0.65.

Indian Head Penny, 1904, Value is: \$ 2.00.

Value of the set is \$ 8.55.

Fifty-Cents, 1944, Walking Liberty Portrait. Value is: \$ 2.25.

Twenty-five Cents, 1929, Standing Liberty Portrait. Value is: \$ 5.00.

Ten Cents, 1945, Mercury Portrait. Value is: \$ 0.40.

Five Cents, 1936, Buffalo Portrait. Value is: \$ 0.50. Value is: \$

Indian Head Penny, 1903, Value is: \$ 2.00.

Value of the set is \$ 10.15.

Fifty-Cents, 1936, Walking Liberty Portrait. Value is: \$ 2.25.

Twenty-five Cents, 1925, Standing Liberty Portrait. Value is: \$ 3.00.

Ten Cents, 1943, Mercury Portrait. Value is: \$ 0.40.

Five Cents, 1936, Buffalo Portrait, good condition. Value is: \$ 0.50.

One Cent, 1901, Value is: \$ 2.00.

Value of the set is \$ 8.15.

Fifty-Cents, Walking Liberty Portrait. 1944, Value is: \$ 2.25.

Twenty-five Cents, 1962, Washington Portrait. Value is: \$ 1.25.

Ten Cents, 1944, Mercury Portrait. Value is: \$ 0.40.

Five Cents, 1937, Buffalo Portrait, good condition. Value is: \$ 0.55.

One Cent, 1948-S, Value is: \$ 0.10.

Value of the set is \$ 4.55.

Total value of all five sets is \$ 48.15.

10. 3, Ingots, Sterling Silver, 2 @ 1 ounce each, 1 @ 5 ounces.

Value is \$ 5.45 per ounce, \$ 38.15 collectively,

11. 3, Synthetic gemstones. Two of the stones are cubic zirconia, one is glass.

Value is: \$ 5.00.

12. Loose diamond, round brilliant cut, weighing .23 carats, color I, clarity I1.

Value is: \$ 300.00.

13. 1, Ear studs, One ear stud contains a round brilliant cut diamond weighing .23 carats, color I, clarity SI3. There are two earring findings (one without a diamond) that are 14 karat yellow gold, with screw backs.

Value is: \$ 355.00

14. 1, Necklace, sterling silver, three braided strands, weighing 16.6 grams.

Value is: \$ 8.00.

15. 14, Coin, Five Cents, U. S., Buffalo Portrait:
1916, good condition. Value is: \$ 0.85.
1936-S, good condition. Value is: \$ 0.35.
1937-D, Value is: \$ 0.35.
1937-D, Value is: \$ 0.35.
1937-S, Value is: \$ 0.35.
1937, Value is: \$ 0.35.
1928-D, good condition. Value is: \$ 0.70.
1920, Value is: \$ 0.70.
1917, good condition. Value is: \$ 0.85.
1936-D, Value is: \$ 0.35.
1936, good condition. Value is: \$ 0.35.
1936, good condition. Value is: \$ 0.35.
1936, good condition. Value is: \$ 0.35.
Indiscernible date, AG-3, Value is: \$ 0.20.
Total value of the fourteen coins is \$ 6.45.

16. 3, Coin, U. S. Fifty-Cent:
1946, Booker T. Washington, uncirculated, Silver Commemorative. Value is: \$ 25.00.
1963-D, Franklin, about uncirculated, Value is: \$ 3.00.
1962, Franklin, proof, Value is: \$ 14.00.
Total value of the three coins is \$ 42.00.

17. 4, Coin, Twenty-five Cent, United States:
1959, Washington Portrait, Value is: \$ 1.00.
1924, Standing Liberty Portrait, extra fine, Value is: \$ 35.00.
1959, Washington Portrait, Value is: \$ 1.00.
Undetermined date (1917-1930), Standing Liberty Portrait, Value is: \$ 2.00.
Total value of the four coins is \$ 39.00.

18. 2, Coin, Five Cent Piece, U. S. Liberty Head Portrait:
1910, Value is: \$ 1.00.
1883, without cents. Value is: \$ 3.00.
Total value of the two coins is \$4.00.

19. 6, Coin, sterling silver, 1 ounce, commemorative, Republic of Marshall Islands, "outer space theme".
Value of each coin is \$ 5.45, \$ 32.70 collectively.

20. 3, Coin:
1890-O, U. S. Silver Dollar, Liberty Head Portrait, extra fine condition. Value is: \$ 18.00.
1989-S, U. S. Half Dollar, Bicentennial Congress, proof. Value is: \$ 12.00.
1989-S, U. S. Silver Dollar, Bicentennial Congress, proof. Value is: \$ 20.00.
Total value of the three coins is: \$ 50.00.

21. 5, Coin:
1853, U. S. Half-Dime, Seated Liberty Portrait. Value is: \$ 5.00.
1962, U. S. Dime, Roosevelt Portrait, extra fine condition. Value is: \$ 0.50.
1959, U. S. Dime, Roosevelt Portrait, extra fine condition, Value is: \$ 0.65.
One-Fourth Krugerrand, uncirculated, Value is: \$ 109.00.
1960, U. S. Dime, Roosevelt Portrait. Value is: \$ 0.50.
Total value if the five coins is \$ 115.15.

1B1 (4 of 7):

1. 1, 45, Coin, U. S. Fifty-Cent, Kennedy.
Value is: .50 each, \$ 22.50 collectively.

Appraisal, Federal Bureau of Investigation, B. Lawrence, cont.

2. 9, Coin, U. S. Silver Dollar, Susan B. Anthony.
Value is: \$ 1.00 each, \$ 9.00 collectively.

Total Value of 706 individual coins, currency and items in this appraisal: \$ 8023.35

I Scott Schober, do hereby certify that this appraisal was made under my supervision and is accurate to the best of my knowledge and belief. The foregoing appraisal is made with the understanding that the appraiser assumes no liability with respect to any action that may be taken on the basis of this appraisal.



APPRAISER

March 11, 1994
DATE

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

FILED

JUN 28 1995

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

MARILYN DICKERSON, as the Personal
Representative of TERRY ANDERSON,
Deceased,

Plaintiff,

vs.

COLUMBUS LIFE INSURANCE COMPANY,
and BILL L. PARKEY,

Defendants.

Case No. 94-C-643-H

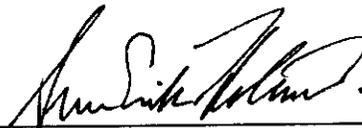
ENTERED ON DOCKET

DATE JUN 29 1995

ORDER

Upon the Dismissal With Prejudice filed by the Plaintiff herein, and for good cause shown therein, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the above-styled and numbered cause of action is hereby dismissed with prejudice to the filing of any further cause of action.

DATED this 27th day of June, 1995.



Sven Erik Holmes
United States District Judge

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

FILED

JUN 27 1995

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

GIDEON IBEMERE, ROBERT
BENTON, and DAVID
LITTLEJOHN,

Plaintiffs,

v.

Case No. 93-C-1133-H

MIDWEST PANCAKE HOUSE, INC.,
d/b/a Village Inn,

Defendant.

ENTERED ON DOCKET

DATE JUN 29 1995

J U D G M E N T

This action came on for consideration before the Court,
Honorable Sven Erik Holmes, District Judge, presiding, and the
issues having been duly heard, and a decision having been duly
rendered in favor of the Defendant,

IT IS THEREFORE ORDERED that the Plaintiffs take nothing from
the Defendant and that the action be dismissed on the merits.

IT IS SO ORDERED.

This 27TH day of JUNE, 1995.



Sven Erik Holmes
United States District Judge

48

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

FILED

JUN 28 1995

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

JESSE B. SAMPSON,

Plaintiff,

v.

DONNA SHALALA, Secretary of
DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendant.

NO. 93-C-954-H

ENTERED ON DOCKET

DATE JUN 29 1995

JUDGMENT

There being no objection, the Court adopts the Magistrate's Report and Recommendation and REVERSES and REMANDS the decision of the Secretary.

Judgment is hereby entered for the Plaintiff and against Defendant. Dated this 27th day of JUNE, 1995.



SVEN ERIK HOLMES
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
SHELIA BEATTY DEVILLE fka Shelia)
Beatty Richardson; CHARLES OLEN)
DEVILLE; COUNTY TREASURER,)
Tulsa County, Oklahoma; BOARD OF)
COUNTY COMMISSIONERS, Tulsa)
County, Oklahoma,)
)
Defendants.)

JUN 28 1995

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

ENTERED ON DOCKET
DATE JUN 29 1995

) Civil Case No. 95-C 0084 BU
)

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27th day of June,

1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, SHELIA BEATTY DEVILLE fka Shelia Beatty Richardson and CHARLES OLEN DEVILLE, appear not, but make default.

The Court further finds that the Defendants, SHELIA BEATTY DEVILLE fka Shelia Beatty Richardson and CHARLES OLEN DEVILLE, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 27, 1995, and continuing through May 1, 1995, as more fully appears from the

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

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, SHELIA BEATTY DEVILLE fka Shelia Beatty Richardson and CHARLES OLEN DEVILLE, 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, SHELIA BEATTY DEVILLE fka Shelia Beatty Richardson and CHARLES OLEN DEVILLE. 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 through the Secretary of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on February 9, 1995; and that the Defendants, SHELIA BEATTY DEVILLE

fka Shelia Beatty Richardson and CHARLES OLEN DEVILLE, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, SHELIA BEATTY DEVILLE, is one and the same person as and formerly referred to as Shelia Beatty Richardson, and will hereinafter be referred to as "SHELIA BEATTY DEVILLE." The Defendants, SHELIA BEATTY DEVILLE and CHARLES OLEN DEVILLE, are husband and wife.

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

**LOT ELEVEN (11), BLOCK ONE (1), MARY ELLEN
SECOND AN ADDITION TO THE CITY OF TULSA,
COUNTY OF TULSA, STATE OF OKLAHOMA,
ACCORDING TO THE RECORDED PLAT THEREOF.**

The Court further finds that on March 24, 1986, W. Wayne Smith and M. Kayleen Smith, executed and delivered to MidAmerica Federal Savings and Loan Association, their mortgage note in the amount of \$33,850.00, payable in monthly installments, with interest thereon at the rate of Ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, W. Wayne Smith and M. Kayleen Smith, husband and wife, executed and delivered to MidAmerica Federal Savings and Loan Association, a mortgage dated March 24, 1986, covering the above-described property. Said mortgage was recorded on March 27, 1986, in Book 4932, Page 1175, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 16, 1986, MIDAMERICA FEDERAL SAVINGS AND LOAN ASSOCIATION, assigned the above-described mortgage note and

mortgage to MORTGAGE CLEARING CORPORATION. This Assignment of Mortgage was recorded on April 25, 1986, in Book 4938, Page 380, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 1, 1988, MORTGAGE CLEARING CORPORATION, assigned the above-described mortgage note and mortgage to TRIAD BANK, N.A. This Assignment of Mortgage was recorded on July 18, 1989, in Book 5195, Page 644, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 9, 1989, TRIAD BANK, N.A., assigned the above-described mortgage note and mortgage to Secretary of Housing and Urban Development. This Assignment of Mortgage was recorded on October 13, 1989, in Book 5213, Page 1707, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendant, SHELIA BEATTY DEVILLE, currently holds the title to the property by virtue of a Warranty Deed Dated March 22, 1989, recorded on April 6, 1989, in Book 5176, Page 936, in the records of Tulsa County, Oklahoma. Said Defendant, SHELIA BEATTY DEVILLE is the current assumptor of the subject indebtedness.

The Court further finds that on September 15, 1989, the Defendant, SHELIA RICHARDSON, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on July 23, 1990, May 1, 1991, and May 13, 1992.

The Court further finds that the Defendant, SHELIA BEATTY DEVILLE, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly

installments due thereon, which default has continued, and that by reason thereof the Defendant, SHELIA BEATTY DEVILLE, is indebted to the Plaintiff in the principal sum of \$52,579.19, plus interest at the rate of 10 percent per annum from October 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$18.00 which became a lien on the property as of June 26, 1992; a lien in the amount of \$17.00 which became a lien on the property as of June 25, 1993; and a lien in the amount of \$17.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, SHELIA BEATTY DEVILLE and CHARLES OLEN DEVILLE, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that 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, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendant, SHELIA

BEATTY DEVILLE, in the principal sum of \$52,579.19, plus interest at the rate of 10 percent per annum from October 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.53 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$52.00, plus costs and interest, for personal property taxes for the years 1991-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, SHELIA BEATTY DEVILLE and CHARLES OLEN DEVILLE, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa
County, Oklahoma, in the amount of \$52.00, personal property
taxes which are currently due and owing.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that 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.

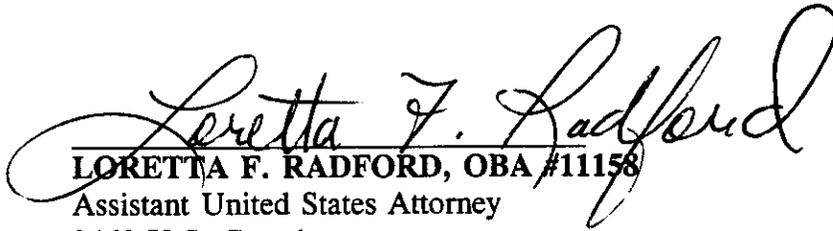
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under and by virtue of this judgment
and decree, all of the Defendants and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of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

¶/ MICHAEL BURRAGE

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



DICK A. BLAKELEY, OBA #852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-C 0084BU

LFR:flv

ENTERED ON DOCKET
DATE JUN 29 1995

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

F I L E D

JUN 28 1995

SHEILA WAITS, surviving)
widow of BRYON WAITS,)
deceased.)
)
Plaintiff,)
)
vs.)
)
MASSACHUSETTS MUTUAL LIFE)
INSURANCE COMPANY and)
HARTFORD LIFE INSURANCE)
COMPANY,)
)
Defendant.)

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

Case No. 94-C-632-E

ORDER ALLOWING DISMISSAL WITHOUT PREJUDICE

Before the Court is the Application of Plaintiff for a dismissal without prejudice to the re-filing of this cause of action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above styled and numbered cause of action is hereby dismissed without prejudice to the filing of any further cause of action.

IT IS FURTHER ORDERED that the Clerk shall mail file-stamped copies of this Order to attorneys of record.

DATED this 28 day of June, 1995.

S/ JAMES O. ELLISON

JUDGE OF THE DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

ENTERED ON DOCKET

DATE JUN 29 1995

HELEN GREY TRIPPET; HELEN GREY) Civil Action No. 92-C-192-E
TRIPPET, Custodian for Leslie S.)
Murphy and Mark Murphy; ROBERT S.)
TRIPPET, Guardian of Virginia)
Trippet; MARY SUSAN TRIPPET;)
CONSTANCE S. TRIPPET; FLO HEDLEY)
NORVELL and RUSSEL SIMPSON)
NORVELL, Executors of the Estate)
of Alberta Simpson Matteson;)
HELEN GREY TRIPPET, Custodian for)
Scott Trippet Poland,)

Plaintiffs,)

vs.)

TRI TEXAS, INC. (a Florida)
Corporation); CHARLES S.)
CHRISTOPHER; THE HOME-STAKE OIL)
AND GAS COMPANY and THE HOME-)
STAKE ROYALTY CORPORATION;)
JARRELL B. ORMAND; PAINE WEBBER)
INCORPORATED,)

Defendants.)

F I L E D

JUN 28 1995

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

JUDGMENT

Now on this 28 day of June, 1995 comes before this Court plaintiff Helen Grey Trippet's ("Trippet") Motion for Deficiency Judgment. The Court finds as follows:

1. On December 12, 1994 a judgment was entered in favor of Trippet and against Tri Texas, Inc. a/k/a EnvirOmint Holdings, Inc. and Charles S. Christopher in the amount \$258,870.52 plus interest at the rate of 4.51% per annum from April 3, 1994 until paid and in the amount of \$172,314.64 plus interest at the rate of 4.51% per annum from April 3, 1994 until paid.

2. As of May 25, 1995 the amounts owed pursuant to the judgment were

\$272,206.18 and \$181,192.57 respectively for a total amount of \$453,398.75.

3. On May 25, 1995 a sale was conducted wherein certain assets of Charles S. Christopher were sold at public auction by United States Marshal.

4. Trippet was the successful bidder on Christopher's assets for the amount of \$1.00.

5. After deducting the proceeds of said sale there remains due and owing on the judgment the deficiency amount of \$453,397.75.

6. Trippet is entitled to a judgment for the deficiency amount of \$453,397.75 against Tri Texas, Inc. a/k/a EnvirOmint Holdings, Inc. and Charles S. Christopher jointly and severally plus interest at the rate of 4.51% per annum or \$56.02 per diem until paid.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Judgment is entered in favor of Helen Grey Trippet and against Tri Texas, Inc. a/k/a EnvirOmint Holdings, Inc. and Charles S. Christopher jointly and severally in the deficiency amount of \$453,397.75 plus interest at the rate of 4.51% per annum or \$56.02 per diem until paid.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

JUN 28 1995

ASBESTOS HANDLERS, INC.,)
an Oklahoma corporation, et al.,)
)
Plaintiffs,)
)
vs.)
)
DAVE RENFRO, et al.,)
)
Defendants.)

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

Case No. CIV-94-C-969-E

ORDER OF DISMISSAL

THIS matter comes on for hearing on this 28 day of June, 1995, upon consideration of the parties joint request for dismissal.

The Court finds that the above styled and captioned matter has been settled and that it should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above styled and captioned matter shall be dismissed with prejudice.

S/ JAMES O. ELLISON

HONORABLE JAMES O. ELLISON
U.S. DISTRICT JUDGE

FRAZIER, SMITH & PHILLIPS
Attorneys for Plaintiff
1424 Terrace Drive
Tulsa, OK 74104-4626
(918) 744-7200
FRAZIER, OBA# 3112

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

ENTERED ON DOCKET
JUN 29 1995
DATE

JIM D. SHERL,

Plaintiff,

vs.

RODGER RANDLE, SAM KEIRSEY,
ROY HEIM, and the CITY OF
TULSA, OKLAHOMA, a Municipal
corporation,

Defendants.

Case No. 93-C-986-K

FILED

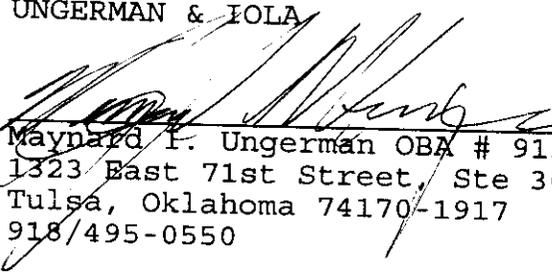
JUN 28 1995

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

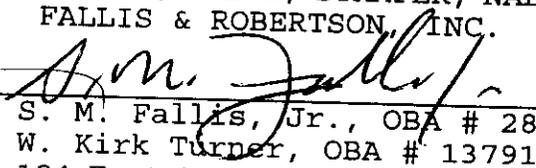
JOINT STIPULATION OF DISMISSAL OF ALL CLAIMS WITH PREJUDICE

The parties hereto, by and through their attorneys of record, and pursuant to Fed.R.Civ.P. 41(a)(1)(ii), hereby stipulate that the Plaintiff's cause is hereby dismissed in its entirety with prejudice, as to the individually named defendants.

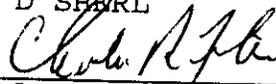
UNGERMAN & IOLA


Maynard F. Ungerman OBA # 9157
1323 East 71st Street, Ste 300
Tulsa, Oklahoma 74170-1917
918/495-0550

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


S. M. Fallis, Jr., OBA # 2813
W. Kirk Turner, OBA # 13791
124 East Fourth Street, Ste 400
Tulsa, Oklahoma 74103-5010
918/584-5182

ATTORNEYS FOR PLAINTIFF,
JIM D SHERL


Charles R. Fisher, OBA 2933
City Attorney's Office
200 Civic Center, Room 316
Tulsa, Oklahoma 74103-3827

ATTORNEYS FOR DEFENDANTS ROY
HEIM AND SAM KEIRSEY

ATTORNEYS FOR DEFENDANTS THE
CITY OF TULSA AND ROGER RANDLE

33

WJM 2 T

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

FILED

JUN 14 1995

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

BOB WALLS CHEVROLET/OLDSMOBILE, :
on behalf of itself and all :
others similarly situated, :

Plaintiff, :

v. :

GENERAL MOTORS CORPORATION, a :
Delaware Corporation and :
LEAMON CUMMINGS, an individual, :

Defendants.:

CASE NO. 94-C 1019H ✓

DIST. COURT. NO. :
CJ 94-43

ENTERED ON
JUN 28 1995
DATE

FILED

JUN 27 1995

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

ORDER

Now on this 5th day of June, 1995, came on for hearing before me the undersigned Judge the Motion of Plaintiff to Voluntarily Withdraw all Class Claims and the Court, upon consideration finds that:

Plaintiff should be allowed to voluntarily withdraw all class claims and allegations from its Petition and should dismiss such class claims without prejudice, and that this case shall henceforth be considered as an individual action only.

AND IT IS SO ORDERED.



Hon. Sven Erik Holmes
United States District Judge

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Approved:


Attorney for Plaintiff

Attorney for Defendant

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

FILED

JUN 27 1995

GENEVA MAE GILES, as Administrator,
of the Estate of WILLIAM ALVIE
THOMPSON, Deceased,

Plaintiff,

v.

NORTHEAST OKLAHOMA REHABILITATION
HOSPITAL, INC.
a foreign corporation,

Defendant.

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

Case No. 94CV-1189-BU

ENTERED NET

DATE JUN 28 1995

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil procedure, the parties hereby stipulate that the claim of Geneva Mae Giles, as Administrator of the Estate of William Alvie Thompson, Deceased, is hereby dismissed with prejudice to refileing.

By:



Mark S. Thetford, OBA No. 1893
STIPE LAW FIRM
P. O. Box 1038
Muskogee, Oklahoma 74170
(918) 683-5050

ATTORNEY FOR PLAINTIFF

By:



Karen L. Callahan
Barkley & Rodolf
2700 Mid-Continent Tower
401 South Boston Avenue
Tulsa, Oklahoma 74103-4035

ATTORNEY FOR DEFENDANT

JUN 28 1995

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUN 28 1995

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
)
 JACK'S MACHINE & FAB, INC.;)
 JACK R. ULRICH)
 aka Jack Roy Ulrich;)
 SHARLETT M. ULRICH)
 aka Sharlett Marie Ulrich;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma;)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

FILED

JUN 27 1995

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

CIVIL ACTION NO. 94-C-269-K

JOINT STIPULATION OF DISMISSAL

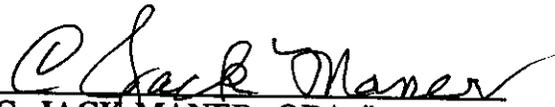
The Plaintiff, United States of America on behalf of the Small Business Administration, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants, Jack's Machine & Fab, Inc., Jack R. Ulrich aka Jack Roy Ulrich, Sharlett M. Ulrich aka Sharlett Marie Ulrich, by their attorney C. Jack Maner; the Defendants, County Treasurer, Tulsa County, Oklahoma; and Board of County Commissioners, Tulsa County, Oklahoma, by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma, hereby jointly stipulate that this action may be dismissed with prejudice pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure. The parties would further advise the Court that this foreclosure proceeding has been settled in the amount of \$10,100.00.

UNITED STATES OF AMERICA

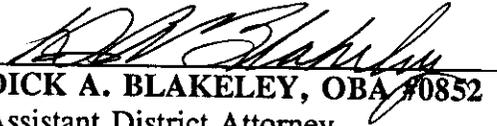
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Stipulation of Dismissal
Case No. 94-C-269-K

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

FILED

JUN 26 1995

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

CHARLES A. McCOMBS,)
)
 Plaintiff,)
)
 v.)
)
 DONNA E. SHALALA,¹)
 Secretary of HHS,)
)
 Defendant)

NO. 93-C-1037-H ✓

ENTERED ON DOCKET
DATE JUN 27 1995

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, Charles M. McCombs seeks judicial review of a final decision of the Secretary of Health & Human Services denying Social Security disability benefits.²

Mr. McCombs, who was 48 years old at the time of his application, has a 10th grade education, has secured a General Equivalency Diploma and has attended welding school. He has not been engaged in substantial gainful employment activity since November 6, 1990. Prior to that time he had been most recently employed as a drill press helper [R. 93]. Mr. McCombs claims he is disabled within the meaning of the Social Security Act and has been under a disability since June 25, 1990, as a result of neck and back injuries, severe shortness of breath, muscle weakness and tremors.

¹ Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. However, this Report and Recommendation continues to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

² Mr. McCombs' June 25, 1992 application for disability benefits was denied November 12, 1991, the denial was affirmed on reconsideration. A hearing before an Administrative Law Judge was held September 4, 1992. By order dated December 11, 1992 the ALJ entered the findings that are the subject of this appeal. The Appeals Council affirmed the findings of the ALJ September 21, 1993. The decision of the Appeals Counsel represents the Secretary's final decision for purposes of further appeal. 20 C.F.R. §§ 404.981, 416.1481.

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On November 20, 1990, Mr. McCombs underwent decompressive laminectomy and spinal fusion surgeries at the L4 and L5 levels [R. 243-248], followed by an anterior cervical discectomy and anterior interbody fusion surgery at the C6 and C7 levels on February 18, 1991 [R. 155-156]. On December 16, 1991 a redo of the L4 and L5 laminectomy was performed [R. 258]. On January 20, 1992, five weeks post-operatively, the surgeon noted that x-rays taken that day revealed the bone graft to be in good position and consolidating satisfactorily [R. 257].

The clinic record from Claremore Indian Hospital reflects that on January 8, 1992, Mr. McCombs complained of shortness of breath [R. 354]. On February 6, 1992, the clinic notes contain an entry that Mr. McCombs' shortness of breath was getting worse [R. 351-2]. Mr. McCombs was seen at the Clinic numerous times for his breathing complaints, shortness of breath and muscle tremors.³

Mr. McCombs was also seen at Oklahoma Heart, Inc. by Doctors Robert C. Sonnenschein and Fred Garfinkel for diagnosis of the source of his shortness of breath, or dyspnea. The personal history note dated March 16, 1992 reflects that Mr. McCombs reported shortness of breath with exertion over the last three months and, over the last two weeks shortness of breath, even at rest [R. 312]. On examination performed March 18, 1992, the physician found "marked" shortness of breath [R. 310-11]. The stated reason for Mr. McCombs' visit that day was "breathing worse, increased DOE [dyspnea on exertion]" [R. 307]. Again on May 20, 1992 Mr. McCombs presented with the following complaint, "breathing worse, especially at night and shakiness in arms and legs worse with activity" [R. 305].

³ Mr. McCombs was seen in the Claremore Indian Hospital clinic on the following dates for complaints of muscle tremors and shortness of breath: 2/19/92, 3/4/92, 3/18/92, 4/2/92, 4/23/92, 4/29/92, 5/22/92, 6/20/92, 7/14/92. [R. 324-348].

In an effort to find the cause of his shortness of breath Mr. McCombs underwent numerous pulmonary function tests, an echocardiogram (3/25/92) [R. 273], a heart catheterization (4/13/92) [R. 275-276], hospital admission to a monitored bed from 5/4/92 to 5/8/92 for an EMG, lab tests, blood gas studies [R. 302-3], a neurological examination (6/3/92) [R. 415], and a muscle biopsy (8/12/92) [R. 380-1]. Despite these efforts, Mr. McCombs' physicians never arrived at a diagnosis of the cause of his breathing problems or muscle tremors. Despite this lack of diagnosis as to the cause of the complaints, the treating physicians never questioned the reality of the physical manifestations and variously described his condition as: a "major problem" [R. 431], "a very serious situation" [R. 432], "severely short of breath with worsening symptoms" [R. 435], "extreme shortness of breath" [R. 441], "rapidly progressive disabling SOB [shortness of breath]" [R. 460], "fairly incapacitated by the disease" [R. 289], and "progressive severe shortness of breath that is significantly limiting" [R. 288].

On behalf of the Secretary, the ALJ concluded that:

- (1) Plaintiff has severe impairments which significantly affect the performance of basic work activities;
- (2) The record does not show that Plaintiff has an impairment, or combination of impairments, that meet or equal the severity of any impairment listed in 20 C.F.R. pt. 404, Subpt. P, App. 1;
- (3) Based on his back complaints and surgeries, Plaintiff was limited to less than the sedentary exertional level from November 6, 1990 to January 20, 1992, and was therefore disabled during that time frame;
- (4) Plaintiff's complaints of "excess pain" and other symptomatology after January 20, 1992, are not credible beyond limiting Plaintiff to the light exertional level, limitations on frequent or repetitive bending and stooping, alternate sitting and standing, and some bilateral hand tremors;

(5) Even at the light exertional level, effective January 20, 1992, Plaintiff would not be able to do his past relevant work as a drill press operator, mechanic, truck body builder, or maintenance helper;

(6) Based on the testimony of the vocational expert, there exist a significant number of jobs in the national economy which the claimant could perform, even though the light exertional level is some what eroded by Plaintiff's nonexertional limitations;

(7) The Plaintiff's disability ceased on January 20, 1992.

The role of the court under 42 U.S. C. § 405(g) is to determine whether there is substantial evidence in the record to support the decision of the Secretary, and not to reweigh the evidence or try the issues *de novo*. *Sisco v. U.S. Dept. of Health and Human Services*, 10 F.3d 739, 741 (10th Cir. 1993). If supported by substantial evidence, the Secretary's findings are conclusive and must be affirmed. *Richardson v. Perales*, 402 U.S. 389, 390, 91 S. Ct. 1420, 1422, 28 L.Ed.2d 842 (1971). Substantial evidence is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* at 401, 91 S.Ct. at 1427.

In order to determine whether a claimant is under a disability, the Secretary applies a five-step inquiry: (1) whether the claimant is currently working; (2) whether the claimant suffers from a medically severe impairment; (3) whether the impairment meets an impairment listed in appendix 1 of the relevant regulation; (4) whether the impairment prevents the claimant from continuing his past relevant work; and (5) whether the impairment prevents the claimant from doing any kind of work. 20 C.F. R. §§ 404.1520(c), 416.920(c); *see Williams v. Bowen*, 844 F.2d 748, 751 (10th Cir. 1988). If at any point in the process the Secretary finds that a person

is disabled or not disabled, the review ends and evaluation under a subsequent step is not necessary. *Musgrave v. Sullivan*, 966 F.2d 1371, 1374 (10th Cir. 1992).

In the present case, step-one (whether claimant is working) is satisfied as the Plaintiff is not currently working. Step-two concerns whether claimant suffers from a medically severe impairment. This step is based on medical evidence alone and is satisfied where, as here, Plaintiff makes a threshold showing that his medically determinable impairment, or combination of impairments, significantly limits his ability to do basic work activities. *Williams*, 844 F.2d at 750-1. The ALJ concluded that Mr. McCombs has severe impairments which significantly affect the performance of basic work activities [R. 14]. The evaluation proceeded to step-three where the Secretary determined that the Plaintiff does not have an impairment, or combination of impairments, which meet or equal the requirements of a listed impairment found in 20 C.F.R. pt. 404, Subpt.P, App. 1 [R. 14]. Next, the ALJ considered Mr. McCombs' subjective complaints of pain and other symptomatology and found them "not credible beyond limiting the claimant to the light exertional level, limitations on frequent or repetitive bending and stooping, alternate sitting and standing and some bilateral hand tremors" [R. 17]. Finding these limitations prevented McCombs from returning to his past relevant work, a vocational expert was called to testify whether there exists a significant number of jobs in the national economy Mr. McCombs could perform, despite his limitations. The ALJ concluded that after January 20, 1992, Plaintiff was not disabled within the meaning of the Act.

Plaintiff contends that the ALJ, acting on behalf of the Secretary, (1) failed to apply correct legal standards in evaluating Plaintiff's subjective complaints of pain; (2) failed to properly consider the combined effects of Plaintiff's ailments; and (3) based his conclusion that

Plaintiff could perform a number of jobs available in the national economy on improper hypothetical questioning of the vocational expert.

In holding that Mr. McCombs was capable of performing work, the ALJ found that the degree of functional limitation alleged due to pain and other subjective complaints after January 20, 1992, when he had recovered from back surgery, was not credible [R. 22]. This finding was based, in part, on supposedly inconsistent complaints regarding tremors and shortness of breath. According to the ALJ:

[McCombs] told the treating physician on March 9, 1992, that he had been getting increasingly short of breath since his surgery in November 1991. Nevertheless, he was able to go to 7 METS on the treadmill test, and he told the physician on August 10, 1992, that he had been at that time walking 3 miles per day. However, he reported to another treating physician his dyspnea at the time of onset was not a problem (Exhibit 39/7). These statements reflect a considerable amount of strenuous activity without significant negative consequences. [R. 17].

In fact, Exhibit 39/7 is dated May 4, 1992, not March 9, and reveals the following:

Started noticing some DOE [dyspnea on exertion] approximately November 1991. However, not a major problem. Underwent back surgery in January 1992. Up until that time was walking approximately 3 miles per day without major problem. Post-op, when attempting to walk, was extremely dyspneic. February '92 a little worse. Has been getting rapidly and progressively worse over last 6-8 weeks. Now, even talking leads to dyspnea.

* * *

Pulmonary evaluation interesting. No major pulmonary abnormality. Very minimal airway obstruction. Slightly reduced PO₂ at rest but increased to normal value with exercise. However with any exercise developed severe metabolic acidosis . . . [R. 457-8].

The August 10, 1992 entry does not state that Mr. McCombs "had been at that time walking 3 miles per day" as represented by the ALJ [R. 17]. The entry actually states, "The patient indicates that in December 1991 he started noticing some shortness of breath when he finished

walking 3 miles each day" [R. 382]. This history is consistent with the history given other health care providers and with Mr. McCombs' hearing testimony [R. 42, 219, 340, 382].

Concerning the treadmill test, the medical record reflects that although Mr. McCombs went to 7 METS on a February 11, 1992 treadmill test, the exercise time was only 5.27 minutes. Further, the technician noted the presence of dyspnea and cough and also that the test was abnormal in regard to recovery period [R. 446]. Similarly, the record for May 8, 1992 reflects that while he was hospitalized for testing, Mr. McCombs walked 9 minutes at 4 mph but again became short of breath and complained of his legs hurting [R. 468]. Contrary to the ALJ's finding, there is not substantial evidence in the medical record to support the conclusion that Mr. McCombs can endure a considerable amount of strenuous activity without significant negative consequences [R. 17]. In fact, the medical record supports Mr. McCombs' hearing testimony.

The ALJ noted that Mr. McCombs "was observed to get slightly dyspneic even with talking,⁴ he surprisingly is able to spend 2 or 3 hours per day walking around and shopping at Walmart . . . His practice of spending several hours daily at Walmart also belies his allegation that he can stand for only 20 or 30 minutes" [*Id.*]. And, "even if the claimant were somewhat short of breath after exertion, it would not preclude all activity and the undersigned is somewhat skeptical of those allegations anyway, considering the claimants' hours of activity in shopping at Walmart's" [R. 18]. Concerning his shopping activity at Walmart, Mr. McCombs actually testified, as follows:

⁴ It is unclear from the record, or the ALJ's opinion whether the observation that Mr. McCombs gets "slightly" dyspneic even with talking" is the ALJ's own observation or one he has paraphrased from the medical records. However, Mr. McCombs' physicians do not characterize his dyspnea with talking as "slight". See R. 458, "now even talking leads to dyspnea"; "develops dyspnea with talking" [R. 459].

Q: (By ALJ) Do you exercise in a normal day?

A: Yes, sir, we try to get out and, and go shopping and go to Wal-Mart and walk around where I'll have someplace to sit down. We usually sit down and drink a Coke or eat lunch and then go back home. [R. 47].

Mr. McCombs also testified that climbing stairs brings on shortness of breath which requires him to sit for 10-15 minutes to recover [R. 46]. It takes an hour to an hour and a half to get showered and dressed because he has to sit and rest [R. 47-8]. Mr. McCombs' testimony concerning these limitations was unrebutted either at the hearing or in the medical record. That Mr. McCombs has been deviled by progressively severe shortness of breath, or dyspnea, of unknown etiology is fully supported by the record.

Allegations of subjective complaints must be analyzed in accordance with guidelines established in *Luna v. Bowen*, 834 F.2d 161, 165 (10th Cir. 1987), 20 C.F.R. 404.1529(c)(3) and Social Security Ruling 88-13. These guidelines require consideration of factors other than objective medical test results when determining the credibility of subjective complaints. In this regard, it is necessary to consider, *inter alia*, a claimant's persistent attempts to find relief, the claimant's daily activities, and precipitating and aggravating factors. The ALJ engaged in the correct analysis with respect to Mr. McCombs' back and neck problems. However, the factual basis for his conclusions related to Mr. McCombs' breathing problems is based on an erroneous interpretation of both Mr. McCombs' testimony and the medical record.

The ALJ seemed to place stock in the fact that the numerous medical tests failed to produce a diagnosis of the cause of Mr. McCombs' muscle tremors and breathing problems. However, it has been established that the language in §223(d)(5)(A) of the Social Security Act requiring proof of a disability by "medically acceptable clinical or laboratory diagnostic

techniques" does not mean that a disability is covered by the Act only if it can be conclusively diagnosed by a "laboratory-type test". *Sisco v. U.S. Dept. of Health & Human Services*, 10 F.3d 739, 743 (10th Cir. 1993). According to the Court in *Luna v. Bowen*, 834 F.2d 161, 162 (10th Cir. 1987), "objective" as used by the Regulations requiring disability claimants to show "objective" medical evidence of a pain-producing impairment means "any evidence that an examining doctor can discover and substantiate." Conversely, subjective evidence consists of statements by the claimant that are not based on information which an impartial medical expert can evaluate either from examining the claimant himself or from evaluating the claimant's test results or examination reports. *Id.* at note 2. In this case the medical record is replete with the personal clinical observations of Mr. McCombs' treating physicians which substantiate that Mr. McCombs suffers from shortness of breath, dyspnea, muscle weakness and muscle tremors. These clinical observations are objective medical evidence.

The medical record reflects a continuing, sometimes frantic, effort over several months by a team of specialists to rule out various possible causes of Mr. McCombs' breathing and muscle problems. The following physicians' comments are found in the medical record: "Due to pts. extreme shortness of breath, pt. needs [tests] As soon as possible !!!!" [R. 441]; "[T]his is a very serious situation and delaying the workup of this patient could lead to his demise. We need to proceed with all haste possible in working up this patient" [R. 432]; "Pt. needs to be seen by Pulmonologist (Dr. Garfinkle/Gottehrer) as soon as possible! to assess marked shortness of breath and dyspnea on exertion !!!" [R. 430]. Nowhere in the medical record is there the slightest suggestion that these problems are non-existent.

Because the ALJ based his conclusions on erroneous interpretations of Mr. McCombs' testimony and the medical record, the undersigned United States Magistrate Judge finds that the ALJ's credibility determination concerning Mr. McCombs' subjective complaints after January 20, 1992 is not supported by substantial evidence.

In addition, the ALJ's questioning of the vocational expert is also infirm. *Hargis v. Sullivan*, 945 F.2d 1482, 1292 (10th Cir. 1991) provides that "testimony elicited by hypothetical questions that do not relate with precision all the claimants' impairments cannot constitute substantial evidence to support the Secretary's decision." Because the findings incorporated in the ALJ's hypothetical questions to the vocational expert are not supported by substantial evidence, it follows that the questions based on those findings fail to relate with precision all Mr. McCombs' impairments. In particular, the hypothetical questions relied upon by the ALJ failed to relate the severity of Mr. McCombs' dyspnea and resulting fatigue and muscle tremors brought on by such slight exertion as talking. According to *Hargis*, the vocational expert's testimony does not constitute substantial evidence to support the finding that he can perform other jobs which exist in significant numbers in the national economy.

The undersigned United States Magistrate Judge recommends that the Secretary's determination that Mr. McCombs' disability ended January 20, 1992 be REMANDED for further consideration of his capacity to perform even sedentary work in view of the progressive muscle tremors/weakness and shortness of breath/dyspnea documented in the record. This consideration should include a determination of whether these conditions (shortness of breath, dyspnea and muscle tremors/weakness) have lasted for a continuous period of not less than 12 months in accordance with the durational requirements of the relevant regulations.

In accordance with 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b), any objections to this Report and Recommendation must be filed with the Clerk of the Court within ten (10) days of the receipt of this Report. Failure to file objections within the time specified waives the right to appeal from a judgment of the district court based upon the findings and recommendations of the magistrate. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This 26th day of JUNE, 1995.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

Q:\SOCSEC\mcombs

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

FILED

JUN 26 1995

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

No. 93-C-0057-H

ENTERED ON DOCKET

DATE JUN 27 1995

ROBERT COTNER,
Petitioner,
vs.
R. MICHAEL CODY, et al.,
Respondents.

ORDER

This matter comes before the Court on Petitioner's Motion for Appointment of Counsel (docket #43).

On May 15, 1995, the Court denied Petitioner's motion to reconsider the order dismissing the instant petition for a writ of habeas corpus for failure to exhaust state remedies. Accordingly, Petitioner's motion for appointment of counsel is hereby **denied as moot**.

IT IS SO ORDERED.

This 26TH day of JUNE, 1995.


Sven Erik Holmes
United States District Judge

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ENTERED ON DOCKET
DATE JUN 27 1995

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

F I L E D

GREGORY MASON, and ERVIN L. POOL, JR. and ARLENE POOL, NEXT OF KIN OF ERVIN L. POOL, III DECEASED,

Plaintiff,

vs.

FORD MOTOR COMPANY,

Defendant.

Case No. 95-C-196BU

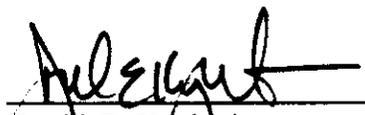
JUN 26 1995

Shirley L. Greaves, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STIPULATION OF DISMISSAL

COMES NOW the Plaintiff, by and through his attorneys of record, and Defendant, by and through its attorneys of record, and hereby stipulate to the dismissal of the above-styled action with prejudice to the refileing of same. This dismissal is made pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Respectfully submitted,


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ATTORNEYS FOR DEFENDANT


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ATTORNEY FOR PLAINTIFF

ENTERED ON DOCKET
DATE JUN 27 1995

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA** JUN 26 1995

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

**KELLEE JO BEARD, by her
parents and next friends,
Patty and Bill Beard, et al,**)

Plaintiffs,)

vs.)

No. 87-C-704-E

**THE HISSOM MEMORIAL CENTER,
et al**)

Defendants.)

JUDGMENT

Pursuant to the Order entered on the 5th day of June 1995, the Court finds that Plaintiffs as prevailing parties are entitled to fees and expenses from Defendants in the amount of \$87,321.37.

IT IS THEREFORE ORDERED that the Defendants Department of Human Services and the State Department of Education shall pay Plaintiffs' counsel, Bullock & Bullock the amount of \$75,054.87, PILCOP in the amount of \$8,529.00, and R. Thomas Seymour the amount of \$3,737.50 for a total amount of \$87,321.37 for fees and expenses, and a judgment is hereby entered. Interest shall be computed from the 17th day of August, 1994, at a rate of 5.49%.

ENTERED this 26 day of June, 1995.

S/ JAMES O. ELLISON

**James O. Ellison
United States District Court Judge**

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

APPROVED:



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FILED

JUN 23 1995

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

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SHARON PITMAN, Wife of GAIL PITMAN,)
Deceased,)

Plaintiff,)

vs.)

BLUE CROSS AND BLUE SHIELD OF)
OKLAHOMA, Individually and as Trade)
Name of GROUP HEALTH INSURANCE OF)
OKLAHOMA, INC.,)

Defendant.)

Case No. 92-C-451-E ✓

ENTERED ON DOCKET

DATE JUN 27 1995

ORDER

Now before the Court is the Motion Under Rules 54(b) and 59(e) (Docket #58) of the Defendant Blue Cross and Blue Shield of Oklahoma (Blue Cross). Defendant objects to the Order of the Court filed March 1, 1995, arguing that Defendant was "surprised and prejudiced by the affirmative relief granted to Pitman by the Court *sua sponte*" and reurging the grounds on which it had previously moved for summary judgment. The Court finds that Defendant has provided no basis upon which the Court should reconsider its Order denying Blue Cross's Motion for Summary Judgment. However, while Blue Cross is not able to demonstrate "unfair surprise" in light of the Tenth Circuit's offering on remand Doe v. Group Hospitalization and Medical Services, 3 F.3d 80 (4th Cir. 1993), the Court will grant Blue Cross' request for an evidentiary hearing on the limited issue of whether Blue Cross had a conflict of interest in amending the plan or denying coverage under the amended plan as raised by the Tenth Circuit's Order on Remand.

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Blue Cross's motion under Rules 54(b) and 59(e) is denied in part and granted in part. This matter is set for evidentiary hearing on Thursday, the 27th day of July, 1995, at 1:30 p.m. on the issue of conflict of interest as raised by the Order on remand.

IT IS SO ORDERED THIS 20th DAY OF JUNE, 1995.



JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
JUN 27 1995
DATE _____

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

FILED

JUN 23 1995

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

MICHAEL J. SWAN, Successor to
BUCHBINDER & ELEGANT, P.A.,
Receiver of Aikendale Associates,
a California Limited Partnership,
ROBERT MARLIN and JACK D.
BURSTEIN,

Plaintiffs,

vs.

Case No. 89-C-843-E ✓

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

Defendants.

O R D E R

Now before the Court is the Application to Confirm Arbitration Award and for entry of Judgment (Docket #234) of the Defendant PaineWebber Incorporated (PaineWebber), the Motion to Vacate, Modify or Correct Arbitration Award and Memorandum in Support (Docket #242) of the Plaintiffs Michael J. Swan, Successor to Buchbinder & Elegant, P.A., Receiver of Aikendale Associates, a California limited partnership, Robert Marlin, and Jack D. Burstein, and the Renewed Application to Confirm Arbitration Award and for Entry of Judgment and Memorandum in Support (Docket #246) of the Defendant PaineWebber.

PaineWebber seeks entry of judgment pursuant to an arbitration award in its favor. The arbitration decision provides:

The claim of the Claimants Michael J. Swan, Receiver of Aikendale Associates, Robert Marlin and Jack Burstein is hereby dismissed in all respects. . . . Claimant Michael

J. Swan, Receiver of Aikendale Associates, shall pay to Respondent Paine Webber [sic] the Sum of \$88,396.81 (Eighty-Eight Thousand Three Hundred and Ninety-Six Dollars and Eighty-One Cents) as an award on the counterclaim. In addition, the award on the counterclaim shall bear interest as allowed by the State of New York from March 31, 1989 until the date of payment.

PaineWebber is requesting a judgment in the amount of \$88,396.81, plus interest at 9%, compounded monthly. Plaintiffs do not object to the principal amount of the judgment, but object to the interest requested by PaineWebber and to the compounding of the interest.

N.Y. C.P.L.R. §5001(a) provides:

Interest shall be recovered upon a sum awarded because of a breach of performance of a contract, or because of an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property, except that in an action of an equitable nature, interest and the rate and date from which it shall be computed shall be in the court's discretion.

Moreover, N.Y. C.P.L.R. §5004 provides that interest shall be at the rate of 9% per annum. Thus, under New York law, and the arbitration award, PaineWebber is entitled to 9% interest from March 31, 1989 until such time as the amount is paid. This includes 9% interest on the judgment entered by this Court.

PaineWebber also argues that the interest should be compounded monthly. Under New York Law, interest may be compounded if the Court determines that the party acted in bad faith. Matter of Revson, 86 A.D.2d 872, 447 N.Y.S.2d 297, 302 (2d Dep't 1982). The Court does not find bad faith in this case which warrants compounded interest.

In their motion to vacate the arbitration award, plaintiffs argue that the New York Stock Exchange improperly assessed forum

fees in the amount of \$5,500.00 against the individual claimants, Robert Marlin and Jack D. Burstein. The Court finds that this issue is not properly before this Court inasmuch as the New York Stock Exchange is not a party to this action and has not had an opportunity to respond to this motion.

The Application to Confirm Arbitration Award and for entry of Judgment (Docket #234) of the Defendant PaineWebber is granted, the Motion to Vacate, Modify or Correct Arbitration Award (Docket #242) of the Plaintiffs Michael J. Swan, Receiver of Aikendale Associates, Robert Marlin, and Jack D. Burstein is denied, and the Renewed Application to Confirm Arbitration Award and for Entry of Judgment and Memorandum in Support (Docket #246) is denied as moot. In addition, the Court notes that, by virtue of this ruling and the renewed motion, the Application for Additional Time to File Response (Docket #241) should be and is denied as moot. The parties are directed to file an agreed Judgment consistent with the terms of this Order.

IT IS SO ORDERED THIS 20th DAY OF JUNE, 1995.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE JUN 27 1995

FILED

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

JUN 26 1995

ERIC BANDURSKI and CHARLENE BANDURSKI,
individually, DOUG MARTIN, and MARK PERRY
d/b/a WINDWARD PROPERTIES,

Plaintiffs,

vs.

JUNIOR REGIER, d/b/a REGIER FLYING SERVICE,
ORVAL D. SMITH, d/b/a SMITH SALES, ANNA PITTS)
JOSETTE KELTON, and UNITED STATES
OF AMERICA, ex rel. DEPARTMENT OF INTERIOR,
ex rel. BUREAU OF INDIAN AFFAIRS,

Defendants.

Richardson, Haskins, Clerk
U.S. DISTRICT COURT -
NORTHERN DISTRICT OF OKLAHOMA

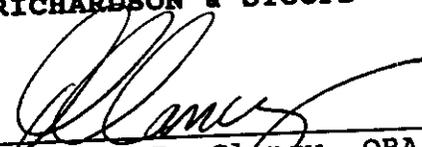
Case No. 95-C-386K

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, it is hereby stipulated and agreed between the parties, Eric Bandurski, Charlene Bandurski, Doug Martin and Mark Perry, d/b/a Windward Properties and defendant Junior Regier, d/b/a Regier Flying Service, by and through their respective attorneys, Richardson & Stoops and Atkinson, Haskins, that the above-titled action be, and the same hereby is, dismissed without prejudice, each party to pay its own costs.

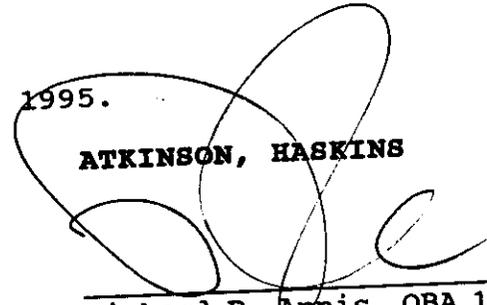
DATED this 15th day of June, 1995.

RICHARDSON & STOOPS


Timothy P. Clancy, OBA 14199
6846 South Canton, Suite 200
Tulsa, OK 74136
(918) 492-7674

ATTORNEY FOR PLAINTIFF

ATKINSON, HASKINS


Michael R. Annis, OBA 15179
525 S. Main St., Suite 1500
Tulsa, OK 74103
(918) 582-8877

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that on the 17
day of June, 1995, a true and correct copy of this
STIPULATION OF DISMISSAL WITHOUT PREJUDICE was mailed, postage
fully thereon paid to:

Mr. Ancel Simpson
102 West Admire
Kingfisher, Ok 73750
Attorney for Orval Smith

Walter D. Haskins, Esq.
525 South Main, Suite 1500
Tulsa, OK 74103-4524
Attorney for Regier Flying
Service

Charles R. Babst, Jr.
Attorney-Advisor
U.S. Dept. of Interior
P.O. Box 3156
Tulsa, Ok 74101



TIMOTHY P. CLANCY

FILED

JUN 23 1995

LC

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

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

JACKIE HOWARD PARRET)
)
) Petitioner,)
)
 v.)
)
 BOBBY BOONE, Warden,)
)
) Respondents.)

NO. 94-C-221-H ✓

ENTERED ON DOCKET

DATE JUN 26 1995

ORDER
OVERRULING PETITIONER'S MOTION FOR JUDGMENT ON THE PLEADINGS

The Petitioner's Motion For Judgment On The Pleadings [Dkt. 16]¹ filed May 24, 1995 has been referred to the undersigned United States Magistrate Judge for disposition.

Petitioner's Motion is brought under Fed.R.Civ.P Rule 12(c) which provides in relevant part:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. [emphasis supplied].

The rules governing habeas corpus proceedings do not permit Respondent to answer until directed to do so by the Court. Respondent has not been so directed. Accordingly, the "after the pleadings are closed" requirement highlighted above has not been met. Therefore, Petitioner's Motion [Dkt. 16] is **OVERRULED** as premature. If appropriate, Petitioner may reurge his Motion for Judgment On The Pleadings after Respondent has filed an answer.

¹ The docket number refers to the internal document numbering system used by the Court Clerk in the Northern District of Oklahoma. The numbers are for reference only and have no independent legal significance.

17

Respondent is directed to file an answer in accordance with the requirements of Rule 5 of the Rules Governing Section 2254 (Habeas Corpus) Cases. RESPONDENT'S ANSWER IS DUE 30 DAYS FROM THE DATE OF THIS ORDER.

SO ORDERED THIS 23rd DAY OF JUNE, 1995.

Frank H. McCarthy
FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUN 26 1995
F I L E D

JUN 23 1995

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
CLAY JEROME SPRADLING;)
UNKNOWN SPOUSE, IF ANY, OF)
CLAY JEROME SPRADLING; CLAY)
JEROME SPRADLING, JR.; LORETTA)
J. SPRADLING; STATE OF)
OKLAHOMA *ex rel* OKLAHOMA TAX)
COMMISSION; CITY OF BROKEN)
ARROW, Oklahoma; COUNTY)
TREASURER, Tulsa County, Oklahoma;)
BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
Defendants.

Civil Case No. 95-C 194B

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Housing and Urban Development, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that service on the Defendant, UNKNOWN SPOUSE, IF ANY, OF CLAY JEROME SPRADLING, be quashed, and the Defendant, UNKNOWN SPOUSE, IF ANY, OF CLAY JEROME SPRADLING, is hereby dismissed from this action.

Dated this 23rd day of June, 1995.

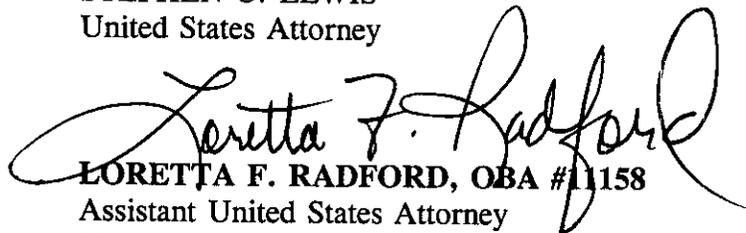
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

A handwritten signature in black ink, reading "Loretta F. Radford". The signature is written in a cursive style with a large, looping initial "L".

LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

3900 U.S. Courthouse

Tulsa, Oklahoma 74103

(918) 581-7463

LFR:lg

FILED

JUN 23 1995

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

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

KATHY RYALS,)
)
 Plaintiff,)
)
 vs.)
)
 CITY OF TULSA, a municipal)
 corporation, and ROY C. JOHNSON,)
)
 Defendants.)

Case No. 91-C-693-E ✓

ENTERED ON DOCKET
DATE JUN 26 1995

O R D E R

Now before the Court is the Application for Attorney's Fees (Docket #156) of the Plaintiff, Kathy Ryals (Ryals).

Plaintiff, who prevailed on her §1983 claim against the City of Tulsa and Roy Johnson, a police officer, seeks an attorney fee pursuant to 42 U.S.C. §1988. That section provides: "In any action or proceeding to enforce a provision of sections . . . 1983 . . . of this title . . . , the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. Plaintiff asks for 372.75 hours at an hourly rate of \$125.00 per hour.

Plaintiff claimed that Johnson used excessive force when he arrested her on September 30, 1989, and that the arrest and her subsequent prosecution was retaliatory. At the close of Plaintiff's evidence, the Court granted Johnson's Motion for directed verdict on the malicious prosecution claim, and the jury returned a verdict in favor of Johnson on the excessive force claim and in favor of Plaintiff on her retaliatory arrest and retaliatory prosecution claims against Johnson. A malicious prosecution claim

against the City was dismissed prior to trial, and the jury returned a verdict in favor of the Plaintiff on her retaliatory prosecution claim against the City.

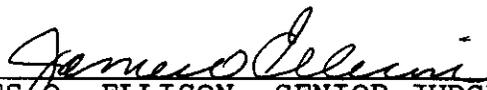
In objecting to Ryal's motion, Defendant Johnson merely points out that an award of attorney fees is discretionary, and requests that the Court, in its discretion, deny the motion because the judgment taken against him is "without basis in law or fact." The City argues that Plaintiff should not receive fees for the hours spent on the unsuccessful claims (primarily the excessive force claim), and that the base amount requested by Plaintiff (\$125.00 per hour) is not reasonable under the circumstances and does not take into account the extent of the Plaintiff's success on her claims.

The Court finds that the judgment taken against Johnson for retaliatory prosecution and retaliatory arrest has basis in law and fact, and, in its discretion, finds that Plaintiff is entitled to an attorney fee. Moreover, "a fee award need not be reduced merely because a plaintiff failed to prevail on every claim raised in a lawsuit, especially where, as here, the claims all arise out of a common set of facts." Starrett v. Wadley, 876 F.2d 808, 824-25 (10th Cir. 1989) (citing Hensley v. Eckerhart, 461 U.S. 424, 435 (1983)). In this case, all claims arose out of a common set of facts, and two wrongful actions: the arrest and the prosecution. Plaintiff prevailed on claims for both acts, and therefore, the Court finds that the attorney fee should not be reduced by the amount of time spent on the "unsuccessful claims."

Lastly, the City argues that, in determining the hourly fee to be awarded, the Court should take into account numerous factors including the amount involved and the result obtained. King v. Greenblatt, 560 F.2d 1024 (1st Cir. 1977). Defendant City is incorrect in claiming that these factors affect the hourly fee awarded. In fact the hourly fee should be determined according to the prevailing market rates in the relevant community. Blum v. Stenson, 465 U.S. 886, 895 (1984), Starrett, 876 F.2d at 825. Neither Defendant argues that \$125.00 per hour is not consistent with the prevailing market rates in this community. Moreover, Plaintiff provides numerous civil rights cases where an hourly fee of \$125.00 was approved by courts in this community. The Court finds that the hourly rate of \$125.00 is consistent with the prevailing market rates in this community.

In sum, the Court finds that plaintiff should be awarded a fee, that it should not be reduced for any unsuccessful claims, that the result achieved by Plaintiff's counsel was not minimal, and that \$125.00 per hour is consistent with the prevailing market rates in the community. The Court notes that neither Defendant makes any argument that the hours requested by Plaintiff (372.75) were not reasonably spent by Plaintiff's counsel. Plaintiff's Motion for attorney fees is granted in the amount of \$46,593.75.

IT IS SO ORDERED THIS 20th DAY OF JUNE, 1995.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE JUN 26 1995

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

THERESA MICHELLE CHUCKLUCK,)
)
 Plaintiff,)
)
 vs.)
)
 WASHINGTON COUNTY JAIL, and)
 LARRY SILVER, Sheriff,)
)
 Defendants.)

No. 95-C-151-K

FILED

JUN 26 1995

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

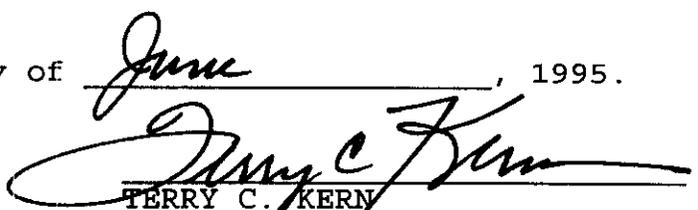
ORDER

This matter comes before the Court on Defendants' motion for summary judgment pursuant to Fed. R. Civ. P. 56. Plaintiff, a pro se litigant, has neither responded to the motion nor left a forwarding address.

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 7.1.C. In any event, having independently reviewed the motion and exhibits, the Court finds that there remain no genuine issues of material fact and that Defendants are entitled to judgment as a matter of law. See Hall v. Bellmon, 935 F.2d 1106, 1111 (10th Cir. 1991).

Accordingly, Defendants' motion for summary judgment (docket #7) is hereby **granted**.

SO ORDERED this 22 day of June, 1995.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

THERESA MICHELLE CHUCKLUCK,)
)
 Plaintiff,)
)
 vs.)
)
 WASHINGTON COUNTY JAIL, and)
 LARRY SILVER, Sheriff,)
)
 Defendants.)

No. 95-C-151-K

FILED

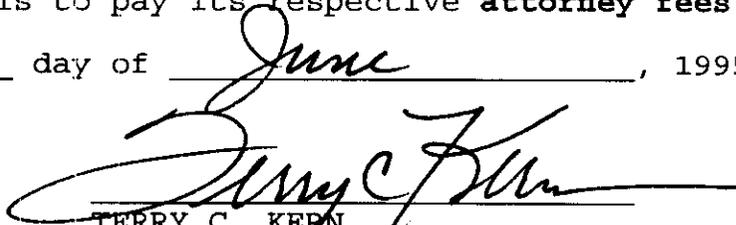
JUN 27 1995

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

JUDGMENT

In accord with the Order granting Defendants' motion for summary judgment, the Court hereby **enters judgment** in favor of Defendants, Washington County Jail and Larry E. Silver, and against Plaintiff, Teresa Michelle Chuckluck. Plaintiff shall take nothing on her claim. Each side is to pay its respective **attorney fees**.

SO ORDERED THIS 22 day of June, 1995.


TERRY C. KEEN
UNITED STATES DISTRICT JUDGE

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

ENTERED ON DOCKET
DATE JUN 23 1995

TOMMY RAY ISHAM,
Plaintiff,
vs.
ATTORNEY GENERAL FOR THE STATE
OF OKLAHOMA, Susan Loving,
Defendant.

No. 94-C-963-BU ✓

JUN 22 1995

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter comes before the Court on Defendant's motion to dismiss and/or for summary judgment. Plaintiff has objected.

Plaintiff, a state prisoner appearing pro se and in forma pauperis, brings this action pursuant to 42 U.S.C. § 1983, alleging that he has been subjected to "double jeopardy" and "excessive punishment" when he was convicted of escaping from custody under Okla. Stat. tit. 21, § 443 although he had been found guilty of the same conduct in a disciplinary proceeding within the Oklahoma Department of Corrections (DOC). Plaintiff seeks an order directing the DOC to restore all earned credits, privileges, and security level, including work release; in the alternative, he asks the Court to "void the . . . two (2) years [sic] sentence for escape, and dismiss all restitutions, court cost[s], etc." Lastly, Plaintiff requests the Court to order his two-year sentence for escape from custody to run concurrent with his present sentence.

A court should dismiss a constitutional civil rights claim only if it appears beyond doubt that plaintiff could prove no set of facts in support of his claim which would entitle him to relief.

Meade v. Grubbs, 841 F.2d 1512, 1526 (citing Owens v. Rush, 654 F.2d 1370, 1378-79 (10th Cir. 1981)). For purposes of reviewing a complaint for failure to state a claim, all allegations in the complaint must be presumed true and construed in a light most favorable to plaintiff. Id.; Hall v. Bellmon, 935 F.2d 1106, 1109 (10th Cir. 1991). Furthermore, pro se complaints are held to less stringent standards than pleadings drafted by lawyers and the court must construe them liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972). Nevertheless, the court should not assume the role of advocate, and should dismiss claims which are supported only by vague and conclusory allegations. Hall, 935 F.2d at 1110.

Accepting Plaintiff's allegations as true, the Court holds that Plaintiff has failed to state a claim upon which relief can be granted. The Tenth Circuit Court of Appeals has long held "that administrative punishment imposed by prison officials does not render a subsequent judicial proceeding, criminal in nature, violative of the double jeopardy clause." United States v. Rising, 867 F.2d 1255, 1259 (10th Cir. 1989) (cited cases omitted). In the alternative, the Court holds that Plaintiff's request for declaratory or injunctive relief is tantamount to a decision on the length of custody which can only be obtained in a habeas corpus action. See Duncan v. Gunter, 15 F.3d 989, 991 (10th Cir. 1994), and cases cited therein. Accordingly, Defendant's motion to dismiss for failure to state a claim (docket #5-1) is **granted**; Defendant's motion for summary judgment is **denied as moot**; and this

action is hereby **dismissed with prejudice.**

SO ORDERED THIS 22 day of June, 1995.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
BEVERLY G. PARHAM aka Beverly G. Ross;)
fka Beverly G. Wade;)
JEFF WADE, Former Spouse of Beverly G. Parham)
aka Beverly G. Ross fka Beverly G. Wade;)
COUNTY TREASURER, Washington County,)
Oklahoma;)
BOARD OF COUNTY COMMISSIONERS,)
Washington County, Oklahoma,)
)
Defendants.)

CIVIL ACTION NO. 94-C-857-BU

FILED

JUN 22 1995

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

ENTERED ON DOCKET

DATE JUN 23 1995

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22 day of June, 1995. The Plaintiff, United States of America, acting through the Rural Housing and Community Development Service, formerly Rural Economic and Community Development, formerly Farmers Home Administration, appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendants, Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade; Jeff Wade, Former Spouse of Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade; County Treasurer, Washington County, Oklahoma, and Board of County Commissioners, Washington County, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade, was served with Summons and Complaint on December 23, 1994 by the United States Deputy Marshal;

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

that the Defendant, **Jeff Wade, Former Spouse of Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade**, executed a Waiver of Service of Summons on March 31, 1995 which was filed on April 6, 1995; that the Defendant, **County Treasurer, Washington County, Oklahoma**, was served with Summons and Complaint on September 9, 1994 by certified mail, return receipt requested, delivery restricted to the addressee; that the Defendant, **Board of County Commissioners, Washington County, Oklahoma**, was served with Summons and Complaint on September 9, 1994 by certified mail, return receipt requested, delivery restricted to the addressee.

It appears that the Defendants, **Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade; Jeff Wade, Former Spouse of Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade; County Treasurer, Washington County, Oklahoma, and Board of County Commissioners, Washington County, Oklahoma**, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

The North Half of Lots Thirteen (13), Fourteen (14), and Fifteen (15), in Block Eighty-Six (86) of Nannie M. Bartles Section of Dewey, Washington County, Oklahoma, "subject, however, to all valid outstanding easements, right-of-ways, mineral leases, mineral reservations, and mineral conveyances of record."

The Court further finds that on September 26, 1988, Beverly G. Parham executed and delivered to the United States of America, acting through the Farmers Home

Administration, now known as Rural Housing and Community Development Service, her promissory note in the amount of \$32,500.00, payable in monthly installments, with interest thereon at the rate of 9.50 percent per annum.

The Court further finds that as security for the payment of the above-described note, Beverly G. Parham, a single person, executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Rural Housing and Community Development Service, a real estate mortgage dated September 26, 1988, covering the above-described property, situated in the State of Oklahoma, Washington County. This mortgage was recorded on September 26, 1988, in Book 849, Page 2484, in the records of Washington County, Oklahoma.

The Court further finds that Beverly G. Parham aka Beverly G. Ross executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Rural Housing and Community Development Service, the following Interest Credit Agreements pursuant to which the interest rate on the above-described note and mortgage was reduced.

<u>Instrument</u>	<u>Dated</u>	<u>County</u>
Interest Credit Agreement	09/26/88	Washington
Interest Credit Agreement	09/05/89	Washington
Interest Credit Agreement	07/26/90	Washington
Interest Credit Agreement	08/06/91	Washington
Interest Credit Agreement	07/17/92	Washington

The Court further finds that the Defendant, Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade, is now a single person using her maiden name of Ross.

The Court further finds that the Defendant, Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade, a single person, made default under the terms of the aforesaid

note, mortgage, and interest credit agreements by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, **Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade**, a single person, is indebted to the Plaintiff in the principal sum of \$32,219.23, plus accrued interest in the amount of \$2,691.48 as of August 16, 1994, plus interest accruing thereafter at the rate of 9.50 percent per annum or \$8.3858 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$7,992.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$26.00 (\$18.00 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, **Jeff Wade, Former Spouse of Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade; County Treasurer, Washington County, Oklahoma, and Board of County Commissioners, Washington County, Oklahoma**, are in default and therefore have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting through the Rural Housing and Community Development Service, formerly Rural Economic and Community Development, formerly Farmers Home Administration, have and recover judgment against the Defendant, **Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade**, a single person, in the principal sum of \$32,219.23, plus accrued interest in the amount of \$2,691.48 as of August 16, 1994, plus interest accruing thereafter at the rate of 9.50 percent per annum or \$8.3858 per day until judgment, plus interest thereafter at the current legal rate of 5.88

percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$7,992.00, plus interest on that sum at the current legal rate of 5.88 percent per annum from judgment until paid, plus the costs of this action in the amount of \$26.00 (\$18.00 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property and any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Jeff Wade, Former Spouse of Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade; County Treasurer, Washington County, Oklahoma, and Board of County Commissioners, Washington County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Beverly G. Parham aka Beverly G. Ross fka Beverly G. Wade, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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

s/ MICHAEL BURRAGE

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney

PETER BERNHARDT, OBA #741

Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Judgment of Foreclosure
USA v. Beverly G. Parham, et al.
Case No. 94-C-857-BU

PB:css

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

RONALD E. WESTMORELAND,)
)
 Petitioner,)
)
 vs.)
)
 U.S. PAROLE COMMISSION, U.S.)
 PROBATION OFFICE, U.S.)
 MARSHALL'S SERVICE, STANLEY)
 GLANZ, TULSA COUNTY SHERIFF,)
 and THE U.S. BUREAU OF)
 PRISONS,)
)
 Respondents.)

No. 95-C-491-BU

JUN 21 1995

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

ENTERED ON DOCKET
DATE JUN 22 1995

ORDER

On June 7, 1995, the Court ordered Petitioner to show cause on or before eleven days why this petition for a writ of habeas corpus should not be dismissed with prejudice. Otherwise, the Court noted that it would dismiss this action sua sponte because Petitioner was no longer in custody and his request for immediate release appeared to be moot. Petitioner has not responded.

Accordingly, the petition for a writ of habeas corpus (docket #1) is hereby **dismissed with prejudice**.

SO ORDERED THIS 21st day of June, 1995.

Michael Burrage
MICHEAL BURRAGE
UNITED STATES DISTRICT JUDGE

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

F I L E D

JUN 21 1995

LINDA CARTER,)
)
Plaintiff,)
)
vs.)
)
ALLSTATE INSURANCE CO.,)
a foreign corporation,)
)
Defendant.)

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

Case No. 95-C-330-BU

ENTERED ON DOCKET
JUN 21 1995
DATE _____

ADMINISTRATIVE CLOSING ORDER

The Clerk is hereby DIRECTED to administratively terminate this action in his records pending resolution of the Oklahoma Supreme Court proceedings in Kramer v. Allstate, Case No. 83822.

If either party has not reopened this case for final resolution within 30 days of the date mandate issues in the Oklahoma Supreme Court in Kramer v. Allstate, Case No. 83822, the plaintiff's action shall be deemed to be dismissed.

Entered this 21st day of June, 1995.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE JUN 21 1995

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

JOSEPH F. CLARK, JR., as Guardian)
Ad Litem for THOMAS D. KIEFER, a)
minor and WILLIAM KIEFER, natural)
father and custodian,)

Plaintiffs,)

vs.)

OCCIDENTAL PETROLEUM)
CORPORATION MEDICAL CARE PLAN,)

Defendant.)

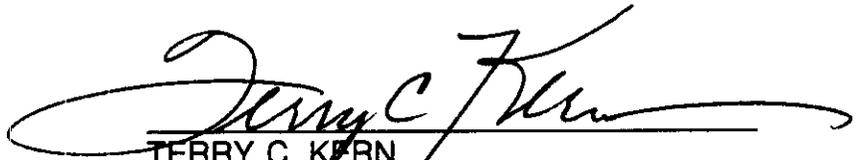
Case No. 94-C-30-K

FILED
JUN 16 1995
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

ORDER APPROVING SETTLEMENT ON BEHALF OF MINOR CHILD

The parties have sought approval of a settlement which affects the rights of a minor child, Thomas Kiefer. The Court, having heard the evidence and arguments of counsel, and for good cause shown, hereby approves the settlement in favor of the minor child, Thomas Kiefer, and hereby approves the filing of a Stipulation of Dismissal With Prejudice as to the claims asserted on behalf of the minor child in this matter.

IT IS SO ORDERED this 16 day of June, 1995.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

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

JOSEPH F. CLARK, JR., as Guardian
Ad Litem for THOMAS D. KIEFER, a
minor and WILLIAM KIEFER, natural
father and custodian,

Plaintiffs,

vs.

OCCIDENTAL PETROLEUM
CORPORATION MEDICAL CARE PLAN,

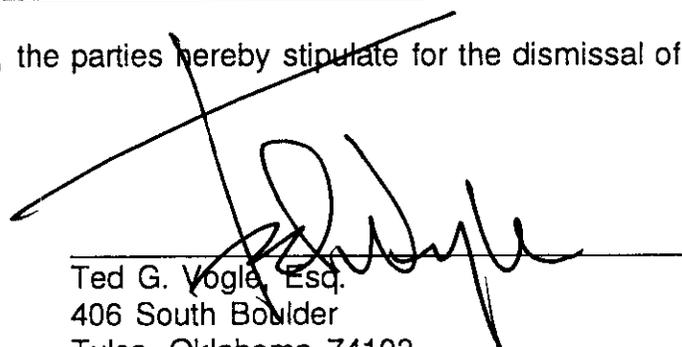
Defendant.

Case No. 94-C-30-K

JUN 15 1995
CLERK

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed.R.Civ.P. 41(a)(1), the parties hereby stipulate for the dismissal of
this action with prejudice.



Ted G. Vogle, Esq.
406 South Boulder
Tulsa, Oklahoma 74103
ATTORNEY FOR PLAINTIFFS



Elsie Draper, Esq.
Timothy A. Carney
GABLE & GOTWALS, INC.
2000 Bank IV Center
15 West 6th Street
Tulsa, Oklahoma 74119-5447
ATTORNEYS FOR DEFENDANT

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

F I L E D

JUN 21 1995

LINDA CARTER,)
)
 Plaintiff,)
)
 vs.)
)
 ALLSTATE INSURANCE CO.,)
 a foreign corporation,)
)
 Defendant.)

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

Case No. 95-C-330-BU

ENTERED ON DOCKET
JUN 21 1995
DATE _____

ADMINISTRATIVE CLOSING ORDER

The Clerk is hereby DIRECTED to administratively terminate this action in his records pending resolution of the Oklahoma Supreme Court proceedings in Kramer v. Allstate, Case No. 83822.

If either party has not reopened this case for final resolution within 30 days of the date mandate issues in the Oklahoma Supreme Court in Kramer v. Allstate, Case No. 83822, the plaintiff's action shall be deemed to be dismissed.

Entered this 21st day of June, 1995.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

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

FILED

RENALDO WASHINGTON,
Petitioner,
vs.
JACK COWLEY,
Respondent.

No. 94-C-1126-BU

JUN 21 1995

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

ENTERED ON DOCKET

DATE JUN 21 1995

ORDER

This matter comes before the court on Respondent's motion to dismiss this habeas corpus action for failure to exhaust state remedies. (Docket #10.) In his response, Petitioner contends that on November 28, 1994, he submitted a petition for a writ of habeas corpus for filing in Tulsa County District Court and has yet to receive a response. On June 6, 1995, Respondent notified the Court that the Tulsa County Court Clerk's Office has no record of any petition for writ of habeas corpus and that the last entry on the docket sheet in Petitioner's case was on January 21, 1987.

This is not Petitioner's first attempt to seek federal habeas corpus relief. On March 8, 1994, the Honorable James O. Ellison dismissed Petitioner's application for a writ of habeas corpus in Case No. 93-C-1028-E as a mixed petition, concluding that Petitioner had failed to exhaust his state remedies as to his first and second grounds for habeas relief.¹ On December 9, 1994, Petitioner submitted for filing in 93-C-1028-E a "Request to

¹In his first ground, Petitioner alleged that his due process rights were violated because there were no blacks allowed on the jury. In his second ground, he alleged that his due process rights were violated when his trial was passed twenty-eight times.

Proceed Under Original In Forma Pauperis," a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (alleging only the two grounds for relief set out in footnote number 1), and a brief in support. Although some of the pleadings bore the caption of Tulsa County District Court, the Court liberally construed Petitioner's pleadings as a second habeas petition and directed the Clerk to file and docket the instant action. (December 12, 1994 order in Washington v. Cowley, 93-C-1038-E, also docketed in this action as docket #2.)

In retrospect, the Court believes that the petition at issue in this case is the one which Petitioner sought to file in Tulsa County District Court in November of 1994. The copy of the petition and brief which Petitioner allegedly submitted for filing in Tulsa County District Court (attached to Petitioner's response) are the same documents which the Honorable James O. Ellison directed the Clerk to file in this action.

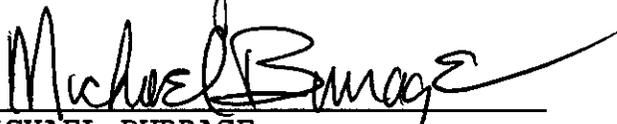
Because Petitioner has not yet been able to file an application for post-conviction relief in Tulsa County District Court, the Oklahoma state courts have not had an opportunity to address the merits of his unexhausted claims.² 22 O.S. 1991, §§

²The 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

1080-1089. Petitioner must therefore give the Oklahoma State courts that opportunity. In the event Petitioner is not granted the relief which he seeks, after filing an application for post-conviction relief in Tulsa County District Court and appealing the denial, if any, to the Court of Criminal Appeals, he may refile this petition for a writ of habeas corpus in the Northern District of Oklahoma. A new case number will be assigned at the time of filing.

ACCORDINGLY, IT IS HEREBY ORDERED that Respondents' motion to dismiss (docket # 10) is **granted** and that the petition for a writ of habeas corpus is hereby **dismissed without prejudice**.

IT IS SO ORDERED this 21st day of June, 1995.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

alleged violations of prisoners' federal rights." Duckworth v. Serrano, 454 U.S. 1, 3 (1981) (per curiam).

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

ROBERT J. CLEMENS,)
)
 Plaintiff,)
)
 vs.)
)
 LINDA DESELMS,)
)
 Defendant.)

FILED

JUN 21 1995

No. 94-C-1110-BH

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

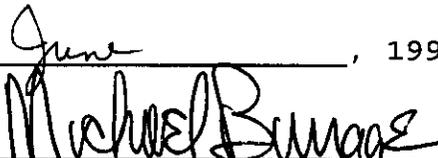
ORDER

This matter comes before the Court on Defendant's motion for summary judgment pursuant to Fed. R. Civ. P. 56. On May 10, 1995, the Court granted Plaintiff a twenty-day extension of time to file a response to Defendant's motion for summary judgment and advised him of his right to file counter-affidavits or other responsive material. Plaintiff, a pro se litigant, has not responded.

Plaintiff's failure to respond to Defendant's motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 7.1.C. In any event, having independently reviewed the motion and exhibits, the Court finds that there remain no genuine issues of material fact and that Defendant is entitled to judgment as a matter of law. See Hall v. Bellmon, 935 F.2d 1106, 1111 (10th Cir. 1991).

Accordingly, Defendant's motion for summary judgment (docket #8) is hereby **granted**.

SO ORDERED this 21st day of June, 1995.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

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

FILED

JUN 21 1995

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

GREGORY MASON, ET AL.,
Plaintiffs,
vs.
FORD MOTOR COMPANY,
Defendant.

Case No. 95-C-196-BU

ENTERED ON DOCKET
JUN 21 1995
DATE

ADMINISTRATIVE CLOSING ORDER

As the parties have reached a settlement and compromise of this matter, it is ordered that the Clerk administratively terminate this action in his records without prejudice to the rights of the parties to reopen the proceeding for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If the parties have not reopened this case within 30 days of this date for the purpose of dismissal pursuant to the settlement and compromise, the plaintiffs' action shall be deemed to be dismissed with prejudice.

Entered this 21st day of June, 1995.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

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

ENTERED ON DOCKET
DATE JUN 21 1995

NATHANIEL MCKINNEY

Plaintiff,

vs.

CITY OF TULSA

Defendant.

No. 94-122-K

FILED

JUN 21 1995

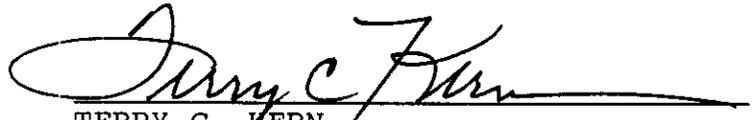
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

This matter came before the Court for consideration upon conclusion of a non-jury trial. The issues having been duly considered and a decision having been rendered in accordance with the Findings of Fact, Conclusions of Law, and Order filed on May 16, 1995,

IT IS THEREFORE ORDERED that judgment is hereby entered for the defendant and against the plaintiff.

ORDERED this 19 day of June, 1995.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

46

ENTERED ON DOCKET
DATE JUN 21 1995

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

Oklahoma Disability Law
Center, Inc.)
)
)
Plaintiff,)
)
)
vs.)
)
)
Dillon Family and Youth)
Services, Inc. d/b/a Shadow)
Mountain Institute)
)
)
Defendant.)

No. 94-C-532-K

FILED

JUN 21 1995

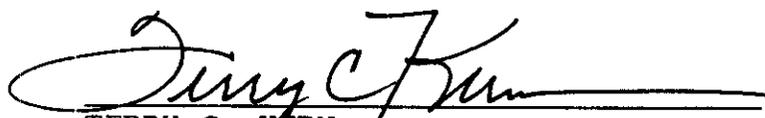
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

This matter came before the Court for consideration of the motions by plaintiff and defendant for summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed March 9, 1995,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered for the plaintiff and against the defendant.

ORDERED this 19 day of June, 1995.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE