

ENTERED ON DOCKET  
DATE 2-29-96

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

DEWEY TURNEY, JR., )  
)  
Plaintiff, )  
)  
vs. )  
)  
SHELTER MUTUAL INSURANCE CO., )  
a Missouri Insurance )  
Corporation, )  
)  
Defendant. )

No. 95-C-544K

FILED

FEB 28 1996

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

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties herein and would hereby mutually stipulate that the above-styled matter should be dismissed with prejudice. The parties further agree that this decision has been reached of their own freewill, after consultation with legal counsel. The parties further stipulate that no inference should be drawn as to the merits of the Plaintiff's claim against the Defendant as a result of this dismissal with prejudice.

It is, therefore, the request of the Plaintiff and the Defendant that the above-styled matter should be dismissed with prejudice to its being re-filed, and this Court enter an Order accordingly.

Respectfully submitted,

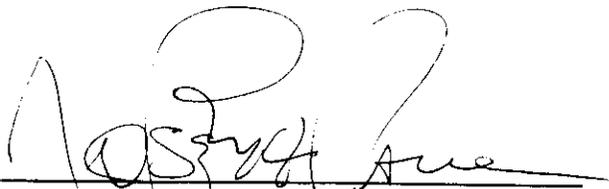


DAVID GARRETT,  
Attorney for Plaintiff



MIKE JONES,  
Attorney for Plaintiff

*Handwritten notes:*  
Cude FYI  
JT 4-15-96  
FTC 3-14-96



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JOSEPH H. PAULK,  
Attorney for Defendant

**FILED**

**FEB 29 1996**

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

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

THELMA R. SHERRIFF,  
Plaintiff(s),  
vs.  
RALPH L. JONES, JR.,  
Defendant(s).

Case No. 95-C-401-B

ENTERED ON DOCKET  
DATE FEB 29 1996

**JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT**

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

**IT IS ORDERED** that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

**IT IS FURTHER ORDERED** that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

**IT IS SO ORDERED** this 29th day of February, 1996

  
THOMAS R. BRETT, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

13

ENTERED ON DOCKET  
DATE 2-29-96

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

**F I L E D**

FEB 28 1996

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

BANKERS TRUST COMPANY )  
OF CALIFORNIA, )  
 )  
Appellant, )  
 )  
v. )  
 )  
WARREN D. MORRIS, )  
 )  
Appellee. )

Case No. 93-C-910-H ✓

ORDER

This matter comes before the Court on appeal from the United States Bankruptcy Court for the Northern District of Oklahoma.

In 1992, Warren D. Morris executed and delivered a promissory note to Bankers Trust Company of California ("Bankers Trust"). The note was secured by a mortgage on real property owned by Mr. Morris in Tulsa County. Under the terms of the note and mortgage, Mr. Morris agreed that if he defaulted, he would pay collection costs, including attorneys' fees of ten percent of the amount owed. Mr. Morris defaulted, and Bankers Trust filed a foreclosure action in Tulsa County District Court. On June 29, 1993, the state court entered judgment against Mr. Morris, awarding Bankers Trust attorneys' fees of \$1500.

On July 8, 1993, Mr. Morris filed for bankruptcy pursuant to Chapter 13. The Plan filed by Mr. Morris on that date allocated \$850 to the payment of Bankers Trusts' attorneys' fees from the state court action. Also on July 8, 1993, the Bankruptcy Court sent notice to Bankers Trust of both the meeting of creditors, scheduled for 10:30 a.m on August 8, 1993, and the confirmation hearing, set for 1:30 p.m. on the same day. Bankers Trust received a copy of the Plan, which included a provision that "all claims will be treated as set forth above unless a creditor objects prior to the

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confirmation hearing and files a claim within 90 days after the first date set for the meeting of creditors called pursuant to 11 U.S.C. § 341(a).”

Bankers Trust did not object to the Plan prior to its confirmation on August 3, 1993. Instead, Bankers Trust filed a proof of claim on August 24, 1993, which included a claim for \$1500 in attorneys’ fees arising from the state court action. Mr. Morris filed his objection to the proof of claim. At a hearing held on September 28, 1993, the Bankruptcy Judge, noting that there was no objection to the Plan at the time of confirmation, upheld the Plan’s allocation of \$850 to Bankers Trust for attorneys’ fees. Tr. at 8.

This appeal is based upon the application of two separate provisions of the Bankruptcy Code to the facts of this case. Under Rule 3002(c) of the Federal Rules of Bankruptcy Procedure, a proof of claim in a Chapter 13 case “shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to § 341(a) of the Code . . . .” Rule 3002(c) merely sets the outside limit for filing a proof of claim and does not preclude Bankers Trust from filing its proof of claim prior to the August 3, 1993 creditor’s meeting. In fact, Bankers Trust could have filed its proof of claim immediately upon its receipt of notice of the Plan.

The Bankruptcy Code further provides that

[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

11 U.S.C. § 1327(a). Federal courts have construed Section 1327(a) as foreclosing post-confirmation challenges to the plan. See In re Northrup, 141 B.R. 171, 173 (N.D. Iowa 1991)(“[F]ailure to object prior to confirmation will operate as a waiver of the objection after confirmation.”); In re Murry-Hudson, 147 B.R. 960 (Bankr. N.D. Cal. 1992)(refusing to revisit valuation of secured claim because creditor’s “failure to object to the treatment of its claim prior to confirmation of the plan precludes it from doing so now”); In re Thomas, 60 B.R. 7 (Bankr. E.D.N.Y. 1986)(holding that, where creditor had notice of plan and did not object, Section 1327(a)

binds creditor to the terms of debtor's plan and thus creditor's post-confirmation proof of claim is rejected). see also In re Ross, 162 B.R. 785, 789 (Bankr. N.D. Ill. 1993) ("The law is well settled that a confirmation order is res judicata as to all issues decided or which could have been decided at the hearing on confirmation."). Thus, Section 1327(a) and the cases interpreting it suggest that the failure of Bankers Trust to object prior to confirmation precludes it from raising post-confirmation objections.

The interaction of Section 1327(a) and Rule 3002(c) may appear problematic under the circumstances of this case. As noted above, Rule 3002(c) permits the creditor to take up to 90 days from the date of the first meeting of the creditors to file its proof of claim. Yet, under the facts of this case, confirmation of the plan occurred only hours after that meeting took place. The Court finds, however, that Section 1327(a) and the mandatory directive of the bankruptcy court in this case to object to the plan prior to confirmation do not conflict with Rule 3002(c). Even if a creditor does not choose to file its proof of claim prior to the confirmation hearing, it is important to note that any creditor could have satisfied the requirements of the court's order merely by objecting to the Plan at or before the hearing and then filing the proof of claim at a later date within the 90-day window.

Because Bankers Trust neither objected nor filed a proof of claim prior to August 3, 1993, the first indication that it disagreed with the Plan occurred post-confirmation. Bankers Trust could easily have voiced its concerns at the meeting of the creditors and/or the confirmation hearing, both of which are designated forums for airing objections to the Plan prior to its confirmation. In fact, policy considerations surrounding Section 1327(a) mitigate in favor of requiring Bankers Trust to challenge the Plan prior to its confirmation.

The purpose of section 1327(a) is the same as the purpose served by the general doctrine of res judicata. There must be finality to a confirmation order so that all parties may rely upon it without concern that actions which they may thereafter take could be upset because of a later change or revocation of the order. As the bankruptcy appellate panel for the Ninth Circuit held:

It would hardly serve the purposes for which the federal bankruptcy laws were intended to permit a dissatisfied creditor to withhold its

opinion of the practicality and fairness of a debtor's plan until after the plan has been completed. At such a late point in time, a meaningful modification of the plan is difficult, if not impossible, and the objecting creditor is in a position to circumvent the protective shield provided debtors under chapter 13.

The binding effect of the confirmation order establishes the rights of the debtor and creditors as those which are provided in the plan. It is therefore incumbent upon creditors with notice of the chapter 13 case to review the plan and object to the plan if they believe it to be improper; they may ignore the confirmation hearing only at their peril.

Collier on Bankruptcy ¶ 1327.01 (quoting In re Gregory, 6 C.B.C.2d 518, 521-22 (9th Cir., B.A.P., 1982)). The Court thus concludes that Bankers Trust had a responsibility to notify the Bankruptcy Court of its objections to the Plan prior to its confirmation. Bankers Trust had notice that the Plan only allocated \$850 for the attorneys' fees payment and could have alerted the Bankruptcy Court to the disparity between that number and the \$1500 amount that it intended to reflect on its proof of claim. The failure to do so precludes it from asserting a claim for the higher amount after confirmation of the Plan. The September 28, 1993 ruling of the Bankruptcy Court is hereby affirmed.

IT IS SO ORDERED.

This 28<sup>TH</sup> day of February, 1996.

  
Sven Erik Holmes  
United States District Judge

ENTERED ON DOCKET  
DATE 2-29-96

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

DEWEY TURNEY, JR., )  
)  
Plaintiff, )  
)  
vs. )  
)  
SHELTER MUTUAL INSURANCE CO., )  
a Missouri Insurance )  
Corporation, )  
Defendant. )

No. 95-C-544K

**FILED**  
FEB 28 1996  
Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties herein and would hereby mutually stipulate that the above-styled matter should be dismissed with prejudice. The parties further agree that this decision has been reached of their own freewill, after consultation with legal counsel. The parties further stipulate that no inference should be drawn as to the merits of the Plaintiff's claim against the Defendant as a result of this dismissal with prejudice.

It is, therefore, the request of the Plaintiff and the Defendant that the above-styled matter should be dismissed with prejudice to its being re-filed, and this Court enter an Order accordingly.

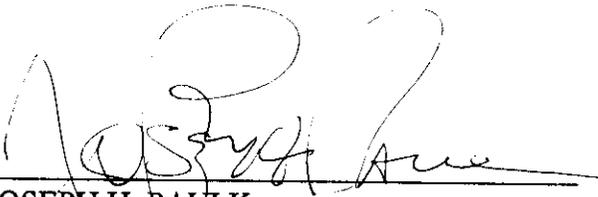
Respectfully submitted,



DAVID GARRETT,  
Attorney for Plaintiff



MIKE JONES,  
Attorney for Plaintiff



---

JOSEPH H. PAULK,  
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

GREGORY L. DOLENCE; DEBBIE A. )

DOLENCE; COMMERCIAL FEDERAL )

BANK, Successor by Merger to Heartland )

Federal Savings & Loan Association; 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 933K

**FILED**

FEB 28 1996

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

**JUDGMENT OF FORECLOSURE**

This matter comes on for consideration this 27 day of February

1996. 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 Michael R. Vanderburg, City Attorney; the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, appears not having previously filed a Disclaimer; the Defendant, COMMERCIAL FEDERAL BANK, successor by Merger to Heartland Federal Savings & Loan Association now the Federal Deposit Insurance Corporation, appears not

having previously filed a Disclaimer; and the Defendants, GREGORY L. DOLENCE and DEBBIE A. DOLENCE, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, GREGORY L. DOLENCE, signed a Waiver of Summons on October 15, 1995; that the Defendant, DEBBIE A. DOLENCE, was served with process a copy of Summons and Complaint on December 4, 1995; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, was served a copy of Summons and Complaint on September 20, 1995, by Certified Mail.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on September 28, 1995; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, filed its Answer on September 27, 1995; that the Defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, filed its Disclaimer on October 25, 1995; that the Defendant, COMMERCIAL FEDERAL BANK, Successor by Merger to Heartland Federal Savings & Loan Association now the Federal Deposit Insurance Corporation, filed its Disclaimer on December 19, 1995; and that the Defendants, GREGORY L. DOLENCE and DEBBIE A. DOLENCE, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendants, GREGORY L. DOLENCE and DEBBIE A. DOLENCE, 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 Twenty-nine (29), Block Seven (7), WOLF CREEK ESTATES V, an Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded plat thereof, less and except ½ interest in all of the oil, gas and other minerals which were previously reserved.**

The Court further finds that on December 16, 1987, the Defendants, GREGORY L. DOLENCE and DEBBIE A. DOLENCE, executed and delivered to FIRST SECURITY MORTGAGE COMPANY, their mortgage note in the amount of \$77,746.00, payable in monthly installments, with interest thereon at the rate of Nine and One-Half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, GREGORY L. DOLENCE and DEBBIE A. DOLENCE, husband and wife, executed and delivered to FIRST SECURITY MORTGAGE COMPANY a mortgage dated December 16, 1987, covering the above-described property. Said mortgage was recorded on December 21, 1987, in Book 5070, Page 2151, in the records of Tulsa County, Oklahoma.

The Court further finds that on December 17, 1987, FIRST SECURITY MORTGAGE COMPANY, assigned the above-described mortgage note and mortgage to THE LOMAS & NETTLETON COMPANY. This Assignment of Mortgage was recorded on January 11, 1988, in Book 5074, Page 0235, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 18, 1990, LOMAS MORTGAGE USA, INC, formerly the Lomas & Nettleton Company, 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 April 27, 1990, in Book 5249, Page 1250, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 9, 1990, the Defendants, GREGORY L. DOLENCE and DEBBIE A. DOLENCE, 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 May 3, 1991, August 10, 1992 and March 17, 1993.

The Court further finds that the Defendants, GREGORY L. DOLENCE and DEBBIE A. DOLENCE, 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, GREGORY L. DOLENCE and DEBBIE A. DOLENCE, are indebted to the Plaintiff in the principal sum of \$113,206.34, plus interest at the rate of 9.50 percent per annum from June 8, 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 Defendants, GREGORY L. DOLENCE and DEBBIE A. DOLENCE, are in default, and have no right, title or interest in the subject real property.

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

The Court further finds that the Defendants, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, and COMMERCIAL FEDERAL BANK, successor by

Merger to Heartland Federal Savings & Loan Association now the Federal Deposit Insurance Corporation, disclaim any right, title or interest in the subject real property.

The Court further finds that the Defendant, CITY OF BROKEN ARROW, Oklahoma, disclaims any right, title or interest in the subject real property, except insofar as it is the lawful holder of certain easements contained in the plat.

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, GREGORY L. DOLENCE and DEBBIE A. DOLENCE, in the principal sum of \$113,206.34, plus interest at the rate of 9.5 percent per annum from June 8, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 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, CITY OF BROKEN ARROW, Oklahoma, has no right, title or interest in the subject 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, GREGORY L. DOLENCE, DEBBIE A. DOLENCE, COMMERCIAL FEDERAL BANK, Successor by Merger to Heartland Federal Savings & Loan Association

now the Federal Deposit Insurance Corporation, STATE OF OKLAHOMA, ex rel.  
OKLAHOMA TAX COMMISSION, COUNTY TREASURER and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject  
real property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that upon the  
failure of said Defendants, GREGORY L. DOLENCE and DEBBIE A. DOLENCE, 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 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.

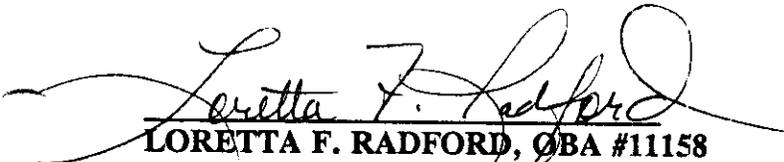
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

**TERRY C. KERN**

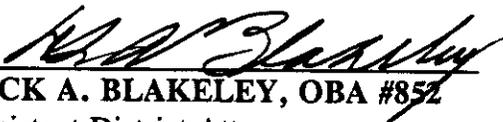
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS  
United States Attorney



**LORETTA F. RADFORD, OBA #11158**  
Assistant United States Attorney  
3460 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(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



**MICHAEL R. VANDERBURG, OBA #9180**

City Attorney, Broken Arrow, Oklahoma

220 S. First Street

Broken Arrow, Oklahoma 74012

Attorney for Defendant,

City of Broken Arrow, Oklahoma

Judgment of Foreclosure

Civil Action No. 95 C 933K

LFR:flv

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

ENTERED ON DOCKET

DATE 2-29-96

JAMES ALEXANDER, JR.,  
Plaintiff,

v.

BOARD OF COUNTY COMMISSIONERS OF  
THE COUNTY OF TULSA, OKLAHOMA,  
COMMISSIONER LEWIS HARRIS,  
COMMISSIONER JOHN SELPH,  
COMMISSIONER MEL RICE, TULSA  
COUNTY EMERGENCY SHELTER  
SUPERVISORY STAFF (1982-1987),  
NORMA ARNOLD, LLOYD CUNNINGHAM,  
TERRY TALLENT, and CLAY EDWARDS,

Defendants.

Case No. 94-C-199-H ✓

**FILED**

FEB 28 1996

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

**ORDER**

Before the Court for consideration is the Report and Recommendation of the United States Magistrate Judge (Docket #11) regarding the Motion to Dismiss of Defendants the Board of County Commissioners of Tulsa County, Lewis Harris, John Selph, Mel Rice, and Terry Tallent (Docket # 3) and the Motion to Dismiss of Defendant Norma Arnold (Docket # 7).

The Magistrate Judge recommends that the Court grant Defendants' Motions to Dismiss. Although neither party has filed an objection to the Report and Recommendation and the time for filing such objections has expired, the Court notes that Plaintiff, who is pro se in this matter, has filed a document entitled "Independent Action to Release from Initial Judgment and Proceed with Lawsuit". Because Plaintiff is pro se and because his filing requests that the Court proceed with his lawsuit, the Court deems Plaintiff's filing as an objection to the Report and Recommendation recommending dismissal of the lawsuit in its entirety and reviews the Report and Recommendation under the applicable standard when a party objects.

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When a party objects to the report and recommendation of a Magistrate Judge, Rule 72(b) of the Federal Rules of Civil Procedure provides in pertinent part that:

[t]he district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommendation decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Based on a review of the Report and Recommendation of the Magistrate Judge and the Objection thereto, the Court hereby adopts and affirms the Report and Recommendation of the Magistrate Judge in its entirety, thus, granting Defendants' Motions to Dismiss. The Court notes that executed returns of service have not been filed with respect to the two defendants who have failed to join in the Motions. Therefore, the lawsuit will be dismissed as to them as well.

IT IS SO ORDERED.

This 27<sup>TH</sup> day of February, 1996.



---

Sven Erik Holmes  
United States District Judge

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

ENTERED ON DOCKET  
DATE 2-29-96

JAMES ALEXANDER, JR.,  
Plaintiff,

v.

BOARD OF COUNTY COMMISSIONERS OF  
THE COUNTY OF TULSA, OKLAHOMA,  
COMMISSIONER LEWIS HARRIS,  
COMMISSIONER JOHN SELPH,  
COMMISSIONER MEL RICE, TULSA  
COUNTY EMERGENCY SHELTER  
SUPERVISORY STAFF (1982-1987),  
NORMA ARNOLD, LLOYD CUNNINGHAM,  
TERRY TALLENT, and CLAY EDWARDS,

Defendants.

Case No. 94-C-199-H ✓

**FILED**  
FEB 28 1996  
Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

**JUDGMENT**

This matter came before the Court on two Motions to Dismiss by Defendants the Board of County Commissioners of Tulsa County, Lewis Harris, John Selph, Mel Rice, Terry Talent, and Norma Arnold. The Court duly considered the issues and rendered a decision in accordance with the order filed on February 28, 1996.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Defendants the Board of County Commissioners of Tulsa County, Lewis Harris, John Selph, Mel Rice, Terry Talent, and Norma Arnold and against the Plaintiff.

IT IS SO ORDERED.

This 28<sup>TH</sup> day of FEBRUARY, 1996.

  
Sven Erik Holmes  
United States District Judge

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

**FILE**

FEB 27 1996 *ja*

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

UNITED RESOURCES 1988-I )  
DRILLING AND COMPLETION )  
PROGRAM, L.P., a Kansas )  
limited partnership, and )  
UNITED RESOURCES 1988-II )  
DRILLING AND COMPLETION, )  
L.P., a Kansas limited )  
partnership, )

Plaintiffs, )

vs. )

W.L. MORRIS, )

Defendant. )

Case No. 95-C-590-BU ✓

ENTERED ON DOCKET

DATE 2-29-96

**JUDGMENT**

This action came on for trial before the Court and a jury, Honorable Michael Burrage, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

IT IS HEREBY ORDERED AND ADJUDGED that judgment is entered in favor of the defendant, W.L. Morris, and against the plaintiffs, United Resources 1988-I Drilling and Completion Program, L.P., a Kansas limited partnership, and United Resources 1988-II Drilling and Completion Program, L.P., a Kansas limited partnership, and that the defendant, W.L. Morris, is entitled to recover of the plaintiffs, United Resources 1988-I Drilling and Completion Program, L.P., a Kansas limited partnership, and United Resources 1988-II Drilling and Completion Program, L.P., a Kansas limited partnership, his costs of action.

Dated at Tulsa, Oklahoma, this 27 day of February, 1996.

*Michael Burrage*  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

63

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

**FILED**

FEB 28 1996

MARVIN D. HOPSON, )  
)  
Plaintiff, )  
)  
vs. )  
)  
K. STAATS, J. POWELL, J. T. )  
SPITLER, and ROY OWENS, )  
)  
Defendants. )

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

No. 95-C-670-C ✓  
consolidated with  
95-C-810-C

ENTERED ON DOCKET  
FEB 29 1996  
DATE \_\_\_\_\_

**ORDER**

This matter comes before the Court on Plaintiff's "Motion to Dismiss [Criminal] Case #CF-95-0749" in Tulsa County District Court and response to Defendants' motion to dismiss (docket #18). Plaintiff's motion and response do not contain a certificate of service as required by Fed. R. Civ. P. 5.<sup>1</sup>

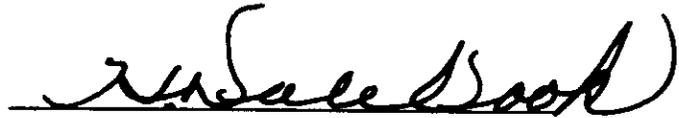
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<sup>1</sup> Information and Instruction #8 for filing a civil rights action specifically provides:

You must furnish an original and one copy of all motions, pleadings, correspondence or other documents (except the original complaint which requires an original and two copies) submitted to the court for filing and consideration. In addition you must furnish the opposing party or his attorney with a copy of all such documents submitted to the court. Each original document (except the original complaint) must include a certificate stating the date a copy of the document was mailed to the opposing party or his attorney and the address to which it was mailed. Any pleading or other document received which fails to include a certificate of service may be disregarded by the court or returned.

Plaintiff cannot seek habeas relief in this civil rights action. Therefore, Plaintiff's motion to dismiss pending state criminal charges (docket #18-1) is hereby DENIED. The Clerk shall MAIL to Plaintiff information and instructions for filing a petition for a writ of habeas corpus. The Clerk shall MAIL to Defendants a copy of the first nine pages of Plaintiff's response to Defendants' motion for summary judgment (docket #18).

SO ORDERED THIS 27<sup>th</sup> day of February, 1996.



H. DALE COOK  
UNITED STATES DISTRICT JUDGE

---

(Emphasis added.)

A certificate of service may be in the following form:

I hereby certify that a copy of the foregoing pleading/  
document was mailed to \_\_\_\_\_

(opposing party or counsel)

at \_\_\_\_\_

(address)

on \_\_\_\_\_, 199\_.

\_\_\_\_\_  
(signature)

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

FEB 28 1996

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

C. JOSEPH WILLIAMS, DALE K. )  
WATTS, B.S. ROBERTS, MAXINE )  
HORNER, POCAHONTAS GREADINGTON, )  
VIRGINIA FRANKLIN, and H.M. )  
ANDERSON, )

Plaintiffs, )

MARY POLFER, EDWIN AVERILL, and )  
OKLAHOMA NATURAL GAS COMPANY, a )  
division of ONEOK Inc., )

Plaintiffs in Intervention, )

v. )

THE CITY OF TULSA, an Oklahoma )  
chartered municipality, )

Defendant. )

No. 95-CV-953-E

ENTERED ON DOCKET  
DATE FEB 29 1996

ORDER OF DISMISSAL

Plaintiffs and Plaintiffs in Intervention challenged on constitutional grounds the first two sentences of Section 13 of Title 12 of the 1989 Amended Charter of the City of Tulsa, which prohibited certain city offices from being filled by persons in the employ of companies "holding or seeking any franchise of the city." In the course of the hearings on the parties' summary judgment motions, the Court was advised that the issue of the repeal of Section 13, insofar as it pertained to employees of franchise-holders, had been placed on the ballot for consideration by the electorate of the City on February 13, 1996.

The Court therefore entered an order on December 12, 1996, (a) finding that, because the electorate might approve the repeal of the language in Section 13 at issue in the litigation, the constitutionality of Section 13 was not ripe for determination, and (b) staying its consideration of the parties' summary judgment motions pending the February vote.

On February 13, 1996, the electorate of the City voted to repeal the language in Section 13 at issue in the litigation. Accordingly, the issue involved in this action has become moot and there is no justiciable case or controversy on which this Court can act.

IT IS THEREFORE ORDERED that the action be, and hereby is, dismissed without prejudice, each party to bear its own costs.

Dated this 28 day of February, 1996.

S/ JAMES O. ELLISON

\_\_\_\_\_  
JAMES O. ELLISON, SENIOR JUDGE  
UNITED STATES DISTRICT COURT

APPROVED BY:

  
\_\_\_\_\_  
William H. Hinkle, OBA #4229  
HINKLE, ZERINGUE & SMITH  
320 South Boston Avenue, Suite 1100  
Tulsa, Oklahoma 74103-4700  
(918) 584-6700

Attorney for Plaintiffs C. Joseph  
Williams, Dale K. Watts, B.S.  
Roberts, Maxine Horner, Pocahontas  
Greadington, Virginia Franklin, and  
H.M. Anderson

F:\CK\ONEOK\MOOT

Kathy R Neal  
William C. Anderson, OBA #292  
Dallas E. Ferguson, OBA #2871  
Kathy R. Neal, OBA #674  
DOERNER, SAUNDERS, DANIEL & ANDERSON  
320 South Boston Avenue, Suite 500  
Tulsa, Oklahoma 74103-3725  
(918) 582-1211

Attorneys for Plaintiffs in Intervention  
Mary Polfer and Edwin Averill

J. Clarke Kendall II  
John L. Arrington, Jr., OBA #342  
John A. Gaberino, Jr., OBA #3188  
J. Clarke Kendall II, OBA #4953  
ARRINGTON KIHLE GABERINO & DUNN  
100 West Fifth Street, Suite 1000  
Tulsa, Oklahoma 74103-4219  
(918) 585-8141

Attorneys for Plaintiff in Intervention  
Oklahoma Natural Gas Company, a  
Division of ONEOK Inc.

Martha Rupp Carter  
David L. Pauling  
Martha Rupp Carter, OBA #7828  
Office of the City Attorney  
200 Civic Center, Room 316  
Tulsa, Oklahoma 74103-33827  
(918) 596-7717

Attorneys for Defendant City of Tulsa

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**FEB 28 1996**

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TONY A. HODGES; JOANNIE S. )  
 HODGES; COUNTY TREASURER, Tulsa )  
 County, Oklahoma; BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

ENTERED ON DOCKET

DATE FEB 29 1996

Civil Case No. 95-C 742E

**ORDER**

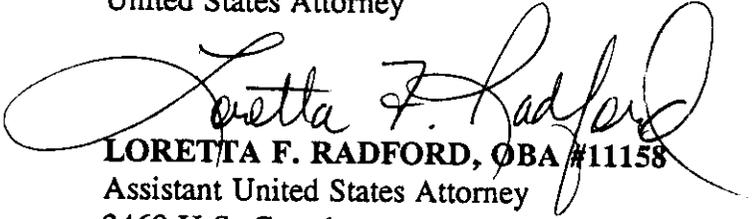
Upon the Motion of the United States of America, acting on behalf of the Secretary of Housing and Urban Development, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, and for good cause shown it is hereby **ORDERED**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

Dated this 28 day of Feb, 1996.

S/ JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS  
United States Attorney

A handwritten signature in cursive script, reading "Loretta F. Radford". The signature is written in black ink and is positioned above the printed name and title of the signatory.

**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

GLORIETTA I. WICKHAM,  
Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner  
of the Social Security Administration,  
Defendant.

Case No. 93-C-925-H ✓

**FILED**

FEB 27 1996

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

ENTERED ON DOCKET

DATE 2-28-96

ORDER

Before the Court for consideration is the Report and Recommendation of the United States Magistrate Judge (Docket #24) regarding Defendant's Motion to Dismiss Plaintiff's Complaint (Docket #4).

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 and affirms the Report and Recommendation of the Magistrate Judge (Docket #24). Defendant's Motion to Dismiss is hereby granted (Docket #4).

IT IS SO ORDERED.

This 27<sup>th</sup> day of February, 1996.

  
Sven Erik Holmes  
United States District Judge

25

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 KELLY D. HARRIS; DAVID E. )  
 HARRIS; 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. )

FEB 27 1996

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

ENTERED ON DOCKET  
DATE 2-28-96

Civil Case No. 95cv 1014BU

**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.

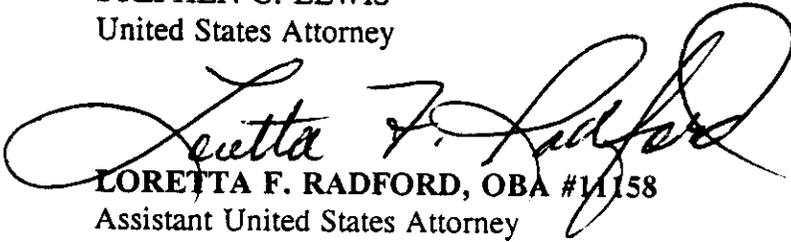
Dated this 27<sup>th</sup> day of February, 1996.

s/ MICHAEL BURRAGE

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS  
United States Attorney

A large, stylized handwritten signature in black ink, appearing to read "Loretta F. Radford". The signature is written in a cursive style with large, sweeping loops.

LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

3460 U.S. Courthouse

Tulsa, Oklahoma 74103

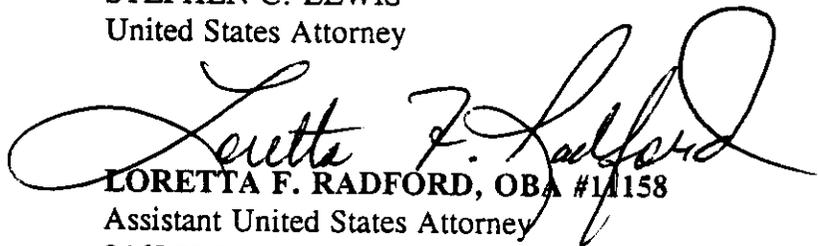
(918) 581-7463

LFR:flv



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 large, flowing loops.

**LORETTA F. RADFORD, OBA #11158**

Assistant United States Attorney

3460 U.S. Courthouse

Tulsa, Oklahoma 74103

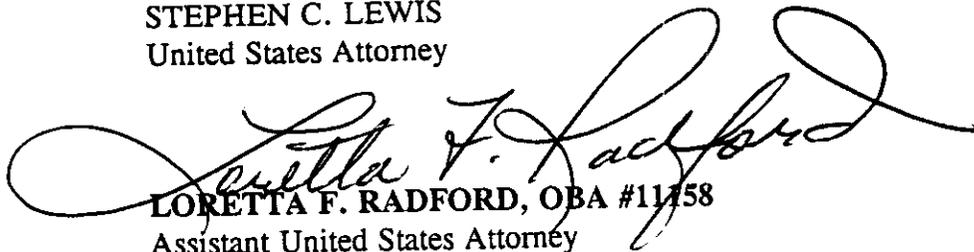
(918) 581-7463

LFR:flv



APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS  
United States Attorney

A large, elegant handwritten signature in black ink, reading "Loretta F. Radford". The signature is written in a cursive style with large, flowing loops and a prominent initial "L".

**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

SHIRLEY MANNING, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SHIRLEY S. CHATER, Commissioner )  
 of the Social Security Administration, )  
 )  
 Defendant. )

Case No. 93-C-979-H

**FILED**

FEB 27 1996

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

ENTERED ON DOCKET  
DATE 2-28-96

ORDER

Before the Court for consideration is the Report and Recommendation of the United States Magistrate Judge (Docket #19).

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 and affirms the Report and Recommendation of the Magistrate Judge (Docket #19). The Court therefore reverses the decision of the Secretary and remands this matter for the immediate award of benefits.

IT IS SO ORDERED.

This 27<sup>th</sup> day of February, 1996.

  
\_\_\_\_\_  
Sven Erik Holmes  
United States District Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**  
FEB 26 1996

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RONALD EUGENE HARDING aka )  
 Ronald E. Harding; WARREN G. )  
 HARDING; WILMA HARDING; )  
 COUNTY TREASURER, Tulsa County, )  
 Oklahoma; BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

ENTERED ON DOCKET ✓  
FEB 28 1996

Civil Case No. 95-C 678B ✓

**JUDGMENT OF FORECLOSURE**

This matter comes on for consideration this 26 day of Feb.,  
1996. 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, RONALD EUGENE HARDING,  
WARREN G. HARDING and WILMA HARDING, appear not, but make default.

The Court being fully advised and having examined the court file finds that the  
Defendant, WARREN G. HARDING, signed a Waiver of Summons on July 26, 1995; that the  
Defendant, WILMA HARDING, signed a Waiver of Summons on August 8, 1995.

The Court further finds that the Defendant, RONALD EUGENE HARDING,  
was served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a

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

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newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning November 30, 1995, and continuing through January 4, 1996, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, RONALD EUGENE HARDING, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, RONALD EUGENE HARDING. 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 party served by publication with respect to his present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed

their Answers on August 14, 1995; and that the Defendants, RONALD EUGENE HARDING, WARREN G. HARDING and WILMA HARDING, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, RONALD EUGENE HARDING, is one and the same person as Ronald E. Harding, and will hereinafter be referred to as "RONALD EUGENE HARDING." The Defendant, RONALD EUGENE HARDING, is a single unmarried person. The Defendants, WARREN G. HARDING and WILMA HARDING, 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 Seventeen (17), Block Three (3), NORTHRIDGE, an Addition in Tulsa County, State of Oklahoma, according to the recorded Plat thereof.**

The Court further finds that on September 20, 1979, Lynn Jones, a single person, executed and delivered to Mercury Mortgage Co., Inc., a corporation, a mortgage note in the amount of \$19,200.00, 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, Lynn Jones, a single person, executed and delivered to Mercury Mortgage Co., Inc., a corporation, a mortgage dated September 20, 1979, covering the above-described property. Said mortgage was recorded on September 24, 1979, in Book 4429, Page 739, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 18, 1987, Mercury Mortgage Co., Inc., 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 March 18, 1987, in Book 5008, Page 1808, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendant, RONALD EUGENE HARDING, currently holds title to the property by virtue of a certain General Warranty Deed, dated October 10, 1986, and recorded on October 21, 1986, in Book 4977, Page 1255, in the records of Tulsa County, Oklahoma, and is the current assumptor of the subject indebtedness.

The Court further finds that on July 1 1989, the Defendant, RONALD EUGENE HARDING, 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 1, 1990, July 1, 1991 and May 1, 1992.

The Court further finds that the Defendant, RONALD EUGENE HARDING, 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 his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, RONALD EUGENE HARDING, is indebted to the Plaintiff in the principal sum of \$27,324.38, plus interest at the rate of 10 percent per annum from May 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, 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 \$17.00 which became a lien on the property as of June 26, 1992, a lien in the amount of \$8.00 which became a lien on the property as of June 25, 1993, and a lien in the amount of \$8.00 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, RONALD EUGENE HARDING, WARREN G. HARDING and WILMA HARDING, 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 In Rem judgment against the Defendant, RONALD EUGENE HARDING, in the principal sum of \$27,324.38, plus interest at the rate of 10 percent per annum from May 1, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 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 \$33.00, plus costs and interest, for personal property taxes for the years 1991, 1992 and 1993, plus the costs of this action.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendants, RONALD EUGENE HARDING, WARREN G. HARDING, WILMA HARDING and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that upon the failure of said Defendant, RONALD EUGENE HARDING, 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, Tulsa County, Oklahoma, in the amount of \$33.00,

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.

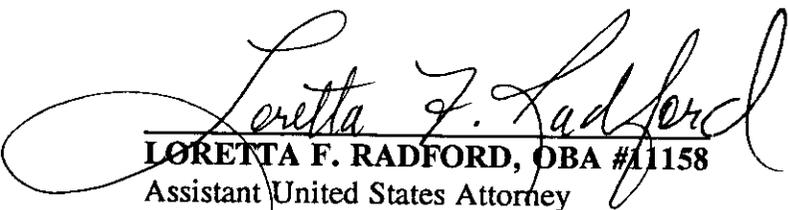
**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that pursuant  
to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right  
to possession based upon any right of redemption) in the mortgagor or any other person  
subsequent to the foreclosure sale.

**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.

  
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 678B

LFR:flv

*United States Attorney  
Northern District of Oklahoma*  
U.S. Department of Justice

D

J

333 West 4th Street, Suite 3460  
Tulsa, Oklahoma 74103-3809

(918)581-7463  
(918)581-7769 (Fax)

January 30, 1996

**DICK A. BLAKELEY, OBA #852**  
Assistant District Attorney  
Tulsa County, Oklahoma  
406 Tulsa County Courthouse  
Tulsa, Oklahoma 74103

Dear Mr. Blakeley:

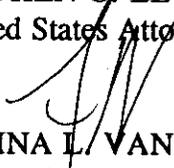
RE: USA v. Ronald Eugene Harding, et al.  
Civil Action No. 95-C 678B

Enclosed please find the original of a proposed Judgment of Foreclosure for your signature. Return the signed judgment at your earliest convenience.

Please contact me if you have any questions, revisions, or comments. Your cooperation is sincerely appreciated.

Sincerely yours,

STEPHEN C. LEWIS  
United States Attorney

  
FATINA L. VANZANDT  
Paralegal Specialist

Enclosure

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SHERRI L. CLARK; RICHARD C. )  
 CLARK; COUNTY TREASURER, Rogers )  
 County, Oklahoma; BOARD OF COUNTY )  
 COMMISSIONERS, Rogers County, )  
 Oklahoma, )  
 )  
 Defendants. )

FEB 26 1996

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

ENTERED ON BOOK  
DATE FEB 28 1996

Civil Case No. 95 C 1041B

**JUDGMENT OF FORECLOSURE**

This matter comes on for consideration this 26 day of Feb,  
1996. 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; the Defendant, RICHARD C.  
CLARK, appears not having previously filed a Disclaimer; and the Defendant, SHERRI L.  
CLARK, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the  
Defendant, SHERRI L. CLARK, was served with process a copy of Summons and Complaint  
on December 7, 1995; that the Defendant, RICHARD C. CLARK, was served with process a  
copy of Summons and Complaint on December 7, 1995; that the Defendant, COUNTY  
TREASURER, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint  
on October 20, 1995; and that Defendant, BOARD OF COUNTY COMMISSIONERS,

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

Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on October 20, 1995.

It appears that the Defendants, COUNTY TREASURER, Rogers County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma, filed their Answer on October 24, 1995; that the Defendant, RICHARD C. CLARK, filed his Disclaimer on January 12, 1996; and that the Defendant, SHERRI L. CLARK, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendants, SHERRI L. CLARK and RICHARD C. CLARK, were granted a Divorce in Case No. D-88-257, on December 20, 1988, in Rogers County, Oklahoma. The Defendants, SHERRI L. CLARK and RICHARD C. CLARK, are both single unmarried persons.

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:

**The S $\frac{1}{2}$  of N $\frac{1}{2}$  of W $\frac{1}{2}$  of SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 29, Township 21 North, Range 16 East of the I.B.&M., Rogers County, Oklahoma, together with a road easement as contained in Deed recorded in Book 585 Page 800.**

The Court further finds that on April 21, 1987, the Defendants, SHERRI L. CLARK and RICHARD C. CLARK, executed and delivered to FIRST FEDERAL SAVINGS BANK OF OKLAHOMA, their mortgage note in the amount of \$48,682.00, 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, the Defendants, RICHARD C. CLARK and SHERRI L. CLARK, husband and wife, executed and delivered to FIRST FEDERAL SAVINGS BANK OF OKLAHOMA, a mortgage dated April 21, 1987, covering the above-described property. Said mortgage was recorded on April 22, 1987, in Book 757, Page 595, in the records of Rogers County, Oklahoma.

The Court further finds that on July 13, 1989, First Federal Savings Bank of Oklahoma, 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 14, 1989, in Book 811, Page 362, in the records of Rogers County, Oklahoma.

The Court further finds that on June 1, 1989, the Defendant, SHERRI L. CLARK, 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 June 1, 1990 and May 1, 1992.

The Court further finds that the Defendants, SHERRI L. CLARK and RICHARD C. CLARK, 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, SHERRI L. CLARK and RICHARD C. CLARK, are indebted to the Plaintiff in the principal sum of \$79,512.51, plus interest at the rate of 10 percent per annum from March 24, 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, SHERRI L. CLARK, is in default, and have no right, title or interest in the subject real property.

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

The Court further finds that the Defendant, RICHARD C. CLARK, disclaims any 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, SHERRI L. CLARK and RICHARD C. CLARK, in the principal sum of \$79,512.51, plus interest at the rate of 10 percent per annum from March 24, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 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 Defendants, SHERRI L. CLARK, RICHARD C. CLARK, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Rogers 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, SHERRI L. CLARK and RICHARD C. CLARK, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

**First:**

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

**Second:**

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

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

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that 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.

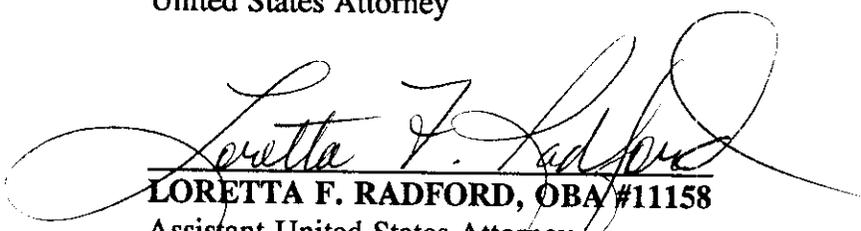
**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the

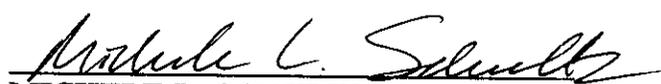
Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

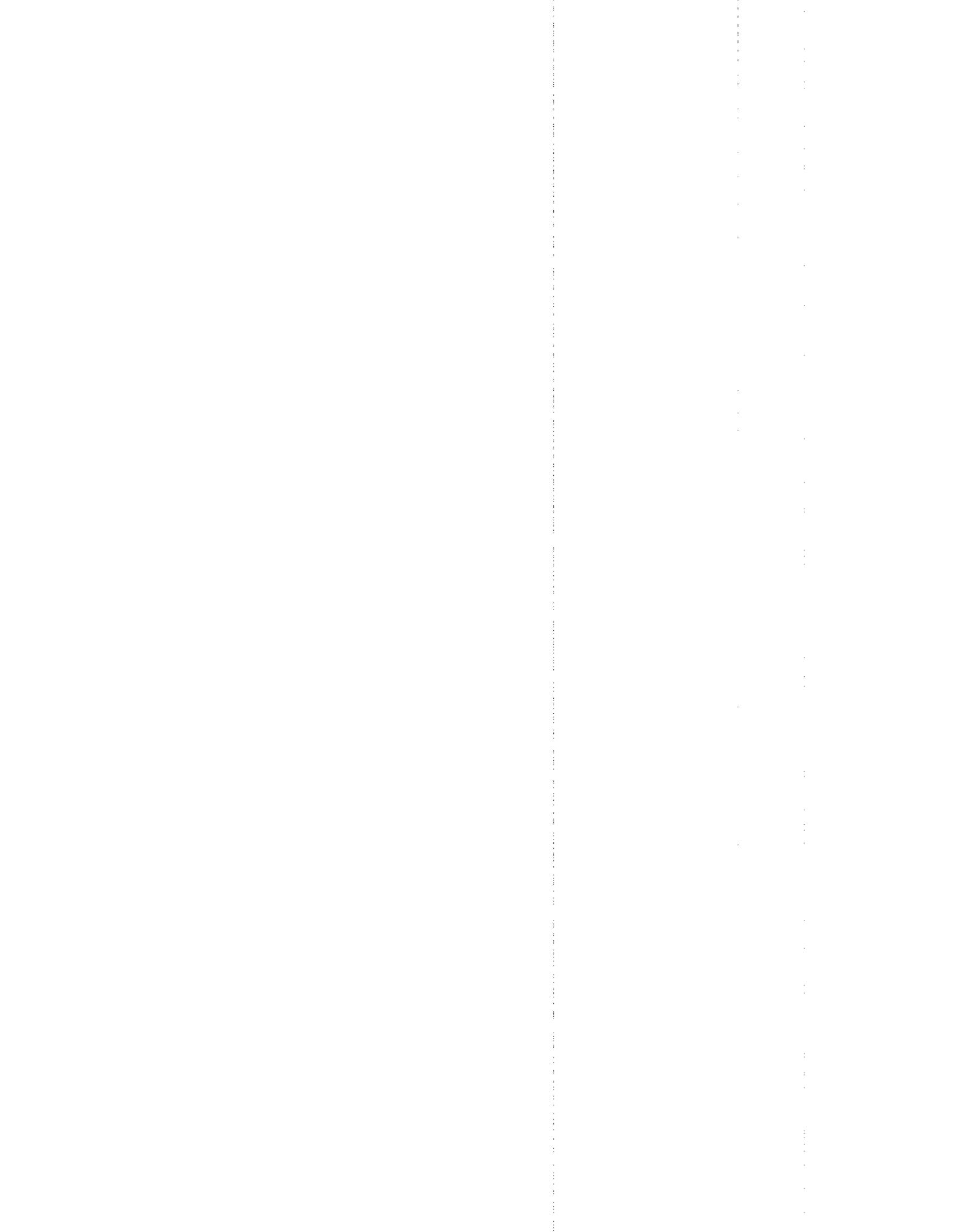
STEPHEN C. LEWIS  
United States Attorney

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

  
**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 1041B

LFR:flv



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

FEB 26 1996

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

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

RICHARD HARBOUR; ANITA )  
HARBOUR; COUNTY TREASURER, )  
Tulsa County, Oklahoma; BOARD OF )  
COUNTY COMMISSIONERS, Tulsa )  
County, Oklahoma, )

Defendants. )

Civil Case No. 95 C 650B

FEB 26 1996

**JUDGMENT OF FORECLOSURE**

This matter comes on for consideration this 26 day of Feb.,

1996. 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 not having previously filed a Disclaimer; and the Defendant, Richard Harbour, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, **Richard Harbour**, signed a Waiver of Summons on August 11, 1995.

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,

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

13

filed its Disclaimer on December 11, 1995; and that the Defendant, **Richard Harbour**, has failed to answer and his 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 Six (6), Block Eight (8), ROLLING HILLS THIRD ADDITION, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.**

The Court further finds that on November 28, 1989, the Defendant, **Richard Harbour and Anita Harbour, deceased**, executed and delivered to **CENTRAL MORTGAGE CORPORATION**, their mortgage note in the amount of \$38,509.00, 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 Defendant, **Richard Harbour and Anita Harbour, deceased**, then husband and wife, executed and delivered to **CENTRAL MORTGAGE CORPORATION**, a mortgage dated November 29, 1989, covering the above-described property. Said mortgage was recorded on November 30, 1989, in Book 5222, Page 2111, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 28, 1989, **CENTRAL MORTGAGE CORPORATION**, assigned the above-described mortgage note and mortgage to **BANK OF MEEKER**. This Assignment of Mortgage was recorded on December 11, 1989, in Book 5224, Page 1911, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 28, 1989, BANK OF MEEKER, assigned the above-described mortgage note and mortgage to J.I. KISLAK MORTGAGE SERVICE CORPORATION. This Assignment of Mortgage was recorded on December 13, 1989, in Book 5225, Page 527, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 14, 1991, J.I. Kislak Mortgage Serv. 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 June 18, 1991, in Book 5329, Page 0716, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 22, 1991, the Defendant, **Richard Harbour and Anita Harbour, deceased**, 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 November 25, 1991 and April 29, 1992.

The Court further finds that Anita Harbour died on June 26, 1995, while seized and possessed of the real property being foreclosed. The Certificate of Death was issued by the Oklahoma State Department of Health certifying Anita Harbour's death.

The Court further finds that the Defendant, **Richard Harbour**, 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 his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, **Richard Harbour**, is indebted to the Plaintiff in the principal sum of \$57,833.21, plus interest at the rate of 10.50

percent per annum from March 23, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that Plaintiff is entitled to a judicial determination of the death of Anita Harbour, and to a judicial termination of the Joint Tenancy between Anita Harbour, Deceased and Richard Harbour.

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 \$21.00 which became a lien on the property as of June 26, 1992, a lien in the amount of \$19.00 which became a lien on the property as of June 25, 1993, and a lien in the amount of \$23.00 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, **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, **State of Oklahoma, ex rel. Oklahoma Tax Commission**, disclaims any right, title or interest in the subject real property.

The Court further finds that the Defendant, **Richard Harbour**, is in Default, and has 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, **Richard**

Harbour, in the principal sum of \$57,833.21, plus interest at the rate of 10.50 percent per annum from March 23, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 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 death of Anita Harbour be and the same is hereby judicially determined to have occurred on June 26, 1995, in the City of Tulsa, County of Tulsa, State of Oklahoma.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Joint Tenancy between Anita Harbour, Deceased and Richard Harbour is hereby judicially terminated.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$63.00 for personal property taxes for the years 1991, 1992 and 1993, plus the costs of this action.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendants, Richard Harbour, Board of County Commissioners, Tulsa County, Oklahoma and State of Oklahoma, ex rel. Oklahoma Tax Commission, 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 Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$63.00, 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.

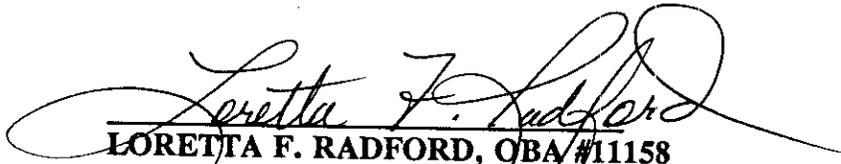
**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

**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.

1/1 P. [Signature]

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) 596-4841

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Tulsa County, Oklahoma

Judgment of Foreclosure  
Civil Action No. 95 C 650B

LFR:flv

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

**FILED**

FEB 26 1996

*cl*

LONDALE HARRIS, )  
)  
Plaintiff, )  
)  
vs. )  
)  
PHYLLIS COLLINS, et al., )  
)  
Defendants. )

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

No. 93-C-148-B ✓

ON DOCKET ✓  
FEB 28 1996

**ORDER**

On February 28, 1994, the Court stayed this civil rights action to permit Plaintiff to exhaust his state remedies in connection with his request for restoration of earned credits. See Duncan v. Gunter, 15 F.3d 989 (10th Cir. 1994). On February 7, 1996, Defendants advised the Court that Plaintiff has not filed an action in any state court in which he attacks a disciplinary action and seeks restoration of his earned credits. Plaintiff has not objected.

Accordingly, the stay is LIFTED and this action is hereby DISMISSED for lack of prosecution.

SO ORDERED THIS 26 day of Feb, 1996.

*Thomas R. Brett*

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

*33*



**FILED**

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

FEB 27 1996

WALTER MAHER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ASSOCIATED MILK PRODUCERS, INC. )  
 )  
 Defendant. )

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

Case No. 95-C-1161-E

ENTERED ON DOCKET

FEB 28 1996

ORDER

Now before the Court is the Motion to Dismiss (Docket #2) of the Defendant Associated Milk Producers, Inc. (AMPI).

Plaintiff Walter Maher (Maher) brought this claim for breach of contract in state court and AMPI removed it to federal court. Maher asserts that in 1985, he entered into a contract to haul milk for AMPI, and that under the terms of the contract AMPI was entitled to a fee for tank rental. Maher asserts that AMPI actually charged a fee in excess of that to which it was entitled, and additionally charged an "administrative fee" that was not contemplated under the contract.

AMPI filed this Motion to Dismiss, arguing that Maher's claim is barred by res judicata. AMPI recites that Maher filed a previous claim against AMPI, in this court, for breach of the duty of good faith, that the Court granted summary judgment on that claim, and on the next day Maher amended his complaint to add a breach of contract claim identical to the one in this case. The breach of contract claim was later dismissed through a joint

stipulation of dismissal, and final judgment was then entered on the bad faith claim (on which summary judgment had already been granted). The judgment was appealed and affirmed. AMPI asserts that, under res judicata, a final judgment on the merits precludes the parties from relitigating issues that were or could have been raised in that action. Allen v. McCurry, 449 U.S. 90, 94 (1980). AMPI then argues that the two claims are part of a single cause of action for purposes of res judicata and therefore are barred by the judgment rendered in the first case.

AMPI relies on May v. Parker-Abbott Transfer and Storage, Inc., 899 F.2d 1007, 1009 (10th Cir. 1990) for its assertion that the two claims in this case would constitute a single cause of action. The court in May recognizes the transactional approach in determining what constitutes a single cause of action, and notes that considerations such as "whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage" are relevant to the analysis. May, 899 F.2d at 1010. The Court in May noted that, under this analysis, a "contract" is a transaction so that all breach of contract claims not brought in the original action would be subject to claim preclusion. May, 899 F.2d at 1010.

Maher argues that summary judgment is not appropriate and that May is distinguishable. Maher's argument is that his first claim for bad faith was not based on breach of contract, but rather implied contract. He asserts that his bad faith claim had nothing

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

**FILED**

FEB 27 1996

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

MARVIN D. HOPSON, )  
)  
Plaintiff, )  
)  
vs. )  
)  
TULSA CITY COUNTY JAIL, STANLEY )  
GLANZ, ROY OWENS, POWELL JOHN, K. )  
STAATS, JOEL SPITLER, TULSA COUNTY )  
JAIL MEDICAL DEPARTMENT, and )  
DR. JOHNSON, )  
)  
Defendants. )

96-CV-103-E

~~ENTERED ON DOCKET~~  
FEB 28 1996

**ORDER**

This matter comes before the Court on Plaintiff's motion for leave to proceed in forma pauperis and a civil rights complaint. Plaintiff seeks to sue Dr. Johnson, the Tulsa City/County Jail, Sheriff Stanley Glanz, and four Tulsa Police Officers for denial of medical care while he was a pretrial detainee at the Tulsa City County Jail. Although Plaintiff alleges Dr. Johnson was specifically involved in the denial of medical care at the Tulsa City-County Jail, he fails to do so for the other named Defendants.<sup>1</sup> See Ruark v. Solano, 928 F.2d 947, 950 (10th Cir. 1991) (an official may not be individually liable unless an

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<sup>1</sup> The Court notes that Plaintiff has sued Tulsa Police Officers Owens, Powell, Staats, and Spitler for excessive use of force during his arrest in consolidated Case No. 95-CV-670-C.

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

ENTERED ON DOCKET

DATE 2-28-96

DUKE'S OFFICE SUPPLY, INC. :  
an Oklahoma Corporation, :

Plaintiff , :

v. :

CIVIL ACTION NO. 95-C-749 *-H* ✓

FEDERAL EMERGENCY MANAGEMENT :  
AGENCY, FEDERAL INSURANCE :  
ADMINISTRATION, NATIONAL :  
CON-SERVE, INC. :

Defendants. :

*FILED*  
*FEB 27 1996*  
*ja*

STIPULATION OF DISMISSAL

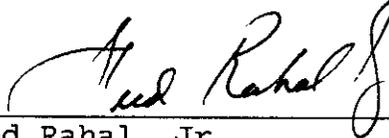
COME NOW, Plaintiff Duke's Office Supply, Inc., and Defendants Federal Emergency Management Agency, Federal Insurance Administration, and National Con-Serv, Inc.,<sup>1</sup> and respectfully advise the Court that the above-captioned action has been settled by agreement of the parties. Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties to the above-captioned action, through their undersigned attorneys, hereby stipulate to the dismissal with prejudice of this action.

<sup>1</sup>The Director of the Federal Emergency Management Agency and the Administrator of the Federal Insurance Administration are proper Defendants in this lawsuit to recover under the National Flood Insurance Program. See 42 U.S.C. § 4072; 44 C.F.R. § 62.22. National Con-Serv, Inc., is a contractor administering the National Flood Insurance Program and is not a proper Defendant. National Con-Serv, Inc. has been represented in this matter by counsel for the United States and the Federal Emergency Management Agency.

*6*

2-27-96

RESPECTFULLY SUBMITTED,



Fred Rahal, Jr.  
Riggs, Abney, Neal, Turpen & Lewis  
Frisco Building  
502 West Sixth Street  
Tulsa, OK 74119-1010  
Attorney for Plaintiff

UNITED STATES OF AMERICA

STEPHEN C. LEWIS  
UNITED STATES ATTORNEY

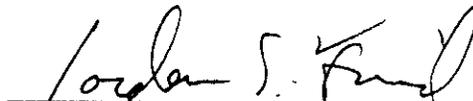
Dated: 2-26-96

BY:



Phillip Pinnel  
Assistant United States Attorney  
Northern District of Oklahoma

Dated: 2/20/96



Jordan S. Fried  
Trial Attorney  
Office of the General Counsel, FEMA

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

FILE

PHILLIPS PETROLEUM COMPANY, )  
a corporation, )

Plaintiff, )

vs. )

MANUEL LUJAN, Secretary of Interior; )  
UNITED STATES DEPARTMENT OF )  
INTERIOR; and MINERALS )  
MANAGEMENT SERVICE, )

Defendants. )

FEB 27 1996

Edward M. Lawrence, Court Clerk  
DISTRICT COURT

Civil Action No. 90-C-137-H ✓

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to 41(a)(1), Fed. R. Civ. P., the Plaintiff, Phillips Petroleum Company, and the Defendants, Secretary of the Interior, United States Department of Interior, and Minerals Management Service, hereby dismiss with prejudice all claims raised in the Plaintiff's Complaint and Amended Complaint and the Defendants' Answer and Amended Answers in the above-styled litigation.

*Paul E. Swain*

PAUL E. SWAIN, III, OBA #8785  
Boone, Smith, Davis, Hurst & Dickman  
100 West Fifth Street, Suite 500  
Tulsa, Oklahoma 74103  
(918) 587-0000  
**Attorneys for the Plaintiff**



---

CATHRYN MCCLANAHAN

OBA #14853

Assistant United States Attorney

333 West 4th Street, Suite 3460

Tulsa, Oklahoma 74103-3809

**Attorneys for the Defendants,  
Secretary of the Interior, United States  
Department of the Interior, and  
Minerals Management Service**

ENTERED ON DOCKET

DATE 2-28-96

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

FILED

FEB 27 1996

Edward M. Lawrence, Court Clerk  
DISTRICT COURT

PHILLIPS PETROLEUM COMPANY, )  
a corporation, and PHILLIPS 66 )  
NATURAL GAS COMPANY, )  
a corporation, )

Plaintiffs, )

vs. )

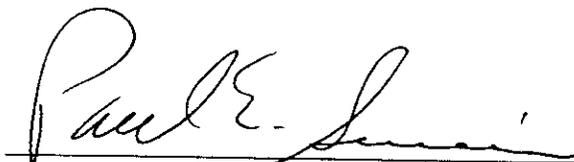
Civil Action No. 90-C-098-H ✓

UNITED STATES DEPARTMENT OF )  
THE INTERIOR, et al., )

Defendants. )

**JOINT STIPULATION OF DISMISSAL WITH PREJUDICE**

Pursuant to 41(a)(1), Fed. R. Civ. P., the Plaintiffs, Phillips Petroleum Company and Phillips 66 Natural Gas Company, and the Defendants, Secretary of the Interior, United States Department of Interior, and Minerals Management Service, hereby dismiss with prejudice all claims raised in the Plaintiffs' Complaint and the Defendants' Answer in the above-styled litigation.



PAUL E. SWAIN, III, OBA #8785  
Boone, Smith, Davis, Hurst & Dickman  
100 West Fifth Street, Suite 500  
Tulsa, Oklahoma 74103  
(918) 587-0000  
**Attorneys for the Plaintiff**



CATHRYN MCCLANAHAN

OBA #14853

Assistant United States Attorney

333 West 4th Street, Suite 3460

Tulsa, Oklahoma 74103-3809

**Attorneys for the Defendants,  
Secretary of the Interior, United States  
Department of the Interior, and  
Minerals Management Service**



ENTERED ON DOCKET  
DATE 2-27-96

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JAMES GEORGE aka James W. George; )  
 ANDEARY GEORGE aka Andeary F. )  
 George; JIM L. FORTNER; STATE OF )  
 OKLAHOMA, ex rel. OKLAHOMA TAX )  
 COMMISSION; COUNTY TREASURER, )  
 Tulsa County, Oklahoma; BOARD OF )  
 COUNTY COMMISSIONERS, Tulsa )  
 County, Oklahoma, )  
 Defendants. )

**FILED**  
FEB 26 1996  
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Civil Case No. 95 C 613H ✓

**CLERK'S ENTRY OF DEFAULT**

It appearing from the files and records of this Court as of Feb 26, 1996 and the declaration of Loretta F. Radford, Assistant United States Attorney, that the Defendants, **James George aka James W. George, Andeary George aka Andeary F. George and Jim L. Fortner**, against whom judgment for affirmative relief is sought in this action have failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure; now, therefore,

I, RICHARD M. LAWRENCE, Clerk of said Court, pursuant to the requirements of Rule 55(a) of said rules, do hereby enter the default of said defendants.

Dated at Tulsa, Oklahoma, this 26 day of February, 1996.

RICHARD M. LAWRENCE, Clerk  
United States District Court for  
the Northern District of Oklahoma  
by Mark C. McCartt Acting Clerk

By S. Adamski  
Deputy

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

FILED

FEB 28 1996

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

JACKIE JOE DONALDSON,

Plaintiff,

v.

REDERIET A.P. MOLLER A/S  
d/b/a MAERSK DRILLING,

Defendant.

Case No. 93-C-1032-H

ORDER

This matter comes before the Court on Defendant's Motion to Dismiss (Docket #34).

Plaintiff brought this action against his former employer, alleging wrongful discharge on the basis of handicap and age in violation of public policy and breach of employment contract. Defendant now asserts that dismissal pursuant to Fed. R. Civ. P. 12(b)(6) is appropriate. To prevail on a motion to dismiss, a defendant must establish that there is no set of circumstances upon which the plaintiff would be entitled to relief. Jenkins v. McKeithen, 395 U.S. 411 (1969); Ash Creek Mining Co. v. Lujan, 969 F.2d 868, 870 (10th Cir. 1992). For the purposes of this analysis, the court must accept as true all material allegations in the complaint. Ash Creek Mining, 969 F.2d at 870. The Court will apply this standard to each of Plaintiff's claims in turn.

Oklahoma law recognizes a common law tort claim for wrongful discharge when the discharge is motivated by an employee's handicap. Atkinson v. Halliburton Co., 66 O.B.J. 3195, 3196 (Okl. 1995). The Oklahoma legislature has also provided a statutory basis for pursuing claims of employment discrimination on the basis of handicap. The statute provides:

If a charge for discrimination in employment on the basis of handicap is filed under the provisions of Sections 1101 through 1801 of Title 25 of the Oklahoma Statutes [the administrative procedures provided by the Act,] and is not resolved to the satisfaction of the charging party within one hundred eighty (180) days from the filing of such charge, the charging party may commence an action for redress against any person who is alleged to have discriminated against the charging party and any

65

person named as respondent in the charge, such action to be commenced in the district court of this state for the county in which the unlawful employment practice is alleged to have been committed.

25 Okla. Stat. Ann. § 1901 (Supp. 1996). Thus, the statute provides that a plaintiff may bring an action pursuant to the statute only upon exhaustion of administrative remedies. Although the statute does not foreclose common law tort actions for wrongful discharge, the Oklahoma Supreme Court has held that the statutory exhaustion requirement also applies to public policy torts. Atkinson, 66 O.B.J. at 3198 (“We do not decide that plaintiff may not file a [common law tort] claim for handicap discrimination, we only decide that he must first exhaust his administrative remedies.”) Plaintiff therefore may pursue his tort claim for wrongful discharge on the basis of handicap only upon exhaustion of administrative remedies. It is undisputed that Plaintiff has failed to exhaust potential administrative remedies. Thus, his claim for wrongful discharge in violation of public policy is dismissed insofar as it is based upon alleged handicap discrimination.

Plaintiff also alleges wrongful discharge on the basis of age discrimination. The Oklahoma Supreme Court recently refused to find a common law remedy for age discrimination in employment, concluding that statutory remedies are exclusive. List v. Anchor Paint Mfg. Co., 67 O.B.J. 127 (Okla. 1996). In so doing, the court distinguished its decision in Tate v. Browning-Ferris, 833 P.2d 1218 (Okla. 1992), which held that a common law action for racially motivated discharge was not preempted either by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, or by the Oklahoma anti-discrimination statutes, 25 Okla. Stat. Ann. §§ 1101 *et seq.* The List court based this distinction on the fact that the statutory remedies for age discrimination embodied in the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 *et seq.*, are more comprehensive than the Title VII remedies available to the plaintiff in Tate. The court noted:

Had we not held in Tate that plaintiff was entitled to assert a common law cause of action, he would have had no right to a jury trial because neither the state act nor the Civil Rights Act provided for such a remedy. Further, plaintiff's damages would have been limited to back pay with no right to additional compensatory or punitive damages. Here, Mr. List, if successful, would have significantly greater statutory

remedies than were available to the plaintiff in Tate. Mr. List would be entitled to a jury trial, and to punitive damages in an amount equal to his unpaid wages.

List, 67 O.B.J. at 128 (citing 29 U.S.C. § 626). Thus, where the statutory remedies for age discrimination in employment are adequate, Oklahoma law does not recognize a common law remedy.

Plaintiff contends that List is inapplicable in this case because his statutory remedies are inadequate. Defendant, a Danish corporation, is not subject to the provisions of the ADEA, which states in applicable part:

(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

29 U.S.C. § 623(h)(1)-(2) (emphasis added). Thus, Plaintiff has no remedy under the ADEA. The Court further notes that the Oklahoma statute cited in List merely provides administrative remedies and does not include an avenue for judicial redress in age discrimination cases, such as that available in wrongful discharge cases based on handicap.

Discharging an employee on the basis of age clearly violates Oklahoma public policy. See 25 Okla. Stat. Ann. § 1302(A)(1). The Court therefore concludes that, taking as true all allegations set forth in the complaint, Plaintiff has alleged a violation of public policy that is not cognizable under the ADEA and therefore is without a specific statutory remedy. Based upon this conclusion, the Court holds that Oklahoma law permits Plaintiff to bring a common law action for wrongful discharge in violation of public policy on the basis of age discrimination. Defendant's motion to dismiss the age discrimination claim is therefore denied.

Finally, Defendant asserts that Plaintiff has failed to state a claim for breach of contract. Specifically, Defendant points to paragraph 16 of the employment contract which states in its entirety as follows:

## TERMINATION OF EMPLOYMENT

It is especially understood that your employment may be terminated without notice, at the Company's discretion if you fail to abide by the rules and regulations of the Company or its clients, if you fail to observe general rules of good conduct, whether personal or in the line of duty and if you fail to conduct according to applicable laws and regulations of the Area of Assignment or for other good cause.

Moreover, it is expressly understood that the Company reserves the right with one month's prior notice in writing to terminate your employment at any time without cause. By giving the Company one month's prior notice in writing you may terminate your employment under this Agreement, subject always to the condition that notice be given at the end of a work period.

Br. in Supp. of Def.'s Mot. to Dismiss, Attach. 1 at 17-18 ¶16 (emphasis added). In a letter dated December 28, 1992, Defendant notified Plaintiff that, for economic reasons, his employment would cease effective January 31, 1993. Thus, Defendant fulfilled the 30-day notice requirement of paragraph 16.

Plaintiff, however, claims that paragraph 3 of the contract creates an ambiguity within the agreement. Paragraph 3 provides:

### LENGTH OF EMPLOYMENT

Your employment under the terms of this Agreement will cover no fixed period, but will continue as long as your performance is satisfactory to the Company, and as long as there is a job available which, in the Company's opinion, you are qualified to fill. The date upon which your employment under the terms of this Agreement commences is March 10, 1985, which date is regarded as your Anniversary Date.

Id. at 12 ¶3. Plaintiff contends that there were administrative jobs available for which he applied and for which he was qualified. The Court concludes, however, that Paragraph 3 does not create an ambiguity. The contract clearly designates Paragraph 16 as controlling in the termination context. Paragraph 16 specifically provides for at-will employment with a 30-day notice requirement. There is no dispute that Defendant complied with this requirement. The Court therefore holds that Plaintiff's breach of contract claim should be dismissed.

In summary, Plaintiff's claims for wrongful discharge on the basis of handicap and breach of contract are hereby dismissed. Plaintiff may proceed, however, with his claim for wrongful

discharge on the basis of age. Accordingly, Defendant's Motion to Dismiss is granted in part and denied in part (Docket #34).

IT IS SO ORDERED.

This 23<sup>rd</sup> day of February, 1996.

  
\_\_\_\_\_  
Sven Erik Holmes  
United States District Judge

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

**FILED**

**FEB 26 1996**

JOHN L. DICKERSON, III, )  
an individual, )  
 )  
Plaintiff, )  
vs. )  
 )  
PICCADILLY CAFETERIAS, INC., )  
a corporation, )  
 )  
Defendant. )

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

Case No. 95-C-855-BU

**ENTERED ON DOCKET**

**DATE 2-27-96**

**ADMINISTRATIVE CLOSING ORDER**

The Court has reviewed Defendant Piccadilly's Unopposed Motion to Stay All Discovery Deadlines Pending Finalization of Details of Settlement. Having done so, the Court **DENIES** the motion. However, the Court **ORDERS** that the Court 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 45 days of this date for the purpose of dismissal pursuant to the settlement and compromise of the parties, the plaintiff's action shall be deemed to be dismissed with prejudice.

Entered this 26<sup>th</sup> day of February, 1996.

  
\_\_\_\_\_  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

19<sup>th</sup>

*[Handwritten mark]*



ENTERED ON DOCKET  
DATE 2-27-96

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

BRENDA GEORGE, JULIE ANDERSON, )  
NANCY HILL, IRA JEAN LOVE, ANNA L. )  
DEVERS, SHANTELL JOHNSON, NIESHA )  
BYERS, EBONY NASH, CONNIE WILLIAMS, )  
and KIA TAYLOR, )

Plaintiffs, )

v. )

WORLD PUBLISHING COMPANY, an )  
Oklahoma Corporation, and )  
NEWSPAPER PRINTING CORPORATION, )  
an Oklahoma Corporation, )

Defendants. )

ANNA DEVERS, )

Plaintiff, )

v. )

WORLD PUBLISHING COMPANY, an )  
Oklahoma corporation, )

Defendant. )

**FILED**

FEB 23 1996

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

Case No. 93-C-755H  
Case No. 94-C-84H  
(CONSOLIDATED)

**STIPULATION OF DISMISSAL AND ORDER**

It is hereby stipulated and agreed by Brenda George, Julie Anderson, Nancy Hill, Ira Jean Love, Anna L. Devers, Shantell Johnson, Niesha Byers, Ebony Nash, Connie Williams, and Kia Taylor, "Plaintiffs," by and through Steven R. Hickman, Frasier, Frasier & Hickman, Inc., their attorneys, and World Publishing Company, an Oklahoma Corporation, and Newspaper Printing

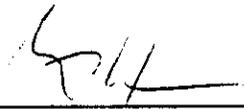
Corp., an Oklahoma Corporation, "Defendants," by and through their attorneys, R. Eddie Wayland, Charles J. Mataya and Susan E. Major, King and Ballow, that the above-entitled actions be dismissed with prejudice and that each of the parties hereto shall bear their own costs, including attorneys' fees incurred herein.

It is acknowledged by the parties that an agreement has been reached involving the dismissal with prejudice of all claims prior to any Rule 54(b) certification being entered by the Court. Thus, without a final judgment, the Defendants did not have an appealable order. The Defendants disagreed with any prior determinations adverse to their interests and would have appealed these determinations, if the agreement between the parties had not been reached. It is the intent of the parties that there be no final judgment and nothing in this proceeding, except the parties' agreement, as to their specific circumstances, will be given any kind of preclusive effect, in this or any subsequent proceeding.

It is agreed that the Court is to retain jurisdiction over the parties for purposes of determining any dispute relating to their agreement and the terms of this Order.

Dated February 20<sup>th</sup>, 1996.

FRASIER, FRASIER & HICKMAN

By 

Steven R. Hickman  
1700 Southwest Blvd., Suite 100  
P. O. Box 799  
Tulsa, OK 74101  
(918) 584-4724

ATTORNEYS FOR PLAINTIFFS

KING & BALLOW

By Susan E Major  
Eddie Wayland  
Charles J. Mataya  
Susan E. Major, OBA #15298  
23 West Fourth St., Suite 900  
Tulsa, OK 74102  
(918) 592-7800

ATTORNEYS FOR DEFENDANTS

**ORDER**

On the above Stipulation of Dismissal by both Plaintiffs and Defendants, IT IS ORDERED that this action is dismissed without final judgment. This Court retains jurisdiction over the parties to resolve any disputes relating to the agreements reached between the parties resulting in this dismissal.

Dated this 23<sup>rd</sup> day of February, 1996.

SI SVEN ERIK HOLMES

UNITED STATES DISTRICT JUDGE

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

GRANVEL GOLDEN, an individual, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TEXACO REFINING AND MARKETING, )  
 INC., a Delaware corporation; )  
 and PETROMAN, INC., a Delaware )  
 corporation, )  
 )  
 Defendants. )

ENTERED ON DOCKET  
DATE 2-27-96

Case No. 95-C-756-H

**FILED**

FEB 23 1996

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

**ORDER GRANTING JOINT STIPULATION AND APPLICATION  
FOR AN ORDER OF DISMISSAL WITH PREJUDICE**

Upon consideration of the parties' Joint Stipulation and Application for an Order of Dismissal With Prejudice of any and all claims that have been asserted or which might have been asserted in this action, and good cause having been shown, it is this 23<sup>rd</sup> day of February, 1996,

**ORDERED** that the parties' Joint Stipulation and Application for an Order of Dismissal with Prejudice be and it is hereby GRANTED; and it is further

**ORDERED** that the above-captioned action be and it is hereby **DISMISSED WITH PREJUDICE**, each party to pay their own costs and attorneys' fees.

S/ SVEN ERIK HOLMES

\_\_\_\_\_  
SVEN ERIK HOLMES,  
United States District Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET  
DATE 2-27-96

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
JANICE WATKINS aka JANICE )  
DEE'ANN WATKINS; OSTEOPATHIC )  
HOSPITAL FOUNDERS ASSOCIATION )  
dba Tulsa Regional Medical Center )  
formerly Oklahoma Osteopathic Hospital; )  
CITY OF SAND SPRINGS, Oklahoma; )  
FORD MOTOR CREDIT COMPANY; )  
COUNTY TREASURER, Tulsa County, )  
Oklahoma; BOARD OF COUNTY )  
COMMISSIONERS, Tulsa County, )  
Oklahoma, )

**FILED**

FEB 23 1996

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

Civil Case No. 95-CV 887H

Defendants.

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23<sup>rd</sup> day of February, 1996. 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 SAND SPRINGS, Oklahoma, appears by City Attorney Ronald D. Cates; the Defendant, FORD MOTOR CREDIT COMPANY, appears by its attorney William L. Nixon, Jr.; and the Defendants, JANICE WATKINS aka JANICE DEE'ANN WATKINS and OSTEOPATHIC HOSPITAL FOUNDERS ASSOCIATION DBA TULSA REGIONAL MEDICAL CENTER FORMERLY OKLAHOMA OSTEOPATHIC HOSPITAL, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, JANICE WATKINS aka JANICE DEE'ANN WATKINS will hereinafter be referred to as ("JANICE WATKINS"); and the Defendant, JANICE WATKINS, is a single, unmarried person.

The Court being fully advised and having examined the court file finds that the Defendant, JANICE WATKINS, acknowledged receipt of Summons and Complaint via certified mail on October 26, 1995; that the Defendant, OSTEOPATHIC HOSPITAL FOUNDERS ASSOCIATION DBA TULSA REGIONAL MEDICAL CENTER FORMERLY OKLAHOMA OSTEOPATHIC HOSPITAL, waived service of Summons on September 12, 1995; that the Defendant, CITY OF SAND SPRINGS, Oklahoma, acknowledged receipt of Summons and Complaint via certified mail on September 8, 1995; and the Defendant, FORD CREDIT MOTOR COMPANY, acknowledged receipt of Summons and Complaint via certified mail on October 10, 1995.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answer on September 27, 1995; that the Defendant, CITY OF SAND SPRINGS, Oklahoma, filed its disclaimer on October 2, 1995; that the Defendant, FORD MOTOR CREDIT COMPANY, filed its Answer on January 17, 1996; and that the Defendants, JANICE WATKINS and OSTEOPATHIC HOSPITAL FOUNDERS ASSOCIATION DBA TULSA REGIONAL MEDICAL CENTER FORMERLY OKLAHOMA OSTEOPATHIC HOSPITAL, 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 Five (5), Block Three (3), STONEY RIDGE, An Addition to the City of Sand Springs, County of Tulsa, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on June 12, 1986, William F. Hensley and Carla S. Hensley, executed and delivered to MORTGAGE CLEARING CORPORATION their mortgage note in the amount of \$54,443.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, William F. Hensley and Carla S. Hensley, executed and delivered to MORTGAGE CLEARING CORPORATION a mortgage dated June 12, 1986, covering the above-described property. Said mortgage was recorded on June 16, 1986, in Book 4948, Page 3331, in the records of Tulsa County, Oklahoma.

The Court further finds that on December 6, 1991, MORTGAGE CLEARING CORPORATION assigned the above-described mortgage note and mortgage to TRIAD BANK, N.A. This Assignment of Mortgage was recorded on December 9, 1991, in Book 5366, Page 1605, in the records of Tulsa County, Oklahoma.

The Court further finds that on December 6, 1991, TRIAD BANK, N.A. assigned the above-described mortgage note and mortgage to SECRETARY OF HOUSING AND URBAN DEVELOPMENT OF WASHINGTON, D.C., HIS SUCCESSORS OR ASSIGNS. This Assignment of Mortgage was recorded on December 9, 1991, in Book 5366, Page 1606, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, JANICE WATKINS, currently holds the fee simple title to the property via mesne conveyances and is the current assumpor of the subject indebtedness.

The Court further finds that on November 20, 1991, the Defendant, JANICE WATKINS, 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 October 21, 1992, October 20, 1993, and April 19, 1994.

The Court further finds that the Defendant, JANICE WATKINS, 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, JANICE WATKINS, is indebted to the Plaintiff in the principal sum of \$64,345.08, plus interest at the rate of 9 percent per annum from November 8, 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 \$33.00 which became a lien on the property as of June 23, 1994; a lien in the amount of \$17.00 which became a lien as of June 25, 1993; and a lien in the amount of \$21.00 which became a lien as of June 26, 1992. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, CITY OF SAND SPRINGS,

Oklahoma, disclaims any interest in the subject property except insofar as it is the lawful holder of any dedicated public easement or right of way.

The Court further finds that the Defendant, FORD MOTOR CREDIT COMPANY, has a lien on the subject property in the amount of \$2,184.44, for a judgment, which became a lien as of June 7, 1995. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, JANICE WATKINS and OSTEOPATHIC HOSPITAL FOUNDERS ASSOCIATION DBA TULSA REGIONAL MEDICAL CENTER FORMERLY OKLAHOMA OSTEOPATHIC HOSPITAL, 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, JANICE WATKINS, in the principal sum of \$64,345.08, plus interest at the rate of 9 percent per annum from November 8, 1994 until judgment, plus interest thereafter at the current legal rate of 4.89 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 \$71.00, 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 Defendant, FORD MOTOR CREDIT COMPANY, have and recover judgment in the amount of \$2,184.44 for a judgment, plus the costs and interest.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, CITY OF SAND SPRINGS, Oklahoma, has no right, title, or interest in the subject real property except insofar as it is the lawful holder of any dedicated public easement or right of way.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendants, JANICE WATKINS, OSTEOPATHIC HOSPITAL FOUNDERS ASSOCIATION DBA TULSA REGIONAL MEDICAL CENTER FORMERLY OKLAHOMA OSTEOPATHIC HOSPITAL and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that upon the failure of said Defendant, JANICE WATKINS, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the

proceeds of the sale as follows:

**First:**

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

**Second:**

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

**Third:**

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$71.00, personal property taxes which are currently due and owing.

**Fourth:**

In payment of Defendant, FORD MOTOR CREDIT COMPANY, in the amount of \$2,184.44, for a judgment.

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

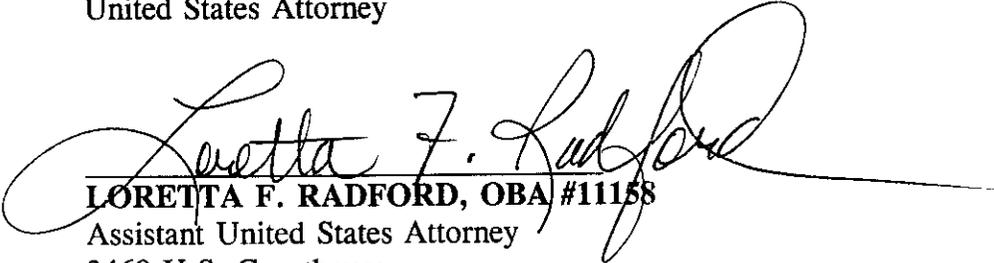
and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

**S/ SVEN ERIK HOLMES**

**UNITED STATES DISTRICT JUDGE**

APPROVED:

STEPHEN C. LEWIS  
United States Attorney



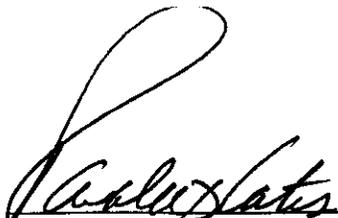
**LORETTA F. RADFORD, OBA #11158**

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

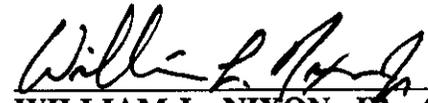


**DICK A. BLAKELEY, OBA #852**

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

  
\_\_\_\_\_  
**RONALD D. CATES, OBA #1565**

Suite 680, ParkCentre  
525 South Main  
Tulsa, Oklahoma 74103  
(918) 582-7447  
Attorney for Defendant,  
City of Sand Springs, Oklahoma

  
\_\_\_\_\_  
**WILLIAM L. NIXON, JR., OBA #012804**

LOVE, BEAL & NIXON, P.C.  
P.O. Box 32728  
Oklahoma City, Oklahoma 73123  
(405) 720-0565  
Attorney for Defendant,  
Ford Motor Credit Company

Judgment of Foreclosure  
Civil Action No. 95-CV 887H

LFR/lg

SEP - 2 1997

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

**FILED**

FEB 23 1996

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

GREAT ENTERPRISE MERCHANDISE  
INC.,

Plaintiff,

v.

PHYLLIS C. STUCK; MAGIC FASHIONS  
& SCREEN PRINT, INC.; and ANTHONY  
CATERINE a/k/a TONY CATERINE,

Defendants.

Case No. 94-CV-44-H

FILED ON DOCKET  
2-27-96

JUDGMENT

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

IT IS THEREFORE ORDERED that Defendants make payment to Plaintiff in the amount of \$6,000.

IT IS SO ORDERED.

This 23<sup>RD</sup> day of February, 1995.



Sven Erik Holmes  
United States District Judge

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

**FILED**

FEB 23 1996

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

NRB, INC., a Texas corporation, )  
)  
Plaintiff, )  
)  
vs. )  
)  
MARAH WOOD HOLDINGS, INC., et al., )  
)  
Defendants. )

Case No. 95 - C 748 H ✓

RECORDED ON MICROFILM  
2-26-96

**ORDER  
GRANTING JOINT MOTION**

Plaintiff, NRB, Inc. ("NRB") and Defendants Marah Wood Holdings, Inc., Federal Bank Loan Recoveries - Dept. A., L.P., Defendant Federal Bank Loan Recoveries - Dept. B, L.P., Defendant Federal Bank Loan Recoveries - Dept. C, L.P., and Defendant Federal Bank Loan Recoveries - Dept. D, and Commercial Financial Services, Inc. (collectively "Defendants"), having filed a joint motion, and the court being advised in the premises and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all proceedings in this action are stayed pending the outcome of a concurrent lawsuit involving the parties as Third-Party Plaintiff and Defendants, *Tax Valuation, Inc. v. NRB, Inc.*, Cause No. 95-CI-09992 in the 288th Judicial District Court, Bexar County, Texas ("the Texas lawsuit");

IT IS FURTHER ORDERED, ADJUDGED AND DECREED <sup>in accordance with the</sup> that ~~the Judgment (a copy~~  
~~of which is attached as Exhibit "A" to the Joint Motion)~~ <sup>Joint Motion of the parties</sup> submitted at the Court's request on  
~~December 15, 1995, dismissing~~ <sup>is hereby dismissed</sup> Commercial Financial Services, Inc. ~~from this lawsuit;~~ will be  
~~entered contemporaneously with this motion;~~ and

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

FEB 28 1996

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

AMERICAN HOME ASSURANCE  
COMPANY,

Plaintiff,

vs.

FRANCIS TAYLOR AND NORMA  
TAYLOR,

Defendants,

vs.

CHEVALLEY MOVING AND STORAGE  
OF DEWEY, INC., an  
Oklahoma corporation d/b/a  
Chevalley/Tulsa Moving and  
Storage,

Third-Party Defendant.

Case No. 95-C-766-BU

ENTERED ON DOCKET

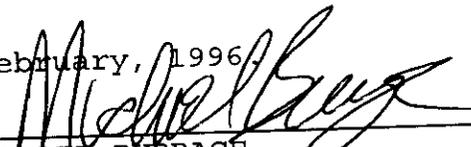
DATE FEB 26 1996

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 plaintiff's action shall be deemed to be dismissed with prejudice.

Entered this 23<sup>rd</sup> day of February, 1996

  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

FEB 21 1996

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

MYRTLE GRIDER,

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner,  
Social Security Administration,

Defendant.

Case No. 95-C-974-W

ENTERED ON DOCKET

FEB 21 1996

ORDER

Upon the motion of the defendant, Commissioner of the Social Security Administration, by Stephen C. Lewis, United States Attorney of the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that this case be remanded to the Commissioner for further administrative action.

DATED this 21<sup>st</sup> day of February 1996.



JOHN LEO WAGNER  
United States District Judge

SUBMITTED BY:

STEPHEN C. LEWIS  
United States Attorney



PHIL PINNELL, OBA #7169  
Assistant United States Attorney  
333 West 4th Street, Suite 3460  
Tulsa, Oklahoma 74103-3809

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

**FILED**

FEB 23 1996

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

SANDRA K. BILBREY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SHIRLEY S. CHATER, )  
 Commissioner of Social Security,<sup>2</sup> )  
 )  
 Defendant. )

Case No: 94-C-517-W

ENTERED ON DOCKET  
FEB 26 1996  
DATE \_\_\_\_\_

JUDGMENT

Judgment is entered in favor of the Plaintiff, Sandra K. Bilbrey, in accordance with this court's Order filed January 26, 1996.

Dated this 23<sup>rd</sup> day of February, 1996.



JOHN LEO WAGNER  
UNITED STATES MAGISTRATE JUDGE

<sup>2</sup>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. Pursuant to Fed.R.Civ.P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action. Although the Court has substituted the Commissioner for the Secretary in the caption, the text of this Order will continue to refer to the Secretary because she was the appropriate party at the time of the underlying decision.



**FILED**

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

FEB 23 1996

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

JAMES L. BELL, )  
SSN: 441-48-0011, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SHIRLEY S. CHATER, Commissioner of )  
the Social Security Administration, )  
 )  
Defendant. )

Case No. 92-C-1087-E

ENTERED ON DO.

DATE FEB 26 1996

ORDER

Now before the Court is the Application for Award of Attorney's Fees and for Approval of Award to Plaintiff (Docket #21) of the Plaintiff, James L. Bell (Bell). There being no objection by the Defendant to the requested award in the amount of \$7,000.00 pursuant to 42 U.S.C. §406, the Court finds that Plaintiff's motion (Docket #21) should be granted. The Court further notes that Plaintiff's Application and Motion for a Final Order and for Attorney's Fees and Expenses Under the Equal Access to Justice Act (Docket #18) is moot due to the Order entered on August 14, 1995.

IT IS SO ORDERED THIS 22<sup>d</sup> DAY OF FEBRUARY, 1996.

  
\_\_\_\_\_  
JAMES O. ELLISON, SENIOR JUDGE  
UNITED STATES DISTRICT COURT

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

FILED  
FEB 22 1996  
Thad M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

MICHAEL G. UPSHAW,

Plaintiff.

v.

WEBCO INDUSTRIES, INC.,

Defendant.

No. 95-C-547-B

ENTERED ON DOCKET

DATE FEB 23 1996

ORDER

The Court has for decision Plaintiff's motion for partial summary judgment (Docket #11) pursuant to Fed.R.Civ.P. 56, Defendant's motion for summary judgment (Docket #14) pursuant to Fed.R.Civ.P. 56, and the parties' respective motions in *limine* concerning anticipated trial testimony. The Plaintiff claims Defendant violated the Americans With Disabilities Act, 42 U.S.C. §12101 et seq. (ADA), and 25 O.S. §1302 et seq. (Oklahoma Anti-Discrimination Act). Because the court sustains the Defendant's motion for summary judgment for the reasons hereafter stated, Plaintiff's motion for partial summary judgment and the motions in *limine* are rendered moot.

UNCONTROVERTED FACTS

1. Plaintiff possesses an associate's degree in Aviation Electronics from Spartan School of Aeronautics attained in 1980 (see Plff. Depo. Testimony, Tr. p. 7, Deft. Ex. 1). Following graduation from Spartan, Plaintiff worked for Petroleum Helicopters as an avionics instrument technician, then was next employed by Rockwell International as a maintenance electronics technician, and then Plaintiff worked for McDonnell Douglas Corporation as a

maintenance electrician. In most of his numerous other jobs of previous employment, heavy physical exertion type work was not required. (See Plff. Depo. Tr. p. 14, Deft. Ex. 1; Plff.'s Resume, Deft. Ex. 2; Plff. Depo. Tr. p. 21, Deft. Ex. 1; Plff.'s Resume, Deft. Ex. 2; Plff. Depo. Tr. p. 27, Deft. Ex. 1; and Plff.'s Resume, Deft. Ex. 2).

2. After being laid off by McDonnell Douglas, Plaintiff was employed in the business of buying and reselling used medical equipment and this business did not require a lot of heavy lifting. (See Plff. Depo. Tr. 34-36, Deft. Ex. 1).

3. Plaintiff underwent low back surgery on August 14, 1992. The surgery consisted of a bilateral modified hemilaminectomy for disk herniation at L4-5, and a right L5-S1 modified hemilaminectomy for diskectomy at L5-S1. Following the surgery he was managed by Dr. Varsha Sikka. (See Plff. Depo. Tr. p. 50-58, Deft. Ex. 1, and Deft. Ex. 12).

4. Dr. Varsha Sikka, a physical medicine and rehabilitation specialist, in August 1994, stated the Plaintiff is not physically able to do "heavy work." (See Dr. Sikka's Letter of Aug. 30, 1994, Deft. Ex. 3; Plff.'s Depo. Tr. pp. 67-68, Deft. Ex. 1).

5. Plaintiff believes he, at relevant times herein, can physically perform all activities he was able to perform prior to his surgery including standing, walking, bending, twisting, reaching, kneeling and climbing. (See Plff. Depo. p. 120, Deft. Ex. 1).

6. In response to Webco's newspaper advertisement in

November 1993, Plaintiff made application for a position of maintenance technician. (See Plff. Depo. Tr. p. 77, Deft. Ex. 1 and Deft. Ex. 9).

7. During the interview process Plaintiff was informed of Webco's requirement that maintenance technicians perform a variety of tasks working all over the plant, sometimes with others and sometimes alone. (Plff. Depo. Tr. p. 80, Deft. Ex. 1).

8. Marrel Blehm, Webco's Director of Plant Engineering and Maintenance, stated that maintenance technicians are required to be multi-craft and work four twelve-hour shifts each week. Mr. Blehm stated the maintenance technician job requires lifting of weights greater than 50 pounds as frequently as several times a day. Occasionally the maintenance technician works in tight places so there are no devices which would aid an individual in lifting in a variety of unique situations. In certain situations, heavy objects must be manually lifted onto lifting devices, scooted or "walked out" of their positions. Maintenance technicians are frequently limited to working alone rather than with a partner due to the confined spaces associated with particular repairs. (Marrel Blehm Depo. Tr. pp. 14, 38, 40, 42-43, 50, 73, 77-78, Deft. Ex. 6; Jim Fulks, Tr. pp. 12, 18-20, Deft. Ex. 7; Robin Robinett Depo. Tr. pp. 98-99, Deft. Ex. 8).

9. Defendant was offered Webco's maintenance technician position contingent upon passing a physical examination. (See Plff. Depo. Tr. p. 118, Deft. Ex. 1; Plff.'s Employment Application, p. 2, Deft. Ex. 9; Bob Trimble Depo. Tr. p. 34, Deft. Ex. 10).

10. Plaintiff underwent a physical examination by Dr. Paul M. Krautter, a family practice specialist. Dr. Krautter reported that Plaintiff was "medically qualified with restrictions" and limited Plaintiff to lifting not more than 50 pounds. (See Harvard Family Physician's Report, Deft. Ex. 16).

11. Dr. Krautter reports that Plaintiff had no medical conditions which prevented him from being employed in general, but said he would not be able to do every job. (See Dr. Krautter Depo. p. 18, Deft. Ex. 11).

12. Because of Plaintiff's low back disk surgery 16 months earlier and the uncertainties of Dr. Krautter's report, Webco's personnel requested that the Plaintiff be assessed by an orthopedic specialist, Dr. Randall Hendricks. (See Robin Robinett Depo., Tr. pp. 43-44, 46-47 and 50, Deft. Ex. 8).

13. Dr. Randall Hendricks examined Plaintiff's physical condition and noted that his height was 5'10" with a weight of 235 pounds. Dr. Hendricks reviewed the Plaintiff's pre-operative lumbar myelogram taken approximately 20 months earlier and about 4 months previous to his low back surgery. Dr. Hendricks compared his x-rays taken on December 1, 1993 with the myelogram of 20 months earlier and concluded that Plaintiff had developed a narrowing of the L4-5 and L5-S1 disk spaces. Dr. Hendricks stated his review of the maintenance technician job description indicated the Defendant would be performing a moderate amount of bending, twisting, and lifting in the range of 25 to 45 pounds and that even greater weights may be required depending on the task. Dr. Hendricks

concluded that the Defendant was at high risk to injure his back in the future. Dr. Hendricks identified the following risk factors: "He is considered obese for his stated height and he has poor musculature abdominally and paraspinally. The patient has residual radiculopathy of the right lower leg with a dropped foot pattern gait. The degenerative changes noted on x-ray are also concerning. I believe that this patient would be best suited for a job lifting less than 35 pounds and that jobs that entail a considerable amount of bending, twisting, and physical activity will increase the likelihood of him having future back problems." Dr. Hendricks then suggested the Plaintiff should engage in a weight reduction program, between 40 and 45 pounds, and engage in an exercise program to improve his musculature. With success risk factors would be lessened and it might be conceivable then the Plaintiff would be a reasonable risk. (See Orthopedic Specialists of Tulsa Report, Deft. Ex. 12).

14. Webco personnel testified that they analyzed the reports of Drs. Krautter and Hendricks and decided not to hire Plaintiff for the position of maintenance technician. (See Robin Robinett Depo. Tr. pp. 65-67, Deft. Ex. 8; Jim Fulks Depo. Tr. p. 76, Deft. Ex. 7, and Bob Trimble Depo. Tr. p. 53, Deft. Ex. 10). Any other positions with Webco for which Plaintiff was qualified had similar weight limitations. (See Robinett Depo. Tr. pp. 69, 79-80, Deft. Ex. 11; Robert Trimble Depo. Tr. 67, Deft. Ex. 12).

15. Plaintiff's expert witness, Cheryl Mallon, certified rehabilitation counselor, is of the opinion that Plaintiff is

qualified to perform work which requires a light or medium exertion level but cannot perform work which requires heavy exertion level such as is required in Defendant's maintenance technician job. (Mallon Depo. Tr. pp. 11, 21-22, 23-25 and 32, Deft. Ex. 4).

16. Plaintiff's expert witness, Cheryl Mallon, C.R.C., is not aware of any circumstances which would prevent Plaintiff from performing the same type of light to medium exertion level work which he has performed in the past. (Mallon Depo. Tr. p. 16, Deft. Ex. 4).

17. Plaintiff's expert witness states that an individual with restrictions on lifting over 50 pounds could reasonably be accommodated by the use of a hoist or request for assistance. (Mallon Depo. pp. 27-28, Deft. Ex. 4). Mallon does acknowledge that the nature of a business, types of machinery and combinations of requirements could make an accommodation not possible. (Mallon Depo. Tr. pp. 28, 30, Deft. Ex. 4).

18. Plaintiff's expert witness admits she has never viewed Webco's facility, or discussed the position of maintenance technician with any Webco personnel and knows nothing about Webco's maintenance technician position other than that contained in the job description. (Mallon Depo. Tr. pp. 30-31, Deft. Ex. 4).

19. Plaintiff's expert states that Plaintiff has about 75% of the entire labor pool in Oklahoma open to him and he is qualified to perform approximately two-thirds of the jobs in Oklahoma that would fit his qualifications. (Mallon Depo. Tr. pp. 33-34, Deft. Ex. 6).

20. Plaintiff has been recalled to Rockwell International where he has been working and performing the same work as when he was first employed with Rockwell and lifting average weights of 20 to 30 pounds. (Plff. Depo. Tr. pp. 33, 46, Deft. Ex. 1).

21. Plaintiff filed a charge with the Equal Employment Opportunity Commission (EEOC) which he later amended to claim that Webco's failure to hire him was a discriminatory act based upon perception of disability in violation of the Americans With Disabilities Act. Therein he stated he was denied employment by Defendant "on or about December 1, 1993." (See Plff.'s letter of August 29, 1994, Deft. Ex. 13; Plff. Ex. H, Deft. Ex. 14).

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

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Widon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

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

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant

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

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

"Summary judgment is appropriate if 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.' . . . Factual disputes about immaterial matters are irrelevant to a summary judgment determination. . . We view the evidence in a light most favorable to the nonmovant; however, it is not enough that the nonmovant's evidence be 'merely colorable' or anything short of 'significantly probative.' . . .

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

#### LEGAL ANALYSIS AND CONCLUSION

It is uncontroverted that the maintenance technician job with Webco, for which Plaintiff applied, required occasional lifting in excess of 50 pounds. (Uncontroverted Fact (UF) 8, 13). Due to

Plaintiff's low back surgery sixteen months earlier, and present physical condition, all three physicians in the case (Dr. Sikka, Dr. Krautter and Dr. Hendricks) agreed Plaintiff should not be employed in a job requiring heavy exertion, i.e., in excess of 50 pounds. (UF 4, 10, 13). The orthopedic specialist, Dr. Randall, concluded the Plaintiff should limit his employment lifting to not in excess of 35 pounds.<sup>1</sup> (UF 13). Further, Dr. Hendricks concluded that if Plaintiff would lose 40-45 pounds and improve his musculature by proper exercise, he would probably be a reasonable risk to not reinjure his back. (UF 13).

It is further uncontroverted that of the many jobs Plaintiff has held throughout his adult life, most required only moderate to light lifting (less than 35 pounds), as does his employment with Rockwell, obtained after being denied employment by Webco. (UF1, 20).

Plaintiff's expert states generally speaking about 75% of the labor pool in the State of Oklahoma is available to the Plaintiff and of such jobs Plaintiff is physically capable of filling two-thirds of them, one-third not being available because of the over 50 pounds lifting limitation. (UF 19).

---

<sup>1</sup>There is no evidence to support Plaintiff's claim that Defendant arranged for Plaintiff to see a second physician (Dr. Hendricks) to assure Plaintiff was denied employment by Webco. Under the circumstances of Plaintiff's prior significant low back surgery, Webco acted reasonably in seeking the opinion of an orthopedic specialist. Dr. Hendricks' comparison of the previous myelogram study with current low back x-ray was the work of a specialist and revealed telling degenerative changes. (UF 13).

Thus, the controverted facts herein present the question, does Plaintiff have a disability under the ADA? If not, the ADA is inapplicable. Under the ADA, a disability is defined as:

"(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.  
42 U.S.C. 12102(2).

The Plaintiff contends he is substantially limited in the major life activity of working or being regarded as having such an impairment.<sup>2</sup> When considering a claim of one being substantially limited in the major life activity of working, the Court should consider the following factors:

(i) The nature and severity of the impairment;

(ii) The duration or expected duration of the impairment; and

(iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment." 29 C.F.R. 1630.2(j)(2).

The Court must also consider whether the Plaintiff is "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes." 29 C.F.R.

---

<sup>2</sup>Plaintiff's expert, Cheryl Mallon, Certified Rehabilitation Counselor, states a lifting restriction of not in excess of 50 pounds is an impairment in a major life activity, i.e., working. (Plff. Ex. O to Plff.'s Brief in Support of Plaintiff's Motion for Summary Judgment). However, when the uncontroverted facts are contrary to an expert opinion, no probative value should be given such opinion. Lee Way Motor Freight v. True, 165 F.2d 38 (10th Cir. 1948), and F.W. Woolworth Co. v. Davis, 41 F.2d 342 (10th Cir. 1930).

1630.2(j)(3)(I); Bolton v. Scrivner, Inc., 36 F.3d 939, 942 (10th Cir. 1994), cert. denied, 115 S.Ct. 1104 (1995). Additionally, the court may consider:

(A) The geographical area to which the individual has reasonable access;

(B) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or

(C) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

29 C.F.R. 1630.2(j)(3)(ii).

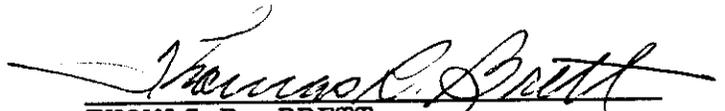
Herein, the Plaintiff has failed to produce evidence showing a significant restriction in his "ability to perform either a class of jobs or a broad range of jobs in various classes." *Id.* Section 1630.2(j)(3)(I). Plaintiff is capable of performing most of the many jobs he has held in his working life and most of the available jobs in Oklahoma's work force. (UF 1, 19). Thus, Plaintiff is not disabled under the ADA. Bolton v. Scrivner, Inc., 36 F.3d 939 (10th Cir. 1994); Welch v. City of Tulsa, 977 F.2d 1415 (10th Cir. 1992); Maulding v. Sullivan, 961 F.2d 694 (8th Cir. 1992); Daley v. Koch, 892 F.2d 212 (2nd Cir. 1989); Forrisi v. Bowen, 794 F.2d 931 (4th Cir. 1986); Elstner v. Southwestern Bell Telephone Co., 659 F.Supp. 1328 (S.D.Tex. 1987); and Cook v. State of R.I. Dept. of Mental Health, Retardation and Hospitals, 783 F.Supp. 1569 (D.R.I. 1992).

17). However, some tight spaces and situations prevent such assistance at Webco. (UF 8, 17). Plaintiff's expert acknowledges that certain areas or situations in a plant might preclude accommodation. (UF 17). Further, the evidence reveals that other jobs for which Plaintiff might have been qualified at Webco also required similar heavy lifting. (UF 4). The uncontroverted evidence herein reflects that accommodation was neither requested nor feasible.

The Court will not address the statute of limitations issue urged by the Defendant because the record is not sufficiently clear to reveal relevant material facts are uncontroverted.

For the reasons stated above, Defendant Webco's motion for summary judgment pursuant to Fed.R.Civ.P. 56 is hereby sustained, thus rendering moot Plaintiff's motion for summary judgment and the pending *in limine* motions of Plaintiff and Defendant. A Judgment in favor of the Defendant and against the Plaintiff in keeping with the conclusions herein shall be filed contemporaneously.

DATED this 22<sup>nd</sup> day of February, 1996.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

MICHAEL G. UPSHAW,

Plaintiff.

v.

WEBCO INDUSTRIES, INC.,

Defendant.

No. 95-C-547-B

ENTERED ON DOCKET  
DATE FEB 23 1996

J U D G M E N T

In keeping with the Order sustaining the motion for summary judgment pursuant to Fed.R.Civ.P. 56 of the Defendant Webco Industries, Inc., entered this date, Judgment is hereby entered in favor of Webco Industries, Inc., and against the Plaintiff, Michael G. Upshaw, and Plaintiff's action is hereby dismissed. Costs are awarded in favor of the Defendant if timely applied for pursuant to Local Rule 54.1 and each party is to pay their own respective attorney fees.

Dated this 22<sup>nd</sup> day of February, 1996.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

52

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

FEB 2 1996

LARRY J. CARTER, )  
)  
Plaintiff, )  
)  
vs. )  
)  
TULSA POLICE DEPARTMENT, )  
OFFICER SPITLER, )  
)  
Defendants. )

NORTHERN DISTRICT OF OKLAHOMA

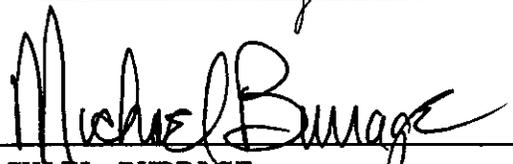
No. 95-CV-1234-BU

ENTERED ON DOCKET  
DATE FEB 2 3 1996

ORDER

On January 4, 1996, the Court denied Plaintiff's motion for leave to proceed in forma pauperis and granted Plaintiff twenty days to submit the \$120.00 fee. On January 30, 1996, the Court granted Plaintiff a fifteen-day extension of time to pay the filing fee. As of the date of this order Plaintiff has failed to either pay the filing fee or seek an extension of time. Accordingly, this civil rights action is hereby DISMISSED WITHOUT PREJUDICE for failure to pay the filing fee. The Motion to Dismiss of the City of Tulsa (docket #9) is hereby DENIED AS MOOT.

SO ORDERED THIS 21<sup>st</sup> day of February, 1996.

  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

10

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
GLORIA A. POTTER aka GLORIA ANN )  
POTTER; DOUGLAS F. WILSON; )  
KRISTI I. WILSON; GOMER G. JONES; )  
SHARRON JONES; MARK G. JONES; )  
LISA A. JONES; MICHAEL J. POTTER; )  
UNKNOWN SOUSE, IF ANY, OF )  
MICHAEL J. POTTER; SHIRLEY MAE )  
POTTER fka SHIRLEY MAE FRALEY )  
aka SHIRLEY MAE POULK aka )  
SHIRLEY MAE KEIZOR; CITY OF )  
TULSA, Oklahoma; STATE OF )  
OKLAHOMA ex rel OKLAHOMA TAX )  
COMMISSION; MORTGAGE )  
CLEARING CORPORATION; TRIAD )  
BANK, N.A.; COUNTY TREASURER, )  
Tulsa County, Oklahoma; BOARD OF )  
COUNTY COMMISSIONERS, Tulsa )  
County, Oklahoma, )  
)  
Defendants. )

FILED

FEB 21 1996

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

Civil Case No. 95-C 568BU

ENTERED ON DOCKET  
DATE FEB 23 1996

**JUDGMENT OF FORECLOSURE**

This matter comes on for consideration this 21<sup>st</sup> day of February  
1996. 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 TULSA, Oklahoma,  
appears by Assistant City Attorney Alan L. Jackere; the Defendant, STATE OF

NOTE: THIS DOCUMENT TO BE MAILED  
IN THE MAIL ROOM AND  
RETURNED TO THE CLERK  
UPON RECEIPT.

OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, appears by Assistant General Counsel Kim D. Ashley; the Defendants, MARK G. JONES, LISA A. JONES, MORTGAGE CLEARING CORPORATION, and TRIAD BANK N.A., each appear not having previously filed their disclaimers; and the Defendants, GLORIA A. POTTER aka GLORIA ANN POTTER, DOUGLAS F. WILSON, KRISTI I. WILSON, GOMER G. JONES, SHARRON JONES, MICHAEL J. POTTER, UNKNOWN SPOUSE IF NAY OF MICHAEL J. POTTER, and SHIRLEY MAE POTTER fka SHIRLEY MAE FRALEY aka SHIRLEY MAE POULK aka SHIRLEY MAE KEIZOR, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, GLORIA A. POTTER aka GLORIA ANN POTTER will hereinafter be referred to as ("GLORIA A. POTTER"). The Defendant, GLORIA A. POTTER, is a single, unmarried person.

The Court being fully advised and having examined the court file finds that the Defendant, MARK G. JONES, acknowledged receipt of Summons and Complaint via certified mail on September 28, 1995; that the Defendant, CITY OF TULSA, Oklahoma, acknowledged receipt of Summons and Complaint via certified mail on June 22, 1995; that the Defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, acknowledged receipt of Summons and Complaint via certified mail on June 22, 1995; that the Defendant, MORTGAGE CLEARING CORPORATION, acknowledged receipt of Summons and Complaint via certified mail on June 22, 1995; and that the Defendant, TRIAD BANK, N.A., acknowledged receipt of Summons and Complaint via certified mail on June 22, 1995.

The Court further finds that the Defendants, GLORIA A. POTTER, DOUGLAS F. WILSON, KRISTI I. WILSON, GOMER G. JONES, SHARRON JONES, MICHAEL J. POTTER, UNKNOWN SPOUSE IF ANY OF MICHAEL J. POTTER, and SHIRLEY MAE POTTER fka SHIRLEY MAE FRALEY aka SHIRLEY MAE POULK aka SHIRLEY MAE KEIZOR, 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 November 8, 1995, and continuing through December 13, 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, GLORIA A. POTTER, DOUGLAS F. WILSON, KRISTI I. WILSON, GOMER G. JONES, SHARRON JONES, MICHAEL J. POTTER, UNKNOWN SPOUSE IF ANY OF MICHAEL J. POTTER, and SHIRLEY MAE POTTER fka SHIRLEY MAE FRALEY aka SHIRLEY MAE POULK aka SHIRLEY MAE KEIZOR, 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, GLORIA A. POTTER, DOUGLAS F. WILSON, KRISTI I. WILSON, GOMER G. JONES, SHARRON JONES, MICHAEL J. POTTER, UNKNOWN SPOUSE IF ANY OF MICHAEL J. POTTER, and SHIRLEY MAE POTTER fka SHIRLEY MAE FRALEY aka SHIRLEY MAE POULK aka SHIRLEY MAE KEIZOR. 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 Answer on July 11, 1995; that the Defendant, CITY OF TULSA, Oklahoma, filed its Answer on June 30, 1995; that the Defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, filed its answer July 10, 1995; that the Defendants, MARK G. JONES and LISA A. JONES, filed their disclaimer on October 11, 1995; that the Defendants, MORTGAGE CLEARING CORPORATION and TRIAD BANK, N.A., filed their disclaimer July 11, 1995; and that the Defendants, GLORIA A. POTTER, DOUGLAS F. WILSON, KRISTI I. WILSON, GOMER G. JONES, SHARRON JONES, MICHAEL J. POTTER, UNKNOWN SPOUSE IF ANY OF MICHAEL J. POTTER, and SHIRLEY MAE POTTER fka SHIRLEY MAE FRALEY aka SHIRLEY MAE POULK aka SHIRLEY MAE KEIZOR, 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 Eighteen (18), Block Two (2), BRIARDALE ADDITION,  
to the City of Tulsa, Tulsa County, State of Oklahoma,  
according to the recorded Plat thereof.

The Court further finds that on February 6, 1986, DOUGLAS F. WILSON and KRISTI L. WILSON executed and delivered to MORTGAGE CLEARING CORPORATION their mortgage note in the amount of \$44,322.00, payable in monthly installments, with interest thereon at the rate of nine and one-half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, DOUGLAS F. WILSON and KRISTI L. WILSON, husband and wife, executed and delivered to MORTGAGE CLEARING CORPORATION a mortgage dated February 6, 1986, covering the above-described property. Said mortgage was recorded on February 10, 1986, in Book 4923, Page 2309, in the records of Tulsa County, Oklahoma and was rerecorded on March 4, 1986 in Book 4927, Page 1450, 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., its successors and assigns. 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 June 4, 1990, TRIAD BANK, N.A., 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 June 8, 1990 in Book 5257, Page 2755, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, GLORIA A. POTTER, currently holds the record title to the property via mesne conveyances and is the current assumpor of the subject indebtedness.

The Court further finds that on May 10, 1990, the Defendant, GLORIA A. POTTER, 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 Defendant, GLORIA A. POTTER, 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, GLORIA A. POTTER, is indebted to the Plaintiff in the principal sum of \$66,916.87, plus interest at the rate of 9.5 percent per annum from May 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, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of cleaning and mowing fees in the amount of \$280.00, plus penalties and interest, for

the year of 1993. 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 \$25.00 which became a lien on the property as of June 23, 1994; a lien in the amount of \$21.00 which became a lien as of June 25, 1993; a lien in the amount of \$32.00 which became a lien on June 26, 1992; and a lien in the amount of \$6.00 which became a lien as of July 2, 1990. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, CITY OF TULSA, Oklahoma, has a lien on the property in the amount of \$275.00 for cleaning and hauling. Said lien is the same lien that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has claimed as an interest, as stated above.

The Court further finds that the Defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, has a lien on the property by virtue of a tax warrant in the amount of \$5,399.35, which became a lien as of September 27, 1985. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, MARK G. JONES, LISA A. JONES, MORTGAGE CLEARING CORPORATION, and TRIAD BANK, N.A., have disclaimed any right, title, or interest in the subject property.

The Court further finds that the Defendants, GLORIA A. POTTER, DOUGLAS F. WILSON, KRISTI I. WILSON, GOMER G. JONES, SHARRON JONES, MICHAEL J. POTTER, UNKNOWN SPOUSE IF ANY OF MICHAEL J. POTTER, and

SHIRLEY MAE POTTER fka SHIRLEY MAE FRALEY aka SHIRLEY MAE POULK aka SHIRLEY MAE KEIZOR, 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, GLORIA A. POTTER, in the principal sum of \$66,916.87, plus interest at the rate of 9.5 percent per annum from May 1, 1995 until judgment, plus interest thereafter at the current legal rate of 4.89 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 \$280.00, plus penalties and interest, for ad mowing and cleaning fees for the year 1993, 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 \$84.00, plus costs and interest, for personal property taxes for the years 1989, 1991-1993, 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 \$5,399.35 for a tax warrant, plus the costs of this action and interest.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, CITY OF TULSA, Oklahoma, has an interest in the subject property in the amount of \$275.00, for cleaning and hauling; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma and CITY OF TULSA, Oklahoma, have agreed that since the liens of each Defendant are identical, that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has the superior lien, and therefore, the Defendant, CITY OF TULSA, Oklahoma, is not entitled to payment.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendants, GLORIA A. POTTER, DOUGLAS F. WILSON, KRISTI I. WILSON, GOMER G. JONES, SHARRON JONES, MARK G. JONES, LISA A. JONES, MICHAEL J. POTTER, UNKNOWN SPOUSE IF ANY OF MICHAEL J. POTTER, and SHIRLEY MAE POTTER fka SHIRLEY MAE FRALEY aka SHIRLEY MAE POULK aka SHIRLEY MAE KEIZOR, MORTGAGE CLEARING CORPORATION, TRIAD BANK, N.A. and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that upon the failure of said Defendant, GLORIA A. POTTER, 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 \$280.00, plus penalties and interest, for cleaning and mowing 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 the Defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, in the amount of \$5,399.35, plus accrued and accruing interest for state taxes currently due and owing.

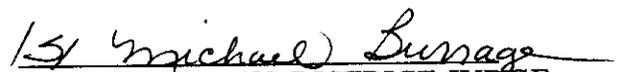
**Fifth:**

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$84.00, personal property taxes which are currently due and owing.

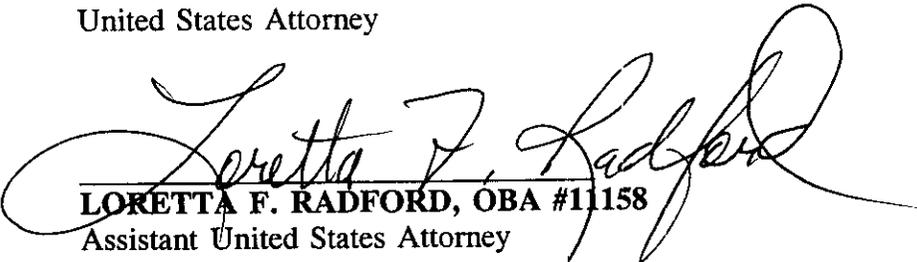
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

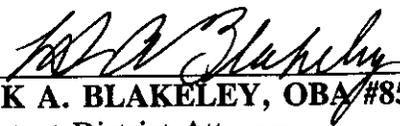
**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

**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.

  
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

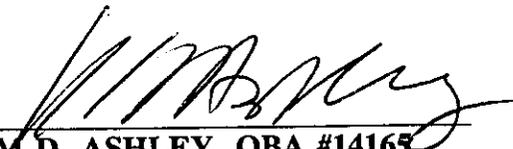
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma



**ALAN L. JACKERE, OBA #4576**

Assistant City Attorney  
200 Civic Center, Room 316  
Tulsa, Oklahoma 74103  
(918) 596-7717

Attorney for Defendant,  
City of Tulsa, Oklahoma



**KIM D. ASHLEY, OBA #14165**

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 568BU

LFR/lg

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

FILED

FEB 2 1996

ROBERT G. TILTON,  
an individual,

Plaintiff,

vs.

GARY L. RICHARDSON,

Defendant.

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)

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

Case No. 94-C-508-BU

ENTERED ON DOCKET

DATE FEB 23 1996

ORDER

This matter comes before this Court upon the Joint Application for Order Striking Agreed Scheduling Order and for Administrative Closing Order filed by the parties on February 15, 1996. For good cause shown, the Court hereby GRANTS the Motion and orders that the current scheduling deadlines, including the scheduled settlement conference, are hereby stricken. The Court hereby DIRECTS the Clerk of the Court to administratively close this matter in his records without prejudice to the rights of the parties to reopen this proceeding to obtain a final determination of the litigation.

If either party desires to reopen this case, said party shall file an application to reopen on or before 9-1-96 for the purpose of obtaining a final determination of this litigation. Upon the reopening of this case, the Court will schedule a case management conference. If such application is not filed, the plaintiff's action shall be deemed to be dismissed with prejudice.

ENTERED this 22<sup>nd</sup> day of Feb, 1996.

Michael Burrage  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE



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

**FILED**

FEB 21 1996

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

RICHARD A. HOFFMAN,

Plaintiff,

v.

GARY WINNICK, et al.,

Defendants.

Case No. 95-CV-1090-H ✓

ENTERED ON DOCKET

DATE 2-22-96

ORDER

Comes now the Court pursuant to Fed. R. Civ. P. 4(m) and hereby dismisses the following parties for failure to obtain service in accordance with law: Bear Stearns & Company, Inc., Richard Sandifer, Ed Carpenter, and Michael E. Tennenbaum.

IT IS SO ORDERED.

This 20<sup>th</sup> day of FEBRUARY, 1996.



Sven Erik Holmes  
United States District Judge

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

**FILED**

FEB 21 1996

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

*ja*

PARRISH WALLACE,

Plaintiff,

v.

L. JOE SMITH, ASSISTANT DISTRICT  
ATTORNEY, IN AND FOR ROGERS  
COUNTY, OKLAHOMA, and GENE  
HAYNES,

Defendants.

Case No. 95-CV-376-H ✓

RECORDED ON BOOKET

DATE 2-22-96

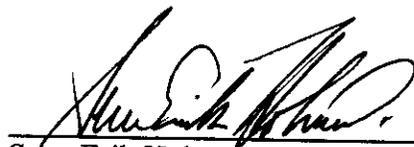
JUDGMENT

This matter came before the Court on a Report and Recommendation by the United States Magistrate Judge. The Court duly considered the issues and rendered a decision in accordance with the order of February 20, 1996.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for the Defendant L. Joe Smith and against the Plaintiff.

IT IS SO ORDERED.

This 20<sup>TH</sup> day of February, 1996.



Sven Erik Holmes  
United States District Judge

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

**FILED**

FEB 21 1996

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

PARRISH WALLACE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 L. JOE SMITH, ASSISTANT )  
 DISTRICT ATTORNEY, IN AND FOR )  
 ROGERS COUNTY, OKLAHOMA, )  
 )  
 Defendant. )

Case No. 95-C-376-H ✓

ENTERED ON DOCKET

2-22-96

ORDER

The court has for consideration the Report and Recommendation of the Magistrate Judge filed January 5, 1996, in which the Magistrate Judge recommended that the Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted Of Defendant L. Joe Smith should be granted, and that the case be dismissed following the granting of the Motion to Dismiss of Defendant Smith because plaintiff has been unable to serve Gene Haynes, the second defendant in this case. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate Judge should be and hereby is affirmed.

IT IS THEREFORE ORDERED that the Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted of Defendant L. Joe Smith is granted.

IT IS FURTHER ORDERED that this case is dismissed for failure to serve Gene Haynes, the second defendant in this case.

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Dated this 20<sup>TH</sup> day of FEBRUARY, 1996.

  
\_\_\_\_\_  
SVEN ERIK HOLMES  
UNITED STATES DISTRICT JUDGE

s:wallace

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

GLYNN SPROLES, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
GULFCOR, INC., d/b/a )  
QUALITY CONTAINER GROUP, )  
a suspended corporation doing )  
business in the state of )  
Oklahoma, et al., )  
 )  
Defendants. )

ENTERED ON DOCKET  
DATE 2-22-96

Case No. 95-C-1224-BU ✓

FEB 22 1996

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

**ORDER**

This matter comes before the Court upon Plaintiff's Motion to Dismiss Tech Pack, Inc., as Party-Defendant, and in the Alternative, Motion to Remand to State Court. Upon due consideration of the parties' submissions, the Court makes its determination.

Plaintiff, Glynn Sproles, originally commenced this action in the District Court of Tulsa County, State of Oklahoma. On December 18, 1995, Defendant, Robert H. Thurmond, III, removed this action to this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. In his Notice of Removal, Defendant asserted that this Court had original jurisdiction over this action under 28 U.S.C. § 1332 based upon a diversity of citizenship among the parties and an amount of controversy in excess of \$50,000.00.

In his motion, Plaintiff requests that the Court dismiss Defendant, Tech Pack, Inc., without prejudice pursuant to Rule 21, Fed.R.Civ.P. Plaintiff states that after it received Defendant,

Robert H. Thurmond, III's Notice of Removal, it received a motion to dismiss filed in the state court action by Defendant, Tech Pack, Inc. Plaintiff states that when he filed this action, he reasonably believed that Defendant, Tech Pack, Inc., was successor-in-interest to Defendant, Gulfcor, Inc. Plaintiff asserts that he has determined from evidence attached to Defendant, Tech Pack, Inc.'s motion and an independent source that Defendant, Tech Pack, Inc., did not absorb any of Defendant, Gulfcor, Inc.'s liabilities. It simply bought the assets of Defendant, Gulfcor, Inc. Plaintiff therefore contends that Defendant, Tech Pack, Inc., has been misjoined in this action and should be dismissed without prejudice.

Plaintiff additionally asserts that if Defendant, Robert H. Thurmond, is not dismissed, then this action must be remanded to state court. Plaintiff states that the Amended Petition clearly alleges that he is a citizen of Oklahoma and that Defendant, Tech Pack, Inc., is an Oklahoma corporation. Thus, contrary to the allegations of Defendant, Robert H. Thurmond, III, in the Notice of Removal, diversity of citizenship does not exist between the parties. As diversity of citizenship is lacking, Plaintiff states that the Court lacks subject matter jurisdiction over this action. Therefore, Plaintiff contends that this action must be remanded unless the Court dismisses Defendant, Tech Pack, Inc.

An action is not removable from a state to a federal court, unless it might have been brought originally in a federal court. 28 U.S.C. § 1441(a). An action may be originally brought in federal court when diversity of citizenship exists between the

parties and the amount of controversy exceeds \$50,000.00. 28 U.S.C. § 1332. For removal purposes, diversity of citizenship generally must exist both at the time of commencement of the action and at the time of removal. Kellam v. Keith, 144 U.S. 568, 12 S.Ct. 922, 36 L.Ed. 544 (1892) (emphasis added); Farm Bureau Mutual Insurance Company, Inc. v. Eighmy, 849 F. Supp. 40, 42 (D. Kan. 1994). If a party's presence destroys diversity jurisdiction, that party must be dismissed in order to permit the removal of an action. 14A, Charles A. Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure, § 3723, p. 319 (1985).

In the instant case, diversity of citizenship did not exist between Plaintiff and Defendant, Tech Pack, Inc., at the time the Notice of Removal was filed by Defendant, Robert H. Thurmond, III. Although motions to dismiss Defendant, Tech Pack, Inc., have been filed in this Court as well as state court, Defendant, Tech Pack, Inc., has not been formally dismissed. Therefore, this action was improvidently removed to this Court.

The Court notes that in their responses to Plaintiff's motion, Defendants, Robert H. Thurmond, III, and Theodore F. Pound, III, have asserted that Plaintiff only alleged a claim against Defendant, Tech Pack, Inc., in order to prevent removal. If a plaintiff fails to state a cause of action against a non-diverse defendant who defeats diversity, and the failure is obvious according to the settled rules of the state, the joinder of the defendant is fraudulent. Dodd v. Fawcett Publications, Inc., 329 F.d 82, 85 (10th Cir. 1964); Roe v. General Am. Life Ins. Co., 712

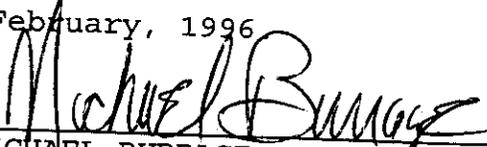
F.2d 450, 452 n \* (10th Cir. 1983). Fraudulent joinder of a non-diverse defendant will not defeat removal. Id. In the instant case, however, Defendant, Robert H. Thurmond, III, did not allege in the Notice of Removal that Plaintiff was fraudulently joined in this action. As a claim of fraudulent joinder is not presented on the face of the Notice of Removal, the Court finds that Defendant, Robert H. Thurmond, III, cannot rely on such a claim to support his removal of this action to federal court. Alvey v. Sears, Roebuck & Company, 162 F. Supp. 786, 787 (W.D.Mo. 1958) (fraudulent joinder may not be considered unless it is alleged in petition for removal and proved).

Section 1447(c) of Title 28 of the United States Code provides in part: "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. 1447(c). The Court finds that subject matter jurisdiction does not exist as complete diversity of citizenship does not exist between Plaintiff and Defendant, Tech Pack, Inc. Therefore, in accordance with section 1447(c), this action must be remanded to state court.

Accordingly, the Court **GRANTS** Plaintiff's Motion to Remand (Docket Entry #4-2). In light of the Court remanding this case to state court, the Court **DECLARES MOOT** Plaintiff's Motion to Dismiss Tech Pack, Inc., as Party-Defendant (Docket Entry #4-1), Defendant Theodore F. Pound's Motion to Dismiss Pursuant to Rule 12(b)(2); and, Subject Thereto, Original Answer to Plaintiff's Original Complaint (Docket Entry #2) and Defendant Robert H. Thurmond's

Motion to Dismiss Pursuant to Rule(b)(2); and, Subject Thereto, Original Answer to Plaintiff's Original Complaint (Docket Entry #3). The Clerk of this Court is **DIRECTED** to mail a certified copy of this Order to the Clerk of the District Court of Tulsa County, State of Oklahoma.

ENTERED this 22 day of February, 1996

  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

FEB 21 1996

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOHN J. GRAMMAR; SHIRLEY A. )  
 GRAMMAR; UNKNOWN SPOUSE OF )  
 John J. Grammar, if any; UNKNOWN )  
 SPOUSE OF Shirley A. Grammar, if any; )  
 CITY OF TULSA, Oklahoma; STATE OF )  
 OKLAHOMA, ex rel. OKLAHOMA TAX )  
 COMMISSION; COUNTY TREASURER, )  
 Tulsa County, Oklahoma; BOARD OF )  
 COUNTY COMMISSIONERS, Tulsa )  
 County, Oklahoma, )  
 )  
 Defendants. )

ENTERED ON DOCKET  
DATE 2-22-96

Civil Case No. 95-C 290H

**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

NOW on this 21st day of February, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on December 5, 1995, pursuant to an Order of Sale dated September 28, 1995, of the following described property located in Tulsa County, Oklahoma:

**Lot Thirteen (13), in Block Five (5), of SUN VALLEY SECOND ADDITION, A Subdivision to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.**

**A/K/A 7107 E. Marshall Place, Tulsa, Okla.**

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, City of Tulsa, Oklahoma, State

of Oklahoma ex rel. Oklahoma Tax Commission, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, by mail, and to the Defendants, John J. Grammar, Shirley A. Grammar, Unknown Spouse of John J. Grammar, if any and Unknown Spouse of Shirley A. Grammar, if any, by publication, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

The Magistrate Judge has examined the proceedings of the United States Marshal under the Order of Sale. Upon statement of counsel and examination of the court file, the Magistrate Judge finds that due and legal notice of the sale was given by publication once a week for at least four weeks prior to the date of sale in the Tulsa Daily Commerce & Legal News, a newspaper published and of general circulation in Tulsa County, Oklahoma, and that on the day fixed in the notice the property was sold to the United States of America on behalf of the Secretary of Housing and Urban Development, it being the highest bidder. The Magistrate Judge further finds that the sale was in all respects in conformity with the law and judgment of this Court.

It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the United States of America on behalf of the Secretary of Housing and Urban Development, a good and sufficient deed for the property.

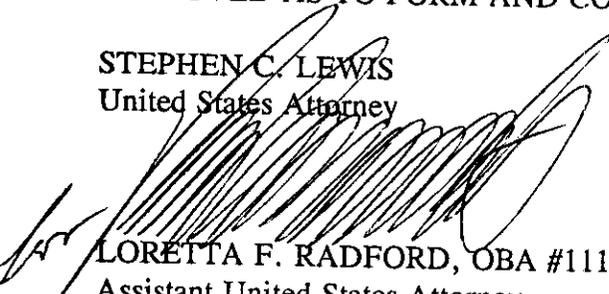
It is the further recommendation of the Magistrate Judge that subsequent to the execution and delivery of the Deed to the purchaser by the United State Marshal, the purchaser be granted possession of the property against any or all persons now in possession.

S/John L. Wagner  
U.S. Magistrate

UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

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

LFR:flv

Report and Recommendation of United States Magistrate Judge  
Civil Action No. 95-C 290H

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

FEB 24 1996

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 KEITH EDWIN ROBINSON aka Keith )  
 Robinson; UNKNOWN SPOUSE OF Keith )  
 Edwin Robinson aka Keith Robinson, if )  
 any; COUNTY TREASURER, Tulsa )  
 County, Oklahoma; BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )  
 )

ENTERED ON DOCKET  
DATE FEB 24 1996

Civil Case No. 95-C-0067-B

**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

NOW on this 21st day of February, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on December 5, 1995, pursuant to an Order of Sale dated September 14, 1995, of the following described property located in Tulsa County, Oklahoma:

Lot Twelve (12), Block Six (6), 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.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, Keith Edwin Robinson, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, by mail, and the Defendant, Unknown Spouse of Keith Edwin Robinson, if any, by Publication, and they do

not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

The Magistrate Judge has examined the proceedings of the United States Marshal under the Order of Sale. Upon statement of counsel and examination of the court file, the Magistrate Judge finds that due and legal notice of the sale was given by publication once a week for at least four weeks prior to the date of sale in the Tulsa Daily Commerce & Legal News, a newspaper published and of general circulation in Tulsa County, Oklahoma, and that on the day fixed in the notice the property was sold to the United States of America on behalf of the Secretary of Housing and Urban Development, it being the highest bidder. The Magistrate Judge further finds that the sale was in all respects in conformity with the law and judgment of this Court.

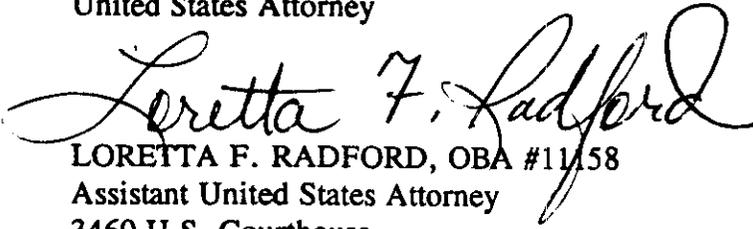
It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the United States of America on behalf of the Secretary of Housing and Urban Development, a good and sufficient deed for the property.

It is the further recommendation of the Magistrate Judge that subsequent to the execution and delivery of the Deed to the purchaser by the United State Marshal, the purchaser be granted possession of the property against any or all persons now in possession.

S/John L. Wagner  
U. S. Magistrate  
UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS  
United States Attorney

A handwritten signature in black ink that reads "Loretta F. Radford". The signature is written in a cursive style with a large initial "L" and a long, sweeping underline.

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

LFR:flv

Report and Recommendation of United States Magistrate Judge  
Civil Action No. 95-C 0067B

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

FEB 21 1996

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BILLY JOE EARP aka Billy J. Earp; )  
 UNKNOWN SPOUSE OF Billy Joe Earp )  
 aka Billy J. Earp, if any; DOROTHY )  
 JOYCE EARP aka Dorothy J. Earp; )  
 UNKNOWN SPOUSE OF Dorothy Joyce )  
 Earp aka Dorothy J. Earp, if any; )  
 SERVICE COLLECTION )  
 ASSOCIATION, INC.; 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 239B

ENTERED ON DOCKET

DATE FEB 22 1996

**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

NOW on this 21st day of February, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on December 4, 1995, pursuant to an Order of Sale dated September 27, 1995, of the following described property located in Tulsa County, Oklahoma:

**LOT TWENTY-THREE (23), BLOCK TWO (2),  
 SOUTH PARK PLAZA, AN ADDITION TO THE  
 CITY OF BROKEN ARROW, TULSA COUNTY,  
 STATE OF OKLAHOMA, ACCORDING TO THE  
 RECORDED PLAT THEREOF.  
 AKA/ 400 WEST ALBUQUERQUE, BROKEN  
 ARROW, OKLAHOMA 74012**

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, Dorothy Joyce Earp, Service Collection Association, Inc, State of Oklahoma ex rel. Oklahoma Tax Commission, City of Broken Arrow, Oklahoma, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, by mail, and to the Defendants, Billy Joe Earp and Unknown Spouse of Billy Joe Earp who is Zina Earp, by Publication, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

The Magistrate Judge has examined the proceedings of the United States Marshal under the Order of Sale. Upon statement of counsel and examination of the court file, the Magistrate Judge finds that due and legal notice of the sale was given by publication once a week for at least four weeks prior to the date of sale in the Tulsa Daily Commerce & Legal News a newspaper published and of general circulation in Tulsa County, Oklahoma, and that on the day fixed in the notice the property was sold to the United States of America on behalf of the Secretary of Housing and Urban Development, it being the highest bidder. The Magistrate Judge further finds that the sale was in all respects in conformity with the law and judgment of this Court.

It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the United States of America on behalf of the Secretary of Housing and Urban Development, a good and sufficient deed for the property.

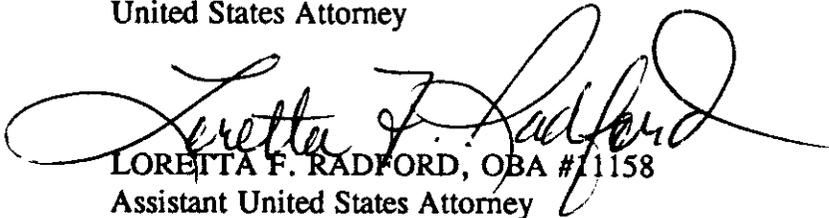
It is the further recommendation of the Magistrate Judge that subsequent to the execution and delivery of the Deed to the purchaser by the United State Marshal, the purchaser be granted possession of the property against any or all persons now in possession.

S/John L. Wagner  
U.S. Magistrate

UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

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

LFR:flv

Report and Recommendation of United States Magistrate Judge  
Civil Action No. \*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

FEB 21 1996

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TERRY E. WARD; UNKNOWN SPOUSE )  
 OF TERRY E. WARD, IF ANY; LORI )  
 R. WARD aka LORI PERKINS; )  
 DAVID WAYNE PERKINS; STATE OF )  
 OKLAHOMA ex rel OKLAHOMA TAX )  
 COMMISSION; SNOWCREST )  
 CONDOMINIUM ASSOCIATION, INC.; )  
 COUNTY TREASURER, Tulsa )  
 County, Oklahoma; BOARD OF )  
 COUNTY COMMISSIONERS, Tulsa )  
 County, Oklahoma, )  
 )  
 Defendants. )

Civil Case No. 94-C 891B

ENTERED ON BOOKET  
DATE \_\_\_\_\_ ✓

**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

NOW on this 21st day of February, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on October 10, 1995, pursuant to an Order of Sale dated August 2, 1995, of the following described property located in Tulsa County, Oklahoma:

LOT TWENTY-FIVE (25), BLOCK EIGHT (8),  
ROSEWOOD ADDITION TO THE CITY OF TULSA,  
COUNTY OF TULSA, STATE OF OKLAHOMA,  
ACCORDING TO THE RECORDED PLAT THEREOF.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, TERRY E. WARD, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, SNOWCREST CONDOMINIUM ASSOCIATION, INC., COUNTY TREASURER, Tulsa County, Oklahoma and BOARD OF COUNTY

COMMISSIONERS, Tulsa County, Oklahoma, by mail, and to the Defendants, UNKNOWN SPOUSE OF TERRY E. WARD, IF ANY, LORI R. WARD aka LORI PERKINS, and DAVID WAYNE PERKINS, by publication, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

The Magistrate Judge has examined the proceedings of the United States Marshal under the Order of Sale. Upon statement of counsel and examination of the court file, the Magistrate Judge finds that due and legal notice of the sale was given by publication once a week for at least four weeks prior to the date of sale in the Tulsa Daily Commerce and Legal News, a newspaper published and of general circulation in Tulsa County, Oklahoma, and that on the day fixed in the notice the property was sold to the Secretary of Housing and Urban Development, it being the highest bidder. The Magistrate Judge further finds that the sale was in all respects in conformity with the law and judgment of this Court.

It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the Secretary of Housing and Urban Development, a good and sufficient deed for the property.

It is the further recommendation of the Magistrate Judge that subsequent to the execution and delivery of the Deed to the purchaser by the United State Marshal, the purchaser be

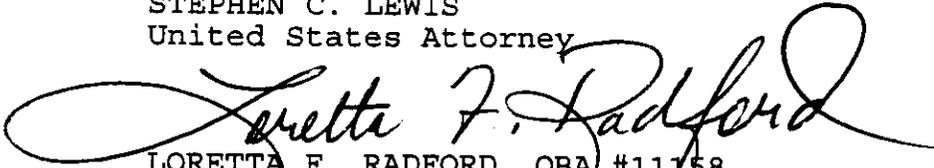
granted possession of the property against any or all persons now in possession.

S/John L. Wagner  
U.S. Magistrate

UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS  
United States Attorney



LORETTA F. RADFORD, OBA #11158  
Assistant United States Attorney  
333 W. 4th St., Ste. 3460  
Tulsa, Oklahoma 74103  
(918) 581-7463

LFR/lg

Report and Recommendation of United States Magistrate Judge  
Civil Action No. 94-C 891B

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

FEB 24 1996

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

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
MARY M. DAVIDSON; UNKNOWN )  
SPOUSE OF Mary M. Davidson, if any; )  
COUNTY TREASURER, Tulsa County, )  
Oklahoma; BOARD OF COUNTY )  
COMMISSIONERS, Tulsa County, )  
Oklahoma, )  
)  
Defendants. )

ENTERED ON DOCKET  
DATE FEB 22 1996

Civil Case No. 95-C 0039B

**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

NOW on this 21st day of February, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on December 5, 1995, pursuant to an Order of Sale dated September 20, 1995, of the following described property located in Tulsa County, Oklahoma:

**Lot Four (4), and the North Ten (10) feet of Lot Five (5), Block Nine (9), FEDERAL HEIGHTS SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.**

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, Mary M. Davidson, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, by mail, to the Defendant, Unknown Spouse of Mary M. Davidson, if any, by Publication, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

The Magistrate Judge has examined the proceedings of the United States Marshal under the Order of Sale. Upon statement of counsel and examination of the court file, the Magistrate Judge finds that due and legal notice of the sale was given by publication once a week for at least four weeks prior to the date of sale in the Tulsa Daily Commerce & Legal News, a newspaper published and of general circulation in Tulsa County, Oklahoma, and that on the day fixed in the notice the property was sold to the United States of America on behalf of the Secretary of Housing and Urban Development, it being the highest bidder. The Magistrate Judge further finds that the sale was in all respects in conformity with the law and judgment of this Court.

It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the United States of America on behalf of the Secretary of Housing and Urban Development, a good and sufficient deed for the property.

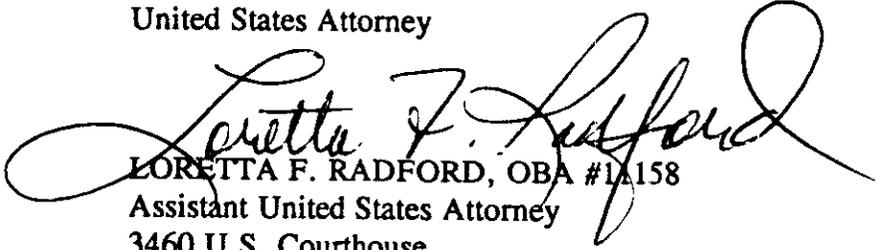
It is the further recommendation of the Magistrate Judge that subsequent to the execution and delivery of the Deed to the purchaser by the United State Marshal, the purchaser be granted possession of the property against any or all persons now in possession.

S/John L. Wagner  
U.S. Magistrate

UNITED STATES MAGISTRATE 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 large loops and flourishes.

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

LFR:flv

Report and Recommendation of United States Magistrate Judge  
Civil Action No. 95-C-0039-B

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RANDY K. RODGERS; LAURA )  
 RODGERS; SHIRLEY G. URIBE; )  
 UNKNOWN SPOUSE OF Shirley G. )  
 Uribe, if any; COUNTY TREASURER, )  
 Tulsa County, Oklahoma; BOARD OF )  
 COUNTY COMMISSIONERS, Tulsa )  
 County, Oklahoma, )  
 )  
 Defendants. )

FEB 21 1996

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

ENTERED ON DOCKET

DATE FEB 22 1996

Civil Case No. 95-C 0100B

**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

NOW on this 21st day of February, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on December 4, 1995, pursuant to an Order of Sale dated October 3, 1995, of the following described property located in Tulsa County, Oklahoma:

**Lot Eight (8), Block Three (3), in RIDGEVIEW ADDITION, a subdivision to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded Plat No. 1587.**

may also be described as:

**Lot Eight (8), Block Three (3), in RIDGE VIEW ADDITION, a Subdivision to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat No. 1587,**

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, Randy K. Rodders, Laura Rodders, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, by mail, and to the Defendants, Shirley G. Urine and Unknown Spouse of Shirley G. Urine, if any, by Publication, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

The Magistrate Judge has examined the proceedings of the United States Marshal under the Order of Sale. Upon statement of counsel and examination of the court file, the Magistrate Judge finds that due and legal notice of the sale was given by publication once a week for at least four weeks prior to the date of sale in the Tulsa Daily Commerce & Legal News, a newspaper published and of general circulation in Tulsa County, Oklahoma, and that on the day fixed in the notice the property was sold to the United States of America on behalf of the Secretary of Housing and Urban Development, it being the highest bidder. The Magistrate Judge further finds that the sale was in all respects in conformity with the law and judgment of this Court.

It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the United States of America on behalf of the Secretary of Housing and Urban Development, a good and sufficient deed for the property.

It is the further recommendation of the Magistrate Judge that subsequent to the execution and delivery of the Deed to the purchaser by the United State Marshal, the purchaser be granted possession of the property against any or all persons now in possession.

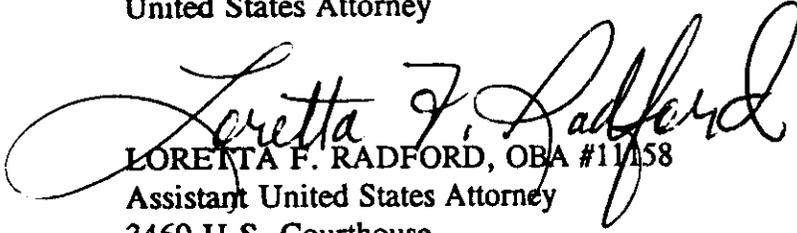
S/John L. Wagner

U.S. Magistrate

**UNITED STATES MAGISTRATE JUDGE**

**APPROVED AS TO FORM AND CONTENT:**

**STEPHEN C. LEWIS**  
United States Attorney



**LORETTA F. RADFORD, OBA #111158**

Assistant United States Attorney

3460 U.S. Courthouse

Tulsa, Oklahoma 74103

(918) 581-7463

LFR:flv

**Report and Recommendation of United States Magistrate Judge**  
**Civil Action No. \***

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
KIM M. TIM aka KIM M. MCKEE aka )  
KIM MCKEE; MICHAEL TIM; )  
GEORGE L. MCKEE aka GEORGE )  
MCKEE; UNKNOWN SPOUSE IF ANY )  
OF GEORGE L. MCKEE aka GEORGE )  
MCKEE; COUNTY TREASURER, Tulsa )  
County, Oklahoma; BOARD OF )  
COUNTY COMMISSIONERS, Tulsa )  
County, Oklahoma, )  
Defendants. )

**FILED**

FEB 21 1996

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

Civil Case No. 95-C 101B

ENTERED ON DOCKET  
DATE FEB 22 1996

**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

NOW on this 21st day of February, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on December 5, 1995, pursuant to an Order of Sale dated October 3, 1995, of the following described property located in Tulsa County, Oklahoma:

LOT NINE (9), BLOCK THIRTEEN (13), WHISPERING MEADOWS, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, County Treasurer, Tulsa County, Oklahoma and Board of County Commissioners, Tulsa County, Oklahoma, by mail, and to the Defendants, Kim M. Tim aka Kim M. Mckee aka Kim Mckee, Michael Tim, George L.

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

FEB 21 1996

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

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

ANTONIO YARBROUGH; VIRGIE MAE )

YARBROUGH; STATE OF OKLAHOMA )

ex rel OKLAHOMA TAX )

COMMISSION; COUNTY TREASURER, )

Tulsa County, Oklahoma; BOARD OF )

COUNTY COMMISSIONERS, Tulsa )

County, Oklahoma, )

Defendants.

Civil Case No. 95-C 312B

ENTERED ON DOCKET

DATE FEB 22 1996

**REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

NOW on this 21st day of February, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on November 21, 1996, pursuant to an Order of Sale dated August 30, 1995, of the following described property located in Tulsa County, Oklahoma:

Lots One (1) and Two(2), WILLIAM PENN ADDITION, an Addition in Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, ANTONIO YARBROUGH, VIRGIE MAE YARBROUGH, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, COUNTY TREASURER, Tulsa County, Oklahoma and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, by mail, and they do not appear.

Upon hearing, the Magistrate Judge makes the following report and recommendation.

The Magistrate Judge has examined the proceedings of the United States Marshal under the Order of Sale. Upon statement of counsel and examination of the court file, the Magistrate Judge finds that due and legal notice of the sale was given by publication once a week for at least four weeks prior to the date of sale in the Tulsa Daily Commerce and Legal News, a newspaper published and of general circulation in Tulsa County, Oklahoma, and that on the day fixed in the notice the property was sold to the Secretary of Housing and Urban Development, it being the highest bidder. The Magistrate Judge further finds that the sale was in all respects in conformity with the law and judgment of this Court.

It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the Secretary of Housing and Urban Development, a good and sufficient deed for the property.

It is the further recommendation of the Magistrate Judge that subsequent to the execution and delivery of the Deed to the purchaser by the United State Marshal, the purchaser be granted possession of the property against any or all persons now in possession.

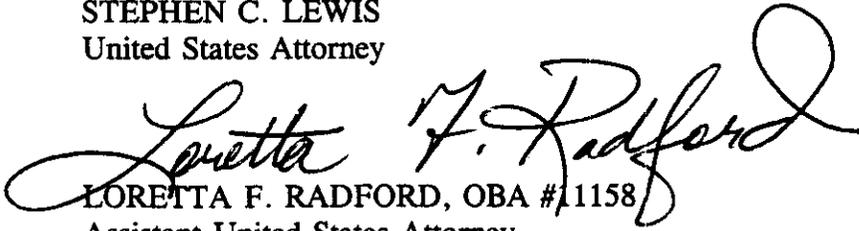
S/John L. Wagner  
U.S. Magistrate  

---

UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS  
United States Attorney

A handwritten signature in cursive script that reads "Loretta F. Radford". The signature is written in black ink and is positioned above the printed name and contact information.

LORETTA F. RADFORD, OBA #11158  
Assistant United States Attorney  
333 W. 4th St., Ste. 3460  
Tulsa, Oklahoma 74103  
(918) 581-7463

LFR/lg

Report and Recommendation of United States Magistrate Judge  
Civil Action No. 95-C 312b

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET  
DATE FEB 22 1996

CONNIE S. EDWARDS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SHIRLEY CHATER, Commissioner of the )  
 Social Security Administration, )  
 )  
 Defendant. )

**FILED**

FEB 21 1996

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

CASE NO. 95-C-951-K

ORDER

Upon the motion of the defendant, Commissioner of Health and Human Services, by Stephen C. Lewis, United States Attorney of the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that this case be remanded to the Commissioner for further administrative action pursuant to sentence 6 of section 205(g) and 1631(c)(3) of the Social Security Act, 42 U.S.C. 405(g) and 1383(c)(3).

DATED this 21 day of February, 1996.

S/Frank H. McCarthy  
U.S. Magistrate

UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

STEPHEN C. LEWIS  
United States Attorney

Wyn Dee Baker  
WYN DEE BAKER, OBA #465  
Assistant United States Attorney  
333 W. Fourth St., Suite 3460  
Tulsa, OK 74103-3809

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

FEB 21 1996

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

UNITED STATES OF AMERICA, )  
Plaintiff, )

vs. )  
JANICE WATKINS aka JANICE )  
DEE'ANN WATKINS; OSTEOPATHIC )  
HOSPITAL FOUNDERS ASSOCIATION )  
dba Tulsa Regional Medical Center )  
formerly Oklahoma Osteopathic Hospital; )  
CITY OF SAND SPRINGS, Oklahoma; )  
FORD MOTOR CREDIT COMPANY; )  
COUNTY TREASURER, Tulsa County, )  
Oklahoma; BOARD OF COUNTY )  
COMMISSIONERS, Tulsa County, )  
Oklahoma, )

Civil Case No. 95-CV 887H

RECORDED ON BOOKET  
DATE 2-21-96

Defendants.

**CLERK'S ENTRY OF DEFAULT**

It appearing from the files and records of this Court as of Feb 21, 1996 and the declaration of Loretta F. Radford, Assistant United States Attorney, that the Defendants, **JANICE WATKINS aka JANICE DEE'ANN WATKINS and OSTEOPATHIC HOSPITAL FOUNDERS ASSOCIATION DBA TULSA REGIONAL MEDICAL CENTER FORMERLY OKLAHOMA OSTEOPATHIC HOSPITAL**, against whom judgment for affirmative relief is sought in this action have failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure; now, therefore,

I, RICHARD M. LAWRENCE, Clerk of said Court, pursuant to the requirements of Rule 55(a) of said rules, do hereby enter the default of said defendants.

Dated at Tulsa, Oklahoma, this 21 day of Feb, 1996.

**RICHARD M. LAWRENCE**, Clerk  
United States District Court for  
the Northern District of Oklahoma  
By J. Adamski  
Deputy

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

**FILED**

FEB 20 1996

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

PRODUCERS OIL COMPANY and  
CHARLES GOODALL REVOCABLE TRUST, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 HARTFORD FIRE INSURANCE COMPANY, )  
 )  
 Defendant. )

Case No. 93-CV-431-H ✓

ENTERED ON DOCKET

DATE 2-21-96

ORDER

This matter comes before the Court on Plaintiff's Motion for Attorneys' Fees, Costs and Prejudgment Interest (Docket #240).

Plaintiffs brought this action pursuant to 36 Okla. Stat. Ann. § 3629(B) (1991). On June 30, 1995, the Court, in accordance with a jury verdict, entered judgment in favor of Plaintiffs in the amount of \$100,000. The parties have reached an agreement as to costs and prejudgment interest, thus the only issue remaining for the Court is the question of attorneys fees.

Section 3629(B) provides that "[u]pon a judgment rendered to either party, costs and attorneys' fees shall be allowable to the prevailing party." Noting the absence of Oklahoma precedent on the issue, the Tenth Circuit has construed this provision as rendering the award of attorneys' fees discretionary. See Adair State Bank v. American Casualty of Reading, Penn., 949 F.2d 1067 (10th Cir. 1991). Subsequently, however, the Oklahoma Court of Appeals has addressed the issue and concluded that section 3629(B) "requires an award of attorney fees to a prevailing party as defined in that statute." Shadoan v. Liberty Mutual Fire Ins. Co., 894 P.2d 1140, 1143-1144 (Okl. Ct. App. 1995). The Court therefore holds that the award of attorneys' fees is mandatory in this

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case<sup>1</sup> and hereby awards Plaintiffs \$101,101.00 in attorneys' fees, plus an additional \$5,500 for attorneys' services rendered in seeking award of the \$101,101.00 fee. See Hamilton v. Telex, 625 P.2d 106 (Okl. 1981). Plaintiff's Motion for Attorneys' Fees is hereby granted (Docket #240).

IT IS SO ORDERED.

This 18<sup>TH</sup> day of February, 1996.

  
\_\_\_\_\_  
Sven Erik Holmes  
United States District Judge

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<sup>1</sup>The Court notes that even if attorneys' fees were discretionary, the facts of this case would render them appropriate.

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

**FILED**

FEB 20 1996

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

Case No. 93-C-0036-H ✓

RHOADES OIL COMPANY,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

RECORDED ON DOCKET

2-21-96

**JUDGMENT**

The Court duly considered the issues and rendered a decision in accordance with the order filed on February 15, 1996.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered for the Plaintiff and against the Defendant for taxes and interest paid in the amount of \$503,689.00, plus interest as allowed by law.

IT IS SO ORDERED.

This 19<sup>TH</sup> day of February, 1996.



Sven Erik Holmes  
United States District Judge

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

SHELLEY SEALS,

Plaintiff,

v.

OIL DATA, INC. and JIM  
HEDINGER, an individual  
and in his capacity as office  
manager,

Defendants.

Case No. 95-C-0511-H

**FILED**  
FEB 20 1996  
Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

ENTERED ON DOCKET  
DATE 2-21-96

**ORDER**

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiff's Amended Complaint. In her amended complaint, Plaintiff alleges that Defendants "created and maintained a hostile work environment in which Seals was sexually harassed and intimidated" in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 1981 et seq.; that Defendants intentionally inflicted emotional distress upon her; that Defendants committed assault and battery; and that Defendants were negligent. Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Hedinger moves to dismiss Plaintiff's Title VII claim, and both Defendants move to dismiss Plaintiff's claims for intentional infliction of emotional distress and assault and battery.

To prevail on a motion to dismiss, a Defendants must establish that there is no set of circumstances under which the Plaintiff would be entitled to relief. Jenkins v. McKeithen, 395 U.S. 411 (1969); Ash Creek Mining Co. v. Lujan, 969 F.2d 868, 870 (10th Cir. 1992). For purposes of this analysis, the Court accepts as true all material allegations in the amended complaint. Ash Creek Mining, 969 F.2d at 870.

Defendant Hedinger argues that he may not be held liable for a hostile work environment or for sexual harassment under Title VII. The Court agrees. First, it is clear that he may not be

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held liable in his individual capacity. "Under Title VII, suits against individuals must proceed in their official capacity; individual capacity suits are inappropriate." Sauers v. Salt Lake County, 1 F.3d 1122, 1125 (10th Cir. 1993). The Tenth Circuit has noted that:

[t]he relief granted under Title VII is against the employer, not individual employees whose actions would constitute a violation of the Act. We think the proper method for a plaintiff to recover under Title VII is by suing the employer, either by naming the supervisory employees as agents of the employer or by naming the employer directly.

Id. (quoting Busby v. City of Orlando, 931 F.2d 764, 772 (11th Cir. 1991)).

Second, even assuming the allegations in Plaintiff's amended complaint are true, Plaintiff has not asserted that Hedinger "serves in a supervisory position and exercises significant control over the plaintiff's hiring, firing, or conditions of employment." Sauers, 1 F.3d at 1125. In such a case, "the individual operates as the alter ego of the employer, and the employer is liable for the unlawful employment practices of the individual without regard to whether the employer knew of the individual's conduct." Id. Thus, a claim against Hedinger under Title VII, in either his individual or his official capacity as office manager, is inappropriate.

Next, Defendants move to dismiss Plaintiff's claims for intentional infliction of emotional distress and for assault and battery. Hedinger asserts that nowhere in the amended complaint does it allege that he sexually harassed or assaulted Plaintiff. Therefore, while corporate officers may be held liable for torts that they personally commit, Oklahoma Federated Gold & Numismatics, Inc. v. Blodgett, 24 F.3d 136, 141 (10th Cir. 1994), Plaintiff has not sufficiently alleged that Hedinger committed any intentional tort. His supervision of the office where Plaintiff worked, without more, cannot rise to the level of intentional infliction of emotional distress. See, e.g., Pytlik v. Professional Resources, Ltd., 887 F.2d 1371, 1379 (10th Cir. 1989); Marshall v. Nelson Elec., 766 F. Supp. 1018, 1026 (N.D. Okla. 1991), aff'd, 999 F.2d 547 (10th Cir. 1993), cert. denied, 114 S. Ct. 921 (1994).

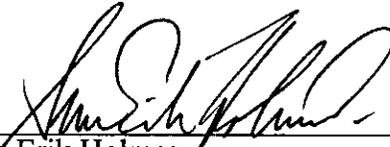
Defendant Oil Data also moves to dismiss Plaintiff's claim for intentional infliction of emotional distress, arguing that Plaintiff's claim must necessarily rest upon a theory of vicarious liability and that the alleged wrongful conduct of Plaintiff's coworkers, namely, sexual harassment, was not in furtherance of Oil Data's business. However, the Court agrees with Plaintiff that this claim against Oil Data is based upon Oil Data's own conduct, its alleged failure to take action in the face of the sexual harassment of Seals' coworkers. See, e.g., Baker v. Weyerhaeuser Co., 903 F.2d 1342, 1347 (10th Cir. 1990). Thus, the Court denies Oil Data's motion to dismiss Seals' claim for intentional infliction of emotional distress.

Finally, Defendants move to dismiss Seals' claim for assault and battery. In her response to Defendant's motion, Seals seeks leave of Court to dismiss this claim against both Defendants. The Court hereby grants this request and Seals' claim for assault and battery is dismissed.

In conclusion, Plaintiff's Title VII claim, claim for intentional infliction of emotional distress and claim for assault and battery against Hedinger are dismissed and the assault and battery claim against Oil Data is dismissed. Defendants' Motion to Dismiss (Docket # 12) is hereby granted, in part, and denied, in part, in accordance with this order.

IT IS SO ORDERED.

This 16<sup>th</sup> day of February, 1996.

  
\_\_\_\_\_  
Sven Erik Holmes  
United States District Judge

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

WENDELL TENISON and BETTY  
TENISON, individually and as  
husband and wife,

Plaintiffs,

vs.

CITY OF BIXBY, an Oklahoma  
corporation; MICKY WEBB, as  
an individual and in his  
capacity as CITY MANAGER OF  
BIXBY, OKLAHOMA; BIXBY CITY  
COUNCIL MEMBERS in their  
capacity as city council  
members; Trustees of the  
BIXBY PUBLIC WORKS AUTHORITY  
in their capacity as  
trustees; JOE WILLIAMS,  
individually; and ED STONE,  
individually,

Defendants.

ENTERED ON DOCKET  
DATE FEB 21 1996

Case No. 95-C-509-BU

FILED

FEB 20 1996

Hard M. Lawrence, Court Clerk  
DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties stipulate that all of Plaintiffs' claims and causes of  
action against Defendants are dismissed with prejudice.

  
\_\_\_\_\_  
WENDELL TENISON, PLAINTIFF

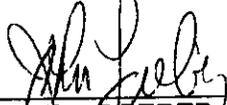
  
\_\_\_\_\_  
BETTY TENISON, PLAINTIFF

TOM C. LANE, SR. AND ASSOCIATES

By:   
\_\_\_\_\_  
TOM C. LANE, OBA #12746  
P.O. Box 384  
Sapulpa, Oklahoma 74067

ATTORNEYS FOR PLAINTIFFS

ELLER AND DETRICH  
A Professional Corporation

By: 

JOHN H. LIEBER, OBA #5421  
2727 East 21st Street  
Suite 200, Midway Building  
Tulsa, Oklahoma 74114  
(918) 747-8900

ATTORNEY FOR DEFENDANTS

3.MAG\TENISON\DISMISSA

FILED

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

FEB 20 1996

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

JAMES C. MILLS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 AMERADA HESS CORPORATION, )  
 )  
 Defendant. )

Case No. 95-C-0008K

ENTERED ON DOCKET  
DATE FEB 21 1996

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff and Defendant, by and through their respective attorneys, hereby jointly inform the Court that they have reached a mutually satisfactory private settlement regarding Plaintiff's claims herein, and all of Plaintiff's claims should, therefore, be dismissed with prejudice with each side to bear its own costs and attorneys' fees.

DATED this 16th day of February, 1996.

Respectfully submitted,

By: Leslie C. Rinn  
Jeff Nix, Esq.  
Leslie C. Rinn, Esq.  
2121 South Columbia  
Suite 710  
Tulsa, Oklahoma 74114-3521

ATTORNEYS FOR PLAINTIFF

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

By: J. Patrick Cremin  
J. Patrick Cremin, OBA #2013  
320 South Boston Avenue, Suite 400  
Tulsa, Oklahoma 74103-3708  
(918) 594-0594

ATTORNEYS FOR DEFENDANT