

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

PORT CITY PROPERTIES, INC.,
d/b/a HODGES WAREHOUSE,

Plaintiff,

vs.

JERRY V. MATHESON, Director of
the Transportation Division of
the Corporation Commission of
of the State of Oklahoma,

AND

J.C. WATTS, CHAIRMAN, CODY L.
GRAVES, VICE-CHAIRMAN, BOB
ANTHONY, COMMISSIONER,
COMMISSIONERS OF THE
CORPORATION COMMISSION OF THE
STATE OF OKLAHOMA,

Defendants.

ENTERED ON DOCKET
DATE MAY 20 1996

Case No. 94-C-760-BU

F I L E D

MAY 17 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL

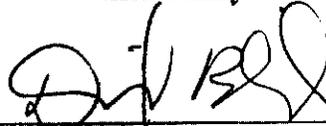
COMES NOW, Plaintiff Port City Properties, Inc. d/b/a Hodges Warehouse and Defendants Jerry Matheson, Director of the Transportation Division of the Corporation Commission of the State of Oklahoma and the Commissioners of the Corporation Commission of the State of Oklahoma and state as follows:

1. It is hereby stipulated that all of the claims involved in this proceeding and the claims involved in the proceeding before the Corporation Commission of the State of Oklahoma IN RE: Investigation into the Operations and Practices of Port City Properties, Inc. d/b/a Hodges Warehouse, Cause No. TD 94 0000 410, MCC-28201 have been settled.

2. It is further stipulated that the above - entitled action

should be dismissed with prejudice, each party forbears his own costs.

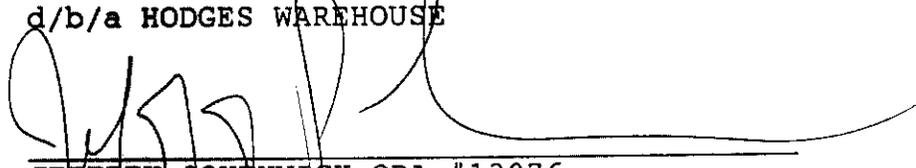
DATED: May 1, 1996



DAVID B. SCHNEIDER, OBA #7969
LAW OFFICES OF DAVID B. SCHNEIDER, P.C.
210 W. Park Avenue, Suite 1120
Oklahoma City, OK 73102
(405) 232-9990

KENNETH L. BRUNE, OBA #1249
BRUNE & NEFF, P.C.
401 S. Boston, 230 Mid-Continent Tower
Tulsa, Oklahoma 74103-4032
(918) 599-8600

ATTORNEY FOR PLAINTIFF
PORT CITY PROPERTIES, INC.
d/b/a HODGES WAREHOUSE



JEFFREY SOUTHWICK OBA #13076
OKLAHOMA CORPORATION COMMISSION
PO BOX 52000-2000
Oklahoma City, OK 73152-2000
(405) 521-2255

ATTORNEY FOR DEFENDANTS
JERRY V. MATHESON, DIRECTOR
OF COMMISSIONERS, OKLAHOMA CORPORATION
COMMISSION

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ESTATE OF RONALD L. MCMUNN,
et al.,

Defendants.

No. 95-C-1105-K

ENTERED ON DOCKET
MAY 20 1996
DATE _____

FILED

MAY 17 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

This matter came on for case management conference before the Court on May 16, 1996. Counsel for plaintiff did not appear. Upon telephone inquiry to Washington, D.C., the Court's staff was advised that the counsel who signed the complaint is no longer employed by the Tax Division of the U.S. Department of Justice, and this case did not appear in Tax Division records.

The only defendant who has answered is another lienholder, the Washington County Board of County Commissioners. The record does not reflect service on any other defendant. Under the circumstances, the Court will dismiss the action, which may be recommenced, if the government deems it appropriate.

It is the Order of the Court that this action is hereby dismissed without prejudice.

ORDERED this 16 day of May, 1996.


TERRY C. KEEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 17 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)

vs.)

GARY RICHARD HILLMAN aka Gary R.)
Hillman; MELISSA D. HILLMAN aka)
Melissa Dawn Hillman; M&M LUMBER)
COMPANY; CITY OF FAITH)
HOSPITAL; COUNTY TREASURER,)
Tulsa County, Oklahoma; BOARD OF)
COUNTY COMMISSIONERS, Tulsa)
County, Oklahoma,)

Defendants.)

ENTERED ON DOCKET

DATE MAY 20 1996

Civil Case No. 95 C 712B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17 day of May,

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 FAITH HOSPITAL, appears by its Attorney Mark W. Dixon; and the Defendants, GARY RICHARD HILLMAN aka Gary R. Hillman, MELISSA D. HILLMAN aka Melissa Dawn Hillman and M&M LUMBER COMPANY, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, GARY RICHARD HILLMAN aka Gary R. Hillman, signed a Waive of Summons on September 26, 1995; that the Defendant, M&M LUMBER COMPANY, signed a Waiver

of Summons on September 29, 1995; that the Defendant, CITY OF FAITH HOSPITAL, signed a Waiver of Summons on August 7, 1995.

The Court further finds that the Defendant, MELISSA D. HILLMAN aka Melissa Dawn Hillman, was served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning October 25, 1995, and continuing through November 29, 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 Defendant, MELISSA D. HILLMAN aka Melissa Dawn Hillman, 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, MELISSA D. HILLMAN aka Melissa Dawn Hillman. 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 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 her present or last known place of residence and/or mailing address. The Court accordingly approves and

confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on September 5, 1995; that the Defendant, CITY OF FAITH HOSPITAL, filed its Answer on October 3, 1995; and that the Defendants, GARY RICHARD HILLMAN aka Gary R. Hillman, MELISSA D. HILLMAN aka Melissa Dawn Hillman, and M&M LUMBER COMPANY, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Defendant, GARY RICHARD HILLMAN, is one and the same person as Gary R. Hillman, and will hereinafter be referred to as "GARY RICHARD HILLMAN." The Defendant, "MELISSA D. HILLMAN, is one and the same person as Melissa Dawn Hillman, and will hereinafter be referred to as "MELISSA D. HILLMAN." The Defendants, GARY RICHARD HILLMAN and MELISSA D. HILLMAN, were granted a Divorce in Tulsa County, Oklahoma, Case No. FD-90-5569, on September 11, 1990. The Defendants, GARY RICHARD HILLMAN and MELISSA D. HILLMAN, are both single unmarried persons.

The Court further finds that on December 3, 1987, Gary R. Hillman filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-B-3367-C. On March 14, 1988, the United States Bankruptcy Court for the Northern District of Oklahoma filed its Discharge of Debtor, and on July 29, 1988, the case was subsequently closed.

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

LOT ONE (1), BLOCK TWELVE (12), AMENDED ROSEWOOD ADDITION, BLOCKS ELEVEN (11) THRU TWENTY-TWO (22), TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

The Court further finds that on May 6, 1986, the Defendants, GARY RICHARD HILLMAN and MELISSA D. HILLMAN, executed and delivered to CHARLES F. CURRY COMPANY their mortgage note in the amount of \$55,844.00, 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, GARY RICHARD HILLMAN and MELISSA D. HILLMAN, Husband and Wife, executed and delivered to CHARLES F. CURRY COMPANY, a mortgage dated May 6, 1986, covering the above-described property. Said mortgage was recorded on May 12, 1986, in Book 4941, Page 2129, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 19, 1989, Charles F. Curry Company, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his/her successors and assigns. This Assignment of Mortgage was recorded on June 23, 1989, in Book 5190, Page 1952, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 1, 1990, the Defendant, GARY RICHARD HILLMAN, 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 and July 1, 1991.

The Court further finds that the Defendant, GARY RICHARD HILLMAN, 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, GARY RICHARD HILLMAN, is indebted to the Plaintiff in the principal sum of \$92,836.05, representing \$54,986.65 Unpaid Principal, \$34,839.31 Accrued Interest, and \$3,010.09 Penalties, etc., plus interest at the rate of 9.5 percent per annum from April 4, 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 \$28.00 which became a lien on the property as of June 26, 1992, a lien in the amount of \$24.00 which became a lien on the property as of June 25, 1993, and a lien in the amount of \$25.00 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, CITY OF FAITH HOSPITAL, has a lien on the property which is the subject matter of this action by virtue of a judgment in the amount of \$5,296.12, together with interest thereon at the rate of 9.58% per annum from the

date of judgment until paid, and for an attorney's fee in the sum of \$1,459.00 for attorney's fees, which became a lien on the property as of March 17, 1992. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, GARY RICHARD HILLMAN, MELISSA D. HILLMAN and M&M LUMBER COMPANY, 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, GARY RICHARD HILLMAN, in the principal sum of \$92,836.05, plus interest at the rate of 9.5 percent per annum from April 4, 1995 until judgment, plus interest thereafter at the current legal rate of 5.60 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 \$77.00, 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, CITY OF FAITH HOSPITAL, have and recover judgment in the amount of \$5,296.12, together with interest thereon at the rate of 9.58% per annum from the date of judgment until paid, and \$1,459.00 attorney's fees, for its judgment, plus the costs and interest.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, GARY RICHARD HILLMAN, MELISSA D. HILLMAN, M&M LUMBER COMPANY, 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, GARY RICHARD HILLMAN, to satisfy the judgment In Rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, **commanding him** to advertise and sell according to Plaintiff's election with or without appraisal **the real** property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

Third:

In payment of Defendant, **CITY OF FAITH HOSPITAL**, have and recover judgment in the amount of \$5,296.12, together with interest thereon at the rate of 9.58% per annum from the date of judgment until paid, and \$1,459.00 attorney's fees, for its judgment, plus the costs and interest.

Fourth:

In payment of Defendant, **COUNTY TREASURER**, Tulsa County, Oklahoma, in the amount of \$77.00, personal property taxes which are currently due and owing.

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

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

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

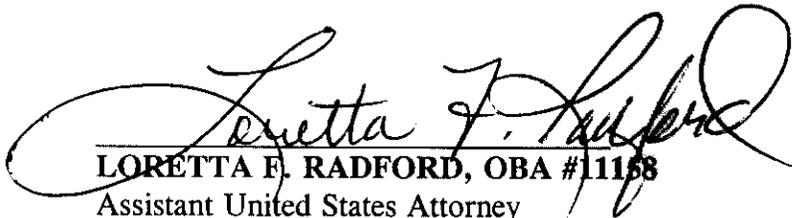
decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

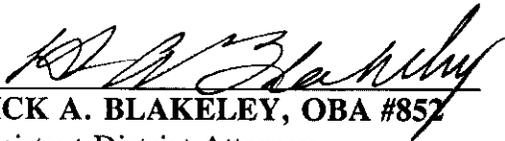
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



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



DICK A. BLAKELEY, OBA #857
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

Mark W. Dixon

MARK W. DIXON, OBA #2378

1437 South Boulder, Suite 900

Tulsa, OK 74119

Attorney for Defendant,

City of Faith Hospital

Judgment of Foreclosure

Civil Action No.95 C 712B

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
HOWARD I. PEACH aka HOWARD)
IRVING PEACH aka HOWARD I.)
PEACH, JR.; PATRICIA L. PEACH aka)
PATRICIA LYNN PEACH; 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.)

F I L E D

MAY 17 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE MAY 20 1996

Civil Case No. 95-C 1082C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17 day of May, 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 City Attorney, Michael R. Vanderburg; and the Defendants, HOWARD I. PEACH aka HOWARD IRVING PEACH aka HOWARD I. PEACH, JR. and PATRICIA L. PEACH aka PATRICIA LYNN PEACH, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, HOWARD I. PEACH aka HOWARD IRVING PEACH aka HOWARD I.

PEACH, JR. will hereinafter be referred to as ("HOWARD I. PEACH"); and the Defendant, PATRICIA L. PEACH aka PATRICIA LYNN PEACH, will hereinafter be referred to as ("PATRICIA L. PEACH"). The Defendants, HOWARD I. PEACH and PATRICIA L. PEACH, are husband and wife.

The Court being fully advised and having examined the court file finds that the Defendant, HOWARD I. PEACH, acknowledged receipt of Summons and Complaint via certified mail on December 13, 1995; that the Defendant, PATRICIA L. PEACH, was served with process on January 23, 1996; and that the Defendant, CITY OF BROKEN ARROW, Oklahoma, acknowledged receipt of Summons and Complaint via certified mail on November 2, 1995.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answer on November 13, 1995; that the Defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, filed its Answer on November 24, 1995; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, filed its Answer on November 6, 1995; and that the Defendants, HOWARD I. PEACH and PATRICIA L. PEACH, 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 Twenty (20), Block **Three** (3), WOODSTOCK, an Addition to the City of **Broken** Arrow, Tulsa County, State of Oklahoma, according to the recorded Plat No. 4199.

The Court further finds **that** on October 26, 1987, Ira C. Apt and Shelley A. Apt, executed and delivered to COMMONWEALTH MORTGAGE COMPANY OF AMERICA their mortgage note in the amount of \$64,978.00, payable in monthly installments, with interest thereon at the rate of eleven and one-half percent (11.5%) per annum.

The Court further finds **that** as security for the payment of the above-described note, Ira C. Apt and Shelley A. Apt, husband and wife, executed and delivered to COMMONWEALTH MORTGAGE COMPANY OF AMERICA a mortgage dated October 26, 1987, covering the above-described property. Said mortgage was recorded on October 30, 1987, in Book 5061, Page 50, in the records of Tulsa County, Oklahoma.

The Court further finds **that** on April 5, 1990, COMMONWEALTH MORTGAGE COMPANY OF AMERICA 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 May 7, 1990, in Book 5251, Page 1035, in the records of Tulsa County, Oklahoma.

The court further finds **that** the Defendants, HOWARD I. PEACH and PATRICIA L. PEACH, are the current title owners of the property by virtue of a General Warranty Deed dated August 23, 1989, **and** recorded on August 23, 1989 in Book 5202, Page 2173, in the records of Tulsa County, Oklahoma. The Defendants, HOWARD I. PEACH and PATRICIA L. PEACH, **are** the current assumptors of the subject indebtedness.

The Court further finds **that** on March 28, 1990, the Defendants, HOWARD I. PEACH and PATRICIA L. PEACH, **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 21, 1991 and December 14, 1992.

The Court further finds that the Defendants, HOWARD I. PEACH and PATRICIA L. PEACH, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, HOWARD I. PEACH and PATRICIA L. PEACH, are indebted to the Plaintiff in the principal sum of \$108,703.97, plus interest at the rate of 11.5 percent per annum from April 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 ad valorem taxes in the amount of \$884.00, plus penalties and interest, for the year of 1995. 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 \$53.00 which became a lien on the property as of June 25, 1993. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, STATE OF OKLAHOMA ex rel: OKLAHOMA TAX COMMISSION, has a lien on the property which is the subject matter of this action by virtue of a tax warrant in the amount of \$411.44, which became a lien on the

property as of October 26, 1993. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds 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.

The Court further finds that the Defendants, HOWARD I. PEACH and PATRICIA L. PEACH, are in default, and have no right, title or interest in the subject real property.

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

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendants, HOWARD I. PEACH and PATRICIA L. PEACH, in the principal sum of \$108,703.97, plus interest at the rate of 11.5 percent per annum from April 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5.60 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 \$884.00, plus penalties and interest, for ad valorem taxes for the year 1995, 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 \$53.00, plus costs and interest, for personal property taxes for the year 1992, 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 \$411.44 for state taxes, plus the costs and interest.

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, HOWARD I. PEACH, PATRICIA L. PEACH and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, HOWARD I. PEACH and PATRICIA L. PEACH, 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 Defendant, **COUNTY TREASURER**, Tulsa County, Oklahoma, in **the amount** of \$884.00, plus penalties and interest, for **ad valorem taxes** which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of Defendant, **COUNTY TREASURER**, Tulsa County, Oklahoma, in **the amount** of \$53.00, personal property taxes which are **currently** due and owing.

Fifth:

In payment of Defendant, **STATE OF OKLAHOMA ex rel** OKLAHOMA TAX COMMISSION, in the amount of \$411.44, plus accrued **and accruing** interest for state taxes.

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.

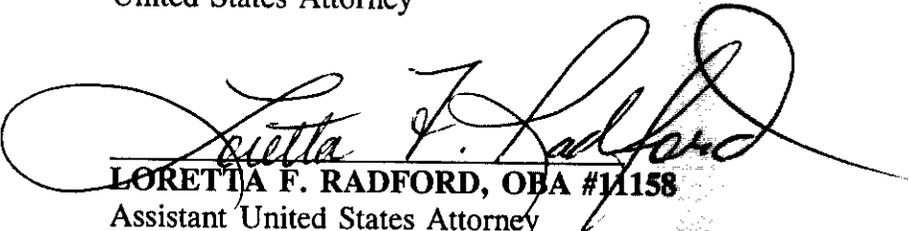
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158

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



DICK A. BLAKELEY, OBA #852

Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842

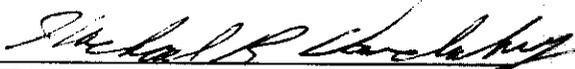
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



KIM D. ASHLEY, OBA #14175

Assistant General Counsel
P.O. Box 53248
Oklahoma City, OK 73152-3248
(405) 521-3141

Attorney for Defendant,
State of Oklahoma ex rel
Oklahoma Tax Commission



MICHAEL R. VANDERBURG, OBA #9180

City Attorney
220 South First Street
Broken Arrow, Oklahoma 74012
(918) ~~251-8113~~

Attorney for Defendant,
City of Broken Arrow, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-C 1082C

LFR/lg

5-20-96

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

FILED
MAY 17 1996
Paul Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
sa

GARY ALAN WALKER,

Petitioner,

v.

RON WARD,

Respondent.

Case No. 94-C-214-H ✓

ORDER

This matter comes before the Court on cross-motions for summary judgment filed by Petitioner (Docket # 41) and Respondent (Docket #45). A hearing on these motions was held before the Court on May 15, 1996.

Petitioner was convicted of first-degree murder in the District Court of Tulsa County in 1984. In the sentencing phase of the trial, the State of Oklahoma sought the death penalty and alleged the existence of two statutory aggravating circumstances: (1) that the murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution, 21 Okla. Stat. Ann. § 701.-12(5), and (2) the existence of a probability that Petitioner would commit criminal acts of violence that would constitute a continuing threat to society, *id.* at § 701.-12(7). See Walker v. State, 723 P.2d 273, 276 (Okla. Ct. Crim. App. 1986). In support of its second claim, the State produced evidence that, at the time of this homicide, Petitioner had committed three other murders. The State also offered as evidence a statement by Petitioner that he would kill again. Petitioner alleged mental illness as a mitigating circumstance, readopting all of the evidence presented in the first stage of trial

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in support of his insanity defense. The jury returned a sentence of death on the sole basis that a probability existed that Petitioner would commit criminal acts of violence that would constitute a continuing threat to society.

Upon exhaustion of his state remedies, Petitioner brought this action seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254. This matter is now before the United States District Court for the first time. In his petition, he alleged nine grounds for relief, including a claim that the “continuing threat” aggravating circumstance is unconstitutionally vague on its face and as applied to him. Petitioner subsequently filed this motion for summary judgment solely on the constitutionality of the “continuing threat” aggravating circumstance. Respondent filed its cross-motion for partial summary judgment on the same issue.¹

Under Oklahoma’s statutory sentencing scheme, “evidence may be presented as to any mitigating circumstances or as to any of the aggravating circumstances” provided by law in the sentencing phase of the trial. 21 Okla. Stat. Ann. § 701.10. Oklahoma law includes as an aggravating circumstance “[t]he existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.” *Id.* at § 701.12. The death penalty may not be imposed unless the jury unanimously finds at least one of the statutory aggravating circumstances beyond a reasonable doubt and finds beyond a reasonable doubt that the aggravating circumstance outweighs any mitigating circumstances. *Id.* at § 701.11.

Petitioner challenges the “continuing threat” aggravating circumstance as unconstitutionally

¹Respondent also styles its motion as a motion for summary judgment. However, disposition of this issue in Respondent’s favor would not dispose of the entire case. The Court therefore construes Respondent’s motion as a motion for partial summary judgment solely on the issue of the constitutionality of the “continuing threat” aggravating circumstance. This order does not address the merits of Petitioner’s remaining grounds for relief.

vague. The Tenth Circuit recently stated:

The Supreme Court has announced that a vagueness review should be “quite deferential” because “mathematical precision” is not possible in the definition of aggravating factors. The “basic principle” is that “a factor is not unconstitutional if it has some ‘common sense core of meaning . . . that criminal juries should be capable of understanding.’” Nevertheless, an aggravating factor may be unconstitutionally vague if it “leave[s] the sentencer without sufficient guidance for determining the presence or absence of the factor.”

United States v. McCullah, 76 F.3d 1087, 1110 (10th Cir. 1996) (quoting Tuilaepa v. California, 114 S.Ct. 2630, 2635-36 (1994); Espinosa v. Florida, 505 U.S. 1079, 1081 (1992)). A state must sufficiently define aggravating circumstances to narrow the class of criminal defendants to which the death penalty applies. Godfrey v. Georgia, 446 U.S. 420 (1980).

In Jurek v. Texas, the United States Supreme Court upheld the constitutionality of the Texas capital sentencing scheme, which allowed the imposition of the death penalty only in those cases where the jury finds beyond a reasonable doubt that “there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.”² 428 U.S. 262, 269 (1976) (quoting Tex. Code Crim. Proc. Ann., art. 37.071(2) (West 1975)). Rejecting a vagueness challenge to the “continuing threat” provision, Justice Stevens, in an opinion joined by Justices Stewart and Powell, wrote:

[P]etitioner argues that it is impossible to predict future behavior and that the question is so vague as to be meaningless. It is, of course, not easy to predict future behavior.

²Texas is a “special issue” state for purposes of capital sentencing. Under the Texas Penal Code applied in Jurek, capital homicides consisted of intentional and knowing murders committed in five specified situations. Upon return of a guilty verdict in a capital case, the jury was required to then find the existence of all three special issues, including the “continuing threat” special issue, beyond a reasonable doubt before a sentence of death could be imposed. The other two special issues have been amended, but the Texas scheme still requires a jury to find the defendant a “continuing threat” in order to impose a punishment of death. See Tex. Code. Crim. Proc. Ann., art. 37.071 (West 1996).

The fact that such a determination is difficult, however, does not mean that it cannot be made. Indeed, prediction of future criminal conduct is an essential element in many of the decisions rendered throughout our criminal justice system. The decision whether to admit a defendant to bail, for instance, must often turn on a judge's prediction of the defendant's future conduct. Any sentencing authority must predict a convicted person's probable future conduct when it engages in the process of determining what punishment to impose. For those sentenced to prison, these same predictions must be made by parole authorities. The task that a Texas jury must perform in answering the statutory question in issue is thus basically no different from the task performed countless times each day throughout the American system of criminal justice. What is essential is that the jury have before it all possible relevant information about the individual defendant whose fate it must determine. Texas law clearly assures that all such evidence will be adduced.

428 U.S. at 274-76 (emphasis added).

Petitioner asserts that the Court should discount this analysis because the Supreme Court issued no opinion of the Court in Jurek and the above-quoted language represents the views of only three justices. Pet. at 84-85. However, three other Justices explicitly agreed with the Justice Stevens' opinion that a vagueness challenge should be rejected, expressing the view that "the issues posed in the sentencing proceeding have a common-sense core of meaning and that criminal juries should be capable of understanding them." 428 U.S. at 279 (White, J., in an opinion joined by Burger, C.J., and Rehnquist, J., concurring in the judgment); see Tuilaepa v. California, 114 S.Ct. 2630, 2635-36 (1994) (quoting Jurek and noting that "[i]n providing for individualized sentencing, it must be recognized that the States may adopt capital sentencing processes that rely upon the jury, in its sound judgment, to exercise wide discretion.").

Applying the reasoning articulated in Jurek to the instant case, the Court concludes that the "continuing threat" aggravating circumstance set forth in the Oklahoma statute is not unconstitutionally vague. The language of the Texas and Oklahoma provisions are identical. In conformance with the requirements of Jurek, the jury was presented with "all possible relevant

information” about Petitioner in making **their** determination that he was a “continuing threat to society.” Before rendering its decision, the **jury** heard evidence on both sides of the issue. The State painted the picture of a man who had just **been** convicted of the callous murder of Eddie Cash, had committed three other murders during the **same** time period, and had made a statement that he would kill again. Petitioner countered by portraying **the same** man as a victim of child abuse who had been in and out of institutions most of his life. **Upon** the jury’s determination that Petitioner was a “continuing threat,” Oklahoma’s two-step **sentencing** procedure required the jury to consider again the mitigating evidence and weigh such **evidence** against the aggravating circumstance. The Oklahoma procedure thus meets the requirements of Jurek.

The Court observes that the United States District Courts for the Northern District and the Western District of Oklahoma previously **have** rejected vagueness challenges to Oklahoma’s “continuing threat” aggravating circumstance. Banks v. Reynolds, No. 92-C-747 (N.D. Okl. July 18, 1994); Castro v. Oklahoma, No. CIV-94-638 (W.D. Okl. Oct. 18, 1994). Although other states, including Texas, Oregon, Virginia, and Idaho, also require criminal juries to consider the probability that the defendant will be a continuing threat to society, Petitioner cites only one case holding the language of the “continuing threat” provision to be unconstitutionally vague. Williamson v. Reynolds, No. 94-CV-539 (E.D. Okl. Sept. 19, 1995). Based upon a review of the record, relevant case law, and the briefs and arguments of **counsel**, the Court concludes that with respect to this issue, Williamson is not persuasive authority.

Petitioner relies in part upon the briefs submitted by the State in Maynard v. Cartwright, 486 U.S. 356 (1988). In Maynard, the State **defended** the “especially heinous, atrocious, or cruel” aggravating circumstance against a **vagueness** challenge by stating:

If anything, an aggravating circumstance that requires a jury to speculate as to whether a defendant is going to commit crimes in the future gives the jury more discretion than if it merely decides whether the crime was “especially heinous, atrocious, or cruel.”

The Court declines to construe arguments of counsel in an unrelated case to be an admission by the State that the “continuing threat” provision is unconstitutionally vague. Even if such assertions were relevant to the present inquiry, the Court would find them unpersuasive. The gravamen of the State’s argument in Maynard was that neither aggravating circumstance was vague. The brief filed in defense of the “especially heinous, atrocious, or cruel” aggravating circumstance merely asserts that the “continuing threat” provision, not under attack in Maynard, gave the jury more discretion than did the aggravating circumstance at issue there. The fact that the Supreme Court determined that the “especially heinous, atrocious, or cruel” aggravating circumstance was unconstitutionally vague certainly does not mean that the Supreme Court accepted the State’s argument as to the relative degrees of vagueness. The Court thus concludes that the arguments of counsel in Maynard are irrelevant to the present inquiry.

Petitioner also contends that the “continuing threat” provision is vague because the Rogers County District Court, in a non-jury trial, did not apply that aggravating circumstance in the sentencing phase of one of Petitioner’s subsequent murder trials. The fact that the finding of one state court judge in a separate case differs from the finding of the jury in the present case does not render the provision unconstitutional. The Court therefore rejects this argument by Petitioner.

Finally, Petitioner claims the jury improperly considered his evidence of mental illness in concluding that he constituted a “continuing threat to society.” Petitioner asserts that the trial court erred by not instructing the jury that such evidence should be considered only as mitigating evidence.

Petitioner does not claim that he requested such an instruction. Further, Petitioner relies upon Penry v. Lynaugh, 492 U.S. 302 (1989), for the proposition that such an instruction is mandatory. Penry, however, arose under the Texas “special issue” sentencing scheme. Beginning with Jurek, challenges to the Texas scheme centered upon whether the “special issues” adequately required a jury to consider mitigating evidence. Unlike balancing states like Oklahoma, the special issue states did not explicitly require consideration of mitigating evidence in a separate phase. Therefore, the Supreme Court in Penry, concerned that a jury presented with evidence of mental illness would weigh that evidence adversely to the defendant rather than as mitigating evidence, held that the trial court should have instructed the jury that it could consider and give effect to the mitigating evidence of mental retardation by declining to impose the death penalty. Id. at 2952. As the Oklahoma balancing system implicitly requires consideration of mitigating evidence put forward by the defendant in the sentencing phase, the problem addressed in Penry is not present here. Furthermore, Petitioner has presented no evidence that the jury impermissibly considered his mental status in concluding he was a “continuing threat.” To the contrary, the evidence presented by the State was sufficient for the jury to reach that conclusion absent consideration of Petitioner’s mental state. The Court therefore finds that the trial court did not err in failing to give a limiting instruction pursuant to Penry.

The Court holds that Oklahoma’s “continuing threat” aggravating circumstance is not unconstitutionally vague. Accordingly, Petitioner’s motion for summary judgment (Docket #41) is hereby denied. Respondent’s cross-motion for partial summary judgment (Docket #45) is hereby granted.³

³The Court notes that because Petitioner has asserted eight alternative bases for relief in his Petition, this is not a final decision for federal appellate purposes. See 28 U.S.C. § 1291. The Court further concludes that an immediate appeal from this Order would not materially advance

IT IS SO ORDERED.

This 17th day of May, 1996.



Sven Erik Holmes
United States District Judge

the ultimate termination of this litigation, and thus an interlocutory appeal pursuant to 28 U.S.C. § 1292(b) would be inappropriate.

DATE 5-17-96

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

FILED

MAY 16 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BARTIN PIPE AND PILING SUPPLY,
LTD.,

Plaintiff,

v.

CHRIS WATSON and RICHARD
ERICKSON,

Defendants.

Case No. 94-CV-107-HV ✓

AMENDED 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 Bartin Pipe and Piling Supply, Ltd. ("Plaintiff"), and Cross-Claimant Richard Erickson.

IT IS THEREFORE ORDERED that Defendant Chris Watson make payment to Plaintiff in the amount of \$50,000, that Defendant Richard Erickson make payment to Plaintiff in the amount of \$100,000 plus prejudgment interest of \$18,657.53, and that Defendant Chris Watson make payment to Cross-Claimant Richard Erickson in the amount of \$2,483.50.

IT IS FURTHER ORDERED that Defendant Richard Erickson make payment to Plaintiff in the amounts of \$38,584.53 for attorneys fees and \$5,575.15 for costs.

IT IS SO ORDERED.

This 15th day of May, 1996.


Sven Erik Holmes
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 16 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JOHN BAYLISS, JR., KAREN RAE QUARLES, and all pawn
customers similarly situated,

Plaintiffs,

vs.

Case No. CIV-96-CO199K

CLASS ACTION

THE CITY OF TULSA, an incorporated municipality; CITY
COUNCIL OF THE CITY OF TULSA a municipal
Corporation within Tulsa County; B.S. ROBERTS, Tulsa City
Councilmember; DARLA HALL, Tulsa City Councilmember;
MIKE PATRICK, Tulsa City Councilmember; GARY WATTS,
Tulsa City Council-member; ROBERT NELSON, Tulsa City
Council-member; JAMES HOGUE, SR., Tulsa City Council-
member; JOHN BENJAMIN, Tulsa City Councilmember;
VICKIE CLEVELAND, Tulsa City Councilmember; DEWEY
BARTLETT, JR., Tulsa City Councilmember; SUSAN
SAVAGE, Tulsa Mayor; RON CUNNINGHAM an individual,
a Police officer for the city of Tulsa, Oklahoma, and president
of the OKLAHOMA PROPERTY RECOVERY
ASSOCIATION, an unincorporated association; RON
PALMER, an individual and the duly appointed Chief of Police
of the city of Tulsa, Oklahoma; and OKLAHOMA PROPERTY
RECOVERY ASSOCIATION, an unincorporated organization;

Defendants.

ENTERED ON DOCKET
MAY 17 1996
DATE _____

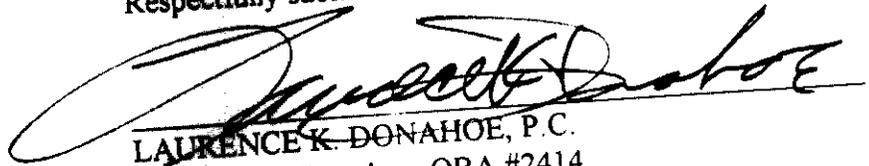
**PLAINTIFFS' DISMISSAL WITHOUT
PREJUDICE OF CERTAIN DEFENDANTS**

COME NOW the Plaintiffs in the above-referenced cause and pursuant to Fed. R. Civ. P.
41 (a) file this dismissal of the following defendants: B.S. ROBERTS; DARLA HALL; MIKE
PATRICK; GARY WATTS; ROBERT NELSON; JAMES HOGUE, SR.; JOHN BENJAMIN;
VICKIE CLEVELAND; DEWEY BARTLETT, JR.; and SUSAN SAVAGE. No Answer or

Motion for Summary Judgment has been filed by any of these defendants. They have been served through the City Attorney.

WHEREFORE Plaintiffs hereby dismiss Defendants B.S. ROBERTS; DARLA HALL; MIKE PATRICK; GARY WATTS; ROBERT NELSON; JAMES HOGUE, SR.; JOHN BENJAMIN; VICKIE CLEVELAND; DEWEY BARTLETT, JR.; and SUSAN SAVAGE without prejudice.

Respectfully submitted,



LAURENCE K. DONAHOE, P.C.
Laurence K. Donahoe, OBA #2414
120 E. Sheridan, Suite 207
Oklahoma City, OK 73104
(405) 236-4179
Attorney for Plaintiffs

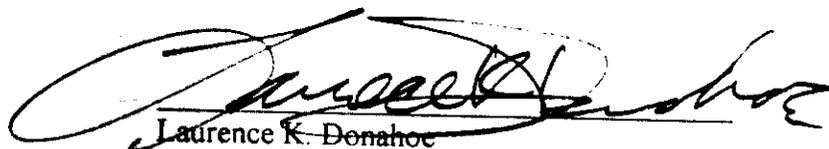
tulsa\pleading\dismiss.mmm

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of **May**, 1996, a true and correct copy of the above and foregoing **PLAINTIFFS' DISMISSAL WITHOUT PREJUDICE OF CERTAIN DEFENDANTS** was deposited in the U.S. Mail with postage prepaid thereon and addressed to:

Larry V. Simmons
Manager, Litigation Division
200 Civic Center, Room 316
Tulsa, OK 74103

B.S. ROBERTS; DARLA HALL; MIKE PATRICK; GARY WATTS; ROBERT NELSON; JAMES HOGUE, SR.; JOHN BENJAMIN; VICKIE CLEVELAND; DEWEY BARTLETT, JR.; and SUSAN SAVAGE
c/o City Attorney, David Pauling
316 City Hall
200 Civic Center
Tulsa, OK 74103


Laurence K. Donahoe

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

ENTERED ON DOCKET
MAY 17 1996
DATE _____

JOHNNY PAUL CLARK,

Plaintiff,

vs.

LOGAN COUNTY SHERIFF
DEPARTMENT, et al.,

Defendants.

No. 96-CV-351-K

FILED

MAY 16 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Before the court is Plaintiff's pro se motion for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 and civil rights complaint pursuant to 42 U.S.C. § 1983. Upon review of the complaint, the Court finds that venue is not proper in this district.

The Court may raise sua sponte the issue of venue in the setting of a section 1915 case. See Yellen v. Cooper, 828 F.2d 1471, 1474-76 (10th Cir. 1987) (allowing for dismissal, under 1915(d) on grounds that would be the basis of an affirmative defense); see also Costlow v. Weeks, 790 F.2d 1486, 1487-88 (9th Cir. 1986) (allowing dismissal sua sponte for lack of venue before responsive pleading had been filed; issue had not been waived). The applicable venue provision for this action is found under 28 U.S.C. §1391(b) which provides as follows:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any

defendant may be found, if there is no district in which the action may otherwise be brought.

There is no applicable law with regard to venue under 42 U.S.C. §1983 which would exempt this case from the general provisions of 28 U.S.C. §1391(b). Coleman v. Crisp, 444 F. Supp. 31 (W.D. Okla. 1977); D'Amico v Treat, 379 F. Supp. 1004 (N.D. Ill. 1974).

Plaintiff bases his Complaint on allegations that he was maliciously prosecuted in Logan County for possessing a firearm, that his Miranda rights were violated, and that his lawyer provided ineffective assistance of counsel. According to the Complaint, the Defendants are residents of Guthrie and Purcell, Oklahoma. The Court takes judicial notice that the Guthrie and Purcell are located within the Western District of Oklahoma. 28 U.S.C. §116. Thus, it is clear that venue is not proper before this Court.

When venue is not proper, the Court may dismiss the action, or if it be in the interest of justice, may transfer the case to the district in which it should have been brought. 28 U.S.C. §1406(a). Because Plaintiff's complaint is handwritten, the undersigned finds that it would be in the best interest of justice and judicial efficiency to transfer the case to the proper district. Accordingly, this matter is transferred to the United States District Court for the Western District of Oklahoma.

IT IS SO ORDERED this 15 day of May, 1996.


PERRY C. KERN
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 16 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

BRENDA GORDON,)
)
Plaintiff,)
)
v.)
)
STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)
)
Defendant.)

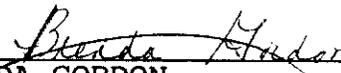
Case No.: 94-C-893-K

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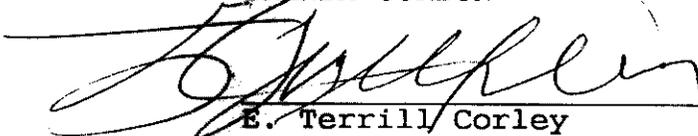
DATE MAY 17 1996

STIPULATION FOR ORDER OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, her attorney of record, and Defendant's counsel, and would show the Court that this matter has been settled through binding arbitration, and, therefore, move the Court for an Order Of Dismissal With Prejudice.



BRENDA GORDON



E. Terrill Corley
Attorney for Plaintiff



Paul T. Boudreax
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT TOSKA aka ROBERT P.
TOSKA; DARLA S. TOSKA; RANDA
TOSKA aka RANDA L. TOSKA;
UNKNOWN SPOUSE IF ANY OF
RANDA TOSKA aka RANDA L.
TOSKA; SERVICE COLLECTION
ASSOCIATION, INC.; CAREER
CREDIT ADJUSTMENT
CORPORATION; CITY OF OWASSO,
Oklahoma; COUNTY TREASURER,
Tulsa County, Oklahoma; BOARD OF
COUNTY COMMISSIONERS, Tulsa
County, Oklahoma,
Defendants.

ENTERED ON DOCKET
DATE MAY 17 1996

Civil Case No. 95-C 732K

F I L E D
MAY 16 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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 15 day of May, 1996.

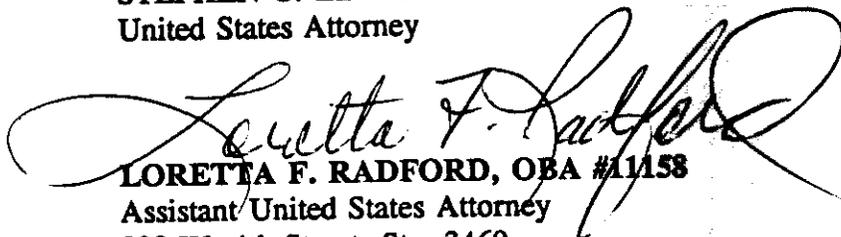
s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

NOTE: THIS ORDER IS TO BE MAILED
BY ROBERT TOSKA, COUNSEL AND
PRO SE LITIGANT'S IMMEDIATELY
UPON RECEIPT.

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 over the typed name and extends to the right.

LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

333 W. 4th Street, Ste. 3460

Tulsa, Oklahoma 74103

(918) 581-7463

LFR/esf

DATE 5-17-96

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

CRYSTAL BAY MARINA,)

Plaintiff,)

and)

UNITED STATES OF AMERICA,)

Intervening)
Plaintiff,)

v.)

BILL SWEEDEN, individually and as)
Chairman of the Board of County)
Commissioners of Osage County; G.H.)
"JESS" BALLARD, individually and as a)
member of the Board of County)
Commissioners of Osage County; VIRGIL)
WILLIAMSON, individually and as a)
member of the Board of County)
Commissioners of Osage County; and BILL)
McBEE, individually and as Chairman of)
the Pawhuska/Osage County Planning)
Commission,)

Defendants,)

and)

CRYSTAL BAY ESTATES, INC., an)
Oklahoma corporation,)

Intervening)
Defendant.)

FILED

MAY 16 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SL

Case No. 94-C-1038-H ✓

54

JUDGMENT

This Court entered an order on **May 15, 1996**, granting summary judgment in favor of Plaintiff Crystal Bay Marina and Intervening Plaintiff United States.

IT IS THEREFORE ORDERED, **ADJUDGED AND DECREED** that judgment is hereby entered for the Plaintiff and the Intervening Plaintiff and against the Defendants and the Intervening Defendant.

IT IS SO ORDERED.

This 16TH day of May, 1996.



Sven Erik Holmes
United States District Judge

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

F I L E D

MAY 16 1996

**Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

BARTIN PIPE AND PILING)
SUPPLY, LTD.,)
)
Plaintiff,)
)
vs.)
)
CHRIS WATSON and RICHARD)
ERICKSON,)
)
Defendants.)

No. 94-C-107-H

ORDER SETTING PLAINTIFF'S ATTORNEY'S FEES

This matter comes before the court upon Plaintiff's Motion for Award of Attorney's Fees, the court having heretofore found that Plaintiff is entitled to recover an attorney's fee upon proper motion having been made. The court finds that although the Defendant Erickson has objected to the award of fees and has not waived that objection, said Defendant does not take issue with the fact that the amount of fees being requested by the Plaintiff is reasonable and reflects necessary expenses. Based upon consideration of Plaintiff's motion with attached exhibits, and the supplementary application bringing attorney's fees to date, the court hereby enters judgment for

attorney's fees in favor of **Bartin Pipe and Piling Supply, Ltd.**, and against **Richard Erickson**
in the amount of \$38,584.53

S/ SVEN ERIK HOLMES

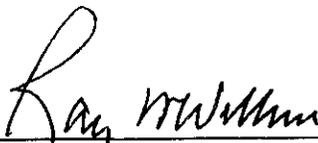
SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM:



Richard L. Carpenter, Jr.
Carpenter, Mason & McGowan
1516 South Boston, Suite 205
Tulsa, Oklahoma 74119-4013

Attorneys for Plaintiff



Ray H. Wilburn
Scott Taylor
Wilburn, Masterson & Smiling
Executive Center II
7314 South Yale, Suite 560
Tulsa, OK 74136-6337

Attorneys for Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DAVID RAY SUMMERS; CYNTHIA)
RENEE SUMMERS; COUNTY)
TREASURER, Tulsa County, Oklahoma;)
BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
Defendants.)

F I L E D

MAY 17 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
DATE MAY 17 1996

Civil Case No. 96CV 150C

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.

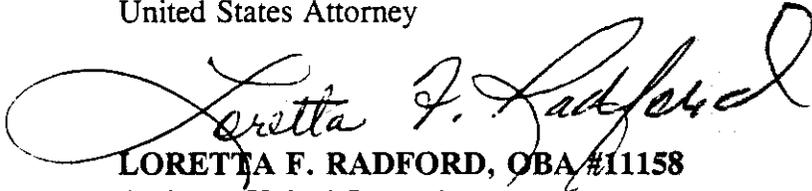
Dated this 17 day of May, 1996.

(Signed) H. Dale Cook

UNITED STATES DISTRICT 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 typed name.

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

FILED

MAY 17 1996

le

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Lagrace Benigar, et al)
)
Plaintiff(s),)
)
vs.)
)
Fibreboard Corporation, et al)
)
)
)
Defendants(s).)

89-C-438-C ✓

ENTERED ON DOCKET
MAY 17 1996
DATE _____

ADMINISTRATIVE CLOSING ORDER

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

IF, by 8/30/96, the Parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismisses with prejudice.

IT IS SO ORDERED this 17 day of May, 1996.

[Signature]
UNITED STATES DISTRICT JUDGE

F I L E D

MAY 15 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

PHILLIPS PIPE LINE COMPANY,)
)
Plaintiff,)
)
vs.)
)
DIAMOND SHAMROCK REFINING)
AND MARKETING COMPANY,)
)
Defendant.)

Case No. 92-C-315-E

ENTERED ON DOCKET
DATE MAY 16 1996

ORDER

Now before the Court is the Motion to Clarify and Amend Judgment (Docket #90) of the plaintiff Phillips Pipe Line Company (Phillips) and the Motion for Scheduling Conference (Docket #91) of the defendant Diamond Shamrock Refining and Marketing Company (Diamond Shamrock).

The current dispute between the parties centers around the Judgment (Docket #89) entered as a result of the ruling of the Appellate Court reversing summary judgment in favor of Phillips. That Opinion states, in its closing paragraph:

On the record before us, then, we hold the filed rate doctrine does not trump the terms of the Lease. This conclusion necessarily revitalizes Diamond Shamrock's counterclaim Phillips breached the terms of Article VI by failing or refusing to provide notification of its monthly excess capacity. Not only does the Lease govern the relationship of the parties, but also each of its provisions as bargained for retains its validity. We, therefore, **REVERSE** the district court's order granting summary judgment in favor of Phillips and **REMAND** for the district court to enter judgment for Diamond Shamrock.¹

¹ The Judgment, entered March 17, 1995 states: The cause is remanded to the United States District Court for the Northern District of Oklahoma for further proceedings in accordance with the opinion of this court."

In accordance with that language, the Court “enter[ed] judgment in favor of the Defendant, Diamond Shamrock Refining and Marketing Company and against the Plaintiff, Phillips Pipe Line Company.”

The parties agree that the Judgment entered does not terminate the case, and that it should be set for scheduling conference. The parties sharply disagree, however, on what issues remain to be decided. Phillips takes the position that Diamond Shamrock’s counterclaim remains to be decided, and that an issue exists as to the charges due Phillips under the terms of the lease. Because of these issues which remain, Phillips argues, the Judgment “in favor of Diamond Shamrock” should be altered or amended. Diamond Shamrock takes the position that it is entitled to judgment on its counterclaim, and that the only issue that remains is the amount of damages it is entitled to pursuant to its counterclaim: “Thus judgment has now been entered in favor of Diamond Shamrock and against Phillips on Phillips’ principal claim and on the liability portion of Diamond Shamrock’s contract damages counterclaim.” Diamond Shamrock takes this position despite its admission in its answer that it does owe Phillips for the lease of additional pipeline space,² and the fact that its counterclaim is one for declaratory judgment and specific performance, and not damages.

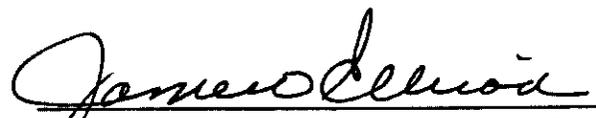
Although both parties focus on a single paragraph in the opinion, the entire opinion of the Court may be consulted to determine the intent of the mandate. Cherokee Nation v. State of Oklahoma, 461 F.2d 674 (10th Cir. 1972). Moreover, “[t]he rule that a lower court must follow the decision of a higher court at an earlier stage of the case applies to everything decided ‘either expressly or by necessary implication.’” Id. Nothing in this Court’s reading of the entire opinion suggests either that the Appellate Court ruled either expressly or impliedly on the “liability” phase of Diamond

²Diamond Shamrock states in its answer: “Diamond Shamrock remains ready, willing and able to pay to Phillips all amounts due under Article VI of the Agreement for the leases of additional Pipeline space.”

Shamrock's counterclaim or found that Diamond Shamrock was entitled to lease additional pipeline space at no charge. In reaching this conclusion, the Court notes that the opinion specifically sets forth the single issue to be decided as follows: "[t]he issue presented by this appeal is whether Phillips Pipe Line Company and Diamond Shamrock and Marketing Company have entered into an agreement for the transportation of product through a pipeline subject to the terms of the Interstate Commerce Act, which governs oil pipelines."³ This single issue framed by the Appellate Court does not contemplate the issues embraced by Diamond Shamrock's counterclaim or by the damage component of Phillips' principal claim.

Defendant Phillips' Motion to Clarify and Amend Judgment (Docket #90) is granted. The Judgment in this matter should reflect that Judgment is entered on Diamond Shamrock's Motion for Summary Judgment only. Diamond Shamrock's Motion for Scheduling Conference (Docket #91) is also granted. However, it should be noted that the remaining issues include the payment due to Phillips for leased space and the counterclaim of Diamond Shamrock. A Status and Scheduling Conference is set in this matter for May 29, 1996 at 11:00 AM

Dated this 14th day of May, 1996.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

³ It is also notable that the Appellate Court did not have the benefit of the stipulation entered into between the parties.

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

FILED

MAY 15 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

TIMOTHY GEORGE RICK,
Petitioner,
vs.
LARRY FIELDS, et al,
Respondent.

No. 95-CV-600-E

ENTERED ON DOCKET

DATE MAY 16 1996

ORDER

This is a proceeding on a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner, currently confined in a Minnesota Correctional Facility, challenges his conviction in Tulsa County District Court Case No. CF-88-4133. Respondent has filed a Rule 5 response. As more fully set out below the Court concludes that this petition should be denied.

I. BACKGROUND

On February 6, 1989, Petitioner pled guilty to First Degree Murder and received a sentence of life imprisonment. Petitioner did not appeal his conviction. In 1994, he filed a petition for post-conviction relief alleging as follows: (1) ineffective assistance of counsel during the ten-day period for perfecting an appeal; (2) denial of right to appeal because the trial court failed to advise Petitioner of his right to a free record on appeal; (3) ineffective assistance of counsel for failing to return to the county jail after Petitioner requested her to do so; (4) denial of right to knowingly and intelligently waive his right to

jury trial, to confront his accusers, and to testify on his own behalf; (5) ineffective assistance of counsel for failing to advise the court of alleged off-the-record threats made to force Petitioner to plead guilty; and (6) insufficiency of the evidence.

The Tulsa County District Court denied relief, finding as follows: (a) Petitioner could not overcome the first tier of the Strickland test; (b) Petitioner's plea was voluntarily and knowingly made; (c) Petitioner was not denied an appeal through no fault of his own; and (d) Petitioner failure to file a timely appeal waived any remaining issues.

In the instant petition for a writ of habeas corpus, Petitioner reasserts the grounds raised in his petition for post-conviction relief.

II. ANALYSIS

Respondent concedes, and this Court finds Petitioner meets the exhaustion requirements under the law. The Court also finds that an evidentiary hearing is not necessary as the issues can be resolved on the basis of the record, see Townsend v. Sain, 372 U.S. 293, 318 (1963), overruled in part on other grounds, Keeney v. Tamayo-Reyes, 504 U.S. 1 (1992).

A. Denial of Right to Appeal (Grounds One, Two, Three, and Four)

Petitioner's claim of denial of his right to appeal has two parts: (1) counsel failed to give notice and perfect a direct appeal during the ten-day period following sentencing, and (2) the

trial court failed to inform Petitioner of his right to a free attorney and an appeal free of cost.

1. Ineffective Assistance of Counsel Claim

To establish ineffective assistance of counsel a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness, and that if counsel had filed an appeal that petitioner would have had a reasonable probability of obtaining relief. Lockhart v. Fretwell, 506 U.S. 364, 369 (1993); Strickland v. Washington, 466 U.S. 668, 694 (1984). A federal habeas court need not consider whether a petitioner can establish prejudice under the second prong of the Strickland test if it finds that counsel was constitutionally inadequate in failing to perfect an appeal--i.e., if the criminal defendant asked his lawyer to file an appeal and the lawyer failed to do so. See Abels v. Kaiser, 913 F.2d 821, 823 (10th Cir. 1990) (holding that when a court has found counsel constitutionally inadequate because counsel failed to properly perfect an appeal, it need not consider the merits of arguments that the defendant might have made on appeal); see also Castellanos v. United States, 26 F.3d 717 (7th Cir. 1994); Lozada v. Deeds, 964 F.2d 956, 958 (9th Cir. 1992).

The Court will address first whether counsel had a duty to advise Petitioner of his right to appeal under Strickland and whether he could avail of that procedure without payment and with the aid of appointed counsel. If there was no such duty, the failure to advise in and of itself cannot be ineffective assistance.

An attorney has no absolute duty in every case to advise a defendant of his appeal rights or to file an appeal following a guilty plea conviction. Laycock v. New Mexico, 880 F.2d 1184, 1187-88 (10th Cir. 1989) (citing Marrow v. United States, 772 F.2d 525, 527 (9th Cir. 1985); Carey v. Leverette, 605 F.2d 745, 746 (4th Cir.) (per curiam) (there is "no constitutional requirement that defendants must always be informed of their right to appeal following a guilty plea"), cert. denied, 444 U.S. 983 (1979)); see also Hardiman v. Reynolds, 971 F.2d 500, 506 (10th Cir. 1992); Castellanos, 26 F.3d 717; Davis v. Wainwright, 462 F.2d 1354 (5th Cir. 1972). Only "[i]f a claim of error is made on constitutional grounds, which could result in setting aside the plea, or if the defendant inquires about an appeal right" does counsel have a duty to inform the defendant of his limited right to appeal a guilty plea. Laycock, 880 F.2d at 1188; see also Shaw v. Cody, 46 F.3d 1152, 1995 WL 20425, *2 (10th Cir. Jan. 20, 1995) (unpublished opinion); Abels v. Kaiser, 913 F.2d 821, 823 (10th Cir. 1990) (counsel's failure to file a requested appellate brief, when he had not yet been relieved of his duties through a successful withdrawal, amounted to constitutionally ineffective assistance). "This duty arises when counsel either knows or should have learned of his client's claim or of the relevant facts giving rise to that claim." Hardiman, 971 F.2d at 506 (quoting Marrow v. United States, 772 F.2d 525, 529 (9th Cir. 1985)).

The only constitutional claims asserted by Petitioner are that his appointed counsel provided ineffective assistance of counsel

when he coerced Petitioner to plead guilty (ground five) and failed to advise him of his right to appointed counsel on appeal and to an appeal free of cost.¹ Petitioner does not allege that during the pertinent time period counsel knew or had reason to know that Petitioner believed his assistance had been constitutionally inadequate. As noted above, counsel's duty to inform his client of his right to appeal a guilty plea arises only when "counsel either knows or should have learned of his client's claim or of the relevant facts giving rise to that claim." Hardiman, 971 F.2d 500, 506. Therefore, counsel had no duty to advise Petitioner of his right to appeal the guilty pleas absent any evidence demonstrating that counsel knew or had reason to know Petitioner believed his assistance was constitutionally inadequate. Laycock, 880 F.2d at 1188.

While counsel had a duty to inform Petitioner of his limited rights to appeal his guilty pleas if Petitioner inquired about his appeal rights, see id., Petitioner has not met this burden either. Petitioner's contention that appointed counsel did not return to the County Jail during the critical ten-day period, even after Petitioner asked her to do so, is unsupported. Even assuming Petitioner asked his attorney to visit him at the Tulsa County Jail following sentencing, Petitioner has set forth no contention that he ever instructed her to appeal his guilty plea conviction or even inquired as to whether he had a right to appeal. Accordingly, the

¹ The Court notes that the latter claim may very well be frivolous because Petitioner was represented by a public defender free of cost during the guilty plea proceedings.

Court concludes counsel had no duty to visit Petitioner at the Tulsa County Jail to discuss whether he should appeal his guilty plea or advise him of his right to an appeal free of cost and/or appointed counsel on appeal. As a result counsel's conduct did not amount to constitutionally ineffective assistance of counsel under the Sixth Amendment.

Petitioner's reliance on Baker v. Kaiser, 929 F.2d 1495 (10th Cir. 1991), is misplaced. In Baker, unlike the case at hand, the defendants were convicted following a jury trial. Therefore, counsel had the duty to "explain the advantages and disadvantages of an appeal[,] . . . provide the defendant with advice about whether there are meritorious grounds for appeal and about the probabilities of success [and] . . . inquire whether the defendant wants to appeal the conviction." Id. at 1499. Since Baker, the Tenth Circuit Court of Appeals has clarified that Baker applies only in situations where the defendant is convicted following a jury trial. See Hardiman, 971 F.2d 500, 506 (implicitly accepting the state's argument that Baker applies in situations where the defendant has not pled guilty); Briggs v. Carr, 53 F.3d 42, 1995 WL 250796 (10th Cir. May 1, 1995) (unpublished opinion); see also Romero v. Tansy, 46 F.3d 1024, 1031 (10th Cir. 1995) (applying Baker to a claim of ineffectiveness in not pursuing appeal following conviction after trial), cert. denied, 115 S.Ct. 2591 (1995). Therefore, the Court declines to apply the Baker analysis to the case at hand in which Petitioner has not challenged the voluntary and intelligent nature of his guilty pleas. But see

United States v. Youngblood, 14 F.3d 38, 40 (10th Cir. 1994) (applying Baker analysis to situation where defendant pled guilty, but finding effective assistance where defendant received the proper explanations from his lawyer, and "the transcript of the hearing makes it clear that [the defendant] never affirmatively indicated any desire to appeal to his counsel or to the district judge").

Accordingly, the Court concludes that Petitioner's counsel did not provide ineffective assistance of counsel when he failed to file a motion to withdraw the guilty pleas and/or appeal Petitioner's convictions.

2. State Court's Failure to Inform

The Court declines to review Petitioner's claim that the state court had a duty to advise him of his right to appointed counsel on appeal and to an appeal free of cost because it is based solely on the alleged violation of state law.² See Hardiman v. Reynolds, 971 F.2d 500, 505 n.9 (10th Cir. 1992) (where court liberally construed the petition to assert a claim of ineffective assistance of counsel because petitioner's claim that the state court should have notified him of his right to an appeal free of cost was grounded only on Oklahoma law). It is well established that in a federal habeas corpus action, this Court is only concerned with whether a federal constitutional right was violated. 28 U.S.C. § 2254. The Court notes, however, that the state court specifically advised

² Petitioner relies on C.C.A. Rule 4.1, and Copenhaver v. State, 431 P.2d 669, 670 n.3 (Okla. Cr. 1967).

Petitioner of his right to appeal and of the procedures for preserving the same. (Plea and Sentencing Tr. at 14-15.)

B. Procedural Bar (Ground Six)

Lastly, the Court addresses Respondent's argument that Petitioner is procedurally barred from asserting in this habeas action his sixth ground for habeas relief--i.e., that there is insufficient evidence to support his conviction.

The doctrine of procedural default prohibits a federal court from considering a specific habeas claim where the state highest court declined to reach the merits of that claim on independent and adequate state procedural grounds, unless a petitioner "demonstrate[s] cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate[s] that failure to consider the claim[] will result in a fundamental miscarriage of justice." Coleman v. Thompson, 501 U.S. 722, 724 (1991); see also Maes v. Thomas, 46 F.3d 979, 985 (10th Cir.), cert. denied, 115 S.Ct. 1972 (1995); Gilbert v. Scott, 941 F.2d 1065, 1067-68 (10th Cir. 1991). "A state court finding of procedural default is independent if it is separate and distinct from federal law." Maes, 46 F.3d at 985. A finding of procedural default is an adequate state ground if it has been applied evenhandedly "'in the vast majority of cases.'" Id. (quoting Andrews v. Deland, 943 F.2d 1162, 1190 (10th Cir. 1991), cert. denied, 502 U.S. 1110 (1992)).

Applying these principles to the instant case, the Court

concludes Petitioner's sixth ground of error is barred by the procedural default doctrine. The state court's procedural bar as applied to Petitioner's claims was an "independent" state ground because "it was the exclusive basis for the state court's holding." Maes, 46 F.3d at 985. Additionally, the procedural bar was an "adequate" state ground because the Oklahoma Court of Criminal Appeals has consistently declined to review claims which were not raised on direct appeal. Moore v. State, 809 P.2d 63, 64 (Okla. Crim. App.), cert. denied, 502 U.S. 913 (1991) (the doctrine of res judicata bars consideration in post-conviction proceedings of issues which have been or which could have been raised on direct appeal).

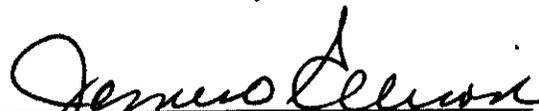
Because of his procedural default, this Court may not consider Petitioner's claim unless he is able to show cause and prejudice for the default, or demonstrate that a fundamental miscarriage of justice would result if his claim is not considered. See Coleman, 111 S. Ct. at 2565. Because counsel was not ineffective for failing to preserve Petitioner's right to a direct appeal, Petitioner cannot show cause and prejudice to excuse his procedural default. Petitioner's only other means of gaining federal habeas review is a claim of actual innocence under the fundamental miscarriage of justice exception. Herrera v. Collins, 506 U.S. 390, 404 (1993); Sawyer v. Whitley, 505 U.S. 333, 340-41 (1992). Petitioner, however, does not claim that he is actually innocent of the crime at issue in this habeas action. Therefore, Petitioner's sixth ground for habeas relief is procedurally barred.

In the alternative, the Court finds Petitioner cannot challenge the sufficiency of the evidence which the state would have presented at trial in this habeas proceeding. Petitioner's plea of guilty was an admission of all facts well pleaded and the judgment is not subject to collateral attack on the grounds that as a factual matter the accused was not guilty of the offense charged.

III. CONCLUSION

Accordingly, Petitioner's request for habeas relief on the basis of grounds one, two, three, four, and six, is hereby DENIED. Respondent shall file a SUPPLEMENTAL RESPONSE, addressing the allegations raised in ground five of the petition, on or before twenty (20) days from the date of filing of this order, as they were not briefed in the original response brief filed on November 22, 1995. See Breechen v. Reynolds, 41 F.3d 1343 (10th Cir. 1994), cert. denied, 115 S.Ct. 2564 (1995). Petitioner may file a REPLY BRIEF within twenty (20) days after the filing of Respondent's supplemental response.

SO ORDERED THIS 14th day of May, 1996.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

MAY 15 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DON BYRD, CURTIS GRAYSON,)
RUSSELL BARNES, CARY McKAUGHAN,)
and LEWIS REYNOLDS,)

Plaintiffs,)

vs.)

No. 95-C-720-C

EAST-WEST AUTO PARTS, INC.,)
an Oklahoma Corporation, and KEN)
FREEMAN and K.C. LOWE,)
individuals,)

Defendants.)

ENTERED ON DOCKET
DATE MAY 16 1996

ORDER

Currently pending before the Court is the motion filed by defendants seeking the dismissal of plaintiff, Grayson's, claims on the grounds of settlement.

On August 2, 1995, plaintiffs filed the present action against defendants, pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* Plaintiffs alleged, inter alia, that they were entitled to unpaid overtime wages for hours worked in excess of forty hours per week. Plaintiff, Grayson, also alleged wrongful termination and retaliation resulting from Grayson's act of reporting defendants to the United States Department of Labor for their failure to comply with the FLSA. A settlement was negotiated between the parties, and on January 3, 1996, every plaintiff, except Grayson, filed a joint application for dismissal with prejudice. On January 8, 1996, the Court granted the joint applications for dismissal with prejudice. On January 5, 1996, Grayson informed his attorney that he would not accept the settlement. Also on January 5, Fred Monachello filed a motion to

withdraw as attorney of record for Grayson, citing Grayson's refusal to accept a settlement which Grayson had previously authorized. On January 10, 1996, the Court granted Monachello's motion to withdraw as attorney for Grayson. On January 11, 1996, defendants filed the present motion to dismiss the claims of Grayson on the grounds of settlement. The Court held a hearing on March 20, 1996, and May 7, 1996, with respect to defendants' present motion.

Defendants entered into settlement negotiations with plaintiffs' attorney, Monachello, during November and December of 1995. In November of 1995, defendants advised Monachello that defendants were willing to settle all claims of all plaintiffs for the sum of \$9,000, of which each plaintiff would receive a pro rata amount. The critical and controverted aspect of this case involves a meeting held at Monachello's office on November 29, 1995, in which all plaintiffs were present. It was at this meeting that Monachello claims he received actual authority from all plaintiffs to enter into the settlement which was finalized in December of 1995. The purpose of the meeting was to discuss whether plaintiffs would accept a total settlement package of \$9,000. The plaintiffs unanimously rejected the offer. Also during the meeting, Monachello sought plaintiffs' thoughts concerning the amount for which they would be willing to settle. Various figures were discussed, and Monachello advised plaintiffs of the likelihood of whether defendants would settle for such amounts, and the costs and disadvantages of pursuing the case to trial. The overwhelming evidence indicates that plaintiffs instructed Monachello to seek a settlement of \$16,000, to be divided among the plaintiffs, although at least one plaintiff testified at the March 20 hearing that Monachello was not authorized to settle for any amount. The evidence indicates that Monachello advised plaintiffs that if they proceeded to trial, they would essentially recover no more than \$12,000, after paying attorney's fees and litigation expenses. Additionally, proceeding to trial would take considerable

time, and plaintiffs were not guaranteed to prevail at trial. Thus, Monachello advised plaintiffs that it would be in their personal interests to agree to a settlement package of \$12,000, if defendants would not agree to a more substantial amount. Other witnesses for Grayson testified that Monachello was authorized to accept either \$16,000 or \$14,000, but not \$12,000. Several of the witnesses testified that they desired to have the settlement completed before Christmas. Under a settlement of \$16,349, Grayson would receive a gross amount of \$2,902, or 17.75% of the total settlement. Testimony at the hearing also revealed that plaintiffs indicated that although they would prefer to settle for approximately \$16,000, the plaintiffs authorized Monachello to settle for a lesser amount, but not less than \$12,000, provided the settlement was finalized prior to Christmas.

On December 12, 1995, Monachello advised defendants that plaintiffs would not settle for \$9,000, but would be willing to settle for \$16,349. Defendants rejected the offer of \$16,349. Monachello and defendants then negotiated and arrived at a settlement amount of \$12,000. Monachello advised defendants that he discussed the figure of \$12,000 with plaintiffs as an obvious settlement amount. On December 18, 1995, Monachello advised defendants that plaintiffs had authorized him to settle all claims of all plaintiffs for \$12,000. Under a settlement of \$12,000, Grayson would receive a gross amount of \$2,130, which represented 17.75% of the total settlement amount. After attorney's fees and withholding taxes, Grayson would net \$1,353.03.

On December 19, 1995, defendants accepted Monachello's offer of \$12,000. It was agreed that individual settlement agreements would be prepared for each plaintiff. At all relevant times, it was the express understanding of defendants that the settlement constituted a "package deal" in which all claims of all plaintiffs would be dismissed with prejudice. On December 20, 1995, settlement documents were signed by defendants and delivered to Monachello. Monachello requested the

issuance of the settlement checks. Defendants proceeded to obtain a loan and issue individual checks to each plaintiff for an amount reflecting each plaintiff's pro rata share of the settlement, less attorney's fees and withholding taxes.

On December 22, 1995, Monachello advised defendants that plaintiffs signed the settlement documents. Monachello requested delivery of the settlement checks. When defendants' counsel arrived at Monachello's office, Monachello advised that all plaintiffs except Grayson had signed the agreement. Monachello informed defendants' counsel that he expected Grayson to come in and sign the agreement shortly. Monachello advised that Grayson had agreed to the settlement and had authorized the settlement in a prior meeting. Since Monachello assured defendants' counsel that the settlement was accepted by all plaintiffs, the settlement checks were left with Monachello and distributed to each plaintiff, except for Grayson.

Thereafter, Grayson informed Monachello that he was not sure about the settlement. Monachello advised Grayson that it was too late to change his mind. Monachello informed Grayson that the settlement was complete, and that Grayson had authorized Monachello to enter into such settlement. On January 5, 1996, Grayson informed Monachello that he would not accept the settlement. Grayson informed Monachello that he did not authorize a settlement for the amount of \$1,353, but that he would accept a net amount of \$2,000. As noted above, under the finalized settlement, Grayson received a gross amount of \$2,130. Prior to January 5, Grayson had not advised Monachello that Grayson would not accept a package settlement of \$12,000, and, prior to that date, Grayson had not revoked any authority which Monachello testified he possessed.

With respect to the plaintiffs' meeting on November 29, 1995, testimony revealed that certain settlement sums were discussed. It is undisputed that defendants' offer of \$9,000 was rejected by all

plaintiffs. Susan Cole, an attorney who was present at the plaintiffs' meeting in November, testified that all plaintiffs, including Grayson, instructed Monachello to seek \$16,000, but that all plaintiffs, including Grayson, authorized Monachello to accept \$12,000 if the settlement could be finalized before Christmas. Sam Newton, one of the plaintiffs involved in this action, corroborated Cole's testimony and likewise testified that he was present at the plaintiffs' meeting, and that all plaintiffs agreed to accept a package of \$12,000 before Christmas, although \$14,000 would be ideal. Newton further testified that Grayson never mentioned any problem with the settlement until after the checks were delivered. Newton testified that Grayson was not satisfied with the amount of his check and that Grayson inquired as to the amount for which they agreed to settle. Newton informed Grayson that they agreed to \$12,000, to which Grayson replied that he thought that the plaintiffs had agreed to \$14,000.

Grayson testified that he told Monachello that he would like to net \$2,000. Grayson testified that he agreed to settle for either \$16,000 or \$14,000 before Christmas, but not \$12,000. Grayson admitted that \$12,000 was presented as a possible amount, but that he did not agree to it. Grayson testified that he thought that the settlement only involved his overtime wage claim and not his wrongful discharge claim. When Grayson saw the amount of his check and discovered that the settlement dismissed all of his claims against defendants, Grayson refused to sign the settlement documents.

Plaintiff, Russell Barnes, testified that he never authorized settlement for any amount. Barnes testified that the plaintiffs instructed Monachello to offer \$16,000, and then Monachello was to meet with plaintiffs again to discuss the outcome of settlement negotiations. Barnes testified that he signed the documents and received the check because he needed the money. Plaintiff, Don Byrd, testified

that all plaintiffs agreed to settle for \$16,000 before Christmas. Byrd further testified that Grayson's wrongful discharge claim was not mentioned at the November 29 meeting. However, Byrd testified that \$12,000 and \$14,000 were mentioned as possible settlement amounts, and that Monachello recommended \$12,000. Byrd testified that no one agreed to settle for \$12,000. Byrd testified that he signed the documents and received the check because he needed the money.

Monachello testified that Grayson understood that Grayson would receive a pro rata share of \$12,000, amounting to 17.75% of the total settlement package. Monachello further testified that he had Grayson's permission to settle for such a sum. Monachello testified that he informed plaintiffs that to seek \$16,000 at trial would be costly and take considerable time, and plaintiffs may be awarded a much smaller sum at trial. Monachello testified that he informed each plaintiff of the amount each would receive under a \$12,000 settlement. Monachello testified that at the conclusion of the meeting, every plaintiff, including Grayson, instructed Monachello to seek \$16,000, but all plaintiffs authorized him to settle for \$12,000 if the settlement could be finalized prior to Christmas. Monachello testified that he told all plaintiffs that the settlement was a "package deal" and that all must agree to it; otherwise, there would be no settlement. Defendants had advised Monachello that they were only interested in settling all claims of all plaintiffs at the same time, and were not interested in settling some but not all claims. The defendants' purpose in agreeing to the settlement was to avoid the expense of litigation, and this purpose would be negated if even one plaintiff decided to proceed to trial.

With respect to Grayson's wrongful discharge claim, Monachello testified that Grayson would receive a letter of reference from defendants in exchange for dismissing that particular claim. Monachello testified that Grayson agreed to dismiss the wrongful discharge claim in exchange for the

letter of reference. Grayson testified that settling his wrongful termination claim in exchange for a letter of reference was not discussed, and that at no time did he authorize a settlement which would net less than \$2,000. Grayson testified that he only viewed the settlement as respecting the overtime wage claim and not the wrongful termination claim.

Monachello testified that Grayson began to "waffle" with respect to the settlement on December 26, and on January 5, 1996, Grayson reneged on the settlement. Prior to this time, Grayson never mentioned that he had any problem with the settlement. Monachello testified that on January 5, 1996, Grayson informed Monachello that he would settle for a net amount of \$2,000. At approximately this time, defendants sued Grayson for an amount allegedly owed on a car which Grayson purchased from defendants.

Mary Matthies, counsel for defendants, testified that she received a phone call from Dale Warner, Grayson's new attorney, around mid-January. Matthies testified that Warner told her that Grayson would sign all the settlement documents if he could net \$2,000, and Matthies was informed that the only objection Grayson had was that he wanted additional money. Matthies testified that she informed Warner that two weeks prior, Grayson demanded a net of \$1,700 from Monachello. Matthies testified that she told Warner that she was suspicious of Grayson's offer because the amount he was seeking kept changing.

It is undisputed that at all relevant times, defendants were acting in good faith and in reasonable reliance upon Monachello's representations. Based upon Monachello's representations, defendants truly and reasonably believed that all plaintiffs had agreed to a \$12,000 settlement package that would settle the entire case. Acting with a reasonable understanding that the case was settled,

defendants proceeded to obtain a loan and **issue settlement checks**. Not until January of 1996 did defendants learn that one plaintiff, Grayson, **would not accept the negotiated deal**.

Given the foregoing and upon **reviewing the documents, materials, affidavits, and exhibits** submitted by the parties, as well as the **testimony of the various witnesses**, the Court finds that Monachello had actual authority from **all of the plaintiffs**, including Grayson, to settle the present case for the total amount of \$12,000, and that **each plaintiff** was entitled to a pro rata share of such sum. Although there is conflicting testimony as to **Monachello's actual authority to enter such a settlement**, the Court finds credible Monachello's **testimony and version of the events surrounding his authority to enter into a binding settlement for \$12,000 on behalf of all the plaintiffs**. Monachello's testimony concerning his actual authority to enter into a **settlement for \$12,000 on behalf of all plaintiffs** was corroborated by Susan Cole and plaintiff Sam Newton, both of whom the Court finds credible. With respect to those witnesses who dispute **Monachello's authority to enter into such a settlement**, the Court finds their testimony to be somewhat **inconsistent and generally lacking in credibility**. Further, the Court finds credible Monachello's **testimony regarding Grayson's wrongful termination claim**. That is, the Court is convinced that Grayson **settled that claim in exchange for a letter of reference from defendants**.

Grayson, in his affidavit filed on **January 30, 1996**, admits that he conveyed to Monachello the amount for which he would be willing to **settle**. Furthermore, Grayson admits in his affidavit that he authorized Monachello to settle for that **amount**. However, he does not state what that amount was. The agreement that Monachello **entered into with defendants for \$12,000** provided Grayson with \$2,130. Grayson testified that he **authorized Monachello to settle the case if Grayson recovered \$2,000**. Clearly, \$2,130 exceeds the amount for which Grayson authorized Monachello to settle.

The fact that attorney's fees and taxes reduced Grayson's recovery to \$1,353 is largely irrelevant. The question is whether Grayson authorized Monachello to enter into a package settlement for \$12,000, of which Grayson would receive a gross of \$2,130. This question must be answered in the affirmative since Grayson himself testified that he would settle for \$2,000. The fact that Grayson was mistaken as to the net amount he would receive under the settlement is not sufficient to invalidate an express authorization to enter into a settlement agreement, whereby Grayson, by his own admission, authorized a settlement if he received \$2,000. Only after Grayson saw the check did he demand that he wanted to settle for a *net* of \$2,000. At that point, it was too late for Grayson to revoke the authority he had previously given to Monachello. Hence, the Court finds that Grayson authorized Monachello at the November 29, 1995, meeting to enter into a package settlement with defendants for a total amount of \$12,000.

Furthermore, the Court finds it interesting that Grayson filed a counterclaim against defendants on January 16, 1996, in a state court proceeding in Tulsa County seeking only \$1,500 for "work expended at East West Auto Parts." Additionally, the Court finds interesting the letter dated March 1, 1996, from Monachello to Dale Warner, attorney for Grayson, in which Monachello offered to return Monachello's attorney fee of \$426 if Grayson would accept the settlement, which would allow Grayson a total amount of \$2,130 before taxes and \$1,779 after taxes. Grayson refused the offer.

The Court also finds it interesting that all plaintiffs, except Grayson, accepted the settlement agreement. Although two witnesses testified that they only accepted the money because they needed it, the Court finds that such acceptance by all other plaintiffs strongly indicates that all of the plaintiffs had indeed authorized Monachello to settle for the amount which he did. The witnesses who viewed

their settlement checks as being less than expected probably did not contemplate attorney's fees and taxes being deducted when they authorized Monachello to accept \$12,000.

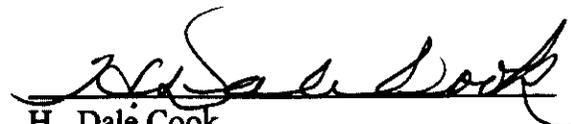
With respect to Grayson's wrongful discharge claim, the Court finds that the credible evidence demonstrates that this claim was settled in exchange for a letter of reference from defendants. This finding is supported by the fact that Grayson, in his affidavit filed on January 30, 1996, only objected to the amount of money he would receive in the settlement. Although Grayson testified that he also objected to the wrongful termination claim being included as part of the settlement, the Court finds it odd that he did not include such an objection in his affidavit. Rather, Grayson stated in his affidavit that, "When I learned that the amount was not the figure I had authorized Mr. Monachello to settle for, I declined to sign the papers." Grayson obviously knew in December of 1995 that his wrongful termination claim would be dismissed with the settlement, and it is therefore strange that he did not include this particular objection to the settlement in his January 1996 affidavit. Rather, he only objected to the amount of money he was to receive. Furthermore, the Court finds interesting Matthies' testimony that Grayson's attorney, Dale Warner, informed Matthies that Grayson would sign the documents if he netted \$2,000. Clearly, at such time, Grayson and Warner must have known that the settlement documents which they offered to sign in exchange for \$2,000 contained a clause dismissing all claims that Grayson may have against defendants.

Hence, the Court concludes that Monachello had actual authority from all plaintiffs, including Grayson, to enter into a binding settlement for a total amount of \$12,000. The Court therefore concludes that Grayson is bound by the settlement entered into by Monachello on behalf of Grayson and the other plaintiffs. With respect to Grayson's wrongful termination claim, the Court concludes that Grayson settled that claim in exchange for a letter of reference from defendants. Since the Court

concludes that Grayson is bound by the settlement entered into by Monachello with defendants, the Court further concludes that the wrongful termination claim is dismissed pursuant to the terms of the settlement agreement. The Court notes that **this case** involves multiple plaintiffs who accepted the settlement agreement and cashed their checks, and it also involves innocent defendants who are now placed in an extremely precarious situation by the acts of Grayson. The Court simply cannot place the parties back in the same situation they occupied prior to the settlement. However, since the Court concludes that Grayson is bound by the settlement by virtue of the actual authority which he bestowed upon Monachello, the Court need not face the difficult and largely unfair task of invalidating the settlement agreement with respect to Grayson.

Accordingly, defendant's motion to dismiss the claims of Grayson based on the grounds of settlement is hereby GRANTED. Defendant's motion to require Grayson to dismiss his duplicative state court counterclaim against defendants for lost wages is hereby DENIED. Defendant's request for attorney fees incurred as a result of presenting the present motion is hereby DENIED.

IT IS SO ORDERED this 14 day of May, 1996.


H. Dale Cook
U.S. District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 15 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JAMES ALLEN PERRYMAN, JR.;)
CHRISTINA PERRYMAN; CITY OF)
CATOOSA, Oklahoma; COUNTY)
TREASURER, Rogers County, Oklahoma;)
BOARD OF COUNTY)
COMMISSIONERS, Rogers County,)
Oklahoma,)
Defendants.)

ENTERED ON DOCKET
DATE MAY 15 1996 ✓

Civil Case No. 96-C 75B

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.

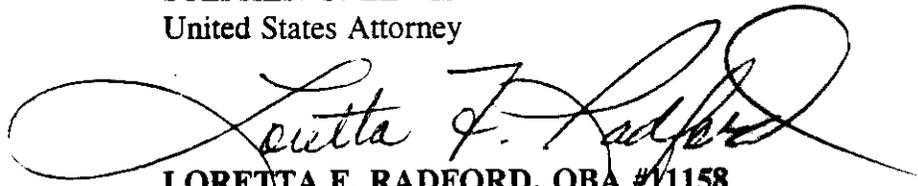
Dated this 15 day of May, 1996.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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 and a long horizontal tail.

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
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAY 16 1996

GARY F. ROBINSON,
Plaintiff,
vs.
THE CITY OF BROKEN ARROW,
OKLAHOMA,
Defendant.

Case No. 93-CV-618-K

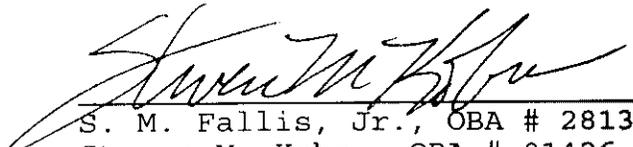
F I L E D

MAY 15 1996

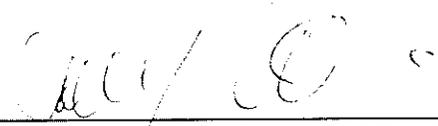
Phil Lombardi, Clerk
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

Comes now plaintiff, Gary F. Robinson, and, pursuant to Fed. R. Civ. R. 41(a)(1)(ii), hereby dismisses all claims and causes of action in this case against the defendant City of Broken Arrow, Oklahoma, with prejudice to the refileing of same.


S. M. Fallis, Jr., OBA # 2813
Steven M. Kobos, OBA # 01426
Nichols, Wolfe, Stamper, Nally,
Fallis & Robertson, Inc.
Suite 400 Old City Hall
124 East Fourth Street
Tulsa, Oklahoma 74103-5010
(918) 584-5182

ATTORNEYS FOR CITY OF BROKEN
ARROW, OKLAHOMA


Patrick J. Malloy III, Trustee
810 Utica National Building
1924 South Utica
Tulsa, Oklahoma 74104-6515
(918) 747-3491

TRUSTEE FOR THE BANKRUPT ESTATE
OF GARY FRED ROBINSON AND
VICTORIA LYNN ROBINSON

ENTERED ON
DATE 5-16-96

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

F I L E D

MAY 14 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CRYSTAL BAY MARINA,)

Plaintiff,)

and)

UNITED STATES OF AMERICA,)

Intervening)
Plaintiff,)

v.)

Case No. 94-C-1038-H ✓

BILL SWEEDEN, individually and as)
Chairman of the Board of County)

Commissioners of Osage County; G.H.)

"JESS" BALLARD, individually and as a)
member of the Board of County)

Commissioners of Osage County; VIRGIL)

WILLIAMSON, individually and as a)
member of the Board of County)

Commissioners of Osage County; and BILL)

McBEE, individually and as Chairman of)
the Pawhuska/Osage County Planning)

Commission,)

Defendants,)

and)

CRYSTAL BAY ESTATES, INC., an)
Oklahoma corporation,)

Intervening)
Defendant.)

53

ORDER

This matter comes before the Court on **Motions** for Summary Judgment filed by Intervening Plaintiff, the United States (Docket #32), **Plaintiff** Crystal Bay Marina (Docket #36), Intervening Defendant Crystal Bay Estates (Docket #37), and Defendants Bill Sweeden, G.H. "Jess" Ballard, Virgil Williamson, and Bill McBee (collectively referred to herein as "Commissioners") (Docket #49).¹

I.

The Flood Control Act of October 23, 1962, P.L. 87-874, Title II, Sec. 207, 76 Stat. 1195, authorized the construction of Skiatook Dam and Reservoir in Osage County, Oklahoma. Congress designated the purposes of the Reservoir as including flood control, water supply, water quality control, recreation, and fish and wildlife management. Congress further provided that the Chief of Engineers ("Corps"), under the supervision of the Secretary of the Army, may "construct, maintain, and operate public park and recreational facilities" at the Skiatook Reservoir or permit the construction, maintenance, and operation of such facilities by local interests. 16 U.S.C. § 460d.

Pursuant to its statutory authority, in May 1984, the Corps entered into a twenty-year lease with the Public Works Authority of Osage County for a tract of land located in the Skiatook Lake Project Area. The stated purpose of the lease was for "public park and recreational purposes." In March 1992, the land was sublet to **Plaintiff** Crystal Bay Marina (the "Marina"). With Corps

¹Also before the Court is **Crystal Bay Estates'** Motion to Stay (Docket #10) these proceedings pending resolution of the state court action between the parties. The Court notes that the District Court for Osage County **has stayed** that action awaiting the outcome of this case. See Informative Mot. by Intervening Def. **Crystal Bay Estates** (Docket #26). By ruling on the pending dispositive issues at this time, the motion to stay is hereby moot.

approval, the Marina pursued plans for the development of a recreational vehicle park on the property.

On August 6, 1993, Crystal Bay Estates, Inc. (the "Estates") filed a Plat and Deed of Dedication of Crystal Bay Estates with the County Clerk of Osage County, indicating the intended use of Crystal Bay Estates for single family residential development. The land leased by the Marina is adjacent to and within 660 feet of the boundary lines of the Estates.

In December 1993, the Commissioners enacted a zoning ordinance which provided in pertinent part as follows:

1.3.2 d. A 660 foot perimeter around **platted** single family residential districts will be zoned as part that district.

1.4 Regulation of Use, Height, Area, Yards, and Open Spaces

Except as herein otherwise provided, **no land shall be used and no building, structure, or improvement shall be made, erected, constructed, moved, altered, enlarged or rebuilt which is designed, arranged or intended to be used or maintained for any purpose or in any manner except in conformity with the regulations contained herein.**

1.7.3 (d) No zoning of lands of any governmental jurisdiction is under this ordinance (emphasis added).

On August 8, 1994, by Nunc Pro Tunc Resolution #3635, the Board of County Commissioners of Osage County deleted Section 1.7.3(d) of these regulations in an attempt to extend the zoning ordinance to government land. As a result, **all of the property operated by the Marina that is within 660 feet of the boundary of the Estates was zoned "Single Family Residential."** The Marina began construction of a recreational vehicle park on the leased premises on September 3, 1994. On October 13, 1994, the Osage County Planning Commission notified the Marina that it was in violation of the applicable zoning regulations.

II.

Summary judgment is appropriate where "there is no genuine issue as to any material fact," Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Widon Third Oil & Gas Drilling Partnership v. Federal Deposit Ins. Corp., 805 F.2d 342, 345 (10th Cir. 1986), cert. denied, 480 U.S. 947 (1987), and "the moving party is entitled to judgment as a matter of law," Fed. R. Civ. P. 56(c). In Celotex, the Supreme Court stated:

[t]he plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the **existence** of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

477 U.S. at 322.

A party opposing a properly supported motion for summary judgment must offer evidence, in admissible form, of specific facts, Fed. R. Civ. P. 56(e), sufficient to raise a "genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) ("The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment."). "Factual disputes that are irrelevant or unnecessary will not be counted." Id. at 248.

Summary judgment is only appropriate if "there is [not] sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." Id. at 250. The Supreme Court stated:

[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.

Id. at 252. Thus, to defeat a summary judgment motion, the nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v.

Zenith Radio Corp., 475 U.S. 574, 585-86 (1986); Anderson, 477 U.S. at 250 ("There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." (citations omitted)).

In essence, the inquiry for the Court is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson, 477 U.S. at 250. All the parties to the instant case have filed motions for summary judgment. Based upon this fact and a review of the record and briefs of counsel, the Court concludes that no genuine issues of material fact exist and that this case may be decided as a matter of law.

III.

The Marina and the Corps seek a judgment declaring that the zoning regulations, as applied to federal land, are pre-empted by federal law and thus unenforceable. The Declaratory Judgment Act provides in applicable part:

In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

28 U.S.C. § 2201(a). The Court concludes that the instant case constitutes an actual and justiciable controversy for purposes of the Act. Declaratory relief is therefore appropriate.

The Marina and the Corps contend that the zoning ordinance is pre-empted by federal law. Federal preemption of state law generally occurs in two ways. First, Congress may evidence an intent to occupy a given field, thus preempting any state efforts to legislate within that field. See Pacific Gas

& Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n, 461 U.S. 190 (1983). The Court can find no evidence of any congressional intent to occupy the relevant field in the instant case.

The Supreme Court, however, also has provided that

[i]f Congress has not entirely displaced state regulation over the matter in question, state law is still pre-empted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.

California Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 581 (1987) (emphasis added). The Court concludes that the zoning ordinance at issue here prevents the Marina from using the property in accordance with the purposes and objectives of Congress and therefore is pre-empted by federal law.

The Property Clause of the Constitution provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. Art. IV, § 3, cl. 2. The Supreme Court has consistently interpreted congressional power under the Property Clause to be "without limitations." Kleppe v. New Mexico, 426 U.S. 529, 539 (1976); United States v. San Francisco, 310 U.S. 16, 29 (1940). Among the powers unconditionally delegated to Congress by the Property Clause is the authority to control the occupancy and use of public lands. See Kleppe, 426 U.S. at 540; Utah Power & Light Co. v. United States, 243 U.S. 389, 405 (1917).

Relying extensively on California Coastal Comm'n v. Granite Rock Co., the Estates and the Commissioners assert that the Property Clause does not automatically prohibit the regulation of federal land by the state governments. 480 U.S. 572 (1987). Granite Rock was the holder of an unpatented mining claim in a national forest. The California Coastal Commission instructed Granite

Rock to apply for a coastal development permit for any mining undertaken on the land. Granite Rock refused and sought injunctive and declaratory relief in federal court, claiming that the Coastal Commission's permit requirement was pre-empted by federal law. The Supreme Court stated:

Granite Rock does not argue that the Coastal Commission has placed any particular conditions on the issuance of a permit that conflict with federal statutes or regulations. Indeed, the record does not disclose what conditions the Coastal Commission will place on the issuance of a permit. Rather, Granite Rock argues, as it must given the posture of the case, that there is no possible set of conditions the Coastal Commission could place on its permit that would not conflict with federal law -- that any state permit requirement is *per se* pre-empted. The only issue in this case is this purely facial challenge to the Coastal Commission permit requirement.

480 U.S. at 579-80 (emphasis added). Presented with this narrow issue, the Supreme Court concluded that the permit requirement itself was not *per se* pre-empted by federal law.

The Supreme Court, however, specifically stated that it did not approve "any future application of the Coastal Commission permit requirement that in fact conflicts with federal law." Id. at 594 (emphasis added). Granite Rock, therefore, permits the enforcement of state regulations on federal land only insofar as the regulations do not actually conflict with federal law. Thus, if the zoning regulation at issue in the instant case conflicts with federal law, it is pre-empted.

Recreation was one of the stated purposes of the Flood Control Act. Congress authorized the Corps to permit local interests to construct, operate, and maintain recreational facilities at the Skiatook project. The Corps approved the Marina's plans for the development of recreational facilities on the land, including the construction and operation of a recreational vehicle park. The zoning ordinance at issue designates the site of the proposed recreational vehicle park as a "single family residential district." Enforcement of that ordinance would preclude the development of the

recreational vehicle park.² Clearly, the ordinance directly conflicts with the federally-approved use of federal land. The Court therefore concludes that the zoning ordinance, as applied to the federal land sublet to the Marina, is pre-empted.

The Estates and the Commissioners submitted a supplemental brief setting forth their claim that the land at issue is not subject to “federal jurisdiction” because the federal government has failed to take the statutory steps necessary to establish exclusive jurisdiction. See 40 U.S.C. § 255. The Corps and the Marina agree that the federal government does not have exclusive jurisdiction over the land. This lack of “jurisdiction,” however, is irrelevant to the present inquiry.

[W]hile Congress can acquire exclusive or partial jurisdiction over lands within a state . . . the presence or absence of such jurisdiction has nothing to do with Congress’ powers under the Property Clause. Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause. And when Congress so acts, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause.

Kleppe v. New Mexico, 426 U.S. 529, 542-43 (1976) (citations omitted). In support of their claim that this lack of federal jurisdiction subjects federal land to local zoning ordinances, the Estates and

²The Estates and the Commissioner contend that the zoning ordinance and federal law do not conflict because:

[W]hile the Corps of Engineers may not build a recreational vehicle park on the Leasehold without first seeking a variance, there are numerous recreational facilities that could be built on the Leasehold such as golf courses, tennis courts, playgrounds, swimming areas, marina, camping, picnicing [sic] areas, hiking areas and parks, all of which are permitted within a single family residential zoning district.

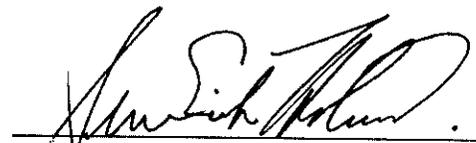
Defs.’ Resp. to Pls.’ Mot. for Summ. J. at 3. This argument is without merit because the Supremacy Clause does not require or even contemplate such compromises. The Corps specifically has approved the construction of a recreational vehicle park. Local governments therefore may not foreclose the building of such a park.

the Commissioners rely upon Dupuis v. Submarine Base Credit Union, Inc., 365 A.2d 1093 (Conn. 1976). Dupuis is a Connecticut Supreme Court case and thus is not controlling in this jurisdiction. Furthermore, Dupuis itself concedes that **even** if federal jurisdiction is not invoked, local zoning ordinances and building codes are applicable to federal land only "to the extent that they are not inconsistent with the federal purpose in acquiring the lands and are not contrary to federal statutes." 365 A.2d at 1097 (citing James Stewart & Co. v. Sadrakula, 309 U.S. 94, 103-04 (1940)). The Court thus concludes that the jurisdictional **argument** is irrelevant to the instant case.

Accordingly, the Motions for Summary Judgment filed by the United States (Docket #32) and the Marina (Docket #36) are hereby granted. The Motions for Summary Judgment filed by the Estates (Docket #37) and the Commissioners (Docket #49) are therefore denied.

IT IS SO ORDERED.

This 14TH day of May, 1996.



Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 PAMELA SUE HUMMEL aka Pamela S.)
 Rider aka Pamela Rider; WILLIAM D.)
 RIDER; COUNTY TREASURER, Tulsa)
 County, Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

F I L E D

MAY 14 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil Case No. 95 C 1167K

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.

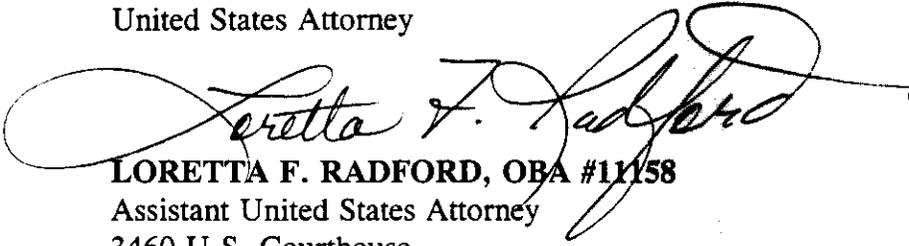
Dated this 14 day of May, 1996.

s/ TERRY C. KERN

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 typed name and address.

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

LFR:flv

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.

ENTERED ON DOCKET
DATE 5-16-96

F I L E D

MAY 14 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil Case No. 95 C 933K ✓

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 the Judgment of Foreclosure entered herein on the 28th day of February, 1996, and the Notice of Sale filed on the 22nd day of April, 1996, are vacated, the Sale now scheduled for the 3rd day of June, 1996, at 10:00 a.m. at the North Front Door of the Tulsa County Courthouse is canceled and the action is dismissed without prejudice.

NOTE: THIS ORDER IS TO BE MAILED
BY MAIL ROOM OR COUNSEL AND
PROCESSED IMMEDIATELY
UPON RECEIPT.

18

Alma

Dated this 13 day of May, 1996.

UNITED STATES DISTRICT 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, OK 74103
(918) 581-7463

LFR:flv

ENTERED ON DOCKET

DATE 5-16-96

F I L E D

MAY 14 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IDELL WARD, et al.,)
)
 PLAINTIFFS,)
)
 vs.)
)
 SUN COMPANY, INC., (R&M), a Pennsyl-)
 vania corporation; and SUN COMPANY,)
 INC., a Pennsylvania corporation,)
)
 DEFENDANTS.)

CASE NO. 94-C-1059-H

PARTIAL STIPULATED DISMISSAL WITHOUT PREJUDICE

COME(S) NOW the Plaintiff, Charles Ruble, only and the defendants, SUN COMPANY, INC. (R&M), and SUN COMPANY INC., pursuant to Fed.R.Civ.P. 41(a)(1), and stipulate to the dismissal of all claims of such Plaintiff(s) against such Defendant(s) without prejudice.

The remaining Plaintiff(s) reserve all rights to proceed against the Defendant(s) and any others who may be liable.

Each party to this stipulated dismissal is to bear their own costs.


JOHN M. MERRITT - OBA #6146
Merritt & Rooney, Inc.
P.O. Box 60708
Oklahoma City, OK 73146
(405) 236-2222
Attorneys for Plaintiffs


ROBERT P. REDEMANN - OBA #7454
Rhodes, Hieronymus, Jones
Tucker & Gable
2800 Fourth National Bank Bldg.
Tulsa, OK 74119
Attorneys for Defendants

ENTERED ON DOCKET
DATE 5-16-96

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 14 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

IDELL WARD, et al.,)
)
 PLAINTIFFS,)
)
 vs.)
)
 SUN COMPANY, INC., (R&M), a Pennsyl-)
 vania corporation; and SUN COMPANY,)
 INC., a Pennsylvania corporation,)
)
 DEFENDANTS.)

CASE NO. 94-C-1059-H

PARTIAL STIPULATED DISMISSAL WITHOUT PREJUDICE

COME(S) NOW the Plaintiff, Wilmot Waquoi, Minor, only and the defendants, SUN COMPANY, INC. (R&M), and SUN COMPANY INC., pursuant to Fed.R.Civ.P. 41(a)(1), and stipulate to the dismissal of all claims of such Plaintiff(s) against such Defendant(s) without prejudice.

The remaining Plaintiff(s) reserve all rights to proceed against the Defendant(s) and any others who may be liable.

Each party to this stipulated dismissal is to bear their own costs.


JOHN M. MERRITT - OBA #6146
Merritt & Rooney, Inc.
P.O. Box 60708
Oklahoma City, OK 73146
(405) 236-2222
Attorneys for Plaintiffs


ROBERT P. REDEMANN - OBA #7454
Rhodes, Hieronymus, Jones
Tucker & Gable
2800 Fourth National Bank Bldg.
Tulsa, OK 74119
Attorneys for Defendants

ENTERED ON DOCKET
DATE 5-16-96

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 14 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

IDELL WARD, et al.,)
)
 PLAINTIFFS,)
)
 vs.)
)
 SUN COMPANY, INC., (R&M), a Pennsyl-)
 vania corporation; and SUN COMPANY,)
 INC., a Pennsylvania corporation,)
)
 DEFENDANTS.)

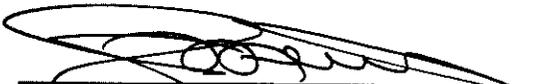
CASE NO. 94-C-1059-H

PARTIAL STIPULATED DISMISSAL WITHOUT PREJUDICE

COME(S) NOW the Plaintiff, Bill Morgan and Shirley Morgan, only and the defendants, SUN COMPANY, INC. (R&M), and SUN COMPANY INC., pursuant to Fed.R.Civ.P. 41(a)(1), and stipulate to the dismissal of all claims of such Plaintiff(s) against such Defendant(s) without prejudice.

The remaining Plaintiff(s) reserve all rights to proceed against the Defendant(s) and any others who may be liable.

Each party to this stipulated dismissal is to bear their own costs.


JOHN M. MERRITT - OBA #6146
Merritt & Rooney, Inc.
P.O. Box 60708
Oklahoma City, OK 73146
(405) 236-2222
Attorneys for Plaintiffs


ROBERT P. REDEMANN - OBA #7454
Rhodes, Hieronymus, Jones
Tucker & Gable
2800 Fourth National Bank Bldg.
Tulsa, OK 74119
Attorneys for Defendants

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 1 4 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
KAREN ANITA RAMIREZ fka KAREN)
A. AQUINO; JUAN MANUEL)
RAMIREZ; COUNTY TREASURER,)
Tulsa County, Oklahoma; BOARD OF)
COUNTY COMMISSIONERS, Tulsa)
County, Oklahoma,)
)
Defendants.)

ENTERED ON DOCKET

MAY 1 5 1996

Civil Case No. 95-C 863B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14th day of May,

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, KAREN ANITA RAMIREZ fka Karen A. Aquino and JUAN MANUEL RAMIREZ, appear not, but make default.

The Court further finds that the Defendants, KAREN ANITA RAMIREZ fka Karen A. Aquino and JUAN MANUEL RAMIREZ, 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 February 8, 1996, and continuing through March 14, 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 Defendants, KAREN ANITA RAMIREZ fka Karen A. Aquino and JUAN MANUEL RAMIREZ, 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, KAREN ANITA RAMIREZ fka Karen A. Aquino and JUAN MANUEL RAMIREZ. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Department of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on September 13, 1995; and that the Defendants, KAREN ANITA RAMIREZ

fka Karen A. Aquino and JUAN MANUEL RAMIREZ, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, KAREN ANITA RAMIREZ, is one and the same person formerly known as Karen A. Aquino, and will hereinafter be referred to as "KAREN ANITA RAMIREZ." The Defendants, KAREN ANITA RAMIREZ and JUAN MANUEL RAMIREZ, 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 NINETEEN (19), BLOCK TWO (2), AMENDED
PLAT OF MAX CAMPBELL THIRD ADDITION TO
THE CITY OF TULSA, COUNTY OF TULSA,
STATE OF OKLAHOMA, ACCORDING TO THE
RECORDED PLAT THEREOF.

The Court further finds that on May 15, 1986, the Defendant, KAREN ANITA RAMIREZ (THEN KAREN A. AQUINO) and Rigoberto Aquino, executed and delivered to COMMONWEALTH MORTGAGE CORPORATION, their mortgage note in the amount of \$40,741.00, 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 Defendant, KAREN ANITA RAMIREZ (THEN KAREN A. AQUINO) and Rigoberto Aquino, then Husband and Wife, executed and delivered to COMMONWEALTH MORTGAGE CORPORATION, a mortgage dated May 15, 1986, covering the above-

described property. Said mortgage was recorded on May 21, 1986, in Book 4943, Page 2670, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 23, 1986, COMMONWEALTH MORTGAGE CORPORATION, assigned the above-described mortgage note and mortgage to METMOR FINANCIAL INC. This Assignment of Mortgage was recorded on January 26, 1987, in Book 4997, Page 1097, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 26, 1989, METMOR FINANCIAL INC., assigned the above-described mortgage note and mortgage to U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. This Assignment of Mortgage was recorded on October 4, 1989, in Book 5211, Page 2205, in the records of Tulsa County, Oklahoma. On February 1, 1990, a corrected assignment by METMOR FINANCIAL INC., of the above-described mortgage note and mortgage was made to the Secretary of Housing & Urban Development of Washington, D.C., his/her successors and assigns. This Corrected Assignment was filed on February 14, 1990, in Book 5236, Page 884 in the records of Tulsa County, Oklahoma.

The Court further finds that on August 16, 1989, the Defendant, KAREN ANITA RAMIREZ, 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, KAREN ANITA RAMIREZ, 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, KAREN

ANITA RAMIREZ, is indebted to the Plaintiff in the principal sum of \$62,376.78 representing an Unpaid Principal of \$40,189.21, Accrued Interest of \$21,343.16, and Penalties of \$844.41, plus interest at the rate of 9.5 percent per annum from November 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$23.00 which became a lien on the property as of June 26, 1992 and a lien in the amount of \$16.00 which became a lien on the property as of June 25, 1993. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, KAREN ANITA RAMIREZ and JUAN MANUEL RAMIREZ, 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, KAREN

ANITA RAMIREZ, in the principal sum of \$62,376.78, plus interest at the rate of 9.5 percent per annum from November 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.60 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, County, Oklahoma, have and recover judgment in the amount of \$39.00, plus costs and interest, for personal property taxes for the years 1991 and 1992, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, KAREN ANITA RAMIREZ, JUAN MANUEL RAMIREZ 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, KAREN ANITA RAMIREZ, to satisfy the judgment In Rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without 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 \$39.00,
personal property taxes which are currently due and
owing.

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

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

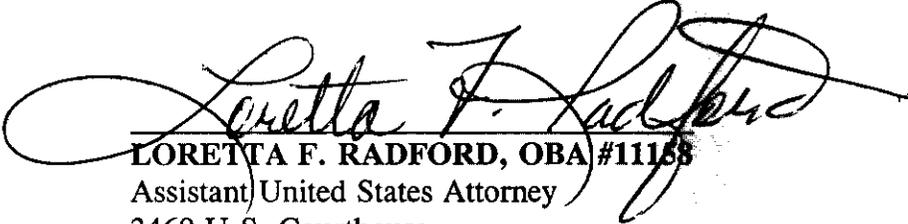
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under and by virtue of this judgment
and decree, all of the Defendants and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



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



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

Judgment of Foreclosure
Civil Action No. 95-C 863B

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE 5-15-96

UNITED STATES OF AMERICA,)
)
 Plaintiff,)

vs.)

J.B. HAMMER; LOUISE HAMMER aka)
 Marian Louise Hammer aka Marian L.)
 Hammer aka Marian Hammer fka Marian)
 Louise Peachey fka Louise Peachey;)
 RONALD DEAN DICKINSON; JUDY)
 CRANE; TULSA ADJUSTMENT)
 BUREAU, INC.; COUNTY)
 TREASURER, Tulsa County, Oklahoma;)
 BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)

Defendants.)

Civil Case No. 95cv 1122K

FILED

MAY 14 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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.

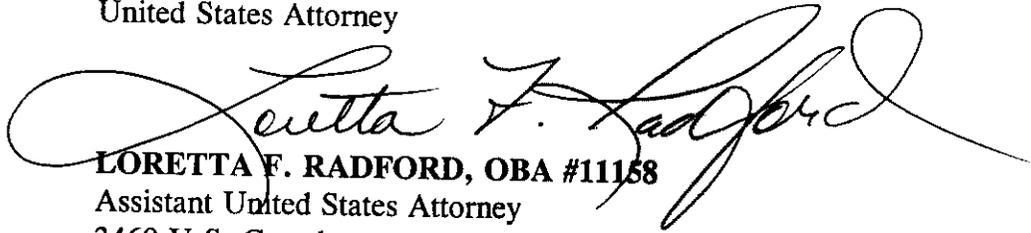
Dated this 14 day of May, 1996.

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

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 and is positioned over the typed 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

DATE 5-15-96

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT

MAY 14 1996 *lu*

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FRANCES E. WILSON,
Plaintiff,

v.

No. 95-C-0051K ✓

TULSA JUNIOR COLLEGE, and
KENNETH HALL, in his
capacity as Tulsa Junior
College Supervisor,

Defendants.

STIPULATION OF PARTIAL DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(a)(1), Fed. R. Civ. P., the parties stipulate to the dismissal, without prejudice, of the causes of action for negligent hiring, retention and supervision of employee, constructive discharge, and intentional infliction of emotional distress set forth in Plaintiff's Second Amended Complaint.

[Signature]

JOE L. WHITE, P.C.
1718 W. Broadway
Collinsville, OK 74021

ATTORNEY FOR PLAINTIFF

[Signature]

THOMAS L. VOGT, #10995
JONES, GIVENS, GOTCHER & BOGAN
15 East 5th Street, #3800
Tulsa, OK 74103
918/581-8200

ATTORNEYS FOR DEFENDANTS

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

ENTERED ON DOCKET
DATE 5-15-96

HELEN GREY TRIPPET,)
)
 Plaintiff,)
)
 vs.)
)
 CAMERON DEE SEWELL,)
)
 Defendant.)

Case No. 93-C-1144-H

FILED
MAY 14 1996
Phil Lombardi, Clerk
U.S. DISTRICT COURT

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Helen Grey Trippet, and hereby dismisses with prejudice all claims in this action against the Defendant, Cameron Dee Sewell.

~~DOYLE & HARRIS~~

Steven M. Harris, OBA #3913
P.O. Box 700450
Tulsa, OK 74170
(918) 743-1276

CERTIFICATE OF MAILING

I do hereby certify that on the 14th day of May, 1996 I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

ROBERT FRANDEN
FELDMAN HALL FRANDEN WOODARD & FARRIS
PARK CENTRE SUITE 1400
525 S MAIN
TULSA OK 74103-4409

[Handwritten Signature]

FILED

MAY 14 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

PAUL SMITH,

Plaintiff,

vs.

G. WATKINS and TULSA POLICE
DEPARTMENT,

Defendants.

No. 96-C-78-E

ENTERED ON DOCKET

MAY 15 1996

DATE _____

ORDER

On April 16, 1996, the Court granted Plaintiff until April 30, 1996, to file a response to the Motion to Dismiss of the City of Tulsa; otherwise the Court would dismiss his action for lack of prosecution. Plaintiff has not responded.

Accordingly, this action is hereby DISMISSED for lack of prosecution.

IT IS SO ORDERED this 13th day of May, 1996.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT LEON ROBERTS; MARY)
 ROBERTS; COUNTY TREASURER,)
 Creek County, Oklahoma; BOARD OF)
 COUNTY COMMISSIONERS, Creek)
 County, Oklahoma,)
)
 Defendants.)

F I L E D

MAY 14 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE MAY 15 1996

Civil Case No. 95-C 1060E

ORDER

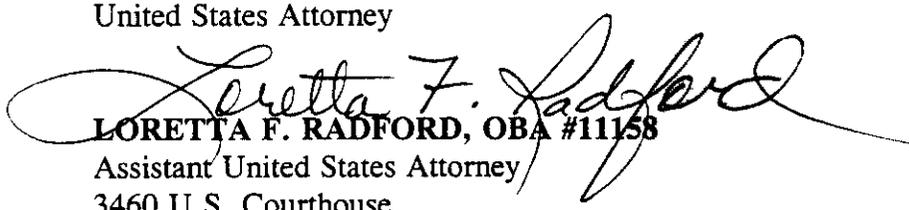
Upon the Motion of the United States of America, acting on behalf of the Secretary of Housing and Urban Development, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that the Judgment of Foreclosure entered herein on the 5th day of February, 1996, is vacated, the sale now scheduled for the 6th day of June, 1996, is hereby canceled and the action is dismissed without prejudice.

Dated this 13 day of May, 1996.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT 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, OK 74103
(918) 581-7463

LFR:flv

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

F I L E D

MAY 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ASSOCIATES COMMERCIAL CORPORATION,
a Delaware corporation,

Plaintiff,

vs.

CHARLES ABERNATHY, an individual,

Defendant.

Case No. 96-0161-B

ENTERED ON DOCKET

DATE MAY 14 1996 ✓

DEFAULT JUDGMENT

Defendant **CHARLES ABERNATHY** has been regularly served with process. Said Defendant has failed to plead or otherwise defend against the Plaintiff's Complaint herein. The default of said Defendant has been entered. It appears that said Defendant is not an infant or incompetent person.

IT IS ORDERED AND ADJUDGED that the Plaintiff, ASSOCIATES COMMERCIAL CORPORATION, recover judgment from Defendant CHARLES ABERNATHY in the principal sum of \$136,081.27 plus interest thereon from February 14, 1996, at 18% per annum, plus a reasonable attorney's fee to be determined at a subsequent hearing upon application of any party hereto, together with the costs of this action, accrued and accruing.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff is entitled to possession of the equipment described in "Exhibit A" attached hereto and made a part hereof, and that

NOTE:

Plaintiff dispose of the subject equipment in accordance with the provisions of 12A O.S.A. §9-504 (Secured Party's Right To Dispose of Collateral After Default; Effect Of Disposition).

Dated May 13, 1996.

§/ THOMAS R. BRETT

United States District Court Judge

**Stewart E. Field, OBA #2891
McCORMICK & FIELD
5314 S. Yale, Suite 601
Tulsa, Oklahoma 74137
(918) 481-7030
Attorneys for Plaintiff**

DESCRIPTION OF COLLATERAL

**1988 International Model 9700 Truck Tractor, VIN
1HSRKYFR5JH588669**

**1988 International Model 9700 Truck Tractor, VIN
1HSRKYFR2JH588662**

**1987 Utility Model Reefer 48x102 Truck Trailer,
VIN 1UYVS2488GT607530**

**1987 Utility Model Reefer 48x102 Truck Trailer,
VIN 1UYVS2485HT660106**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 13 1996

VALLEY NATIONAL BANK)
Appellant)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

vs.)

CASE No. CIV-95-808-C

BTS INC.)
Appellee)

IN RE:)

BANKRUPTCY
CASE NO. 95-01473-W
CHAPTER 11

BTS INC., previously known as)
AVIATION RESOURCES, INC.)

Debtor.)

ENTERED ON DOCKET

DATE MAY 14 1996

ORDER OF DISMISSAL

On the motion of Appellant Valley National Bank to dismiss this bankruptcy appeal, the Court finds the motion should be granted.

WHEREFORE IT IS ORDERED that this action is dismissed.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

UBMITTED BY:
TUART, BIOLCHINI, TURNER & GIVRAY
HARLES GREENOUGH, OBA#12311
5 East Fifth Street, Suite 3300
Tulsa, Oklahoma 74103
(918) 582-3311

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

F I L E D

MAY 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ROBERT DEWAYNE LAMPKIN,)
)
Plaintiff,)

vs.)

CASE NO. 93-C-200-E

McDONNELL DOUGLAS-TULSA, a)
division of McDONNELL DOUGLAS)
CORPORATION; THE FRICK)
COMPANY; ROBIN WERNER;)
INTERNATIONAL UNION, UNITED)
AUTOMOBILE, AEROSPACE AND)
AGRICULTURAL IMPLEMENT)
WORKERS OF AMERICA (UAW);)
and LOCAL NO. 1093 OF THE)
INTERNATIONAL UNION, UNITED)
AUTOMOBILE, AEROSPACE AND)
AGRICULTURAL IMPLEMENT)
WORKERS OF AMERICA (UAW),)
)
Defendants.)

ENTERED ON DOCKET

DATE MAY 14 1996

**ENTRY OF JUDGMENT AGAINST INTERNATIONAL UNION,
AND UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)**

On this 10th day of April, 1996, this matter came on for hearing for the Court to determine the amount of a reasonable attorney fee to be awarded to Plaintiff as compensatory damages as per the jury verdict entered in this matter. The Court, having considered the testimony of two witnesses, finds that a reasonable attorney fee to be awarded the Plaintiff is \$13,027.48.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff, Robert Dewayne Lampkin, have and receive judgment against the Defendants, International Union, and United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) in the

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

F I L E D

MAY 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

TINA BRESEE,

Plaintiff,

vs.

BRUNSWICK CORPORATION,

Defendant.

No. 95-C-912-C

ENTERED ON DOCKET
DATE MAY 14 1996

JUDGMENT

This matter came before the Court for consideration of defendant's motion for summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed on May 7, 1996,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for defendant, Brunswick Corporation, and against plaintiff, Tina Bresee, on each of plaintiff's claims respecting tortious and unlawful conduct in the workplace, including sexual harassment, hostile work environment, assault, battery, extreme emotional distress, and retaliatory acts.

IT IS SO ORDERED this 15th day of May, 1996.


H. Dale Cook
U.S. District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE 5-14-96

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 v.)
)
 ADOLPH CRISP, et al.,)
)
 Defendants.)

F I L E D

MAY 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 95-C-269-H

CLERK'S ENTRY OF DEFAULT

It appearing from the files and records of this Court as of May 13, 1996 and the declaration of Wyn Dee Baker, Assistant United States Attorney, that the Defendant, Betty L. Crisp, against whom judgment for affirmative relief is sought in this action has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure; now, therefore,

I, PHIL LOMBARDI, Clerk of said Court, pursuant to the requirements of Rule 55(a) of said rules, do hereby enter the default of said defendant.

Dated at Tulsa, Oklahoma, this 13 day of May, 1996.

PHIL LOMBARDI, Clerk
United States District Court for
the Northern District of Oklahoma

By L. Adamski
Deputy

Clerk's Entry Of Default
Case No. 95-C-269-H (Crisp)

WDB:cas

5-14-96

223-337

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 10 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

RONALD WILLIAMS, and KATHY)
WILLIAMS, individually and)
as husband and wife,)

Plaintiffs,)

vs.)

SHONEY'S, INC., d/b/a)
CAPTAIN D'S, and KATHY WILLIAMS)

Defendants.)

Case No. ~~C-93-621~~

95C614H

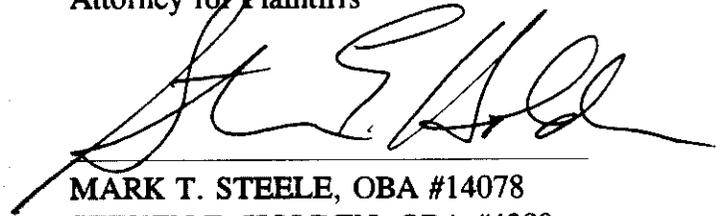
STIPULATION OF DISMISSAL

COME NOW all parties and dismiss the above-entitled action pursuant to Rule 41(1) of the Federal Rules of Civil Procedure.

Dated this ___ day of May, 1996.



REX TRAVIS, OBA #9081
MARY A. TRAVIS, OBA #15059
Attorney for Plaintiffs



MARK T. STEELE, OBA #14078
STEVEN E. HOLDEN, OBA #4289
Attorneys for Defendant Shoney's
d/b/a Captain D's

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

GILBERT R. SUITER, an individual,

Plaintiff,

v.

MITCHELL MOTOR COACH SALES, INC.,

a Florida corporation and
NORMA J. DESBIEN, as Personal
Representative of the Estate of
ROBERT E. DESBIEN, Deceased,

Defendants.

Case No. 93-CV-815-H ✓

F I L E D

MAY 10 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter comes before the Court on the motion of defendant Mitchell Motor Coach Sales, Inc. ("Mitchell"), for default judgment against Norma J. Desbien, as personal representative of the estate of Robert J. Desbien ("the Desbien Estate"). Mitchell appears by its attorney of record, James W. Tilly. No other parties appear. The Court, having reviewed the pleadings filed herein, and considered the arguments of counsel, makes the following findings and conclusions:

On February 16, 1996, the court determined that Mrs. Desbien was the proper party to be substituted for her deceased husband as a party to this proceeding based upon the prior representations of Mrs. Desbien and her counsel that the last will and testament of Mr. Desbien named her as the personal representative of Mr. Desbien's Estate. The Court subsequently found that the Desbien Estate was in default for Mrs. Desbien's failure to appear at the pretrial conference, either in person or through designated counsel.

On April 3, 1996, Mitchell gave notice to Mrs. Desbien that Mitchell had requested the entry of default judgment in favor of Mitchell and against the Desbien Estate on Mitchell's cross-claim against the Desbien Estate. On April 22, 1996, the Court set Mitchell's Motion for Default Judgment for hearing on April 30, 1996, at 1:15 p.m., and gave notice of the hearing to Mrs. Desbien by mailing a copy of the minute order to her. Upon the motion of Mitchell, the hearing

on Mitchell's Motion for Default Judgment against the Desbien Estate was rescheduled for May 7, 1996, at 2:00 p.m., and notice of the continued hearing was given to Mrs. Desbien by mailing a copy of the minute order to her. On April 22, 1996, Mrs. Desbien filed a *pro se* objection to Mitchell's Motion for Default Judgment, asserting that she was not a proper party to be substituted for her deceased husband's estate in this matter. Based upon the foregoing, the Court finds that Mrs. Desbien has been given proper notice of Mitchell's Motion for Default Judgment against the Desbien Estate, and has been given proper notice of this hearing.

Mitchell's cross-claim against the Desbien Estate alleges, in essence, that Robert Desbien violated Section 1989 of the Motor Vehicle Information and Costs Savings Act, 15 U.S.C. §§ 1981-1991 (the "Odometer Act") by transferring the Blue Bird motorcoach which is the subject of this action to Mitchell without disclosing that the original odometer did not reflect the actual vehicle mileage, and without disclosing that the original odometer had been replaced and reset to zero by Blue Bird at the request of Mr. Desbien. During the trial of the issues between plaintiff Gilbert Suiter ("Suiter") and Mitchell, evidence was presented which supports these factual allegations. The Court finds that Mr. Desbien's violation of the act was knowing and willful, and that Mitchell has suffered damages by reason of Mr. Desbien's violation of the Act.

Mitchell is entitled to recover damages from the Desbien Estate for the amount which Mitchell is determined to be liable to Suiter. The Court has previously entered judgment against Mitchell and in favor of Suiter in the sum of \$78,858, and the Court finds that judgment for Mitchell and against the Desbien Estate should be entered in this amount. Pending before the Court at this time is Suiter's Application for Costs, Attorney's Fees, and Interest, pursuant to which Suiter seeks to impose additional liability against Mitchell. At such time as the Court has determined Mitchell's liability to Suiter for costs, attorney's fees, and interest, the judgment of Mitchell and against the Desbien Estate will be increased to reflect this additional amount.

Following such determination, Mitchell may apply to the Court for an award of its costs and attorney's fees against the Desbien Estate.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED, that Mitchell's Motion for Default Judgment against the Desbien Estate is granted, and judgment is hereby granted to Mitchell, and against the Desbien Estate in the sum of \$78,848, subject to revision at such time as the Court rules on Suiter's Application for Costs, Attorney's Fees, and Interest.

IT IS SO ORDERED.

This 10TH day of May, 1996.



Sven Erik Holmes
United States District Judge

DATE 5-13-96

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

FILED

MAY 10 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CLYDE E. HOLLOWAY,)
)
 Plaintiff,)
)
 vs.)
)
 MARTHA KERBO, et al.,)
)
 Defendants.)

No. 96-CV-347-H

ORDER

Before the Court is Plaintiff's pro se motion for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 and a civil rights complaint pursuant to 42 U.S.C. § 1983. Upon review of the complaint and for the reasons set forth below, the Court finds that venue is not proper in this district and that the action should be transferred to the proper district.

The Court may raise sua sponte the issue of venue in the setting of a section 1915 case. See Yellen v. Cooper, 828 F.2d 1471, 1474-76 (10th Cir. 1987) (allowing for dismissal, under 1915(d) on grounds that would be the basis of an affirmative defense); see also Costlow v. Weeks, 790 F.2d 1486, 1487-88 (9th Cir. 1986) (allowing dismissal sua sponte for lack of venue before responsive pleading had been filed; issue had not been waived). The applicable venue provision for this action is found under 28 U.S.C. §1391(b) which provides as follows:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part

of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

There is no applicable law with regard to venue under 42 U.S.C. §1983 which would exempt this case from the general provisions of 28 U.S.C. §1391(b). Coleman v. Crisp, 444 F. Supp. 31 (W.D. Okla. 1977); D'Amico v Treat, 379 F. Supp. 1004 (N.D. Ill. 1974).

Plaintiff bases his complaint on allegations that Defendants conspired to accuse him of being a threat to a female staff at Oklahoma State Reformatory in Granite in order to transfer him to another facility. According to the Complaint, the Defendants are residents of Granite, Tipton, and Oklahoma City and employees of the Oklahoma Department of Corrections. The Court takes judicial notice that the city of Granite, Tipton, and Oklahoma City are located within the Western District of Oklahoma. 28 U.S.C. §116. Thus, it is clear that venue is not proper before this Court.

When venue is not proper, the Court may dismiss the action, or if it be in the interest of justice, may transfer the case to the district in which it should have been brought. 28 U.S.C. §1406(a). Due to the fact that Plaintiff's complaint is handwritten, the undersigned finds that it would be in the best interest of justice and judicial efficiency to transfer the case to the proper district.

ACCORDINGLY, IT IS HEREBY ORDERED that this matter is

transferred to the United States District Court for the Western District of Oklahoma.

IT IS SO ORDERED this 10th day of MAY, 1996.



Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE 5-13-96

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHERYL HANKINS; COUNTY)
 TREASURER, Tulsa County, Oklahoma;)
 BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

MAY 10 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Civil Case No. 95cv 1015H ✓

ORDER

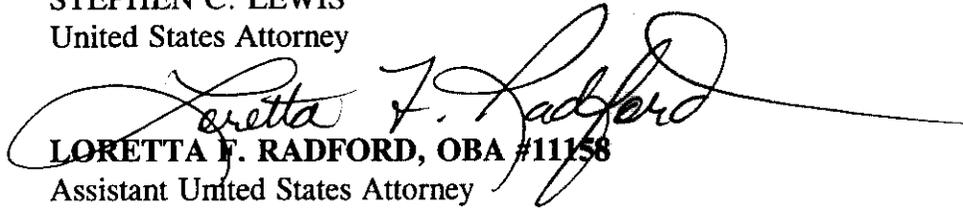
Upon the Motion of the United States of America, acting on behalf of the Secretary of Housing and Urban Development, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that the Judgment of Foreclosure entered herein on the 6th day of February, 1996, and the Notice of Sale filed on the 22nd day of April, are vacated, the sale now scheduled for the 4th day of June, 1996 at 10:00 a.m. at the North Front Door of the Tulsa County Courthouse is canceled and the action is dismissed without prejudice.

Dated this 10TH day of MAY, 1996.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

A handwritten signature in black ink, reading "Loretta F. Radford". The signature is written in a cursive style with a long horizontal line extending to the right.

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

LFR:flv