

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

MOTOROLA, INC., a Delaware corporation,
 Plaintiff,
 vs.
 LARRY NATHAN GASS,
et al,
 Defendants.

JUN 19 1996

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

No. 95-C-1156-C

ENTERED ON DOCKET

DATE JUN 20 1996

ORDER

Currently pending before the Court is the motion filed by plaintiff, Motorola Inc., seeking to dismiss defendants' counterclaim and to strike defendants' first amended answer in its entirety.

On April 15, 1996, plaintiff filed its present motion requesting that this Court dismiss defendants' counterclaim for abuse of process on the grounds that, inter alia, defendants' counterclaim fails to state a claim upon which relief can be granted. Furthermore, plaintiff requests that this Court strike defendants' first amended answer in its entirety on the grounds that, (1) defendants' first amended answer contains verbose, argumentative and redundant material in violation of Rule 8(b) of the F.R.C.P., and (2) defendants failed to seek leave of Court to amend as required by Rule 15(a) of the F.R.C.P.

The Court notes that the Scheduling Order set March 15, 1996, as the deadline for the Joinder of Additional Parties and/or Amendment to the Pleadings. On March 15, defendants applied for a ten day extension of time in which to join additional parties and/or amend the pleadings. Defendants' motion was unopposed by plaintiff, and this Court granted said motion on March 19, 1996. Hence, the deadline for the Joinder of Additional Parties and/or Amendment to the Pleadings was extended to March 25. On March 25, defendants filed their first amended answer and counterclaim. The

counterclaim, which alleges abuse of process on the part of Motorola, was not pleaded by defendants prior to March 25.

With respect to plaintiff's motion to dismiss defendants' counterclaim, plaintiff cites numerous grounds in support of its motion. However, the Court agrees with plaintiff that defendants' counterclaim fails to state a claim upon which relief can be granted, and the Court will therefore focus solely on that ground. Defendants' counterclaim raises one claim against plaintiff, alleging abuse of process. Defendants allege the following in support of their counterclaim: (1) plaintiff's acts in making false claims and false assertions in this proceeding constitute an abuse of process, (2) plaintiff is attempting to improperly use the Court to accomplish its commercial objectives of controlling the aftermarket of its two-way radio systems, and (3) plaintiff knowingly made false claims regarding the illegality of modifications made to Motorola radios, made false claims that the software contained within such radios has been modified or becomes derivative work, and made false claims that non-proprietary, non-copyrighted material contained within the radios is proprietary and copyrighted. It is evident that all of the acts which defendants complain of in their counterclaim are limited to plaintiff's Complaint in this action. In support of its claim for abuse of process, Defendants do not cite any acts on the part of plaintiff outside of plaintiff's alleged inclusion of false claims in its Complaint. That is, defendants simply allege that plaintiff has knowingly used false claims in the judicial process to accomplish an ulterior motive. Such a showing is insufficient to establish a claim for abuse of process.

The standard for dismissing an action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted is well-established in Tenth Circuit precedent. "[I]t must appear beyond doubt that the plaintiff can prove no set of facts that

would entitle him to relief. All well-pleaded facts, as distinguished from conclusory allegations, must be taken as true. All reasonable inferences must be indulged in favor of the plaintiff, and the pleadings must be liberally construed.” Swanson v. Bixler, 750 F.2d 810, 813 (10th Cir.1984) (citations omitted). For the reasons stated below, the Court finds that defendants’ counterclaim must be dismissed for failure to state a claim upon which relief can be granted, even in light of the rigid standards which govern the application of Rule 12(b)(6).

In order to recover under their counterclaim for abuse of process, defendants carry the burden of proof as to three essential elements: (1) issuance of process, (2) an ulterior purpose, and (3) a willful act in the use of process not proper in the regular conduct of the proceedings. Tulsa Radiology Assoc. v. Hickman, 683 P.2d 537, 539 (Ok.App. 1984). The third element is explained as:

[s]ome definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, . . .; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions. The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself. . . .

Id. citing Prosser, Handbook of the Law of Torts, § 121 (4th Ed.1971).

“Prosser made it clear that there must be some ‘definite act or threat not authorized by the process’ and that ‘there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.’” Gore v. Taylor, 792 P.2d 432, 435-436 (Ok.App. 1990). The “gravamen of the misconduct for which liability is imposed is the ‘misuse’ of legal process for some purpose other than that which it was designed to accomplish.” Id. “Abuse of process occurs when legal process is used for an improper purpose, to accomplish an end

not lawfully obtainable, or to compel someone to do some collateral thing he could not legally be compelled to do.” Houghton v. Foremost Fin. Servs. Corp., 724 F.2d 112, 116 (10th Cir.1983) (citing Neil v. Pennsylvania Life Ins. Co., 474 P.2d 961, 965 (Okla.1970)). To maintain an abuse or process claim, “it is clear that the plaintiff must show some definite act or threat by the defendant not authorized by the process.” Meyers v. Ideal Basic Industries, Inc., 940 F.2d 1379, 1382 (10th Cir.1991), cert. denied, 502 U.S. 1058 (1992). “The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or a club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort.” Barrett v. Baylor, 457 F.2d 119, 122 (7th Cir.1972) (citing Prosser, Law of Torts (3d Ed.1964)). The essence of an abuse of process claim is “not the wrongfulness of the prosecution, but some extortionate perversion of lawfully initiated process to illegitimate ends.” Heck v. Humphrey, 114 S.Ct. 2364, 2372 n.5 (1994).

Based upon the foregoing, it is clear that defendants’ counterclaim of abuse of process must fail. Defendants have not demonstrated that any process has been abused by Motorola in this case. Plaintiff, Motorola, has merely used the proper process in the furtherance of its lawsuit and claims. The fact that the claims may not be supported by the facts is not an abuse of process. Moreover, even assuming that Motorola has knowingly used false claims in the judicial process to accomplish ulterior purposes, a claim of abuse of process cannot properly be maintained. There has been no showing that plaintiff, Motorola, is using its present lawsuit against defendants for a coercive purpose to obtain an advantage that is collateral to the lawsuit itself. The only definite act alleged in defendants’

counterclaim alleging abuse of process is Motorola's filing of its present lawsuit and allegedly incorporating false statements into its Complaint. Such a showing is insufficient to state a claim upon which relief can be granted. The "absence of an allegation that some definite act or threat occurred showing an improper use of the process defeats a claim of abuse of process." Meyers, 940 F.2d at 1383. Hence, the Court dismisses defendants' abuse of process counterclaim for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6).

With respect to plaintiff's motion seeking to strike defendants' amended answer, the Court denies the request. The record shows that defendants were granted an extension of time in which to amend the pleadings, and that defendants' amended answer was filed within this time period. Hence, it is arguable that defendants did, in fact, seek leave of court to amend. However, even if the Court's grant of an extension of time did not also grant defendants leave to amend, the Court now recognizes defendants' amended answer as properly filed. Rule 15(a) states that leave shall be freely given when justice so requires. In light of Rule 15(a), the Court can envision no reason why it should strike defendants' amended answer.

Accordingly, Motorola's motion to dismiss defendants' counterclaim for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6), is hereby GRANTED. Motorola's motion to strike defendants' amended answer is hereby DENIED.

IT IS SO ORDERED this 18th day of June, 1996.


H. DALE COOK
Senior U.S. District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 19 1996

UNITED STATES OF AMERICA,)
)
Plaintiff,)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

vs.)

JEAN A. RODGERS aka JEAN)
RODGERS; VETERINARY PRODUCTS,)
INC.; LONGVIEW LAKE)
ASSOCIATION, INC.; COUNTY)
TREASURER, Tulsa County, Oklahoma;)
BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)

ENTERED ON DOCKET
DATE JUN 20 1996

Defendants.)

Civil Case No. 95-C 1075B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19 day of June,

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, JEAN A. RODGERS aka Jean Rodgers, VETERINARY PRODUCTS, INC., and LONGVIEW LAKE ASSOCIATION, INC., appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, JEAN A. RODGERS aka Jean Rodgers, was served with process a copy of Summons and Complaint on March 20, 1996; that the Defendant, VETERINARY PRODUCTS, INC., acknowledged receipt of Summons and Complaint on April 7, 1996, by

Certified Mail; that the Defendant, LONGVIEW LAKE ASSOCIATION, acknowledged receipt of Summons and Complaint on January 23, 1996, by Certified Mail.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on November 8, 1995; and that the Defendants, JEAN A. RODGERS aka Jean Rodgers, VETERINARY PRODUCTS, INC., and LONGVIEW LAKE ASSOCIATION, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, JEAN A. RODGERS, is one and the same person as Jean Rodgers, and will hereinafter be referred to as "JEAN A. RODGERS." JEAN A. RODGERS, is a single unmarried person.

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 12, Block 9, Longview Lake Estates, Blocks 1 through 14, inclusive, an addition in Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on July 16, 1986, the Defendant, JEAN A. RODGERS, executed and delivered to FIRST FEDERAL SAVINGS BANK OF OKLAHOMA, her mortgage note in the amount of \$70,376.00, payable in monthly installments, with interest thereon at the rate of Nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, JEAN A. RODGERS, a single person, executed and delivered to FIRST FEDERAL SAVINGS BANK OF OKLAHOMA, a mortgage dated July 16, 1986, covering

the above-described property. Said mortgage was recorded on July 23, 1986, in Book 4957, Page 1380, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 28, 1989, FIRST FEDERAL SAVINGS BANK OF OKLAHOMA, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his/her successors and assigns. This Assignment of Mortgage was recorded on October 3, 1989, in Book 5211, Page 435, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 1, 1989, the Defendant, JEAN A. RODGERS, 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 April 1, 1991 and May 1, 1992.

The Court further finds that the Defendant, JEAN A. RODGERS, 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, JEAN A. RODGERS, is indebted to the Plaintiff in the principal sum of \$112,095.68, plus interest at the rate of 9 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 \$721.00, 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 \$47.00 which became a lien on the property as of June 26, 1992 and a lien in the amount of \$43.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, JEAN A. RODGERS, VETERINARY PRODUCTS, INC., and LONGVIEW LAKE ASSOCIATION, 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, claim 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 Defendant, JEAN A. RODGERS, in the principal sum of \$112,095.68, plus interest at the rate of 9 percent per annum from April 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5.62 percent per annum until paid, plus the costs of this action, and 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 \$721.00, 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 \$90.00, plus costs and interest, for personal property taxes for the years 1991

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, JEAN A. RODGERS, VETERINARY PRODUCTS, INC., LONGVIEW LAKE ASSOCIATION 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, JEAN A. RODGERS, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

In payment of Defendant, COUNTY TREASURER,
Tulsa County, Oklahoma, in the amount of \$721.00,
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 \$90.00,
personal property taxes which are currently due and
owing.

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

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

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

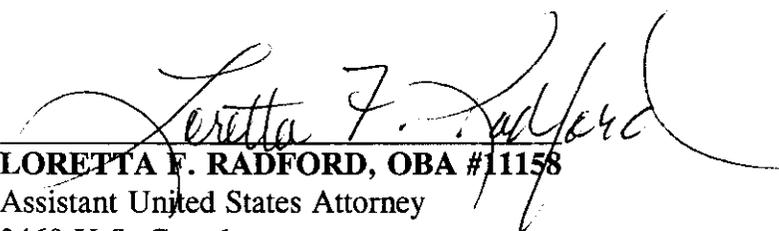
Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

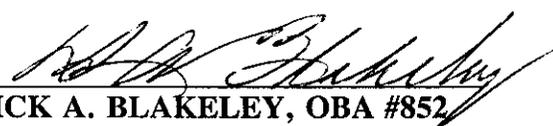
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


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


DICK A. BLAKELEY, OBA #852
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406 Tulsa County Courthouse
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 1075B

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 19 1998

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
PATRICE G. BYRNES KELLAMS aka)
Patrice Kellams fka Patrice Byrnes aka)
Patrice Gwen Byrnes; COUNTY)
TREASURER, Tulsa County, Oklahoma;)
BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma; TULSA ADJUSTMENT)
BUREAU, INC,)
)
Defendants.)

ENTERED ON DOCKET
JUN 20 1996
DATE _____

Civil Case No. 95 C 471B

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on March 20, 1996, pursuant to an Order of Sale dated November 21, 1995, of the following described property located in Tulsa County, Oklahoma:

Lot Three (3), Block "k" CREST VIEW ESTATES, an addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendant, Patrice G. Byrnes Kellams aka Patrice Kellams fka Patrice Byrnes aka Patrice Gwen Byrnes, County Treasurer, Tulsa County, Oklahoma and Board of County Commissioners, Tulsa County, Oklahoma, through Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma, and The Tulsa

Adjustment Bureau, through its Attorney, D. Wm. Jacobus, Jr., by mail, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

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

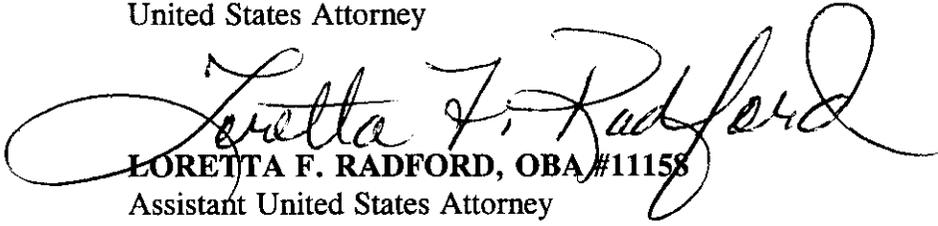
It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the United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

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

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

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

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

LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

LFR:flv

Report and Recommendation of United States Magistrate Judge
Civil Action No. 95 C 471B

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 19 1996

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

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

ENTERED ON DOCKET

DATE ~~JUN 20 1996~~

CIVIL ACTION NO. 94-C-591-B

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on March 18, 1996, pursuant to an Order of Sale dated November 22, 1995, of the following described property located in Tulsa County, Oklahoma:

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

Appearing for the United States of America is Phil Pinnell, Assistant United States Attorney. Notice was given the Defendants, **William R. Grundy aka William Grundy aka William Ralph Grundy; Pamela R. Grundy aka Pamela Grundy; Ronnie Grundy; and Carolyn Grundy**, by mail; Defendant, **State of Oklahoma ex rel. Oklahoma Tax Commission**, through Kim D. Ashley, Assistant General Counsel, by mail; the Defendants, **The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Essie Lee Bohannon, Deceased; Oklahoma Morris Plan Company; and The Van Grack Co.**, by publication; and the Defendants, **County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma**, through Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma, by mail, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

The Magistrate Judge has examined the proceedings of the United States Marshal under the Order of Sale. Upon statement of counsel and examination of the court file, the Magistrate Judge finds that due and legal notice of the sale was given by publication once a week for at least four weeks prior to the date of sale in the Tulsa Daily Commerce & Legal News, a newspaper published and of general circulation in Tulsa County, Oklahoma, and that on the day fixed in the notice the property was sold to **Gordon Fritz and Karon Fritz, 2908 East 73rd Street, Tulsa, Oklahoma 74136**, they being the highest bidders. The Magistrate Judge further finds that the sale was in all respects in conformity with the law and judgment of this Court.

It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchasers, **Gordon Fritz and Karon Fritz, 2908 East 73rd Street, Tulsa, Oklahoma 74136**, a good and sufficient deed for the property.

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

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

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Report and Recommendation of United States Magistrate Judge
Case No. 94-C-591-B (Grundy)

PP:ess

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

DENNIS DEITRICH,
Plaintiff,

vs.

MARVIN T. RUNYON, Jr., Postmaster
General, and the United States
Postal Service,
Defendants.

ENTERED ON DOCKET
DATE JUN 20 1996

Case No. 96-C-215-B ✓

F I L E D

JUN 19 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

O R D E R

This matter comes on for consideration of Defendants Marvin T. Runyon, Jr., Postmaster General, and the United States Postal Service's (Defendants) Motion to Dismiss and Alternative Motion for Summary Judgement (Docket #6). Defendants ask the Court to dismiss Dennis Deitrich's (Plaintiff) claim under the Americans with Disabilities Act (ADA) pursuant to Fed.R.Civ.P. 12(b)(1) because the provisions of the ADA do not apply to government agencies such as the United States Postal Service. Defendants also ask the Court to dismiss the United States Postal Service as a defendant pursuant to Fed.R.Civ.P. 12(b)(2) because under the Rehabilitation Act only the head of the agency may properly be named as a defendant. Finally, Defendants ask the Court to grant summary judgement because Plaintiff failed to timely pursue his administrative remedies, therefore Defendants allege they are entitled to judgment as a matter of law.

BACKGROUND

In early 1993, Plaintiff applied for all positions at the

[Handwritten initials]

[Handwritten mark]

local Tulsa post office. Plaintiff alleges he was told by Defendants' representatives in Tulsa that he would be given preferential consideration for employment if he could demonstrate that he was a disabled veteran. Plaintiff alleges that, based on his belief that he would be given preference due to his disability, Plaintiff allowed Defendants to review his medical history and Veteran's Administration files. Plaintiff alleges he successfully completed Defendants' written examinations and was found eligible for employment. Plaintiff alleges he passed the interview requirement for employment and a physical requirements test for the mail handler position. Plaintiff also alleges he passed the physical examination conducted by Defendants' physician.

Plaintiff alleges that on September 13, 1993, Defendants informed Plaintiff in writing that he was refused employment based on his physical disability. Plaintiff filed this action against Defendants for damages under the ADA and the Rehabilitation Act.

12(b)(6) STANDARD

To dismiss a complaint and action for failure to state a claim upon which relief can be granted it must appear beyond doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41 (1957). Motions to dismiss under Rule 12(b), Fed.R.Civ.P. admit all well-pleaded facts. Jones v. Hopper, 410 F.2d 1323 (10th Cir. 1969), *cert. denied*, 397 U.S. 991 (1970). The

allegations of the Complaint must be taken as true and all reasonable inferences from them must be indulged in favor of complainant. Olpin v. Ideal National Ins. Co., 419 F.2d 1250 (10th Cir. 1969), *cert. denied*, 397 U.S. 1074 (1970).

ANALYSIS

A. Defendants' Motion to Dismiss Plaintiff's claim under the ADA.

Plaintiff seeks to have the Court assert jurisdiction under the ADA. The Court concludes the provisions of the ADA do not apply to government agencies. 42 U.S.C. § 12111(5)(B) exempts "the United States or any corporation wholly owned by the government of the United States" from coverage of the ADA. The United States Postal Service is "an independent establishment of the executive branch of the Government of the United States." See 39 U.S.C. § 201. Thus, the United States Postal Service is excluded from coverage of the ADA under 42 U.S.C. § 12111(5)(B). Therefore, Defendants' Motion to Dismiss Plaintiff's claim under the ADA is GRANTED pursuant to Fed.R.Civ.P. 12(b)(1) because the ADA does not apply to government agencies such as the United States Postal Service.

B. Defendants' Motion to Dismiss the United States Postal Service as a Defendant.

Under Title VII only the head of the agency may properly be named as a defendant. See U.S.C. § 2000e-16(c). Although the Rehabilitation Act does not specify who is to be named as defendant in a suit arising thereunder, 29 U.S.C. § 794a(a)(1) provides that Title VII procedures shall be adopted. See also

Honeycutt v. Long, 861 F.2d 1346, 1349 (5th Cir. 1988).

Therefore, Defendants' Motion to Dismiss the United States Postal Service as a Defendant is hereby GRANTED pursuant to Fed.R.Civ.P. 12(b)(2) and the United States Postal Service is dismissed as a Defendant herein.

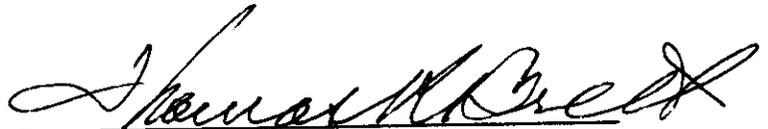
C. Defendant's Alternative Motion for Summary Judgment

Alternatively, Defendants ask the Court to grant summary judgment because Plaintiff failed to timely pursue his administrative remedies. Plaintiff asks the Court to treat Defendants' Motion to Dismiss as a Motion for Summary Judgment because Defendants introduced facts outside of and materials not contained in the Complaint.

The Court concludes Defendants' introduction of facts and materials not contained in the Complaint only pertains to the issue of whether Plaintiff timely exhausted his administrative remedies; thus, the Court will convert Defendant's Motion to Dismiss to a Motion for Summary Judgment only as to this issue.

The Court defers any ruling as to summary judgment at this time in order to give the parties reasonable time to respond and supplement their briefs. The Court directs that Defendant, Marvin T. Runyon, Jr. supplement the record with any additional evidence and pleadings desired by July 15, 1996 as to the issue whether Plaintiff timely exhausted his administrative remedies as raised in Defendants' Motion for Summary Judgment. Plaintiff shall respond thereto on or before August 2, 1996 and Defendant shall file any reply thereto by August 15, 1996.

IT IS SO ORDERED this 19th ~~7th~~ day of June, 1996.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IT IS FURTHER ORDERED that the Case Management Conference set for July 26, 1996 is stricken and will be reset in the order ruling on the motion if needed.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 19 1996

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

DEVIN L. HARP aka Devin Lee Harp;)

MICHELLE ELLEN HARP; BANK)

UNITED OF TEXAS, FSB formerly)

United Savings Assn. of the Southwest,)

fsb; MERRILL LYNCH; COUNTY)

TREASURER, Tulsa County, Oklahoma;)

BOARD OF COUNTY)

COMMISSIONERS, Tulsa County,)

Oklahoma,)

Defendants.)

Civil Case No. 95-C 579B

ENTERED ON DOCKET

DATE: ~~JUN 20 1996~~

JUN 20 1996

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on April 23, 1996, pursuant to an Order of Sale dated January 23, 1996, of the following described property located in Tulsa County, Oklahoma:

THE WEST 60 FEET OF THE EAST 80 FEET OF LOT TWO (2), BLOCK FORTY-SEVEN (47), TOWN OF RED FORK, NOW AN ADDITION IN THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, Bank United of Texas, FSB formerly United Savings Assn of Southwest, fsb, and County Treasurer, Tulsa County,

Oklahoma and Board of County Commissioners, Tulsa County, Oklahoma, by mail, and to the Defendants, Devin L. Harp, Michelle Ellen Harp and Merrill Lynch, by Publication, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

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

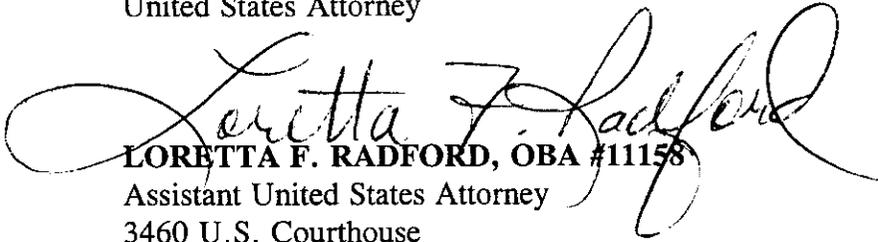
It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the United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

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

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

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

A large, elegant handwritten signature in black ink, reading "Loretta F. Radford". The signature is written in a cursive style with long, sweeping lines.

LORETTA F. RADFORD, OBA #11158

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

LFR:flv

Report and Recommendation of United States Magistrate Judge
Civil Action No. 95-C 579B

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 19 1996

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DONALD G. KAISER aka Donald Gene)
 Kaiser; DOROTHY ANN KAISER; CITY)
 OF CATOOSA, Oklahoma;)
 COUNTY TREASURER, Rogers County,)
 Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Rogers County,)
 Oklahoma,)
)
 Defendants.)

**ENTERED ON DOCKET
DATE JUN 20 1996**

Civil Case No. 95-C 560B

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on April 25, 1996, pursuant to an Order of Sale dated January 12, 1996, of the following described property located in Rogers County, Oklahoma:

**Lot 3, Block 7, SHADOW VALLEY SUBDIVISION to
the City of Catoosa, Rogers County, State of Oklahoma,
according to the recorded plat thereof.**

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, City of Catoosa, Oklahoma, County Treasurer, Rogers County, Oklahoma and Board of County Commissioners, Rogers County, Oklahoma, and to the purchasers of the property, Richard G. Lundy and Sonja K. Lundy, by mail, and to the Defendants, Donald G. Kaiser and Dorothy A. Kaiser, by

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

The Magistrate Judge has examined the proceedings of the United States Marshal under the Order of Sale. Upon statement of counsel and examination of the court file, the Magistrate Judge finds that due and legal notice of the sale was given by publication once a week for at least four weeks prior to the date of sale in the Claremore Daily Progress, a newspaper published and of general circulation in Rogers County, Oklahoma, and that on the day fixed in the notice the property was sold to Richard G. Lundy and Sonja K. Lundy, their being the highest bidder. The Magistrate Judge further finds that the sale was in all respects in conformity with the law and judgment of this Court.

It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchasers, Richard G. Lundy and Sonja K. Lundy, a good and sufficient deed for the property.

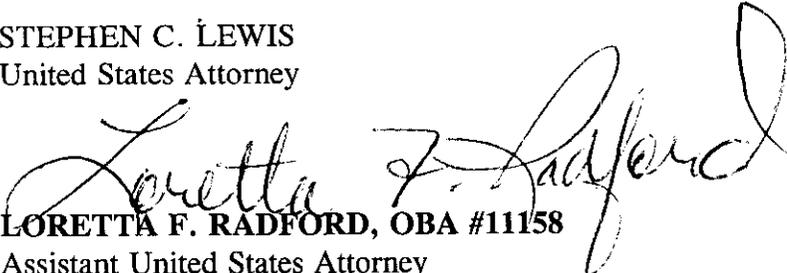
It is the further recommendation of the Magistrate Judge that subsequent to the execution and delivery of the Deed to the purchaser by the United State Marshal, the purchaser be granted possession of the property against any or all persons now in possession.

S/John L. Wagner
U.S. Magistrate

UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

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

LFR:flv

Report and Recommendation of United States Magistrate Judge
Civil Action No. 95-C 560B

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 19 1996

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JOE LEWIS SMITH, SR. aka JOE L.)
SMITH aka LEWIS J. SMITH aka J.L.)
SMITH; STATE OF OKLAHOMA ex rel)
OKLAHOMA TAX COMMISSION;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

**ENTERED ON DOCKET
DATE JUN 20 1996**

Civil Case No. 95-CV 886B

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on April 23, 1996, pursuant to an Order of Sale dated February 22, 1996, of the following described property located in Tulsa County, Oklahoma:

Lot Six (6), Block One (1), UNIVERSITY PLACE
ADDITION to the City of Tulsa, Tulsa County, State
of Oklahoma, according to the recorded Plat thereof.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendant, Joe Lewis Smith, State of Oklahoma, ex rel. Oklahoma Tax Commission, through Kim D. Ashley, Assistant General Counsel, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, through Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma, and to the

purchaser, Elaina Evans, by mail, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

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

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

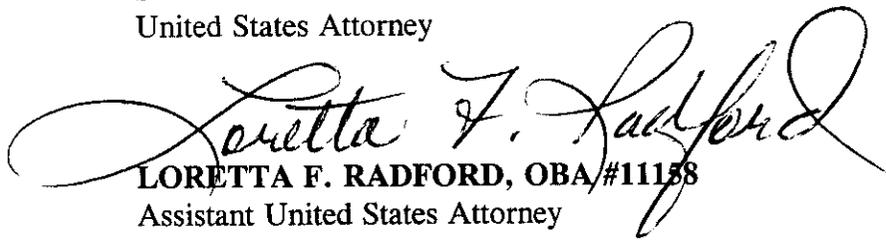
It is the further recommendation of the Magistrate Judge that subsequent to the execution and delivery of the Deed to the purchaser by the United State Marshal, the purchaser be granted possession of the property against any or all persons now in possession.

S/John L. Wagner
U.S. Magistrate

UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

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

LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

3460 U.S. Courthouse

Tulsa, Oklahoma 74103

(918) 581-7463

LFR:flv

Report and Recommendation of United States Magistrate Judge
Civil Action No. 95-CV 886B

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 19 1996

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JAMES BRYAN LOGAN aka JAMES B.)
LOGAN aka JAMES LOGAN; BETTY)
EILEEN LOGAN aka BETTY E. LOGAN;)
STATE OF OKLAHOMA ex rel)
OKLAHOMA TAX COMMISSION;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
Defendants.)

ENTERED ON DOCKET
DATE JUN 20 1996

Civil Case No. 95-C 672B

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on March 20, 1996, pursuant to an Order of Sale dated January 4, 1996, of the following described property located in Tulsa County, Oklahoma:

Lot Eleven (11), Block Four (4), WINNETKA
HEIGHTS ADDITION to the City of Tulsa, Tulsa
County, State of Oklahoma, according to the recorded
plat thereof.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, James Bryan Logan, Betty Eileen Logan, State of Oklahoma, ex rel. Oklahoma Tax Commission, through Kim D. Ashley, Assistant General Counsel, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, through Dick A. Blakeley, Assistant District Attorney, Tulsa County,

Oklahoma, by mail, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

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

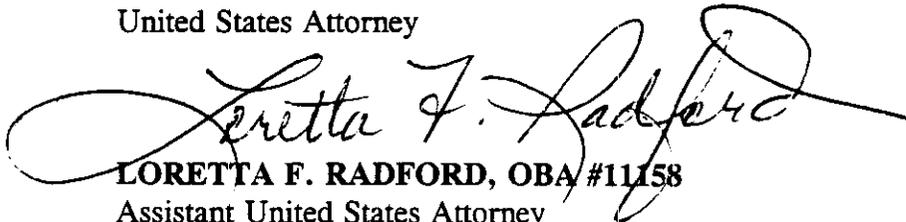
It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the United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

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

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

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

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

LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

3460 U.S. Courthouse

Tulsa, Oklahoma 74103

(918) 581-7463

LFR:flv

Report and Recommendation of United States Magistrate Judge
Civil Action No. 95-C 672B

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 19 1996

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

UNITED STATES OF AMERICA,)
on behalf of the Secretary of)
Housing and Urban Development,)
)
Plaintiff,)

v.)

GARY L. GRAHAM)
aka Gary Lee Graham;)
S. DENISE GRAHAM)
aka Sondra Denise Graham)
aka Sondra D. Graham;)
STATE OF OKLAHOMA *ex rel.*)
Oklahoma Tax Commission;)
COUNTY TREASURER, Tulsa County,)
Oklahoma;)
BOARD OF COUNTY COMMISSIONERS,)
Tulsa County, Oklahoma,)
)
Defendants.)

**ENTERED ON DOCKET
DATE JUN 20 1996**

CIVIL ACTION NO. 95-C-387-B

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on March 18, 1996, pursuant to an Order of Sale dated January 8, 1996, of the following described property located in Tulsa County, Oklahoma:

LOT FOUR (4), BLOCK SEVEN (7), BRIARDALE ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, Gary L. Graham aka Gary Lee

Graham and S. Denise Graham aka Sondra Denise Graham aka Sondra D. Graham, by mail; the Defendant, **State of Oklahoma ex rel. Oklahoma Tax Commission**, through Kim D. Ashley, Assistant General Counsel, by mail; the Defendants, **County Treasurer, Tulsa County, Oklahoma and Board of County Commissioners, Tulsa County, Oklahoma**, through Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma, by mail; and the Purchaser, **Jarry M. Jones**, by mail, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

The Magistrate Judge has examined the proceedings of the United States Marshal under the Order of Sale. Upon statement of counsel and examination of the court file, the Magistrate Judge finds that due and legal notice of the sale was given by publication once a week for at least four weeks prior to the date of sale in the Tulsa Daily Commerce & Legal News, a newspaper published and of general circulation in Tulsa County, Oklahoma, and that on the day fixed in the notice the property was sold to **Jarry M. Jones, P.O. Box 702100, Tulsa, Oklahoma 74105**, he being the highest bidder. The Magistrate Judge further finds that the sale was in all respects in conformity with the law and judgment of this Court.

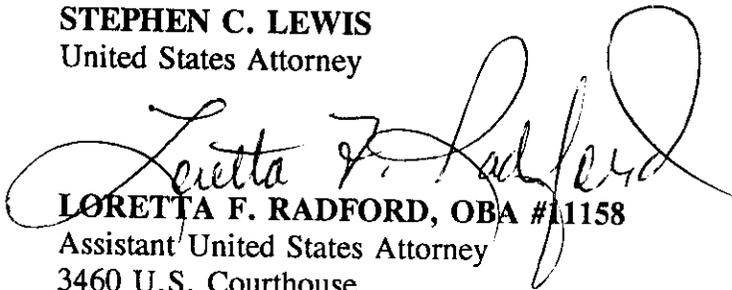
It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, **Jarry M. Jones, P.O. Box 702100, Tulsa, Oklahoma 74105**, a good and sufficient deed for the property.

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

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

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



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

Report and Recommendation of United States Magistrate Judge
Case No. 95-C-387-B (Graham)

LFR:css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 JAMES N. THOMPSON and)
 FIRST NATIONAL BANK OF MIAMI,)
 OKLAHOMA,)
)
 Defendants.)

JUN 19 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
JUN 20 1996
DATE _____

CIVIL ACTION NO. 94-C-1054-B

DEFICIENCY JUDGMENT

This matter comes on for consideration this 19 day of June, 1996, upon the Motion of the Plaintiff, United States of America, acting on behalf of Farm Service Agency, formerly Consolidated Farm Service Agency, formerly Farmers Home Administration, for leave to enter a Deficiency Judgment. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, James N. Thompson, appears neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that copies of Plaintiff's Motion and Declaration were mailed by first-class mail to James N. Thompson, Route 2, Box 39, Miami, Oklahoma 74354, and by first-class mail to all answering parties and/or counsel of record.

The Court further finds that the amount of the Judgment rendered on July 17, 1995, in favor of the Plaintiff United States of America, and against the Defendant, James N. Thompson, with interest and costs to date of sale is \$211,180.96.

The Court further finds that the chattel property involved herein was sold at Marshal's sale, by Sue Dulaney, a professional auctioneer, pursuant to the Judgment of this Court entered July 17, 1995, and Order Authorizing Employment of Auctioneer entered on December 15, 1995, for the sum of \$8,250.00.

The Court further finds that the Plaintiff, United States of America on behalf of Farm Service Agency, formerly Consolidated Farm Service Agency, formerly Farmers Home Administration, is accordingly entitled to a deficiency judgment against the Defendant, James N. Thompson, as follows:

Principal Balance Plus Pre-Judgment Interest as of July 17, 1995	\$199,986.37
Interest From Date of Judgment to Sale	6,756.74
Publication Fees of Notice of Sale	237.42
Auctioneer's Commission	1,237.50
Labor/Cost to move equipment	<u>2,962.93</u>
TOTAL	\$211,180.96
Less Credit of Sale Proceeds	<u>8,250.00</u>
DEFICIENCY	\$202,930.96

plus interest on said deficiency judgment at the legal rate of 5.62 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the sale proceeds of the chattel property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Farm Service Agency, formerly Consolidated Farm Service Agency, formerly Farmers Home Administration, have and recover from Defendant, James N. Thompson, a deficiency judgment in the amount of **\$202,930.96**, plus interest at the legal rate of 5.62 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Deficiency Judgment
Case No. 94-C-1054-B (Thompson)

PP:cm

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

F I L E D

SAMUEL J. WILDER,)
)
Plaintiff,)
)
vs.)
)
RALPH MCINTOSH - MASONIC LODGE)
(MASONS), et al.)
)
Defendants.)

JUN 19 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 95-C-1130B

ENTERED ON DOCKET
DATE JUN 20 1996

O R D E R

The Complaint in this matter was filed on November 13, 1995. The record fails to reflect any Return of Service indicating service upon any of the Defendants in this matter. Accordingly, this case is subject to dismissal without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

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

Plaintiff's motion for appointment of counsel is therefore denied as moot.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
ALPHONZO HARBERT; BERTHA)
HARBERT; ASSOCIATES FINANCIAL)
SERVICES COMPANY OF)
OKLAHOMA, INC; NATIONS BANK OF)
NORTH CAROLINA, N.A., successor by)
name change to North Carolina National)
Bank; SERVICE COLLECTION)
ASSOCIATION, INC; STATE OF)
OKLAHOMA, *ex rel.* OKLAHOMA TAX)
COMMISSION; COUNTY TREASURER,)
Tulsa County, Oklahoma; BOARD OF)
COUNTY COMMISSIONERS, Tulsa)
County, Oklahoma,)
)
Defendants.)

FILED
JUN 19 1996
Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUN 20 1996

Civil Case No. 95 C 612B

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on March 21, 1996, pursuant to an Order of Sale dated November 27, 1995, of the following described property located in Tulsa County, Oklahoma:

Lot Ten (10), Block Fifteen (15), SUBURBAN HILLS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, Alphonzo Harbert, Associates

Financial Services Company of Oklahoma, Inc., Nationsbank of North Carolina, N.A., successor by name change to North Carolina National Bank, Service Collection Association, Inc., through its Attorney, Fred A. Pottorf, State of Oklahoma, ex rel. Oklahoma Tax Commission, through Kim D. Ashley, Assistant General Counsel, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, through Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma, by mail, to the Defendant, Bertha Harbert, by Publication, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

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

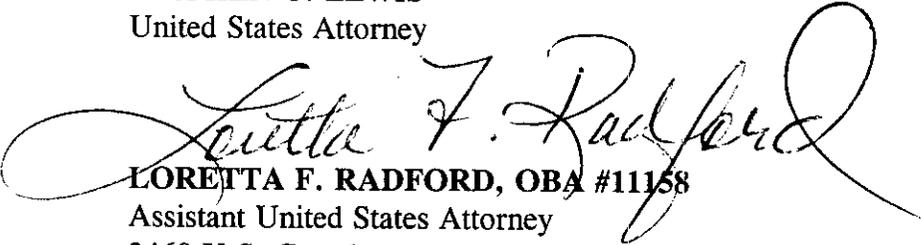
It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the United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

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

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

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



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

LFR:flv

Report and Recommendation of United States Magistrate Judge
Civil Action No. 95-C 612B

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 19 1996

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CATHERINE J. GEORGE aka Catherine)

Jo George aka Catherine George; THE)

UNIVERSITY OF TULSA; COUNTY)

TREASURER, Tulsa County, Oklahoma;)

BOARD OF COUNTY)

COMMISSIONERS, Tulsa County,)

Oklahoma,)

Defendants.)

ENTERED ON DOCKET

DATE JUN 20 1996

Civil Case No. 95 C 754B

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on April 22, 1996, pursuant to an Order of Sale dated January 23, 1996, of the following described property located in Tulsa County, Oklahoma:

**Lot Ten (10), Block Eight (8), EAST LAWN ADDITION
to the City of Tulsa, Tulsa County, State of Oklahoma,
according to the recorded Plat thereof.**

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, The University of Tulsa, through its Attorney, Daniel M. Webb, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, through Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma, by mail, and to the Defendant, Catherine J. George, by publication, and they do

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

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

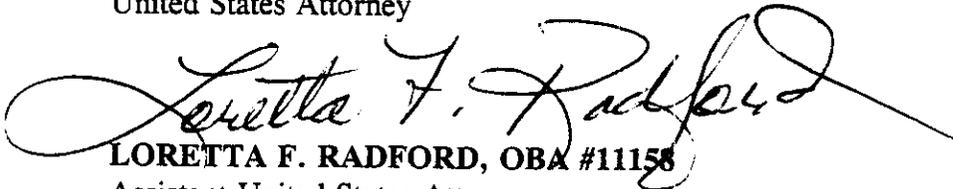
It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, Jarry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

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

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

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

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

LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

3460 U.S. Courthouse

Tulsa, Oklahoma 74103

(918) 581-7463

LFR:flv

Report and Recommendation of United States Magistrate Judge
Civil Action No. 95-C 754B

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

ENTERED ON DOCKET
DATE JUN 20 1996

LASHONN JOHNSON)
)
 Plaintiff,)
)
 vs.)
)
 DILLARD DEPARTMENT STORES, INC.,)
 a foreign corporation,)
)
 Defendant.)

No. 95-C-1187K ✓

F I L E D

JUN 18 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

O R D E R

Now before this Court is the motion by Defendant Dillard Department Stores ("Dillard") to dismiss a cause of action by Plaintiff Lashonn Johnson ("Johnson"). Johnson's Complaint alleges three theories of recovery: (1) wrongful discharge in violation of the public policy of the State of Oklahoma; (2) intentional infliction of emotional distress; and (3) wrongful discharge in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. Dillard moves to dismiss Johnson's claim for wrongful discharge in violation of the public policy of the State of Oklahoma.¹

Dillard argues that a recent Oklahoma Supreme Court opinion, List v. Anchor Paint Manufacturing, 910 F.2d 1011 (Okla. 1996), foreclosed Johnson's common law claim for wrongful discharge.

¹ Dillard also moved to dismiss Johnson's claim under Okla. Stat. tit. 25, §§ 1101 et seq, but Johnson has since stated that no such claim was intended. (Plaint. Resp. at 1.)

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This Court agrees. In 1989, the Oklahoma Supreme Court created common law cause of action for employment discrimination in violation of public policy. Burk v. K-Mart, 770 P.2d 24 (Okla. 1989). The court explained that it had adopted a "public policy exception to the at-will termination rule in a narrow class of cases in which the discharge is contrary to a clear mandate of public policy as articulated by constitutional, statutory or decisional law." Id. at 28. Three years later, the supreme court held that a claimant who has a cognizable Title VII claim for race discrimination may still bring a *Burk* action. Tate v. Browning-Ferris, 833 P.2d 1218 (Okla. 1992). See also Davies v. American Airlines, 971 F.2d 463, 468 (10th Cir. 1992) (holding that *Tate* clearly held that a *Burk* action is available notwithstanding the availability of other remedies).

While the supreme court has not expressly overruled *Tate*, its decision in List v. Anchor Paint Manufacturing, 910 F.2d 1011 (Okla. 1996), had that very effect. In *List* the court explained that in *Tate* it had held that a racially motivated discharge action under the *Burk* rule was not preempted either by Title VII or by the Oklahoma anti-discrimination statutes, 25 O.S. 1981 §§ 1101 et seq. for the following reason:

Had we not held in *Tate* that plaintiff was entitled to assert a common law cause of action, he would have had

no right to a jury trial because neither the state Act nor the Civil Rights Act provided for such a remedy. Further, plaintiff's damages would have been limited to back pay with no right to additional compensatory or punitive damages.

List, 910 P.2d at 1014. In other words, federal and state statutes law did not preempt plaintiff's common law action because the "statutory remedies available to plaintiff in *Tate* were significantly inferior to those available in a common law action." Id. The court reasoned the obverse to hold that common law remedies for age based discriminatory discharge were preempted by statutory remedies. The court explained that the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. § 621 et seq., provided comprehensive remedies, including the right to a jury trial and punitive damages; therefore, statutory remedies preempted common law remedies. Id.

This very reasoning now forecloses the availability of common law remedies for race based discriminatory discharge in light of the Civil Rights Act of 1991. Federal statute now provides comprehensive remedies to plaintiffs bringing race based discriminatory discharge claims equivalent to those available under the ADEA: the right to a jury trial and to compensatory and punitive damages. 42 U.S.C. § 1981a. Since the statutory remedies available to plaintiffs claiming race based

discriminatory discharge are no longer significantly inferior to common law remedies, *List* compels the conclusion that these statutory remedies now preempt common law remedies.

For the reasons stated herein, Johnson's common law action for wrongful discharge in violation of Oklahoma public policy is DISMISSED.

IT IS SO ORDERED THIS 18 DAY OF JUNE, 1996.


TERRY O. KEEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 19 1996

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

FRANCES MAE TIGER; RONALD)

MATTHEW TIGER; LELAND MOSE)

TIGER; JEANNIE BLAYLOCK;)

CHERYL RENEE TIGER; NAOMI)

RUTH WAMEGO; LAWANNA TIGER;)

SHAWN DEE TIGER; JEREMY DON)

TIGER; COUNTY TREASURER, Tulsa)

County, Oklahoma; BOARD OF)

COUNTY COMMISSIONERS, Tulsa)

County, Oklahoma,)

Defendants.)

ENTERED ON DOCKET

JUN 20 1996

DATE _____

Civil Case No. 95-C 300B

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on March 20, 1996, pursuant to an Order of Sale dated December 5, 1995, of the following described property located in Tulsa County, Oklahoma:

Lot Twenty-Eight (28), Block Nine (9), Rolling Hills Third Addition, an Addition in Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, Frances Mae Tiger, Ronald Matthew Tiger, Leland Mose Tiger, Cherly Renee Tiger, Lawanna Tiger, Shawn Dee Tiger and Jeremy Don Tiger, by publication, and they do not appear; and notice was given the

Defendants, Jeannie Blaylock, Naomi Ruth Wamego, and the County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, through Dick A. Blakeley, Assistant District Attorney, by mail, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

The Magistrate Judge has examined the proceedings of the United States Marshal under the Order of Sale. Upon statement of counsel and examination of the court file, the Magistrate Judge finds that due and legal notice of the sale was given by publication once a week for at least four weeks prior to the date of sale in the Tulsa Daily Commerce & Legal News, a newspaper published and of general circulation in Tulsa County, Oklahoma, and that on the day fixed in the notice the property was sold to David Rule, 2445 S. 132nd E. Avenue, Tulsa, Oklahoma 74134, he being the highest bidder. The Magistrate Judge further finds that the sale was in all respects in conformity with the law and judgment of this Court.

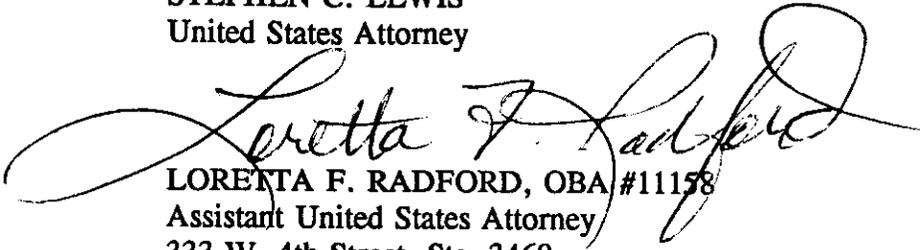
It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, David Rule, 2445 S. 132nd E. Avenue, Tulsa, Oklahoma 74134, a good and sufficient deed for the property.

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

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

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

A large, elegant handwritten signature in cursive script, reading "Loreta F. Radford". The signature is written in black ink and is positioned over the typed name and title of the signatory.

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

LFR/esf

Report and Recommendation of United States Magistrate Judge
Civil Action No. 95-C 300B

ENTERED ON DOCKET
DATE 6-20-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
JUN 19 1996
Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
PAULINE M. ROBERSON; LOUIS J.)
ROBERSON aka LOUIS JAMES)
ROBERSON; BANCOKLAHOMA)
MORTGAGE CORPORATION;)
FEDERAL NATIONAL MORTGAGE)
ASSOCIATION; COUNTY)
TREASURER, Tulsa County, Oklahoma;)
BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)
)

Civil Case No. 95-CV 885BU ✓

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on March 20, 1996, pursuant to an Order of Sale dated January 4, 1996, of the following described property located in Tulsa County, Oklahoma:

Lot Twenty-One (21), Block Two (2), ANELEN HEIGHTS SECOND ADDITION to Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, Pauline M. Roberson, Louis J. Roberson, BancOklahoma Mortgage Corporation, through its Attorney, Richard J. Cipolla,

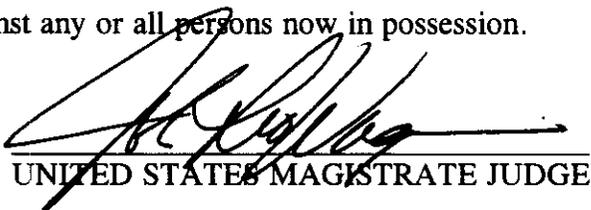
22

Jr., Federal National Mortgage Association, County Treasurer and Board of County Commissioners, through Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma, by mail, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

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

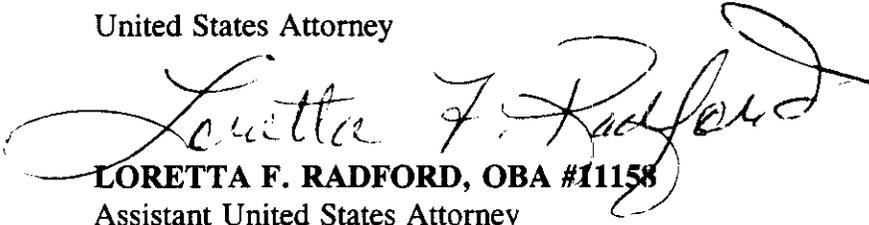
It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the United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

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


UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

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

LORETTA F. RADFORD, OBA #11158

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

LFR:flv

Report and Recommendation of United States Magistrate Judge
Civil Action No. 95-CV 885BU

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE 6-20-96

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLES E. HARRIS; STATE OF)
 OKLAHOMA, ex rel. OKLAHOMA TAX)
 COMMISSION; COUNTY TREASURER,)
 Tulsa County, Oklahoma; BOARD OF)
 COUNTY COMMISSIONERS, Tulsa)
 County, Oklahoma,)
)
 Defendants.)

FILED
JUN 19 1996
Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Civil Case No. 95-C 679BU ✓

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on March 21, 1996, pursuant to an Order of Sale dated November 21, 1996, of the following described property located in Tulsa County, Oklahoma:

Lot Five (5), Block Three (3), OAK RIDGE ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendant, Charles E. Harris, State of Oklahoma, ex rel. Oklahoma Tax Commission, through Kim D. Ashley, Assistant General Counsel, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, through Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma, by mail, and

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

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

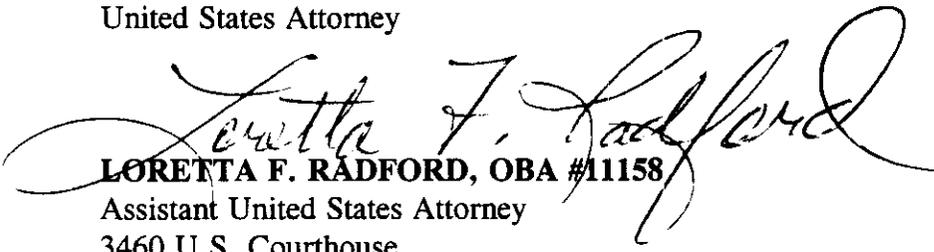
It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, David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

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


UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

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

LFR:flv

Report and Recommendation of United States Magistrate Judge
Civil Action No. 95-C 679BU

ENTERED ON DOCKET
DATE 6-20-96

FILED

JUN 19 1996

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 THE UNKNOWN HEIRS, PERSONAL)
 REPRESENTATIVES, EXECUTORS,)
 ADMINSTRATORS, DEVISEES,)
 TRUSTEES, SUCCESSORS AND)
 ASSIGNS IMMEDIATE AND REMOTE,)
 KNOWN AND UNKNOWN OF Syble E.)
 Addington aka Style Eunice Addington ,)
 Deceased; STATE OF OKLAHOMA, ex rel.)
 OKLAHOMA TAX COMMISSION;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

Civil Case No. 95-C 744BU ✓

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on April 26, 1996, pursuant to an Order of Sale dated January 31, 1996, of the following described property located in Tulsa County, Oklahoma:

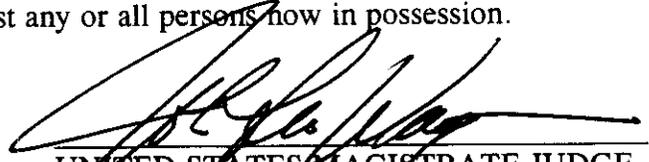
The West Twenty-five (25), feet of Lot Four (4) and the East Thirty-seven and Five tenths (37.5) feet of Lot Five (5), Block Ten (10), HARVARD HILLS, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, State of Oklahoma, ex rel. Oklahoma Tax Commission, County Treasurer, Tulsa County, Oklahoma and Board of County Commissioners, Tulsa County, Oklahoma, by mail, and to the Defendants, THE UNKNOWN HEIRS, PERSONAL REPRESENTATIVES, EXECUTORS, ADMINISTRATORS, DEVISEES, TRUSTEES, SUCCESSORS AND ASSIGNS IMMEDIATE AND REMOTE, KNOWN AND UNKNOWN OF Syble E. Addington, Deceased, by Publication, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

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

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

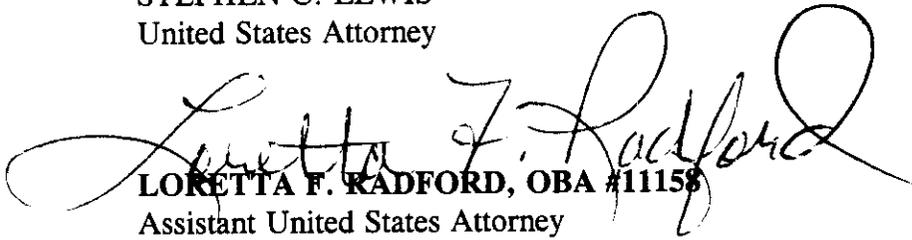
It is the further recommendation of the Magistrate Judge that subsequent to the execution and delivery of the Deed to the purchaser by the United State Marshal, the purchaser be granted possession of the property against any or all persons now in possession.



UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



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

LFR:flv

Report and Recommendation of United States Magistrate Judge
Civil Action No. 95-C 744BU

ENTERED ON DOCKET
DATE 6-20-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 19 1996

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

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
)
 vs.)
)
)
 DEBORAH ANN OSBY aka DEBORAH)
 A. OSBY aka DEBORAH ANN WHITE)
 OSBY; COUNTY TREASURER, Tulsa)
 County, Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

Civil Case No. 95-C 540BU

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on April 15, 1996, pursuant to an Order of Sale dated January 25, 1996, of the following described property located in Tulsa County, Oklahoma:

Lot One (1), Block One (1), SUBURBAN HILLS
ADDITION to the City of Tulsa, Tulsa County, State
of Oklahoma, according to the recorded Plat thereof.

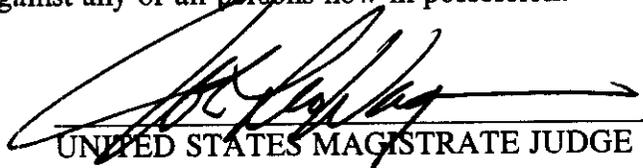
Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, by mail, and to the Defendant, Deborah Ann Osby, by Publication, and they do not appear. Upon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

23

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

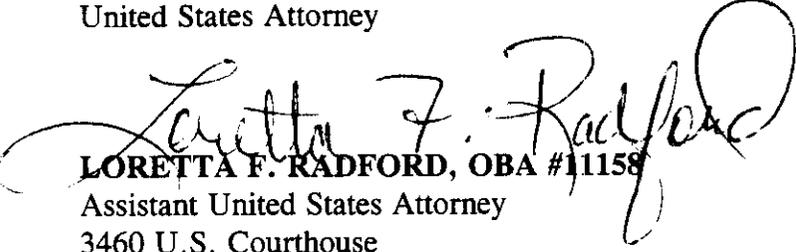
It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, the United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

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


UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



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

LFR:flv

Report and Recommendation of United States Magistrate Judge
Civil Action No. 95-C 540BU

ENTERED ON DOCKET
DATE 6-20-96

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

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

JUN 19 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CASE NO. 94-C-1059-H

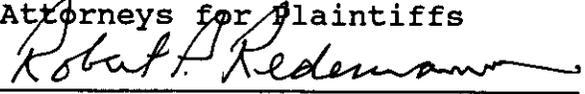
PARTIAL STIPULATED DISMISSAL WITHOUT PREJUDICE

COME(S) NOW the Plaintiff, **Donald 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

F I L E D

JUN 19 1996

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.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CASE NO. 94-C-1059-H

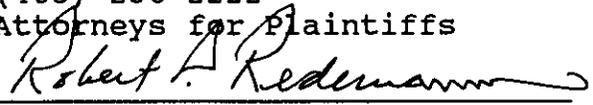
PARTIAL STIPULATED DISMISSAL WITHOUT PREJUDICE

COME(S) NOW the Plaintiff, **Terri Moore**, 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

FILED

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
FRANK RUFFINI; DEBORAH RUFFINI)
COUNTY TREASURER, Tulsa County,)
Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

JUN 19 1996

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

ENTERED ON DOCKET

DATE JUN 20 1996

Civil Case No. 94-C 378E

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on April 22, 1996, pursuant to an Order of Sale dated January 31, 1996, of the following described property located in Tulsa County, Oklahoma:

Lot One (1), Block Twelve (12), MICHAEL HEIGHTS
EXTENDED ADDITION to the City of Tulsa, Tulsa
County, State of Oklahoma, according to the Recorded
Plat thereof.

Appearing for the United States of America is Loretta F. Radford, Assistant United States Attorney. Notice was given the Defendants, Frank Ruffini, Deborah Ruffini, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma and to the purchaser of the property, Jarry M. Jones, by mail, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

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

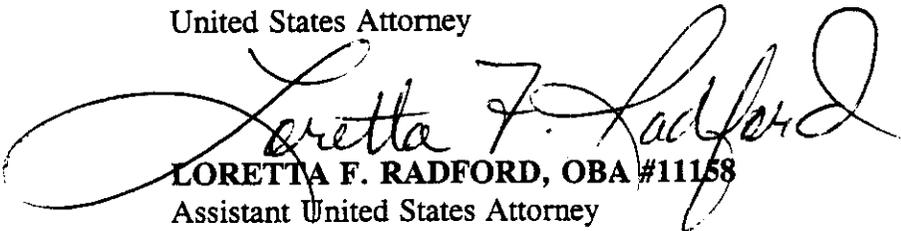
It is therefore the recommendation of the United States Magistrate Judge that the United States Marshal's Sale and all proceedings under the Order of Sale be hereby approved and confirmed and that the United States Marshal for the Northern District of Oklahoma make and execute to the purchaser, Jarry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

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

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

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



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

LFR:flv

Report and Recommendation of United States Magistrate Judge
Civil Action No. 94-C 378E

ENTERED ON DOCKET
DATE 6-20-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 19 1996

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

sa

UNITED STATES OF AMERICA,)
 on behalf of the Secretary of Veterans Affairs,)
)
 Plaintiff,)
)
 v.)
)
 WILLIAM ALVA RUTLEDGE)
 aka William A. Rutledge;)
 ANNA B. RUTLEDGE;)
 STATE OF OKLAHOMA ex rel.)
 Oklahoma Tax Commission;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma;)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

CIVIL ACTION NO. 95-C-561-H ✓

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

NOW on this 19th day of June, 1996, there comes on for hearing before the Magistrate Judge the Motion of the United States of America to confirm the sale made by the United States Marshal for the Northern District of Oklahoma on March 18, 1996, pursuant to an Order of Sale dated November 21, 1995, of the following described property located in Tulsa County, Oklahoma:

The East One Hundred (100) Feet of Lot Five (5), FOSTER LEWIS ACREAGE, an Addition to the Town of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

Appearing for the United States of America is Cathryn D. McClanahan, Assistant United States Attorney. Notice was given the Defendants, William Alva Rutledge aka William A. Rutledge and Anna B. Rutledge, by mail; the Defendant, State of

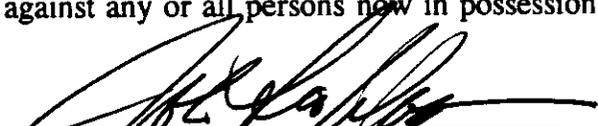
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Oklahoma ex rel. Oklahoma Tax Commission, through Kim D. Ashley, Assistant General Counsel, by mail; and the Defendants, **County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma**, through Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma, by mail, and they do not appear. Upon hearing, the Magistrate Judge makes the following report and recommendation.

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

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

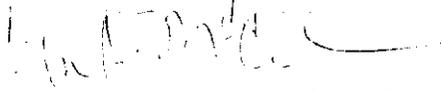
It is the further recommendation of the Magistrate Judge that subsequent to the execution and delivery of the Deed to the purchaser by the United State Marshal, the purchaser be granted possession of the property against any or all persons now in possession.


UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS

United States Attorney



CATHRYN D. MCCLANAHAN, OBA #014853

Assistant United States Attorney

3460 U.S. Courthouse

Tulsa, Oklahoma 74103

(918) 581-7463

**Report and Recommendation of United States Magistrate Judge
Case No. 95-C-561-H (Rutledge)**

CDM:css

ENTERED ON DOCKET

DATE 6/20/96

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

FILED

LEONA M. BLACKMON,)
SS# 442-46-1924,)

Plaintiff,)

v.)

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

Defendant.)

NO. 95-C-512-M ✓

JUN 19 1996
Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

Judgment is hereby entered for Defendant and against Plaintiff. Dated this 19th
day of JUNE, 1996.

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

9

ENTERED ON DOCKET

DATE 6/20/96

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

F I L E D

LEONA M. BLACKMON,)
SS# 442-46-1924,)

Plaintiff,)

v.)

SHIRLEY S. CHATER,¹ Commissioner)
Social Security Administration,)

Defendant.)

NO. 95-C-512M

JUN 19 1996 *SAC*

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

ORDER

Plaintiff, Leona M. Blackmon, seeks judicial review of a decision of the Secretary of Health & Human Services denying Social Security disability benefits.² In accordance with 28 U.S.C. §636(c)(1) & (3) the parties have consented to proceed before a United States Magistrate Judge, any appeal of this Order will be directly to the Circuit Court of Appeals.

The role of the court in reviewing the decision of the Secretary under 42 U.S.C. §405(g) is to determine whether there is substantial evidence in the record to support the decision of the Secretary, and not to reweigh the evidence or try the issues *de novo*. *Sisco v. U.S. Dept. of Health and Human Services*, 10 F.3d 739, 741 (10th

¹ Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-297. However, this order continues to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

² Plaintiff's December 16, 1993 application for disability benefits was denied April 5, 1994, the denial was affirmed on reconsideration. A hearing before an Administrative Law Judge ("ALJ") was held October 18, 1994. By decision dated November 3, 1994 the ALJ entered the findings that are the subject of this appeal. The Appeals Council affirmed the findings of the ALJ on April 5, 1995. The decision of the Appeals Council represents the Secretary's final decision for purposes of further appeal. 20 C.F.R. §§ 404.981, 416.1481.

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Cir. 1993). In order to determine whether the Secretary's decision is supported by substantial evidence, the court must meticulously examine the record. However, the court may not substitute its discretion for that of the Secretary. *Musgrave v. Sullivan*, 966 F.2d 1371, 1374 (10th Cir. 1992). If supported by substantial evidence, the Secretary's findings are conclusive and must be affirmed. *Richardson v. Perales*, 402 U.S. 389, 390, 91 S.Ct. 1420, 1422, 28 L.Ed.2d 842, (1971). Substantial evidence is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* at 401, 91 S.Ct. at 1427.

The record of the proceedings has been meticulously reviewed by the Court. The undersigned United States Magistrate Judge finds that the Administrative Law Judge ("ALJ") has adequately and correctly set forth the relevant facts of this case and has properly outlined the required sequential analysis. The Court therefore incorporates that information into this order as duplication of this effort would serve no purpose.

Plaintiff claims she has been unable to work since October 1993 due to blurred vision, diabetes mellitus, high blood pressure, dizziness, and pain in her arms, legs, and feet. The ALJ determined that despite these impairments, Plaintiff retains the residual functional capacity ("RFC") to perform her past work as a hospital unit clerk. The ALJ also determined that Plaintiff's RFC permits her to do other work at the light exertional level, provided that she not be exposed to unprotected heights, be required

to operate motorized vehicles and provided that she could be allowed to eat regularly scheduled meals.

Plaintiff alleges that the ALJ's determination is not supported by substantial evidence. Specifically, Plaintiff claims: (1) the ALJ failed to make proper determinations regarding the demands of Plaintiff's past relevant work; (2) that the ALJ improperly accepted the opinion of Plaintiff's treating physician that her physical problems *do not* prevent gainful employment; and (3) the ALJ failed to properly develop the record.

DEMANDS OF PAST RELEVANT WORK

The ALJ is required to make the following findings when a disability claimant is denied benefits based on the determination that the claimant is capable of returning to former work:

1. A finding of fact as to the individual's RFC.
2. A finding of fact as to the physical and mental demands of the past job/occupation.
3. A finding of fact that the individual's RFC would permit a return to his or her past job or occupation.

SSR 82-62, 1975-1982 Soc.Sec.Rep.Ser. 809; *Henrie v. U.S. Dept. of Health & Human Services*, 13 F.3d 359, 361 (10th Cir. 1993). Citing the above authorities, Plaintiff asserts this case must be reversed for the ALJ's failure to make all of the required findings. The Court disagrees.

1. A finding of fact as to the individual's RFC. This finding is specifically set forth in Finding No. 5 of the ALJ's Decision. [R. 16].

2. A finding of fact as to the physical and mental demands of the past job/occupation. While there is no specific finding on this point, the ALJ extensively developed the record regarding the requirements of Plaintiff's past relevant work. This was accomplished through a written job description [R. 52-55], information from Plaintiff on her disability report [R. 60-61] and Plaintiff's detailed testimony at the hearing [R. 162]. In Finding No. 6, the ALJ found that Plaintiff's past relevant work did not require work related activities precluded by her RFC and, finally, in Finding No. 7, the ALJ found that Plaintiff's RFC did not prevent her from performing her past relevant work. Additionally, the ALJ received the testimony of a vocational expert, who had reviewed the file and heard Plaintiff's testimony at the hearing, and testified that a person with Plaintiff's RFC could perform the job of unit clerk.

It is implicit in these findings that the ALJ found the physical and mental demands of Plaintiff's past relevant work to be as she described them and that, as specifically described, she could perform her past relevant work with her RFC.

The authorities cited by Plaintiff, SSR 82-62 and *Henrie*, are primarily concerned with the requirement that the ALJ develop the record regarding Plaintiff's past relevant work and then compare those demands to Plaintiff's RFC. It is clear that this analysis was done in this case. It would have been preferable for the ALJ to specifically state in the findings that the Plaintiff's description of her past relevant work is accepted. However, it would elevate form over substance to reverse this case based on the ALJ's failure to do so. The ALJ more than adequately developed the record of Plaintiff's past relevant work, utilized a vocational expert and made

specific findings which lead to the inescapable conclusion that the ALJ accepted Plaintiff's description of the demands of her past relevant work and compared them to her RFC.

3. A finding of fact that the individual's RFC would permit a return to his or her past job or occupation. This finding is specifically set forth in Finding No. 7 of the ALJ's Decision. [R. 16].

TREATING PHYSICIAN OPINION

Plaintiff is a long-time patient of Dr. David Browning, Jr., who has been treating her since 1984. [R. 167]. Dr. Browning submitted a letter dated February 24, 1994, which contains the following opinion:

Given the limits of the patient's requirements for regular meals, medications and physical activity, which might interfere with some work requirements, she has no physical problems, compared with others of her age, which would preclude gainful employment; and has excellent mental and emotional faculties, in my opinion.

It is well-established that a treating physician may offer an opinion which reflects a judgment about the nature and severity of the claimant's impairments including the claimant's symptoms, diagnosis and prognosis. Any physical or mental restrictions imposed by a treating physician are entitled to controlling weight if well supported by clinical and laboratory diagnostic techniques and if not inconsistent with other substantial evidence in the record. 20 CFR §§ 404.1527(d)(2), 416.927(d)(2). The Court finds Dr. Browning's opinion to be consistent with his office notes and the

other evidence of record. Therefore, the ALJ did not err in considering Dr. Browning's opinion.

DEVELOPMENT OF THE RECORD

Plaintiff argues that the ALJ failed in his duty to develop the record because the reports of two physicians were not reviewed by the ALJ. The Secretary/Commissioner has "a basic obligation . . . to ensure that an adequate record is developed during the disability hearing consistent with the issues raised." *Henrie*, 13 F.3d at 360-61. "This duty is not a panacea for claimants, however, which requires reversal in any matter where the ALJ fails to exhaust every potential line of questioning." *Glass v. Shalala*, 43 F.3d 1392, 1396 (10th Cir. 1994). "The duty is one of inquiry, ensuring that the ALJ is informed about facts relevant to his decision and learns the claimant's own version of those facts." *Henrie*, 13 F.2d at 361 [quotation marks and citations omitted].

The two physicians whose reports are not included in the record are Dr. Nahmias, a podiatrist and a Dr. Davis. According to the disability report, Dr. Nahmias has treated Plaintiff for a bone spur and has removed ingrown toe nails. [R. 57]. Plaintiff testified she had not seen Dr. Nahmias for a year. [R. 177]. Dr. Davis's name does not appear on the information Plaintiff provided to the Social Security Administration, nor was it mentioned in the hearing. His name appears only on the request for review of hearing decision where, as reason for seeking review by the Appeals Council, Plaintiff wrote: "My DM and HBP are sever [sic] call Dr. G.R. Davis 130 N. Greenwood Tulsa, Okla. 918-585-3055". [R. 5]. In denying Plaintiff's request

for review of the ALJ's decision, the Appeals Council noted that diabetes mellitus and high blood pressure were taken into account in the ALJ's decision and that she did not submit Dr. Davis's records to the Appeals Council for consideration.

The ALJ's decision reflects a review of the extensive treating physician office notes from March 1991 to February, 1994 produced by Dr. Browning. Dr. Browning had treated Plaintiff for diabetes and hypertension for over 10 years. The Court notes that the requirement is not that an exhaustive record be developed, an adequate record is required. The Court finds that the record was adequately developed concerning Plaintiff's diabetes and hypertension. The record informed the ALJ about the facts relevant to these conditions and the ALJ learned the Plaintiff's version of the facts. Thus, the absence of Dr. Davis's and Dr. Nahmias's records does not provide grounds for reversal.

CONCLUSION

The Court finds that the ALJ evaluated the record in accordance with the legal standards established by the Secretary and the courts. The Court further finds there is substantial evidence in the record to support the ALJ's decision. Accordingly, the decision of the Secretary finding Plaintiff not disabled is AFFIRMED.

SO ORDERED THIS 19th day of June, 1996.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 STEVEN CRAIG BROWN aka Steve)
 Brown; SHIRLEY A. WEDGE dba Port)
 Ketchum Resort; CITY OF BROKEN)
 ARROW, Oklahoma; COUNTY)
 TREASURER, Tulsa County, Oklahoma;)
 BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

F I L E D

JUN 18 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
DATE JUN 19 1996

Civil Case No. 95cv 1121E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17 day of June, 1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, CITY OF BROKEN ARROW, Oklahoma, appears by Michael R. Vanderburg, City Attorney, Broken Arrow, Oklahoma; the Defendant, SHIRLEY A. WEDGE dba Port Ketchum Resort, appears not having previously filed a Disclaimer; and the Defendant, STEVEN CRAIG BROWN aka Steve Brown, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, SHIRLEY A. WEDGE dba Port Ketchum Resort, signed a Waiver of Summons on

January 30, 1996; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, acknowledged receipt of Summons and Complaint on November 16, 1995, by Certified Mail.

The Court further finds that the Defendant, STEVEN CRAIG BROWN aka Steve Brown, 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 March 13, 1996, and continuing through April 17, 1996, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, STEVEN CRAIG BROWN aka Steve Brown, 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, STEVEN CRAIG BROWN aka Steve Brown. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Department of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to

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

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on December 4, 1995; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, filed its Answer on December 26, 1995; that the Defendant, SHIRLEY A. WEDGE dba Port Ketchum Resort, filed her Disclaimer on February 14, 1996; and that the Defendant, STEVEN CRAIG BROWN aka Steve Brown, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, STEVEN CRAIG BROWN is one and the same person as Steve Brown, and will hereinafter be referred to as "STEVEN CRAIG BROWN." The Defendant, STEVEN CRAIG BROWN, is a single unmarried person.

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 Fourteen (14), Block Nine (9), ARROW SPRINGS SECOND, an Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on October 7, 1988, the Defendant, STEVEN CRAIG BROWN, executed and delivered to CONTINENTAL FEDERAL SAVINGS AND LOAN ASSOCIATION, his mortgage note in the amount of \$48,474.00, payable in monthly installments, with interest thereon at the rate of Ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, STEVEN CRAIG BROWN, a single person, executed and delivered to CONTINENTAL FEDERAL SAVINGS AND LOAN ASSOCIATION, a mortgage dated October 7, 1988, covering the above-described property. Said mortgage was recorded on October 10, 1988, in Book 5133, Page 1197, in the records of Tulsa County, Oklahoma. This Mortgage as re-recorded on December 1, 1988, in Book 5143, Page 160, in the records of Tulsa County, Oklahoma, to show full lenders name.

The Court further finds that on November 14, 1988, CONTINENTAL FEDERAL SAVINGS AND LOAN ASSOCIATION, assigned the above-described mortgage note and mortgage to MORTGAGE CLEARING CORPORATION. This Assignment of Mortgage was recorded on December 9, 1988, in Book 5144, Page 2444, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 20, 1990, MORTGAGE CLEARING CORPORATION, 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 February 22, 1990, in Book 5237, Page 1689, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 1, 1990, the Defendant, STEVEN CRAIG BROWN, 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 August 1, 1990, February 1, 1991 and February 1, 1992.

The Court further finds that the Defendant, STEVEN CRAIG BROWN, 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, STEVEN CRAIG BROWN, is indebted to the Plaintiff in the principal sum of \$79,397.74, plus interest at the rate of 10 percent per annum from March 21, 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 \$717.00, 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 \$40.00 which became a lien on the property as of June 23, 1994. 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 real property, except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat.

The Court further finds that the Defendant, STEVEN CRAIG BROWN, is in default, and has no right, title or interest in the subject real property.

The Court further finds that the Defendant, SHIRLEY A. WEDGE dba Port Ketchum Resort, Disclaims any 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, STEVEN CRAIG BROWN, in the principal sum of \$79,397.74, plus interest at the rate of 10 percent per annum from March 21, 1995 until judgment, plus interest thereafter at the current legal rate of 5 1/2 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 \$717.00, 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 \$40.00, plus costs and interest, for personal property taxes for the year 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, STEVEN CRAIG BROWN, SHIRLEY A. WEDGE dba Port Ketchum Resort 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 the Defendant, CITY OF BROKEN ARROW, Oklahoma, has no right, title or interest in the subject real property, except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, STEVEN CRAIG BROWN, 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 Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$717.00, 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 \$40.00,
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.

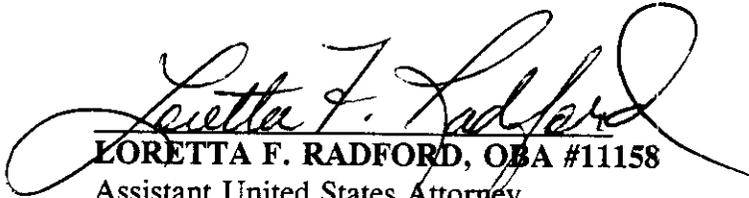
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and
after the sale of the above-described real property, under and by virtue of this judgment and
decree, all of the Defendants and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
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DICK A. BLAKELEY, OBA #852

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(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



MICHAEL R. VANDERBURG, OBA #9180

City Attorney, Broken Arrow, Oklahoma
220 S. First Street
Broken Arrow, Oklahoma 74012
Attorney for Defendant,
City of Broken Arrow, Oklahoma

Judgment of Foreclosure
Civil Action No. 95cv 1121E

LFR:flv

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

FILED
JUN 18 1996

WILLIAM O. ROGERS,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT CARLILE, et al.,)
)
 Defendants.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. 96-CV-0391-B

ENTERED ON DOCKET

DATE JUN 19 1996

ORDER

Plaintiff, a state inmate, has filed with the Court a civil rights complaint, pursuant to 42 U.S.C. § 1983, and a motion for leave to proceed in forma pauperis, pursuant to 28 U.S.C. § 1915.

In his complaint, Plaintiff sues dispatcher Robert Carlile and deputy Jason Thompson. He alleges that Carlile unjustifiably strip searched him in a public restroom where anybody from the public could have come in and seen him nude. He further alleges that Thompson indirectly sprayed him and a bystander with pepper gas while trying to punish a fellow inmate, Mike Fidler. Plaintiff contends the spraying has had a "bad effect on [his] lungs to this day." Plaintiff seeks damages for pain and suffering.

The federal in forma pauperis statute is designed to ensure that indigent litigants have meaningful access to the federal courts without prepayment of fees or costs. Neitzke v. Williams, 490 U.S. 319, 324 (1989); 28 U.S.C. § 1915(d). To prevent abusive litigation, however, section 1915(d) allows a federal court to dismiss an in forma pauperis suit if the suit is frivolous. See 28 U.S.C. § 1915(d). A suit is frivolous if "it lacks an arguable basis in either law or fact." Neitzke, 490 U.S. at 325; Olson v.

Hart, 965 F.2d 940, 942 n.3 (10th Cir. 1992). A suit is legally frivolous if it is based on "an indisputably meritless legal theory." Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992) (quoting Neitzke, 490 U.S. at 327). A complaint is factually frivolous, on the other hand, if "the factual contentions are clearly baseless." Id.

After liberally construing Plaintiff's pro se pleadings, see Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Hall v. Bellmon, 935 F.2d 1106, 1100 (10th Cir. 1991), the Court concludes that Plaintiff's action for mental or emotional suffering lacks an arguable basis in law. On April 26, 1996, President Clinton signed into law the Prison Litigation Reform Act which imposes the following limitation on recovery in prisoner civil actions:

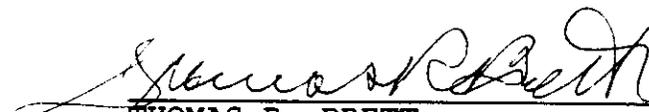
No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

Pub. L. No. 104-134, 110 Stat. 1321, section 803. Plaintiff has not alleged a physical injury as a result of the strip search and pepper gas incidents. Moreover, de minimis applications of force, such as the use of pepper gas, are excluded from the Eighth Amendment's cruel and unusual punishment calculation. Hudson v. McMillian, 503 U.S. 1, 9-10, 112 S.Ct. 995, 1000 (1992); see also Sampley v. Ruetters, 704 F.2d 491, 494 (10th Cir. 1983); El'Amin v. Pearce, 750 F.2d 829 (10th Cir. 1984). Accordingly, Plaintiff's complaint must be dismissed as legally frivolous under 28 U.S.C. § 1915(d).

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's motion for

leave to proceed in forma pauperis is GRANTED and this action is sua sponte DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED this 18th day of June, 1996.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DAVID MAULE, by and through
his guardians and next friends
Mary & Donald R. Maule, Jr.,

Plaintiff

vs.

PERRCORP, INC., an Oklahoma
Corporation d/b/a
TULSA ATHLETIC CLUB,

Defendant.

Case No: 95-C-918-K

F I L E D

JUN 18 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

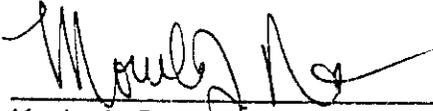
**JOINT STIPULATION OF
DISMISSAL WITH PREJUDICE**

Plaintiff, David Maule, by and through his guardians and next friends,
Mary & Donald R. Maule, Jr., and Defendant, Perrcorp, Inc., an Oklahoma Corporation d/b/a
Tulsa Athletic Club, pursuant to Federal Rule of Civil Procedure 41, hereby stipulate and
agree to the dismissal with prejudice of said cause, all issues therein presented having now
been compromised, settled, satisfied, and released between the parties. The parties agree
that the Court shall retain jurisdiction to resolve any future disputes which may arise in
connection with the settlement agreement executed by the parties. Each party shall bear its
own costs, expenses, and attorney fees.

Entered into this 13th day of June, 1996.

EXHIBIT "A"

Oklahoma Disability Law Center, Inc.



Kayla A. Bower, OBA# 6534
Moura A.J. Robertson, OBA# 14965
4150 S. 100th East Avenue
210 Cherokee Building
Tulsa, Oklahoma 74146
(918) 664-5883
Attorneys for Plaintiff

Wright & Wright, Esqs.



Gerald W. Wright OBA# 9908
Brent Wright, OBA# 14625
406 S. Boulder Ave., Suite 701
Tulsa, Oklahoma 74103-3825
(918) 582-7223
Attorneys for Defendant

ENTERED ON DOCKET
6-19-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DANIEL A. ONORATO aka DANIEL)
ANTHONY ONORATO aka D. A.)
ONORATO, JR.; VNB MORTGAGE)
CORP.; COUNTY TREASURER, Tulsa)
County, Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

FILED

JUN 18 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil Case No. 95-C 1030K

CLERK'S ENTRY OF DEFAULT

It appearing from the files and records of this Court as of 6-17-96 and the declaration of Loretta F. Radford, Assistant United States Attorney, that the Defendants, **Daniel A. Onorato aka Daniel Anthony Onorato aka D.A. Onorato, Jr.**, against whom judgment for affirmative relief is sought in this action have failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure; now, therefore,

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

Dated at Tulsa, Oklahoma, this 18 day of June, 1996.

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

By [Signature]
Deputy

NOTE: THIS DOCUMENT WAS MAILED
BY MAIL ROOM OF CLERK AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE 6-19-96

UNITED STATES OF AMERICA,
on behalf of Rural Housing Service,
formerly Farmers Home Administration,

Plaintiff,

v.

MARVIN DUANE FROST, JR. aka Marvin D. Frost, Jr.
aka Marvin Frost, Jr. aka Marvin Frost;
TAWNYA JOLEE ROBINSON
nka Tawnya JoLee Frost aka Tawnya J.L. Frost
aka Tawnya Frost;
GENERAL MOTORS ACCEPTANCE CORPORATION;
COUNTY TREASURER, Ottawa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Ottawa County, Oklahoma,

Defendants.

FILED

JUN 18 1996

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

CIVIL ACTION NO. 96-C-0211-H ✓

ORDER

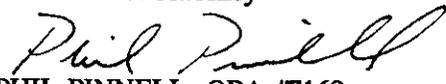
Upon the Motion of the United States of America, acting on behalf of Rural Housing Service, formerly Farmers Home Administration, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that this action shall be dismissed without prejudice.

Dated this 18TH day of JUNE, 1996.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

ENTERED ON DOCKET
DATE 6/19/96:

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

FILED
JUN 18 1996 *SAR*

TERRI L. PAUL,)
)
 Plaintiff,)
)
 v.)
)
 SHIRLEY S. CHATER,)
 Commissioner of Social Security,)
)
 Defendant.)

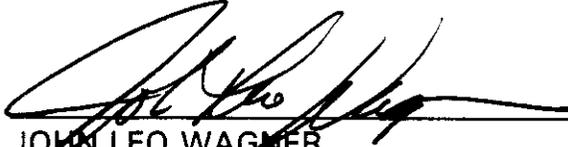
Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No: 95-C-30-W ✓

JUDGMENT

Judgment is entered in favor of the Plaintiff, Terri L. Paul, in accordance with this court's Order filed June 17, 1996.

Dated this 17th day of June, 1996.


JOHN LEO WAGNER
UNITE STATES MAGISTRATE JUDGE

ENTERED ON DOCKET
DATE 6/19/96

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

F I L E D

TERRI L. PAUL,

Plaintiff,

v.

SHIRLEY S. CHATER,
COMMISSIONER OF SOCIAL
SECURITY,¹

Defendant.

JUN 17 1996 *JPK*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 95-C-30-W

ORDER

Plaintiff brought this action pursuant to 42 U.S.C. § 405(g) for judicial review of the final decision of the Secretary of Health and Human Services ("Secretary") denying plaintiff's application for disability insurance benefits under §§ 216(i) and 223.

The procedural background of this matter was summarized adequately by the parties in their briefs and in the decision of Administrative Law Judge Stephen C. Calvarese (the "ALJ"), which summaries are incorporated herein by reference.

The only issue now before the court is whether there is substantial evidence in the record to support the final decision of the Secretary that claimant is not

¹ Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed.R.Civ.P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action. Although the court has substituted the Commissioner for the Secretary in the caption, the text of this Order will continue to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

disabled within the meaning of the Social Security Act.²

In the case at bar, the ALJ made his decision at the fourth step of the sequential evaluation process.³ Claimant was found to have back and leg pain. The ALJ determined that she had the residual functional capacity to perform work of a sedentary nature with the following additional limitations: occasional stooping, bending, or crouching and the need to alter positions from sitting to standing every hour. He found that she had the capacity to perform her past relevant work as an accounts receivable clerk. Having determined that her impairment did not prevent her from performing her past relevant work, the ALJ concluded that she was not disabled

² Judicial review of the Secretary's determination is limited in scope by 42 U.S.C. § 405(g). The court's sole function is to determine whether the record as a whole contains substantial evidence to support the Secretary's decisions. The Secretary's findings stand if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citing Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)). In deciding whether the Secretary's findings are supported by substantial evidence, the court must consider the record as a whole. Hephner v. Mathews, 574 F.2d 359 (6th Cir. 1978).

³ The Social Security Regulations require that a five-step sequential evaluation be made in considering a claim for benefits under the Social Security Act:

1. Is the claimant currently working?
2. If claimant is not working, does the claimant have a severe impairment?
3. If the claimant has a severe impairment, does it meet or equal an impairment listed in Appendix 1 of the Social Security Regulations? If so, disability is automatically found.
4. Does the impairment prevent the claimant from doing past relevant work?
5. Does claimant's impairment prevent him from doing any other relevant work available in the national economy?

20 C.F.R. § 404.1520 (1983). See generally, Talbot v. Heckler, 814 F.2d 1456 (10th Cir. 1987); Tillery v. Schweiker, 713 F.2d 601 (10th Cir. 1983).

under the Social Security Act at any time through the date of the decision.

Claimant now appeals this ruling and asserts alleged errors by the ALJ:

- (1) Substantial evidence does not support the ALJ's finding that claimant retained the residual functional capacity to perform the demands of sedentary work limited to only occasional stooping, bending, or crouching, and the need to alter positions from sitting to standing every hour.
- (2) Substantial evidence does not support the ALJ's finding that the job as accounts receivable clerk permits a person to alternate between sitting and standing every hour and permits a person to sit for fewer than six hours a day.
- (3) Substantial evidence does not support the ALJ's finding that claimant's capabilities permit her to return to her past work as an accounts receivable clerk.

It is well settled that the claimant bears the burden of proving disability that prevents any gainful work activity. Channel v. Heckler, 747 F.2d 577, 579 (10th Cir. 1984).

Claimant's current medical problems originated from a job-related injury to her back sustained while moving furniture on December 6, 1983. (TR 113, 132). As a result of her injury, claimant underwent a chymopapain injection at L4-5 on February 29, 1984, and an anterior interbody lumbar fusion and discectomy at L4-5 on August 29, 1984. (TR 153, 175-178). Subsequently, Dr. Eugene G. Feild performed a bilateral lateral mass fusion from L4 to S1 and implanted an EBT bone growth stimulator on May 28, 1992. (TR 247-256). Dr. Feild indicated after the surgery that claimant was temporarily totally disabled for an undetermined amount of time due to the fusion. (TR 259). By August 31, 1992, Dr. Feild reported that claimant had

"very satisfactory early bone formation, L4 to sacrum." (TR 258). He further indicated that claimant's pain component appeared to definitely be improved. (TR 258).

Dr. Feild examined claimant on November 30, 1992, after she had been involved in an automobile accident, and permitted her to go without her back brace and to "go on light duty." (TR 268). On March 3, 1993, Dr. Feild found no problems with the fusion mass, but expressed concern that claimant was gaining weight, smoking, and not following her rehabilitation walking program. (TR 268). Claimant was examined on August 3, 1993, by Dr. Ashok Kache, who conducted a EMG nerve conduction velocity study, which revealed that the lower right extremity was normal but there was a suggestion of "some nerve root irritation in the L5-S1 levels." (TR 270).

Dr. Michael Karathanos conducted a physical examination of claimant on August 18, 1993, and concluded that claimant had the residual functional capacity at any one time to sit for a total of one hour, stand for thirty minutes, and walk for thirty minutes. (TR 275). He further stated his opinion that during an eight hour workday, claimant could sit up to five hours, stand one hour, and walk one hour. (TR 275). In a previous RFC assessment conducted by Dr. Vallis D. Anthony, dated August 26, 1992, claimant was found to possess the ability to stand and/or walk (with normal breaks) for a total of about six hours in an eight hour workday and to sit (with normal breaks) for a total of about six hours in an eight hour workday. (TR 81). Additionally, Dr. Anthony indicated that claimant did not need to periodically

alternate sitting and standing to relieve pain or discomfort. (TR 81).

At a hearing on July 9, 1993, claimant testified that her only daily activities are cross-stitching and watching television. (TR 47). She stated that she can do no housework, cooking, shopping, or yard work. (TR 48). She testified that she drives once in a while locally and only goes to church on Sundays. (TR 49).

Based on the medical evidence and testimony in the record, claimant's first proposition of error has merit. Substantial evidence does not support the ALJ's finding that claimant retains the residual functional capacity to perform the demands of sedentary work, limited to only occasional stooping, bending, or crouching, and the need to alter positions from sitting to standing every hour. Sedentary work involves:

lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 C.F.R. §404.1567.

Social Security Ruling 83-10 has defined "occasionally" in the context of sedentary work as "occurring from very little up to one-third of the time." The Ruling further states, "Since being on one's feet is required 'occasionally' at the sedentary level of exertion, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday, and sitting should generally total approximately 6 hours of an 8-hour workday." S.S.R. 83-10.

The medical records of Dr. Karathanos support a finding that claimant

possessed the residual functional capacity to sit for only one hour at any given time and a total of five hours in an eight hour workday. Dr. Anthony's assessment conducted a year prior to Dr. Karathanos's examination indicated claimant could sit for a total of six hours in an eight hour workday. Claimant testified that she was only able to sit for a total of ten to fifteen minutes at a time and further stated that she needed to lie down about four to five times per day for periods of thirty minutes to an hour. (TR 46, 55).

The ALJ expressly rejected the testimony of the claimant which was inconsistent with the ALJ's RFC assessment. (TR 28). He also decided not to accept the medical opinions of either Dr. Karathanos or Dr. Anthony. Rather, the ALJ made his own determination of claimant's residual functional capacity which included the limitation that claimant must be able to alternate between sitting and standing every hour. (TR 26). This conclusion is not based on the medical evidence or the claimant's own testimony and therefore is not supported by substantial evidence.

Claimant's second proposition of error also has merit. Substantial evidence does not support the ALJ's finding that the job as accounts receivable clerk permits a person to alternate between sitting and standing every hour and permits a person to sit for fewer than six hours a day. The vocational expert correctly testified that claimant's past relevant work as an accounts receivable clerk is considered by the Dictionary of Occupational Titles as sedentary work. (TR 62). While sedentary work is predominantly performed while sitting, it does involve occasional walking and standing. S.S.R. 83-10.

In response to the ALJ's inquiry regarding how much sitting would be required in an accounts receivable job, the vocational expert stated that the job would involve six hours of sitting. (TR 65). Thus, the guidelines set forth in the regulations and Social Security Ruling 83-10, in combination with the testimony of the vocational expert, establish that the job of an accounts receivable clerk requires the residual functional capacity to sit for six hours of an eight hour workday.

Claimant's third proposition of error also has merit. Substantial evidence does not support the ALJ's finding that claimant's capabilities permit her to return to her past work as an accounts receivable clerk. The ALJ determined claimant had the residual functional capacity to perform sedentary work, limited as follows: occasional stooping, bending, or crouching, and the need to alter positions from sitting to standing every hour. (TR 26). This finding is inherently inconsistent, since the ALJ first concluded that claimant can sit six hours of an eight-hour workday by indicating her ability to perform sedentary work and then contradicted this conclusion by stating that she needs to alter positions from sitting to standing every hour. While the ALJ did not clearly define his qualification requiring the alternating of positions, his questions to the vocational expert seem to indicate that he perceived this additional limitation to mean that claimant could only stand for four hours in an eight-hour workday.⁴ Although the ALJ suggests in his opinion that the vocational expert

⁴ The ALJ asked the vocational expert the following question:

If a person needs to alternate sitting and standing every hour, there would be a total of fours [sic] of sitting during the day and a total of four hours of standing during the day. Would they be able to perform

testified that claimant could perform her past work as an accounts receivable clerk, the record reveals that the vocational expert ultimately reached the opposite conclusion.⁵ (TR 27, 69).

The applicable law does not allow the ALJ to find that an individual with a residual functional capacity which includes the alternating positions limitation could perform her past relevant sedentary work as an accounts receivable clerk. Social Security Ruling 83-12, which addresses the effects of a limitation requiring an individual to alternate sitting and standing, concludes that such a limitation prevents an individual from performing most light and all sedentary jobs.⁶ If the record

the accounts receivable job or the cashier job that we talked about, as far as past relevant work?
(TR 68).

⁵ The following answer was given in response to the question quoted in footnote 4 above:

"...The accounts receivable job would probably require more than four hours of sitting. Normally, it would require six hours of sitting; so if they totally couldn't do any more than four, that would really rule that one out." (TR 68).

The apparent misunderstanding concerning the vocational expert's testimony appeared to have been resolved by the following dialogue between the ALJ and the vocational expert:

Q So neither the accounts receivable job or the cashier job would be able to be performed?

A Right, that would be my opinion.

Q Okay. So, basically, when you said that those jobs could be performed, you were thinking of the other restrictions I had before I mentioned that restriction?

A Right.

(TR 69).

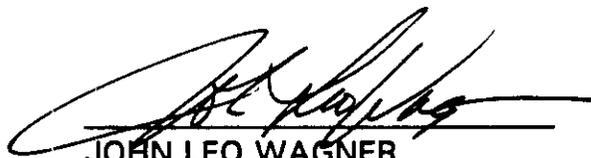
⁶ Social Security Ruling 83-12 reads in pertinent part:

1. Alternate Sitting and Standing
In some disability claims, the medical facts lead to an assessment

supported the ALJ's finding that claimant must alternate sitting and standing, she would not have the requisite residual functional capacity to perform sedentary work as a matter of law.

The decision of the ALJ is not supported by substantial evidence and is an improper application of the regulations. The decision is reversed with instructions to re-evaluate the claimant's residual functional capacity and to elicit further testimony from a vocational expert to determine whether claimant's impairment prevents her from doing any other relevant work available in the national economy.

Dated this 14th day of June, 1998.



JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

S:paul.2

of RFC which is compatible with the performance of either sedentary or light work except that the person must alternate periods of sitting and standing. The individual may be able to sit for a time, but must then get up and stand or walk for awhile before returning to sitting. Such an individual is not functionally capable of doing either the prolonged sitting contemplated in the definition of sedentary work (and for the relatively few light jobs which are performed primarily in a seated position) or the prolonged standing or walking contemplated for most light work.

SAC
6/14/96

ENTERED ON DOCKET

DATE 6-19-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 MATHEW ERWIN III aka Matthew Erwin)
 aka Mathew Freeman Erwin III; PEGGY)
 ERWIN aka Peggy Lynn Erwin;)
 BRIGHTSIDE PROPERTIES; LIBERTY)
 BANK & TRUST COMPANY OF)
 TULSA, N.A. Successor by merger to The First)
 National Bank & Trust Company of Tulsa, as Trustee)
 for The Trustees of the Tulsa County Home Finance)
 Authority, a Public Trust; COUNTY)
 TREASURER, Tulsa County, Oklahoma;)
 BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED
 JUN 18 1996
 Phil Lombardi, Clerk
 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF OKLAHOMA

Civil Case No. 95 C 985H ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18TH day of JUNE,

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, LIBERTY BANK & TRUST COMPANY OF TULSA, N.A. successor by merger to The First National Bank & Trust Company of Tulsa, as Trustee for the Trustees of The Tulsa County Home Finance Authority, a Public Trust, appears not having previously filed a Disclaimer; and the Defendants, MATHEW

12

ERWIN, III aka Matthew Erwin aka Mathew Freeman Erwin III, PEGGY ERWIN aka Peggy Lynn Erwin and BRIGHTSIDE PROPERTIES, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, BRIGHTSIDE PROPERTIES, acknowledged receipt of Summons and Complaint on or about November 9, 1995, by Certified Mail.

The Court further finds that the Defendants, MATHEW ERWIN, III aka Matthew Erwin aka Mathew Freeman Erwin III and PEGGY ERWIN aka Peggy Lynn Erwin, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 14, 1996, and continuing through April 18, 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, MATHEW ERWIN, III aka Matthew Erwin aka Mathew Freeman Erwin III and PEGGY ERWIN aka Peggy Lynn Erwin, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known addresses of the Defendants, MATHEW ERWIN, III aka Matthew Erwin aka Mathew Freeman Erwin III and PEGGY ERWIN aka Peggy Lynn Erwin. 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 October 12, 1995; that the Defendant, LIBERTY BANK & TRUST COMPANY OF TULSA, N.A., successor by merger to The First National Bank & Trust Company of Tulsa, as Trustee for the Trustees of The Tulsa County Home Finance Authority, a Public Trust, filed its Disclaimer on October 24, 1995; and that the Defendants, MATHEW ERWIN, III aka Matthew Erwin aka Mathew Freeman Erwin III, PEGGY ERWIN aka Peggy Lynn Erwin and BRIGHTSIDE PROPERTIES, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, MATHEW ERWIN, III, is one and the same person as Matthew Erwin and Mathew Freeman Erwin III, and will hereinafter be referred to as "MATHEW ERWIN, III." The Defendant, PEGGY ERWIN, is one and the same person as Peggy Lynn Erwin, and will hereinafter be referred to as "PEGGY ERWIN." The Defendants, MATHEW ERWIN, III and PEGGY ERWIN, 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 Eight (8), Block Two (2), AMENDED PLAT OF RIVERVIEW VILLAGE, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on July 14, 1986, Raymond G. Hartman, executed and delivered to MORTGAGE CLEARING CORPORATION, his mortgage note in the amount of \$40,637.00, payable in monthly installments, with interest thereon at the rate of Nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, Raymond G. Hartman, a single person, executed and delivered to MORTGAGE CLEARING CORPORATION, a mortgage dated July 14, 1986, covering the above-described property. Said mortgage was recorded on July 23, 1986, in Book 4957, Page 1689, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 12, 1990, MORTGAGE CLEARING CORPORATION, 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 November 14, 1990, in Book 5288, Page 1364, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendants, MATHEW ERWIN, III and PEGGY ERWIN, currently hold the fee simple title to the property by virtue of a General Warranty Deed, dated April 27, 1987, and recorded on April 27, 1987, in Book 5018, Page 2472, in the

records of Tulsa County, Oklahoma, and are the current assumptors of the subject indebtedness.

The Court further finds that on October 24, 1990, the Defendants, MATHEW ERWIN, III and PEGGY ERWIN, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on November 22, 1991, June 9, 1992, June 30, 1993 and June 14, 1994.

The Court further finds that the Defendants, MATHEW ERWIN, III and PEGGY ERWIN, 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, MATHEW ERWIN, III and PEGGY ERWIN, are indebted to the Plaintiff in the principal sum of \$51,360.29, plus interest at the rate of 9 percent per annum from February 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$3.00 which became a lien on the property as of July 2, 1990 and a lien in the amount of \$13.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, MATHEW ERWIN, III, PEGGY ERWIN, and BRIGHTSIDE PROPERTIES are in default, and have no right, title or interest in the subject real property.

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

The Court further finds that the Defendant, LIBERTY BANK & TRUST COMPANY OF TULSA, N.A., successor by merger to The First National Bank & Trust Company of Tulsa, as Trustee for the Trustees of The Tulsa County Home Finance Authority, a Public Trust, disclaims any right, title or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, MATHEW ERWIN, III and PEGGY ERWIN, in the principal sum of \$51,360.29, plus interest at the rate of 9 percent per annum from February 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5.62 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 \$16.00, plus costs and interest, for personal property taxes for the years 1989 and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, MATHEW ERWIN, III, PEGGY ERWIN, BRIGHTSIDE PROPERTIES 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, MATHEW ERWIN, III and PEGGY ERWIN, to satisfy the judgment In Rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$16.00,

personal property taxes which are currently due and
owing.

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

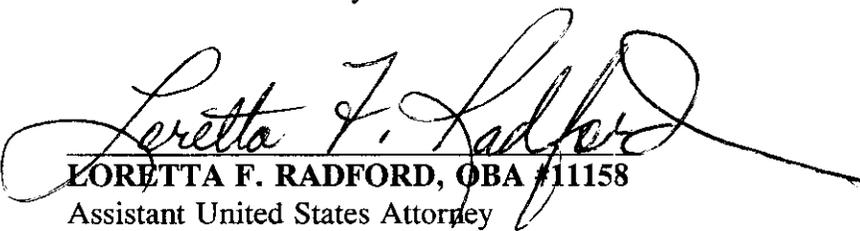
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

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


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


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



DICK A. BLAKELEY, OBA #852

Assistant District Attorney

406 Tulsa County Courthouse

Tulsa, Oklahoma 74103

(918) 596-4842

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Tulsa County, Oklahoma

Judgment of Foreclosure

Civil Action No. 95 C 985H

LFR:flv

6/19/96
SML

ENTERED ON DOCKET

DATE 6-19-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DONALD R. SEIGFRIED; PAULA R.)
 SEIGFRIED fka PAULA R. KELLER;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

JUN 18 1996

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

Civil Case No. 95-C 1083H ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18TH day of JUNE,

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, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED fka Paula R. Keller, appear not, but make default.

The Court further finds that the Defendants, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED fka Paula R. Keller, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 14, 1996, and continuing through April 18, 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, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED fka Paula R. Keller, 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, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED fka Paula R. Keller. 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 November 13, 1995; and that the Defendants, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED fka Paula R. Keller, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, PAULA R. SEIGFRIED, is one and the same person formerly referred to as Paula R. Keller, and will hereinafter be referred to as "PAULA R. SEIGFRIED." The Defendants, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED, are common law 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 Twelve (12), Block Four (4), CUNNINGHAM ADDITION, to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on January 15, 1987, the Defendants, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED (then Keller), executed and delivered to FIRST SECURITY MORTGAGE COMPANY, their mortgage note in the amount of \$34,669.00, payable in monthly installments, with interest thereon at the rate of Nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED (then Keller), executed and delivered to FIRST SECURITY MORTGAGE COMPANY, a mortgage dated January 15, 1987, covering the above-described property. Said mortgage was recorded on January 30, 1987, in Book 4998, Page 1607, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 3, 1988, FIRST SECURITY MORTGAGE COMPANY, assigned the above-described mortgage note and mortgage to

BANK OF OKLAHOMA, N.A. This Assignment of Mortgage was recorded on June 10, 1988, in Book 5106, Page 1100, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 10, 1988, Bank of Oklahoma, N.A., assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., its successors and assigns. This Assignment of Mortgage was recorded on June 10, 1988, in Book 5106, Page 1101, in the records of Tulsa County, Oklahoma. An Amended Assignment was recorded on November 23, 1988, in Book 5141, Page 2010, in the records of Tulsa County, Oklahoma. A second Amended Assignment was recorded on January 13, 1989, in Book 5161, Page 932, in the records of Tulsa County, Oklahoma.

The Court further finds that on July 1, 1988, the Defendants, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on November 1, 1989, November 1, 1990 and May 1, 1991.

The Court further finds that the Defendants, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED, 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, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED, are indebted to the Plaintiff in the principal sum of \$61,313.39, plus interest at the rate of 9 percent per annum from March 16, 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 \$300.00, plus penalties and interest, for the year of 1995 and a lien in the amount of \$26.00 for Drainage District 12, for the year 1995. Said liens are 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 \$18.00 which became a lien on the property as of June 26, 1992, a lien in the amount of \$8.00 which became a lien on the property as of June 25, 1993, and a lien in the amount of \$9.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED, 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 Defendants, DONALD R.

SEIGFRIED and PAULA R. SEIGFRIED, in the principal sum of \$61,313.39, plus interest at the rate of 9 percent per annum from March 16, 1995 until judgment, plus interest thereafter at the current legal rate of 5.62 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 \$300.00, plus penalties and interest, for ad valorem taxes for the year 1995, and \$26.00, for Drainage District 12, 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 \$35.00, plus costs and interest, for personal property taxes for the years 1991 through 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, DONALD R. SEIGFRIED, PAULA R. SEIGFRIED 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, DONALD R. SEIGFRIED and PAULA R. SEIGFRIED, 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 Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$326.00, plus penalties and interest, for ad valorem taxes which are presently due and owing and for Drainage District 12 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 \$35.00, personal property taxes which are currently due and owing.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right

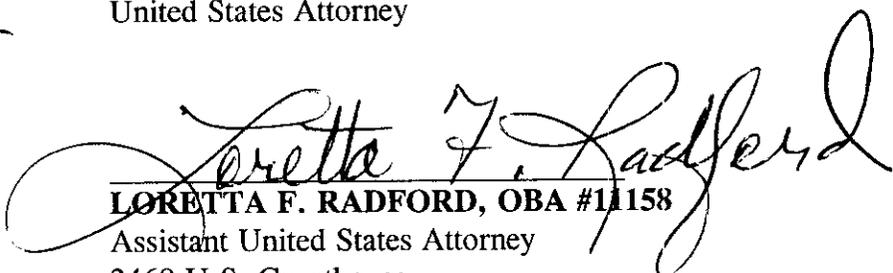
to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

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


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


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



DICK A. BLAKELEY, OBA #852

Assistant District Attorney

406 Tulsa County Courthouse

Tulsa, Oklahoma 74103

(918) 596-4842

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Tulsa County, Oklahoma

Judgment of Foreclosure

Civil Action No. 95-C 1083H

LFR:flv

6/4/96
JAC

ENTERED ON DOCKET

DATE 6-19-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DENNIS DERAL REED aka DENNIS D.)
 REED; LINDA REED aka DELINDA)
 REED; COUNTY TREASURER, Tulsa)
 County, Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

JUN 18 1996

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

Civil Case No. 95-C 1068H ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18TH day of June, 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, DENNIS DERAL REED aka Dennis D. Reed and LINDA REED aka DeLinda Reed, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, LINDA REED aka DeLinda Reed, signed a Waiver of Summons on November 24, 1995.

The Court further finds that the Defendant, DENNIS DERAL REED aka Dennis D. Reed, 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 February 2, 1996, and continuing through April 2, 1996, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, DENNIS DERAL REED aka Dennis D. Reed, 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, DENNIS DERAL REED aka Dennis D. Reed. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Department of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his present or last known places of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the 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 November 1, 1995; and that the Defendants, DENNIS DERAL REED aka

Dennis D. Reed and LINDA REED aka DeLinda Reed, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, DENNIS DERAL REED is one and the same person as Dennis D. Reed, and will hereinafter be referred to as "DENNIS DERAL REED." The Defendant, LINDA REED, is one and the same person as DeLinda Reed, and will hereinafter be referred to as "LINDA REED." The Defendants, DENNIS DERAL REED and LINDA REED are both single, unmarried persons.

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

Lot Thirty-four (34), Block Eight (8), KENSINGTON
II AMENDED, BLOCKS 3 THRU 8, an Addition in
Tulsa County, City of Tulsa, State of Oklahoma,
according to the recorded Plat thereof.

The Court further finds that on August 16, 1985, the Defendants, DENNIS DERAL REED and LINDA REED, executed and delivered to INVESTORS FEDERAL BANK, F.S.B., their mortgage note in the amount of \$63,504.00, payable in monthly installments, with interest thereon at the rate of Twelve percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, DENNIS DERAL REED and LINDA REED, HUSBAND AND WIFE, executed and delivered to INVESTORS FEDERAL BANK, F.S.B., a mortgage dated August 16, 1985, covering the above-described property. Said mortgage was recorded on August 21, 1985, in Book 4886, Page 273, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 3, 1985, Investors Federal Bank, F.S.B., assigned the above-described mortgage note and mortgage to Security Pacific Mortgage Corporation. This Assignment of Mortgage was recorded on September 13, 1985, in Book 4891, Page 2015, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 20, 1987, SECURITY PACIFIC MORTGAGE CORPORATION, assigned the above-described mortgage note and mortgage to FLEET REAL ESTATE FUNDING CORP. This Assignment of Mortgage was recorded on February 24, 1987, in Book 5003, Page 2169, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 12, 1988, FLEET REAL ESTATE FUNDING CORP., assigned the above-described mortgage note and mortgage to the Secretary of Housing & Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on November 21, 1988, in Book 5141, Page 421, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 1, 1988, the Defendants, DENNIS DERAL REED and LINDA REED, 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 January 1, 1989, March 1, 1991, August 1, 1991, August 1, 1991 (revised), September 1, 1992 and October 1, 1992 (revised).

The Court further finds that the Defendants, DENNIS DERAL REED and LINDA REED, 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, DENNIS DERAL REED and LINDA REED, are indebted to the Plaintiff in the principal sum of \$129,559.50, plus interest at the rate of 12 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 \$1,035.00, 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 \$64.00 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 Defendants, DENNIS DERAL REED and LINDA REED, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, 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 Defendants, DENNIS DERAL REED and LINDA REED, in the principal sum of \$129,559.50, plus interest at the rate of 12 percent per annum from April 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5.62 percent per annum until paid, plus the costs of this action and 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 \$1,035.00, 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 \$64.00, plus costs and interest, for personal property taxes for the year 1994, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, DENNIS DERAL REED, LINDA REED 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, DENNIS DERAL REED and LINDA REED, 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 Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$1.035.00, 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 \$64.00, personal property taxes which are currently due and owing.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right

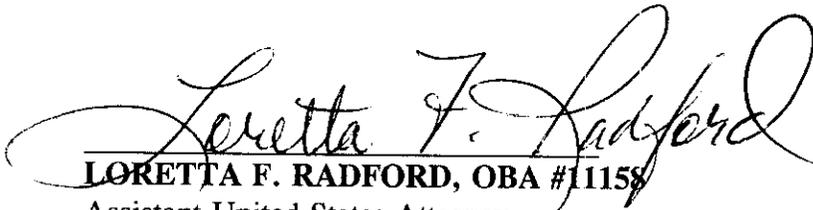
to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

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


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

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


DICK A. BLAKELEY, OBA #852

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

Judgment of Foreclosure
Civil Action No. 95-C 1068H
LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE 6-19-96

UNITED STATES OF AMERICA,
on behalf of the Secretary of Veterans Affairs,

Plaintiff,

v.

GERALD LEE COBB aka Gerald L. Cobb;
LORI D. COBB aka Lori Deana Cobb
nka Lori Deana Clark;
COMMUNITY BUILDERS, INC.;
STATEWIDE MORTGAGE COMPANY;
STATEWIDE ACCEPTANCE CORPORATION;
BANK ONE TEXAS, N.A. as Trustee for
Statewide Acceptance Corporation
1993-A Title I Trust Fund;
COUNTY TREASURER, Rogers County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Rogers County, Oklahoma;
THOMAS CLARK, III, Spouse of Lori Deana Clark,

Defendants.

FILED

JUN 18 1996

ju

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

CIVIL ACTION NO. 95-C-1150-H ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 12th day of June,

1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Cathryn D. McClanahan, Assistant United States Attorney; the Defendants, County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, appear by Michele L. Schultz, Assistant District Attorney, Rogers County, Oklahoma; the Defendant, Statewide Mortgage Company, appears by Executive Vice President Harvey Denman; the Defendant, Statewide Acceptance Corporation, appears by Vice President William Keith Marshall; the Defendant, Bank One Texas, N.A. as Trustee for Statewide Acceptance Corporation 1993-A Title I Trust Fund, appears by its attorney Matthew M. Julius; and the Defendants, Gerald Lee

9

Cobb aka Gerald L. Cobb; Lori D. Cobb aka Lori Deana Cobb nka Lori Deana Clark; Community Builders, Inc.; and Thomas Clark, III, Spouse of Lori Deana Clark, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, **Gerald Lee Cobb aka Gerald L. Cobb**, executed a Waiver of Service of Summons on December 17, 1995; that the Defendant, **Lori D. Cobb aka Lori Deana Cobb nka Lori Deana Clark**, executed a Waiver of Service of Summons on December 6, 1995; that the Defendant, **Community Builders, Inc.**, was served on November 22, 1995 by certified mail, return receipt requested, delivery restricted to the addressee and also executed a Waiver of Service of Summons on November 22, 1995; that the Defendant, **Statewide Mortgage Company**, executed a Waiver of Service of Summons on November 29, 1995; that the Defendant, **Statewide Acceptance Corporation**, executed a Waiver of Service of Summons on November 28, 1995; that the Defendant, **Bank One Texas, N.A. as Trustee for Statewide Acceptance Corporation 1993-A Title I Trust Fund**, executed a Waiver of Service of Summons on December 15, 1995; that the Defendant, **Thomas Clark, III, Spouse of Lori Deana Clark**, was served on February 29, 1996 by certified mail, return receipt requested, delivery restricted to the addressee.

It appears that the Defendants, **County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma**, filed their Answer on or about December 5, 1995; that the Defendants, **Gerald Lee Cobb aka Gerald L. Cobb; Lori D. Cobb aka Lori Deana Cobb nka Lori Deana Clark; Community Builders, Inc.; and Thomas Clark, III, Spouse of Lori Deana Clark**, 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 Rogers County, Oklahoma, within the Northern Judicial District of Oklahoma:

**LOT 4 IN BLOCK 1 OF SPRING MILL SOUTH ADDITION TO
THE CITY OF CLAREMORE, ROGERS COUNTY, OKLAHOMA,
ACCORDING TO THE RECORDED PLAT THEREOF.**

The Court further finds that on April 29, 1993, Gerald Lee Cobb executed and delivered to First Federal Savings Bank of Oklahoma his mortgage note in the amount of \$49,992.00, payable in monthly installments, with interest thereon at the rate of 8 percent per annum.

The Court further finds that as security for the payment of the above-described note, Gerald Lee Cobb, a single person, executed and delivered to First Federal Savings Bank of Oklahoma a real estate mortgage dated April 29, 1993, covering the above-described property, situated in the State of Oklahoma, Rogers County. This mortgage was recorded on April 30, 1993, in Book 0913, Page 337, in the records of Rogers County, Oklahoma.

The Court further finds that on May 3, 1993, First Federal Savings Bank of Oklahoma assigned the above-described mortgage note and mortgage to Fleet Mortgage Corp. This Assignment of Real Estate Mortgage was recorded on May 21, 1993, in Book 0915, Page 665, in the records of Rogers County, Oklahoma.

The Court further finds that on February 17, 1995, Fleet Mortgage Corp. assigned the above-described mortgage note and mortgage to the Secretary of Veterans Affairs. This Mortgage Assignment was recorded on March 10, 1995, in Book 983, Page 752, in the records of Rogers County, Oklahoma.

The Court further finds that on April 17, 1995, Gerald L. Cobb executed and delivered to the United States of America on behalf of the Secretary of Veterans Affairs, a Modification and Reamortization Agreement pursuant to which the interest rate was changed to 6.5 percent and the entire debt due on that date was made principal.

The Court further finds that the Defendant, **Gerald Lee Cobb aka Gerald L. Cobb**, made default under the terms of the aforesaid note, mortgage and modification and reamortization agreement by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, **Gerald Lee Cobb aka Gerald L. Cobb**, is indebted to the Plaintiff in the principal sum of \$54,300.29, plus administrative charges in the amount of \$444.00, plus penalty charges in the amount of \$67.68, plus accrued interest in the amount of \$1,287.61 as of August 23, 1995, plus interest accruing thereafter at the rate of 6.5 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$8.00 (fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, **Statewide Mortgage Company**, claims no right, title or interest in the subject real property..

The Court further finds that the Defendant, **Statewide Acceptance Corporation**, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, **Bank One Texas, N.A. as Trustee for Statewide Acceptance Corporation 1993-A Title I Trust Fund**, claims no right, title or interest in the subject real property.

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

The Court further finds that the Defendants, **Gerald Lee Cobb aka Gerald L. Cobb; Lori D. Cobb aka Lori Deana Cobb nka Lori Deana Clark; Community Builders, Inc.; and Thomas Clark, III, Spouse of Lori Deana Clark**, are in default and therefore have no right, title or interest in the subject real property.

The Court further finds that the Department of Housing and Urban Development has a lien upon the property by virtue of an Assignment of Oklahoma Contract for Labor and Materials, Mortgage, dated October 17, 1994, and recorded on October 25, 1994, in Book 971, Page 821, in the records Rogers County, Oklahoma. Inasmuch as government policy prohibits the joining of another federal agency as party defendant, the Department of Housing and Urban Development is not made a party hereto; however, the lien will be released at the time of sale should the property fail to yield an amount in excess of the debt to the Secretary of Veterans Affairs.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Veterans Affairs, have and recover judgment against the Defendant, **Gerald Lee Cobb aka Gerald L. Cobb**, in the principal sum of \$54,300.29, plus administrative charges in the amount of \$444.00, plus penalty charges in the amount of \$67.68, plus accrued interest in the amount of \$1,287.61 as of August 23, 1995, plus interest accruing thereafter at the rate of 6.5 percent per annum until judgment, plus interest thereafter at the current legal rate of 5.62 percent per annum until paid, plus the costs of this action in the amount of \$8.00 (fee for recording

Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property and any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **Gerald Lee Cobb aka Gerald L. Cobb; Lori D. Cobb aka Lori Deana Cobb nka Lori Deana Clark; Community Builders, Inc.; Statewide Mortgage Company; Statewide Acceptance Corporation; Bank One Texas, N.A. as Trustee for Statewide Acceptance Corporation 1993-A Title I Trust Fund; County Treasurer and Board of County Commissioners, Rogers County, Oklahoma; and Thomas Clark, III, Spouse of Lori Deana Clark**, 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, **Gerald Lee Cobb aka Gerald L. Cobb**, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


CATHRYN D. MCCLANAHAN, OBA #014853
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


MICHELE L. SCHULTZ, OBA #13771
Assistant District Attorney
219 South Missouri, Room 1-111
Claremore, Oklahoma 74017
(918) 341-3164
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Rogers County, Oklahoma

Judgment of Foreclosure
Case No. 95-C-1150-H (Cobb)

CDM:cas



HARVEY DENMAN

Executive Vice President

Statewide Mortgage Company

P.O. Box 890725

Houston, Texas 77289-0725

(713) 332-2009

Judgment of Foreclosure
Case No. 95-C-1150-H (Cobb)

CDM:cm

William Keith Marshall

WILLIAM KEITH MARSHALL

Vice President

Statewide Acceptance Corporation

P.O. Box 890725

Houston, Texas 77289-0725

(713) 332-2009

Judgment of Foreclosure
Case No. 95-C-1150-H (Cobb)

CDM:esa



MATTHEW M. JULIUS

P.O. Box 655415

Dallas, Texas 75265-5415

(214) 290-7898

Attorney for Defendant,

Bank One Texas, N.A. as Trustee for

Statewide Acceptance Corporation 1993-A Title I Trust Fund

Judgment of Foreclosure

Case No. 95-C-1150-H (Cobb)

CDM:cas

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

JUN 17 1996

SHEILA J. NAIFEH, individually and on behalf
of all others similarly situated,]
]
]
 Plaintiff,]
]
 vs.]
]
 GROUP HEALTH SERVICE OF OKLAHOMA]
 INC, d/b/a BLUE CROSS BLUE SHIELD]
 OF OKLAHOMA,]
]
 Defendant.]

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 96-C-512-B

CLASS ACTION

ENTERED ON DOCKET
DATE JUN 18 1996

**AGREED ORDER BASED ON STIPULATION OF THE PARTIES
FOR REMAND OF THE ACTION TO THE OKLAHOMA STATE DISTRICT COURT**

This matter comes on pursuant to the Withdrawal of the Notice of Removal by the Defendant Group Health Service of Oklahoma, Inc., d/b/a Blue Cross Blue Shield of Oklahoma [hereinafter referred to as BCBS], and the Joint Stipulation for Order Remanding this cause back to the District Court and Division from whence it was removed, and the Court finds:

That the Notice of Removal has been withdrawn by Defendant BCBS; and

That the Defendant and Plaintiff, through their counsel of record have stipulated and agreed that an order be entered remanding this cause back to the District Court In and For Creek County, Drumright Division, State of Oklahoma; and

That the Clerk of the United States District Court for the Northern District of Oklahoma forthwith issue a transmittal of a certified copy of the entire original file in the action, together with certified copies of the order remanding the case and the docket sheet.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this cause is hereby

remanded to the District Court In and For Creek County, Drumright Division, State of Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk for the United States District Court for the Northern District of Oklahoma forthwith transfer a certified copy of the entire original file in this case together with a certified copy of this order and a certified copy of the docket sheet.

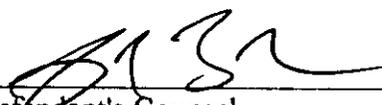
IT IS SO ORDERED, this 17 day of June, 1996.

S/ THOMAS R. BRETT

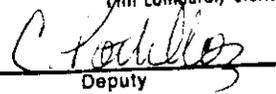
Thomas R. Brett
United States District Judge

Approved for Entry:

Plaintiff's Counsel



Defendant's Counsel

United States District Court)
Northern District of Oklahoma) SS
I hereby certify that the foregoing
is a true copy of the original on file
in this court. Phil Lombardi, Clerk
By  Deputy

TRB-1
6/15/96

PT 7-12
T 8-19

COPY

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

FILED

JUN 17 1996

KELLY GOODWIN,
an individual,

Plaintiff,

vs.

JAMES BENNETT, an individual;
and PICCADILLY CAFETERIAS,
INC., a corporation,

Defendants.

Phil Lombardi, Clerk
U.S. DISTRICT COURT

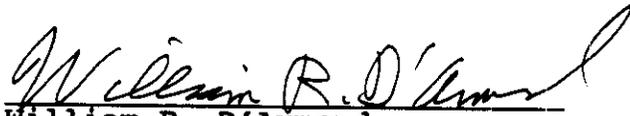
Case No. 95CV 928B

ENTERED ON DOCKET

DATE JUN 18 1996

STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

COME NOW Defendants James Bennett and Piccadilly Cafeterias, Inc. and stipulate that the cross claim of Piccadilly Cafeterias, Inc. is hereby dismissed without prejudice.



William R. D'Armond
(Bar No. 4552)
Kean, Miller, Hawthorne,
D'Armond, McCowan & Jarman
P.O. Box 3513
Baton Rouge, LA 70821
Telephone: (504) 387-0999

Frederic N. Schneider, III
BOONE, SMITH, DAVIS, HURST &
DICKMAN
500 ONEOK Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
Telephone: (918) 587-0000

Attorneys for Defendants
Piccadilly Cafeterias, Inc.



-Of the Firm

CROWE & DUNLEVY
321 South Boston
Suite 500
Tulsa, OK 74103
(918) 592-8900

Attorneys for Defendant
James Bennett

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

F I L E D

JUN 17 1996

TRACY DUNBAR)
)
 Plaintiff,)
)
 vs.)
)
 BS&B SAFETY SYSTEMS, INC.,)
)
 Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 95-C-605-H

ENTERED JUN 17 1996
DATE _____

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

Plaintiff Tracy Dunbar and Defendant BS&B Safety Systems, Inc., by and through their undersigned counsel and pursuant to Fed.R.Civ.P. 41(a)(1) hereby stipulate that the above-captioned action is hereby dismissed with prejudice, with each party to bear its own costs and attorneys fees.

Respectfully Submitted,

ATTORNEY FOR PLAINTIFF
TRACY DUNBAR

By Curtis A. Parks
Curtis A. Parks
Bill Hackathorn
1736 South Carson
Tulsa, Oklahoma 74119

ATTORNEY FOR DEFENDANT
BS&B SAFETY SYSTEMS, INC.

By R. Mark Solano
R. Mark Solano, OBA #11170
2400 First Place Tower
15 East Fifth Street
Tulsa, Oklahoma 74103-4391
(918) 586-5711

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

FILED

JUN 17 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

NOVUS CREDIT SERVICES, INC., a)
Delaware corporation,)

Plaintiff,)

vs.)

MITCHELL MOTOR COACH SALES,)
INC., a Florida corporation,)

Defendant.)

Case No. 94-C-169-K

ENTERED ON DOCKET
DATE JUN 18 1996

DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff, NOVUS Credit Services, Inc., and hereby dismisses the above styled and numbered cause in its entirety with prejudice toward the refileing thereof.

Dated the 17th day of June, 1996.

NOVUS Credit Services, Inc., Plaintiff

By: Robert Thornton
Robert Thornton
General Manager

Carol Wood
Carol Wood, OBA No. 10532
ENGLISH & WOOD, P.C.
15 West Sixth Street, Suite 1700
Tulsa, Oklahoma 74119-5466
(918) 582-1564
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that on this 17th day of June, 19 96, I mailed a full, true and correct copy of the above and foregoing instrument, with proper postage thereon, addressed to:

James Tilly
Craig Fitzgerald
Tilly & Ward
2 West 2nd Street, Suite 2220
Tulsa, Oklahoma 74103-3645
(918) 583-8868
ATTORNEYS FOR DEFENDANT



Carol Wood

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 17 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

VERNETTA B. CARTER,)
)
Plaintiff,)
)
v.)
)
SHIRLEY S. CHATER, Commissioner,)
Social Security Administration,)
)
Defendant.)

Civil Action No. 94-C-920-J

ENTERED ON DOCKET

DATE 6-18-96

ORDER

On April 26, 1996, the Tenth Circuit Court of Appeals granted defendant's unopposed motion to remand and on May 2, 1996, this Court remanded this case to the Commissioner for further administrative proceedings.

Pursuant to plaintiff's motion for attorney fees under the EAJA, 28 U.S.C. § 2412(d), filed on or around May 28, 1996, the parties have stipulated that an award in the amount of \$2,614.50 for attorney fees and \$122.13 for expenses for all work done before the district court is appropriate.

WHEREFORE, IT IS ORDERED that plaintiff's counsel be awarded attorney's fees and expenses under the Equal Access To Justice Act in the amount of \$2,736.63. If attorney fees are also awarded under 42 U.S.C. § 406(b)(1) of the Social Security Act, plaintiff's counsel shall refund the smaller award to plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986). This action is hereby dismissed.

It is so ORDERED THIS 17th day of June 1996.

S/Sam A. Joyner
U.S. Magistrate

SAM A. JOYNER
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RONALD G. TRACY aka RONALD)
 GLENN TRACY; CYNTHIA L. TRACY)
 aka CYNTHIA LEA TRACY; STATE)
 OF OKLAHOMA ex rel. OKLAHOMA)
 TAX COMMISSION; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
 Defendants.)

ENTERED ON DOCKET
DATE JUN 17 1996

F I L E D

JUN 14 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 95-C 351K

DEFICIENCY JUDGMENT

This matter comes on for consideration this 12 day
of June, 1996, upon the Motion of the Plaintiff, United
States of America, acting on behalf of the Secretary of Housing
and Urban Development, for leave to enter a Deficiency Judgment.
The Plaintiff appears by Stephen C. Lewis, United States Attorney
for the Northern District of Oklahoma, through Loretta F.
Radford, Assistant United States Attorney, and the Defendant,
Ronald G. Tracy aka Ronald Glenn Tracy, appears neither in person
nor by counsel.

The Court being fully advised and having examined the
court file finds that copies of Plaintiff's Motion and
Declaration were mailed by first-class mail to Defendant, Ronald
G. Tracy aka Ronald Glenn Tracy, P.O. Box 52298, Tulsa, Oklahoma
74152-0298 and to 1301 B. South Quaker Ave., Tulsa, Oklahoma
74120, and to all answering parties and/or counsel of record.
The Court further finds that the amount of the Judgment rendered

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

on September 2, 1995, in favor of the Plaintiff United States of America, and against the Defendant, Ronald G. Tracy aka Ronald Glenn Tracy, with interest and costs to date of sale is \$45,393.29.

The Court further finds that the appraised value of the real property on October 30, 1995 was \$9,824.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered September 2, 1995, for the sum of \$8,350.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on May 16, 1996.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Housing and Urban Development, is accordingly entitled to a deficiency judgment against the Defendant, Ronald G. Tracy aka Ronald Glenn Tracy, as follows:

Principal Balance plus pre-Judgment Interest as of 9-2-95	\$43,938.22
Interest From Date of Judgment to Sale	1,063.18
Publication Fees of Notice of Sale	166.89
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$45,393.29
Less Credit of Appraised Value	- <u>9,824.00</u>
DEFICIENCY	\$35,569.29

plus interest on said deficiency judgment at the legal rate of 5.62 percent per annum from date of deficiency judgment until

paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Housing and Urban Development have and recover from Defendant, Ronald G. Tracy aka Ronald Glenn Tracy, a deficiency judgment, in the amount of \$35,569.29, plus interest at the legal rate of 5.62 percent per annum on said deficiency judgment from date of judgment until paid.

TERRY C. KERN

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
333 W. 4th St., Ste. 3460
Tulsa, Oklahoma 74103
(918) 581-7463~~

LFR/esf

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

FILED

JUN 14 1996

PATRICK PIERCE,)
)
Plaintiff,)
)
vs.)
)
CENTRAL TOWER, INC.,)
an Indiana corporation,)
)
Defendant.)

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

Case No. 96-C-176-BU

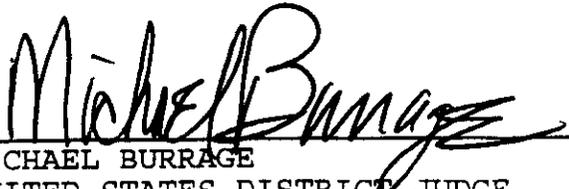
ENTERED ON DOCKET
JUN 17 1996
DATE _____

ORDER

On May 28, 1996, the Court entered an Order directing Plaintiff, Patrick Pierce, to appear by other counsel or in propria persona in this matter by June 12, 1996, and stating that failure to do so may result in dismissal of this action without prejudice. The Court has reviewed the file in this case and has found no entry of appearance by Plaintiff by other counsel or in propria persona. In addition, on June 14, 1996, the Court held a case management conference in this case. Plaintiff, Patrick Pierce, failed to appear through counsel or in propria persona. Accordingly, the Court finds that this matter should be dismissed without prejudice pursuant to Rule 41(b), Fed.R.Civ.P.

Accordingly, this action is **DISMISSED WITHOUT PREJUDICE** to refiling.

ENTERED this 14th day of June, 1996.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

FILED

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

JUN 13 1996

AVTECH, INC., an Oklahoma)
corporation, and DONALD A. MCCANCE,)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Plaintiffs,)

v.)

Case No. 94 C 105 K

E. MISHAN AND SONS, INC., a)
New York corporation, CHEERING)
COUPLE ENTREPRISE, a Taiwan)
corporation, and HANOVER HOUSE,)
a Pennsylvania corporation,)

ENTERED ON DOCKET
DATE JUN 14 1996

Defendants.)

DISMISSAL

Plaintiffs, Avtech, Inc., and Donald A. McCance, hereby
dismiss their claims against the Defendant, Cheering Couple
Enterprise, in the above styled and numbered case.

DATED: June 12th, 1996.

KIVELL, RAYMENT AND FRANCIS
a Professional Corporation

By 
Brian J. Rayment, OBA #7441
7666 East 61st St., Ste. 240
Tulsa, OK 74133
(918) 254-0626
ATTORNEYS FOR PLAINTIFFS

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

F I L E D

DAVID R. MARSHALL,)

Plaintiff,)

vs.)

SHIRLEY S. CHATER,)
COMMISSIONER OF SOCIAL)
SECURITY,¹)

Defendant.)

JUN 13 1996 *JK*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 94-C-1185-W ✓

ORDER

This order pertains to Plaintiff's Motion for Attorney Fees Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412 (Docket #13) and Defendant's Response (Docket #15). Defendant has responded that she does not object to such an award. On April 3, 1996, the court remanded this case to determine whether claimant's heart abnormalities could be expected to produce his exhaustion, and, if so, whether he was capable of doing light or sedentary work from August 18, 1990 through September 30, 1992 (Docket #11).

Under the EAJA, a party seeking an award of fees and other expenses must show he is a prevailing party and must apply for fees within thirty days of final

¹Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed.R.Civ.P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action. Although the court has substituted the Commissioner for the Secretary in the caption, the text of this Order will continue to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

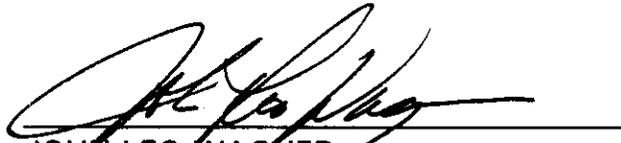
judgment in the action. The court's April 3, 1996 order was a final judgment, and Plaintiff is a prevailing party entitled to fees under the EAJA. Plaintiff's counsel asks to be compensated at an hourly rate of \$124.50. Under the EAJA, the statutory maximum for attorney fees is \$75.00 per hour. Counsel claims an entitlement to the higher rate based on the increased cost of living since the enactment of the EAJA in 1981 as evidenced by the Consumer Price Index published by the United States Department of Labor.

Section 2412(d)(2)(A) of the EAJA provides that: ". . . attorney's fees shall not be awarded in excess of \$75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved justifies a higher fee." Complete discretion is afforded district courts in awarding attorney fees under the EAJA. Pierce v. Underwood, 487 U.S. 552, 571 (1988); Headlee v. Bowen, 869 F.2d 548, 551 (10th Cir.), cert. denied, 493 U.S. 979 (1989).

According to the CPI-Detailed Report, U.S. Department of Labor, Bureau of Labor Statistics (June 1994), the Consumer Price Index for All Urban Consumers ("CPI-U") was 93.4 in 1981 and 155.7 in March, 1996. To compute the percentage of change, the old CPI-U is subtracted from the new one, which leaves 62.30, and that number is divided by the old CPI-U, which is .66, and multiplied by 100, which results in a 66% change. The base rate for attorney's fees is \$75.00 and 66% of that rate is \$49.50. The total fee is the base rate plus the increase in fee resulting from a higher CPI-U, or a total fee of \$124.50 per hour.

Plaintiff is awarded an Equal Access to Justice Attorney Fee at the rate of \$124.50 per hour multiplied by 20.00 hours for a total fee of \$2,490.00 plus filing fees and court costs in the amount of \$120.00. Plaintiff is awarded a total award of Attorney Fees and Costs pursuant to the Equal Access to Justice Act in the total amount of \$2,610.00.

Dated this 13th day of June, 1996.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

s:Marshall.1

of the issues except for the following violations which are now at issue:

1. Was Plaintiff denied exercise privileges during his six-month confinement?
2. Was Plaintiff denied a change of uniform and towel for over a month?

II. ANALYSIS

A. Standard

The court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). When reviewing a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party. Applied Genetics Int'l., Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1241 (10th Cir. 1990). "However, the nonmoving party may not rest on its pleadings but must set forth specific facts showing that there is a genuine issue for trial as to those dispositive matters for which it carries the burden of proof." Id. The court cannot resolve material factual disputes at summary judgment based on conflicting affidavits. Hall v. Bellmon, 935 F.2d 1106, 1111 (10th Cir. 1991). However, the mere existence of an alleged factual dispute does not defeat an otherwise properly supported motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Only material factual disputes preclude summary judgment; immaterial disputes are irrelevant.

Hall, 935 F.2d at 1111. Similarly, affidavits must be based on personal knowledge and set forth facts that would be admissible in evidence. Id. Conclusory or self-serving affidavits are not sufficient. Id. If the evidence, viewed in the light most favorable to the nonmovant, fails to show that there exists a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. See Anderson, 477 U.S. at 250.

Where a pro se plaintiff is a prisoner, a court authorized "Martinez Report" ("Report") prepared by prison officials may be necessary to aid the court in determining possible legal bases for relief for unartfully drawn complaints. See Hall, 935 F.2d at 1109. The Court may treat the Martinez Report as an affidavit in support of a motion for summary judgment, but may not accept the factual findings of the report if the plaintiff has presented conflicting evidence. Id. at 1111. The plaintiff's complaint may also be treated as an affidavit if it is sworn under penalty of perjury and states facts based on personal knowledge. Id. The court must also construe plaintiff's pro se pleadings liberally for purposes of summary judgment. Haines v. Kerner, 404 U.S. 519, 520 (1972). When reviewing a motion for summary judgment, it is not the judge's function to weigh the evidence and determine the truth of the matter but only to determine whether there is a genuine issue for trial. Anderson, 477 U.S. at 249.

B. Rights of Pretrial Detainees

"There is no iron curtain drawn between the Constitution and the prisons of this country." Wolff v. McDonnell, 418 U.S. 539,

555-56 (1974). Even convicted prisoners do not forfeit all constitutional rights by reason of their conviction and confinement in prison. Bell v. Wolfish, 441 U.S. 520, 545 (1979). The court has recognized that pretrial detainees retain at least those constitutional rights as those retained by convicted prisoners. Bell, 441 U.S. at 545. However, these rights are not immune from restrictions or limitations pursuant to lawful incarceration. Id. at 545-46. Detainees do not possess the full range of freedoms as unincarcerated individuals. Id. at 546. Courts must accommodate both the legitimate needs of the institution and the rights of the incarcerated. See id. Courts should ordinarily defer their judgment in the day-to-day operations of a corrections facility to the appropriate officials unless there is substantial evidence that the response is exaggerated. Id. at 546-47.

Conditions or restrictions which implicate only the detainee's liberty interest are evaluated under the Due Process Clause. Bell, 441 U.S. at 535. Because a detainee cannot be punished without adjudication of guilt in accordance with the due process of law, restrictions which amount to punishment are invalid. See id. Loss of freedom of choice and privacy are inherent incidents of lawful confinement and, while they interfere with the detainee's desire to live as comfortably as possible, do not amount to punishment. Id. at 537. Absent a showing of intent to punish on the part of corrections officials, if a condition or restriction is reasonably related to a legitimate government objective, without more, it is valid. Id. at 538-39. However, if the restriction is arbitrary,

purposeless, or appears excessive in relation to the purpose assigned to it, the court may infer a punitive purpose. Id. Such a restriction, although not imposed with expressed intent to punish, contravenes a detainee's rights under the Fourteenth Amendment. See id.

C. Analysis of Plaintiff's Claims Regarding Conditions of Confinement

The remainder of Plaintiff's complaint at issue centers around the general conditions of his confinement. The treatment a detainee receives in jail and the conditions under which he is confined are subject to constitutional scrutiny under the Fourteenth Amendment. See Bell v. Wolfish, 441 U.S. 520, 535 (1979). A detainee may not be subject to conditions which amount to punishment or otherwise violate the constitution. Id. at 537. Conditions which are intended as punitive or are not reasonably related to a legitimate governmental interest violate a detainee's due process rights. Id. at 538-39.

1. Denial of ability to exercise

Defendant alleges he was denied adequate exercise and fresh air. Plaintiff states Defendant was considered a high escape risk and therefore not allowed to exercise. Defendant based Plaintiff's high escape risk classification on a report which stated Plaintiff was previously charged with Escape from a Penal Institution. Plaintiff claims those charges were dropped.¹ Additionally,

¹ Defendant did not claim Plaintiff was an escape risk because of a prior escape until the motion for summary judgment at issue. The report on which Defendant relies is dated October 5, 1995, more than a year after

Plaintiff asserts it is procedure of the Tulsa County Sheriff's Department to identify high escape risk inmates with a yellow arm band. Plaintiff states he was never issued a yellow arm band. Further, Plaintiff points out it is Tulsa County Sheriff's Department procedure to house all high escape risk inmates on the 8th floor of the Tulsa County Courthouse. Plaintiff was housed at the ADC for approximately five of the six months of his incarceration. Finally, Plaintiff's bond was set at \$11,000, much less than that of \$25,000, which automatically classifies an inmate as a high escape risk.

The Court cannot become involved in the minor details of running the county jail. Daily decisions concerning detainees are best left to those entrusted with their confinement. Only where constitutional abuse is apparent should the Court interfere with the administrative functioning of the jail. Parameters in which a prisoner's constitutional rights are violated for lack of exercise were established in French v. Owens, 772 F.2d 1250, 1255 (7th Cir. 1985). Lack of exercise gives rise to a constitutional violation where "movement is denied and muscles are allowed to atrophy, [and] the health of the individual is threatened." Id.

While Defendant's policy of prohibiting high-escape risk inmates from participating in the county jail's exercise program is reasonably related to a legitimate penological interest, see Martin, 845 F.2d at 1457 (denial of outdoor exercise was related to legitimate prison concern in security, based on escape charge

Plaintiff was released from Defendant's custody.

pending against detainee, and thus was not a constitutional deprivation), Plaintiff has raised sufficient questions as to whether he was classified as a high escape risk and, if so, whether there was a legitimate reason for that classification. The Court concludes there remain genuine issues of material fact as to the lack of outdoor exercise.

2. Deprivation of clean uniform and towel

Plaintiff alleges he was deprived of a clean towel and uniform for more than a month. Defendant denies this allegation. Although the Special Report reveals that inmates should be given an opportunity to receive a complete change of clean clothing at least once a week, the Plaintiff has controverted Defendants' statement by presenting a copy of a "prison grievance" which alleges that Plaintiff did not receive a clean towel for over one month. The failure to regularly provide prisoners with clean towels and clothing constitutes a denial of personal hygiene and sanitary living conditions, see, e.g., Dawson v. Kendrick, 527 F. Supp. 1252, 1288-89 (S.D.W.Va. 1981), see also Williams v. Hart, 930 F.2d 36, 1991 WL 47118, at *2 (10th Cir. 1991) (unpublished opinion). The Court is of the opinion a genuine issue of material fact exists as to whether Plaintiff was regularly provided with a clean uniform and towel. Thus, the Court denies Defendant's motion for summary judgment as to this issue.

III. CONCLUSION

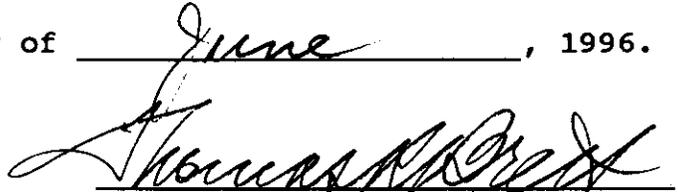
Viewing the evidence in the light most favorable to the non-moving party for purposes of Defendant's motion for summary

judgment and Plaintiff's cross-motion for summary judgment, the Court concludes that both motions should be DENIED.

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Defendant's motion for summary judgment is DENIED; and
- (2) Defendant's cross-motion for summary judgment is DENIED.

SO ORDERED THIS 13 day of June, 1996.


THOMAS R. BRETT, Chief Judge
UNITED STATES DISTRICT COURT

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

F I L E D

JUN 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DARRYL E. EDWARDS,

Plaintiff,

vs.

MARVIN T. RUNYON,
Postmaster General,

Defendant.

No. 95-C-685-B ✓

ENTERED ON DOCKET

DATE **JUN 14 1996**

J U D G M E N T

In keeping with the Court's order sustaining the Defendant's motion for summary judgment filed herewith, Judgment is hereby entered in favor of the Defendant, Marvin T. Runyon, Postmaster General, and against the Plaintiff, Darryl E. Edwards. If timely applied for pursuant to Local Rule 54.2, costs are hereby assessed in favor of the Defendant and the parties are to pay their own respective attorneys' fees.

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



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Parties Present

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

FILED
JUN 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

KELLY EUGENE MOSIER,)
)
Plaintiff,)
)
vs.)
)
JIM EARP, et al.,)
)
Defendants.)

No. 94-C-1067-B

ENTERED ON DOCKET
JUN 14 1996
DATE _____

ORDER

The Court has for consideration Defendant Jim Earp's ("Earp") Motion for Summary Judgment. (Docket #21). After a review of the record and applicable legal authorities, the Court hereby GRANTS in part and DENIES in part Earp's Motion for Summary Judgment.

STATEMENT OF THE CASE

Plaintiff, a former pretrial detainee appearing pro se, brings this action pursuant to 42 U.S.C. § 1983, naming Earp, Sheriff of Delaware County, and Freddie Hall, jail inspector for the Oklahoma Department of Health, as Defendants. This Court dismissed Freddie Hall as a Defendant by Order dated September 13, 1995. (Docket #19). Plaintiff Kelly Mosier ("Mosier") alleges that Earp subjected him to "severe, health threatening and inhumane living condition[s]" during his pretrial detention at the Delaware County Jail. Specifically, Mosier claims he was denied access to legal materials, denied the ability to exercise, denied proper medical care, subjected to substandard living conditions and was not provided a nutritionally balanced diet. Earp denies all such allegations.

ht

UNCONTROVERTED FACTS

1. Jim Earp is currently employed as the Sheriff of Delaware County, Oklahoma and has been so employed since January, 1989. Sheriff Earp's law enforcement experience includes three years as a lake patrolman, one year as a deputy sheriff and six years as a sheriff. (Df.'s Brief, Attachment A).

2. On April 4, 1994, Mosier was booked into the Delaware County Jail on the charges of aggravated assault and battery, malicious property destruction, attempted burglary and grand larceny. (Df.'s Brief Attachment B).

3. On April 14, 1994, Mosier was provided a court-appointed attorney and utilized his court-appointed attorney during his incarceration. (Df.'s Brief, Attachment C).

4. On June 1, 1995, Attorney L. Wayne Woodyard entered his appearance on behalf of Mosier. (Df.'s Brief, Attachment E).

5. Mosier had access to a telephone while incarcerated in the Delaware County Jail. (Df.'s Brief, Attachment A).

6. A jail inspection was done by the Oklahoma State Department of Health on November 16, 1994. The Delaware County Jail was found to be clean and in compliance with the dietary standards. (Df.'s Brief, Attachment A).

7. It is the responsibility of the inmates to clean the jail area, including the showers. If the inmates do not clean their areas, they are given the option to either clean the areas or be locked down while the trustees clean the facility. (Df.'s Brief, Attachment A).

8. Upon booking and during their incarceration, inmates, including Mosier, are provided with a mattress. (Df.'s Brief, Attachment A).

9. The Sheriff's Department dispenses over-the-counter medications. During jail checks these

non-prescription medications are often found stored up in the inmates' cells. (Df.'s Brief, Attachment A).

10. On February 16, 1995, this Court ordered that the Defendants have the right to depose Mosier if they so wish. On June 21, 1995, after receiving a proper and timely notice, Mosier refused to answer certain questions during his deposition. (Df.'s Brief, Attachment I).

SUMMARY JUDGMENT

1. Standard

The court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). When reviewing a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party. Applied Genetics Int'l., Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1241 (10th Cir. 1990). "However, the nonmoving party may not rest on its pleadings but must set forth specific facts showing that there is a genuine issue for trial as to those dispositive matters for which it carries the burden of proof." Id. The court cannot resolve material factual disputes at summary judgment based on conflicting affidavits. Hall v. Bellmon, 935 F.2d 1106, 1111 (10th Cir. 1991). However, the mere existence of an alleged factual dispute does not defeat an otherwise properly supported motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Only material factual disputes preclude summary judgment; immaterial disputes are irrelevant. Hall, 935 F.2d at 1111. Similarly, affidavits must be based on personal knowledge and set forth facts that would be admissible in evidence. Id. Conclusory or self-

serving affidavits are not sufficient. *Id.* If the evidence, viewed in the light most favorable to the nonmovant, fails to show that there exists a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *See Anderson*, 477 U.S. at 250.

The plaintiff's complaint may also be treated as an affidavit if it is sworn under penalty of perjury and states facts based on personal knowledge. *Id.* The court must also construe plaintiff's *pro se* pleadings so liberally for purposes of summary judgment. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). When reviewing a motion for summary judgment, it is not the judge's function to weigh the evidence and determine the truth of the matter but only to determine whether there is a genuine issue for trial. *Anderson*, 477 U.S. at 249.

2. Rights of pretrial detainees

"There is no iron curtain drawn between the Constitution and the prisons of this country." *Wolff v. McDonnell*, 418 U.S. 539, 555-56 (1974). Even convicted prisoners do not forfeit all constitutional rights by reason of their conviction and confinement in prison. *Bell v. Wolfish*, 441 U.S. 520, 545 (1979). The court has recognized that pretrial detainees retain at least those constitutional rights retained by convicted prisoners. *Bell*, 441 U.S. at 545. However, these rights are not immune from restrictions or limitations pursuant to lawful incarceration. *Id.* at 545-46. Detainees do not possess the full range of freedoms as unincarcerated individuals. *Id.* at 546. Courts must accommodate both the legitimate needs of the institution and the rights of the incarcerated. *See id.* Courts should ordinarily defer their judgment in the day-to-day operations of a corrections facility to the appropriate officials unless there is substantial evidence that the response is exaggerated. *Id.* at 546-47.

Conditions or restrictions which implicate only the detainee's liberty interest are evaluated under the Due Process Clause. Bell, 441 U.S. at 535. Because a detainee cannot be punished without adjudication of guilt in accordance with the due process of law, restrictions which amount to punishment are invalid. *See id.* Loss of freedom of choice and privacy are inherent incidents of lawful confinement and, while they interfere with the detainee's desire to live as comfortably as possible, do not amount to punishment. Id. at 537. Absent a showing of intent to punish on the part of corrections officials, if a condition or restriction is reasonably related to a legitimate government objective, without more, it is valid. Id. at 538-39. However, if the restriction is arbitrary, purposeless, or appears excessive in relation to the purpose assigned to it, the court may infer a punitive purpose. Id. Such a restriction, although not imposed with expressed intent to punish, contravenes a detainee's rights under the Fourteenth Amendment. *See id.*

3. Analysis of Mosier's individual claims

(A) Denial of access to legal materials

While a pretrial detainee, Mosier claims he was denied access to the law library. At the time Mosier was booked into the Delaware County Jail, the law library was housed in the same building as the jail. Mosier further complains his request forms (presumably for legal materials) and grievance forms (presumably for not getting the requested material) received no response.

A detainee, just like a convicted inmate, has a constitutional right to adequate, effective, and meaningful access to the courts and the law library. Love v. Summit County, 776 F.2d 208, 912 (10th Cir. 1985), cert. denied, 479 U.S. 814 (1986).

The right is one of the privileges and immunities accorded citizens under article four of the Constitution and the Fourteenth Amendment. It is also one aspect of the First Amendment right to petition the government to redress grievances. Finally the right

of access is founded on the due process clause and guarantees the right to present to a court of law allegations concerning the violation of constitutional rights.

Smith v. Maschner, 899 F.2d 940, 947 (10th Cir. 1990) (citation omitted).

In Bounds v. Smith, 430 U.S. 817, 827 (1977), the Supreme Court held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in law.

While this Court would agree a total denial of access to the courts or the county law library, as claimed by Mosier, would be a solid basis on which to overrule Earp's Motion for Summary Judgment, the Court finds alternative sources of legal assistance were available to Mosier during his detention. An inmate's constitutional right of access to courts is not violated by a denial of access to a county law library when alternative sources of legal assistance are available. Love v. Summit County, 776 F.2d 908, 914 (10th Cir. 1985). In this case, Mosier was represented by a court-appointed attorney from April 14, 1994 through March 28, 1995, when Mosier himself requested to discharge his attorney. On June 1, 1995, another attorney entered his appearance on behalf of Mosier. As far as this Court can tell from the record, this representation continued through trial. Mosier does not dispute the fact a telephone was available to him, albeit at an increased tariff, excepting one week Mosier claims phone privileges were denied as a form of punishment.

While Mosier was not at all times of his detention represented by an attorney, in order to successfully assert a claim for relief of limited access to legal material plaintiff must make a showing of prejudice or an actual injury to the prisoners' attempts at litigation. Gains v. Maynard, 808 P.2d 672, 676 (1991). Mosier fails to make a showing of prejudice or actual injury to his attempts at

litigation. Based on this failure, the Court is of the opinion there is no genuine issue of material fact as to the issue of denial of access to legal material and Earp is entitled to judgment as a matter of law. Earp's Motion for Summary Judgment is hereby GRANTED on the issue of denial of access to legal material.

(B) Ability to exercise

Mosier contends his constitutional right to exercise was violated by Earp during his pretrial detention. The disputed facts have Earp insisting the inmates had ample room to perform calisthenics and stretching exercises in the inmates cells and runways, while Mosier asseverates the overcrowded conditions of the Delaware County Jail prevented such activities. Mosier claims the population in certain cells was more than double the number the cell was built to hold. As a result of the overcrowding, the mattresses of some inmates covered the floors of the cells and runways, further restricting any available space in the cell or runway. Mosier further claims an area just outside the Delaware County Courthouse would provide a place for the inmates to exercise, provided a fence was installed for obvious reasons.

The Court cannot become involved in the minor details of running the county jail. Daily decisions concerning detainees are best left to those entrusted with their confinement. Only where constitutional abuse is apparent should the Court interfere with the administrative functioning of the jail. Parameters in which a prisoners' constitutional rights are violated for lack of exercise were established in French v. Owens, 777 F.2d 1250, 1255 (7th Cir. 1985). Lack of exercise gives rise to a constitutional violation where "movement is denied and muscles are allowed to atrophy, [and] the health of the individual is threatened." Id. The Court is of the opinion a genuine issue of material

fact exists as to whether Mosier was denied the ability to exercise. The Court hereby DENIES Earp's Motion for Summary Judgment on the issue of ability to exercise.

(C) Denial of access to medical care

Mosier avers Earp denied him proper medical care during his incarceration in the Delaware County Jail. Earp counters by attaching two pages labeled "Inmates Medication Log," purporting to be for inmate Kelly Mosier, as Attachment F to his Brief.¹ Deliberate indifference to a prisoner's serious medical needs constitutes cruel and unusual punishment under the Eighth Amendment, and gives rise to a civil rights cause of action under 42 U.S.C. § 1983. Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). This same standard applies to pretrial detainees under the due process clause of the 14th Amendment. Garcia v. Salt Lake County, 768 F.2d 303, 307 (10th Cir. 1985).

In the supporting facts of his Complaint, Mosier asserts he was given a damp and smelly mattress when he was placed in the main jail area. Due to the crowded conditions, Mosier was forced to spread his mattress on a wet floor near a toilet. Mosier claims he soon became sick. Mosier goes on to state his requests for medical attention were denied and he was told no medication was available to treat his symptoms. Mosier contends Earp refused to provide him a physician unless he had an Indian card or medical insurance. The Court is of the opinion a genuine issue of material fact exists as to whether Earp's conduct, or the conduct of those under his charge, was deliberately indifferent

¹The Court is unpersuaded by this Attachment for a number of reasons. First, what year(s) does this log cover? Second, all but three dates on the second page are illegible. Third, 40 of 45 entries made on the first page were made within an eight day span. Fourth, it seems curious to the Court that almost all the medication allegedly offered to Mosier consisted of Amoxicillin and Pseudophedrine (roughly 84%).

to Mosier's medical needs.² The Court hereby DENIES Earp's Motion for Summary Judgment on the issue of denial of medical care.

(D) Living conditions

Mosier claims the living conditions in the Delaware County Jail were severe, health threatening and intimidating. In defense of this allegation, Earp relies on the fact the Delaware County Jail passed an inspection performed by a representative of the State Department of Health in November, 1994. Earp further states it is the responsibility of the inmates to clean the cells.

The treatment a detainee receives in jail and the conditions under which he is confined are subject to constitutional scrutiny under the 14th Amendment. See Bell v. Wolfish, 441 U.S. 520, 535 (1979). A detainee may not be subject to conditions which amount to punishment or otherwise violate the constitution. Id. at 537. Conditions which are intended as punitive or are not reasonably related to a legitimate governmental interest violate a detainee's rights. Id. at 538-39. It is fundamental that loss of liberty and freedom of choice occur during lawful incarceration. Corrections officials cannot accommodate the precise needs of every inmate. Consequently, some level of discomfort is inherent in any incarceration, and as long as that discomfort does not amount to punishment, it does not violate a detainee's constitutional rights.

Mosier complains of the fact he was forced to sleep on the floor of the Jail. The constitution is indifferent as to whether the mattress a detainee sleeps on is on the floor or on a bed absent some aggravating circumstances. See Mann v. Smith, 796 F.2d 79, 85 (5th Cir. 1986); Castillo v. Bowles, 687 F.Supp. 277, 281 (N.D. Tex. 1988). The Court is of the opinion aggravating circumstances exist

²It is also unclear from the record whether Plaintiff's medical condition was sufficiently serious as set out in Estelle.

in this case which preclude a finding by this Court that no genuine issue of material fact exists as to the issue of living conditions. Specific aggravating circumstances include Mosier's claim the head of his mattress was less than 3 feet from a toilet, the floor in the basement of the Jail was wet and prisoners locked in the dayroom at night are forced to urinate in the shower. Thus, the Court believes a factual question exists as to the state of mind of Earp with respect to the living conditions in the Delaware County Jail. The Court hereby DENIES Earp's Motion for Summary Judgment on the issue of living conditions.

(E) Diet

Finally, Mosier contends the diet provided him during his pretrial detention was not nutritionally balanced because the meals consisted of mostly starch, little fruit and no milk. Mosier even alleges that as a form of punishment the prisoner's diet consisted of rice and beans for one week. In light of the fact Mosier is unable to show how a diet consisting of starch and a little fruit violates his constitutional rights, and the Oklahoma State Department of Health found the Delaware County Jail to be in compliance with dietary standards, this Court is of the opinion a genuine issue of material fact does not exist as to whether Mosier's constitutional right to a nutritionally balanced diet (if he has such a right) have been violated. The Court hereby GRANTS Earp's Motion for Summary Judgment with respect to the issue of failure to provide a proper diet.

III. CONCLUSION

Viewing the evidence in the light most favorable to the nonmoving party for purposes of Earp's Motion for Summary Judgment, the Court concludes that Earp's Motion for Summary Judgment should be GRANTED in part and DENIED in part.

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Defendant's Motion for Summary Judgment is **GRANTED** on the issues of access to legal materials and failure to provide a proper diet; and
- (2) Defendant's Motion for Summary Judgment is **DENIED** on the issues of ability to exercise, access to medical care and living conditions.

IT IS SO ORDERED THIS 13 day of June, 1996.



THOMAS R. BRETT, Chief Judge
UNITED STATES DISTRICT COURT

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

FILED
JUN 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DARRYL E. EDWARDS,)
)
 Plaintiff,)
)
 vs.)
)
 MARVIN T. RUNYON,)
 Postmaster General,)
)
 Defendant.)

Case No. 95-C-685-B ✓

ENTERED ON DOCKET
DATE JUN 14 1996

ORDER

Before the Court for consideration is Defendant, Marvin T. Runyon's, Postmaster General, United States Postal Service ("Defendant"), Motion for Summary Judgment pursuant to Fed.R.Civ. P. 56 (Docket #7), in the claim of Plaintiff, Darryl E. Edwards' ("Edwards"), for alleged violation of the Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq., as amended ("Rehabilitation Act"). Following a thorough review of the record and the applicable legal authority, the Court concludes the Defendant's motion should be and is hereby GRANTED.

I. UNDISPUTED FACTS

1. Edwards alleges that Defendant discriminated against him on the basis of physical disability when he applied for the position of Emergency Rural Letter Carrier Associate and was not hired.
2. Edwards applied for and was considered for the position of Emergency Rural Letter Carrier Associate in December 1993.
3. On or about December 16, 1993, Tulsa physician, Dr. G. W.

Kelly, examined Edwards and completed PS FORM 2485 as requested by the Associate Area Medical Doctor, Dr. Perry Taaca. (Defendant's Exh. 1, Medical Examination and Assessment, PS FORM 2485.)

4. Dr. Kelly's report noted a parascapular strain or "neck stiffness" experienced during the period of 1986-1989, a 20% partial permanent (sic) disability for a broken finger, and a 6% partial permanent (sic) disability for neck stiffness. (Defendant's Exh. 1, at p. 5.)

5. On or about December 17, 1993, Edwards was offered the position of Emergency Rural Letter Carrier Associate.

6. On or about December 20, 1993, Dr. Taaca requested the medical records, "including report of injury, copies of physician records, hospital records, treatment records, and copies of x-ray or scan reports," regarding Edwards' medical condition concerning the "shoulder injury and related conditions of the shoulder." (Defendant's Exh. 1, at p. 7.)

7. Dr. Taaca's Medical Assessment Report of December 21, 1993 noted significant findings of "Shoulder & Finger injuries with partial permanent disability" and that the reports of a Board Certified Neurologist "indicate that the applicant should not do repetitive lifting (over 20 lbs.) or overhead work. (Defendant's Exh. 1, at p. 6.)

8. On or about December 22, 1993, Edwards was informed that he was no longer under consideration for the position of Emergency Rural Letter Carrier Associate.

9. In May of 1986 Edwards sustained an on-the-job injury

while working at Crane Carrier Corporation. (Defendant's Exh. 4, Plaintiff's Response to Interrogatories.)

10. Edwards was seen by Richard Stamile, M.D., from June 5, 1986 to September 2, 1986 for follow-up of the on-the-job injury of May 8, 1986. (Defendant's Exh. 4, Plaintiff's Response to Interrogatories.)

11. Edwards was seen by Sashi Husain, M.D., from approximately September through October 1986 for treatment of the on-the-job injury of May 8, 1986. (Defendant's Exh. 4, Plaintiff's Response to Interrogatories.)

12. Edwards was seen by Alexander Raptou, M.D., subsequent to the injury until February of 1987 for treatment of the on-the-job injury of May 8, 1986. (Defendant's Exh. 4, Plaintiff's Response to Interrogatories.)

13. Edwards was seen by Cynthia Murphy, Ph.D., from 1986 through 1987 for emotional trauma evaluation associated with the on-the-job injury of May 8, 1986. (Defendant's Exh. 4, Plaintiff's Response to Interrogatories.)

14. Edwards was seen by David Smith, Ph.D., from 1986 through 1987 for emotional trauma evaluation associated with the on-the-job injury of May 8, 1986. (Defendant's Exh. 4, Plaintiff's Response to Interrogatories.)

15. Edwards was seen by Mayes, M.D., in approximately May and June of 1986 for treatment of the on-the-job injury of May 8, 1986. (Defendant's Exh. 4, Plaintiff's Response to Interrogatories.)

16. Edwards was seen by Paul Atkins, M.D., in approximately

May and June of 1986 for treatment of the on-the-job injury of May 8, 1986. (Defendant's Exh. 4, Plaintiff's Response to Interrogatories.)

17. On February 9 and March 26 of 1990, Edwards was seen by Ralph W. Richter, M.D., F.A.C.P. In a letter dated May 21, 1990, Dr. Richter states that while he does not believe that Edwards is totally disabled, "he would be disabled from the standpoint of limiting him from prolonged reaching above his head and from lifting objects more than 20 pounds." He also states Edwards presents "hypochondrial tendencies" and "a strong probability that he has schizo-affective disorder." (Defendant's Exh. 6, Letter to Paul V. McGivern, May 21, 1990.)

18. On July 18, 1990, Sami R. Framjee, M.D., examined Edwards. In a letter dated October 23, 1990 Dr. Framjee was unable to find any evidence of a permanent impairment to the cervical spine according to the AMA Guidelines, Second Edition. He stated that "[t]he patient's clinical picture was indicative of malingering." (Defendant's Exh. 7, Letter to Paul V. McGivern, October 23, 1990.)

19. On June 1, 1992, an order of the Workers' Compensation Court of the State of Oklahoma declared Edwards to have a permanent partial disability ("PPD") to his neck (3%), left shoulder (5%), left arm (10%) and a psychological overlay from the injury resulting in a 7.5% PPD to the body as a whole. (Defendant's Exh. 8, Order of the Workers' Compensation Court dated June 1, 1992.)

20. Edwards states that in 1992, he had "difficulty

vacuuming, making beds, taking out the trash, climbing steps and picking up objects from the floor." (Defendant's Exh. 9, Vocational Evaluation, dated November 24, 1992.)

SUMMARY JUDGMENT STANDARD

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

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

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

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

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

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

III. LEGAL ANALYSIS

A. Edwards' claim under the Rehabilitation Act

Edwards claims Defendant discriminated against him by refusing to hire him for the position of Emergency Rural Letter Carrier Associate. Under the Rehabilitation Act, 29 U.S.C. § 791 *et seq.*, Edwards must establish that (1) he is a handicapped person; (2) he is qualified: with or without reasonable accommodation, he is able to perform the essential functions of the job; and (3) the employer refused to hire him because of his disability. See White v. York International Corp., 45 F.3d 357, 360 (10th Cir. 1995). The Rehabilitation Act, as amended, defines "handicapped individual" as one who "(i) has a physical or mental impairment which

substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment." 29 U.S.C. § 706(8)(B). Edwards contends Defendant regarded him as having such an impairment, thus, qualifying him as a "handicapped individual" pursuant to subsection (iii) of 29 U.S.C. § 706(8)(B) and entitling him to relief under the Rehabilitation Act.

"Is regarded as having such an impairment" means:

(A) has a physical ... impairment that does not substantially limit major life activities but that is treated ... as constituting such a limitation; (B) has a physical ... impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or (C) has none of the impairments defined in paragraph (j)(2)(I) of this section but is treated by a recipient as having such an impairment.

45 C.F.R. § 84.3(j)(2)(iv).

The definition of "major life activities" includes "functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, and working." 29 C.F.R. § 1613.702(c). Edwards claims that his permanent partial disability and/or thoracic outlet syndrome did not substantially limit any of his major life activities, such as working, but Defendant perceived the condition(s) as a handicap on his ability to work when Defendant found him to be a "high risk" employment candidate and refused to further consider him for the job of Emergency Rural Letter Carrier Associate.

While working is considered a "major life activity" under the Rehabilitation Act, it does not necessarily mean working at the job

of one's choice. Welsh v. City of Tulsa, 977 F.2d 1415, 1417 (citing Tudyman v. United Airlines, 608 F.Supp. 739 (D. Cal. 1984)). The position of Emergency Rural Letter Carrier Associate involves strenuous physical activity Defendant believed Edwards unable to perform due to his PPD and/or thoracic outlet syndrome. Being declared "high risk" and, thus, unsuitable for the particular position of Emergency Rural Letter Carrier Associate is not a substantial limitation of the major life activity of working. Numerous courts have held that "[a]n employer does not necessarily regard an employee as handicapped simply by finding the employee to be incapable of satisfying the singular demands of a particular job." Welsh, *supra* at 1417-1418 (citing Forrissi v. Bowen, 794 F.2d 931, 934 (4th Cir. 1986)). See also Jasany v. United States Postal Service, 755 F.2d 1244 (6th Cir. 1985) ("an impairment that interfered with an individual's ability to do a particular job, but did not significantly decrease that individual's ability to obtain satisfactory employment otherwise, was not substantially limiting within the meaning of the statute" [emphasis in original]); Daley v. Koch, 892 F.2d 212 (2nd Cir. 1989) ("[b]eing declared unsuitable for the particular position of police officer is not a substantial limitation of a major life activity"); Maulding v. Sullivan, 961 F.2d 694 (8th Cir. 1992) ("[w]e find no error in [the] conclusion that [plaintiff's] ailment would prevent her from only lab work and that such a limitation does not substantially limit her employment as a whole"); Cook v. State of Rhode Island Dep't of Mental Health, 783 F.Supp. 1569 (D.R.I. 1992) (Impairment must be perceived as

placing plaintiff "so far outside the norm as to make it impossible or unusually difficult... to perform work that could be done by most other people"); Partlow v. Runyan, 826 F.Supp. 40 (D.N.H. 1993) ("[c]ourts have uniformly rejected the notion that failure to qualify for one position renders a person 'handicapped' within the meaning of the Act").

The Tenth Circuit Court of Appeals, in analyzing such cases as Forrissi, Jasany, Maulding, and Cook stated that:

We agree with the above-cited decision that an impairment that an employer perceives as limiting an individual's ability to perform only one job is not a handicap under the Act. Any other interpretation would render meaningless the requirement that the impairment substantially limit a major life activity. 'It was open to Congress to omit these limiting adjectives, but Congress did not do so.'

Welsh, *supra* at 1419 (citing Forrissi, 794 F.2d at 924 (emphasis in original)).

The Court is of the opinion that Defendant's refusal to hire Edwards as an Emergency Rural Letter Carrier Associate does not substantially limit Edwards' major life activity of working.

Additionally, Edwards advances the position Defendant's decision to not hire him (based on Defendant's belief Edwards could not lift more than 20 pounds over his head, engage in overhead work and that Edwards ran a high risk of reinjury if he engaged in the activities of an Emergency Rural Letter Carrier Associate) creates the perception he is unable to perform the substantial life activity of performing manual tasks. As a result, Edwards claims, he is qualified for coverage under the Rehabilitation Act. The

Court disagrees. If Edwards had been perceived by Defendant to be suffering from an impairment which substantially limited the major life activity of performing manual tasks, whether or not in reality he had no impairment, he might qualify for relief under the Rehabilitation Act. However, the Rehabilitation Act requires a substantial limitation of a major life activity, emphasizing that the impairment must be a significant one. See Welsh, *supra* at 1415. It is clear Defendant never considered Edwards to be suffering from an impairment which substantially limited his ability to perform manual tasks, only that Edwards was unsuitable for the position of Emergency Rural Letter Carrier Associate. In fact, Edwards was working as a dump truck driver and/or a general helper at a restaurant at the time Defendant made the decision to not hire Edwards.

The Court is of the opinion adopting Edwards' reasoning would allow anyone who failed to obtain a single job because of a single requirement of employment to become a handicapped individual because the employer would necessarily be regarding the applicant's failure as a handicap. Tudyman, *supra* at 746. "Such a handicap would stand the Act on its head. The Rehabilitation Act seeks to remedy perceived handicaps that, like actual disabilities, extend beyond this isolated mismatch of employer and employee." Forrissi, *supra* at 935.

In support of his position that Defendant perceived him to be unable to perform manual tasks, Edwards claims an employee of Defendant told Edwards he was not qualified for any position with

the Defendant. Although this assertion reeks of hearsay, it is irrelevant as the Court is unable to find where Edwards applied for any other position with Defendant and was not hired based on any perceived disability.

The Court is of the opinion Edwards has failed to raise a genuine issue of material fact showing Defendant's perception of his disability substantially limited a major life activity. To the contrary, the facts and case law reveal Edwards has not suffered a substantial limitation in the major life activities of working and/or performing manual tasks. Thus, Edwards falls outside the definition of a handicapped person. It is therefore unnecessary to discuss whether or not Edwards could establish he is qualified, as defined by the Rehabilitation Act or other federal law, and the Defendant refused to hire him because of his disability.

For the above reasons the Court believes Defendant is entitled to judgment as a matter of law on Edwards' claim brought under the Rehabilitation Act. Thus, summary judgment is hereby GRANTED in favor of Defendant and against Edwards on the claim so described.

B. Edwards' claim the Defendant's Medical Determination of his Alleged Physical Inability to Perform the Job was not Based on Reasonable Factors.

Edwards contends Defendant's determination that his physical limitations posed a "high risk" of reinjury if he were allowed to perform the job of Emergency Rural Letter Carrier Associate was not based upon reasonable factors. In support of this contention,

Edwards maintains the medical information relied on by Dr. Taaca was outdated, Dr. Taaca refused to personally examine him and Defendant did not comply with its own regulations concerning medical evaluations of prospective employees. The relevant provisions of the United States Postal Service make it mandatory that all of the following requirements be met by the medical officer in making a determination of unsuitability:

142.21 Any medical history records from outside sources forming the basis of the unsuitability evaluation must be current. Preferably, the medical opinion is based on an examination completed within the preceding 6 months.

142.22 (when a private physician performs the preemployment examination) A difference of opinion between the private physician and the medical officer must be resolved by a third party opinion of a board certified specialist. The expense is borne by the USPS. No medical unsuitability is to be made on history or outside records alone.

Plaintiff's Exh. 16, Health and Medical Service Handbook EL-806.

Dr. Taaca, when preparing his report of December 21, 1993, possessed Edwards' medical history, completed by Edwards, Dr. Kelly's examination report (PS Form 2485), and the 1990 report of Dr. Richter, consisting of two pages and supplied by Edwards at Dr. Taaca's request. While it is true Edwards' injuries arising from the 1986 on-the-job injury were not of a current vintage as of December 1993, it is also true the injuries were determined by the Worker's Compensation Court to be of a permanent nature and partially disabling.

Dr. Kelly performed a physical examination on Edwards within

one week of the issuance of Dr. Taaca's opinion. While Dr. Kelly's report seems to rehash Edwards' medical history, it also indicates some abnormalities in Edwards' mouth and throat, upper extremities and feet. (Defendant's Exh. 1, pg. 4).

Dr. Richter's report states that Edwards had symptoms or factors of thoracic outlet syndrome and that symptoms may be largely associated with "mental conditions." Dr. Richter's report also states that while he does not believe that Edwards is totally disabled, "he would be from the standpoint of limiting him from prolonged reaching above his head and from lifting objects more than 20 pounds." (Defendant's Exh. 6, Letter to Paul V. McGivern, May 21, 1990).

"[I]f the employer reasonably believes that the employee is unable adequately to perform the work and refuses to hire him on that basis, the federal law will not have been transgressed." Bento v. I.T.O. Corporation of Rhode Island, 599 F.Supp. 731, 744 (D.R.I. 1984). While "the Rehabilitation Act forbids discrimination based on stereotypes about a handicap... it does not forbid decisions based on actual attributes of the handicap. The Act replaces 'reflexive reactions... with actions based on reasoned and medically sound judgments.'" Anderson v. University of Wisconsin, 841 F.2d 737, 740 (7th Cir. 1988) (citing School Board of Nassau County v. Arline, 107 S.Ct. 1123, 1129 (1987)). Even an erroneous determination will not be construed as discrimination on the basis of a handicap, if, in making the determination, the agency relied upon reasonable medical opinions. Severino v. North

Myers Fire Control Dist., 935 F.2d 1179, 1182 (11th Cir. 1991). An employer is required "to assess the nature and extent of an employee's disability in reasonable and realistic terms. Once this is done, however, the assessment itself need not reach a medically unassailable conclusion; the law does not demand... omniscience." Bento, *supra* at 744-745.

The Court is of the opinion Edwards has failed to raise a genuine issue of material fact as to why Dr. Taaca's medical determination was unreasonable. Dr. Taaca possessed a current medical examination and assessment of Edwards, completed by Dr. Kelly less than one week before Dr. Taaca issued his opinion. Dr. Taaca was aware of the demands of the position Edwards sought. With these demands in mind he made a judgment call as to Edwards suitability for the position. Even if Dr. Taaca's opinion is wrong, this Court is of the opinion the decision was reasonable. Thus, Defendant is entitled to judgment as a matter of law on the issue of the reasonableness of Dr. Taaca's determination Edwards was not physically suited for the job of Emergency Rural Letter Carrier Associate. Therefore, Defendant's Motion for Summary Judgment is GRANTED in favor of Defendant and against Edwards' on this issue.

IT IS SO ORDERED this 13 day of June, 1996.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED
JUN 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

LARRY DON MAYNARD,
Petitioner,
vs.
BOBBY BOONE, Warden,
Respondent.

No. 95-C-952-B ✓

ENTERED ON DOCKET
DATE JUN 14 1996

ORDER

This matter comes before the Court on Respondent's motion to dismiss this habeas corpus action for failure to exhaust state remedies. Petitioner, pro se, has objected. He contends exhaustion should be excused because of delay in obtaining the necessary records for his direct appeal.

I. BACKGROUND AND PROCEDURAL HISTORY

In January 1988, Petitioner was committed to Eastern State Hospital for evaluation in connection with charges pending against him in Delaware County. On February 18, 1988, the Delaware County district court released Petitioner from Eastern State Hospital and the Delaware County Jail. Only fourteen days later, on March 4, 1988, Petitioner was charged with shooting with intent to Kill in Osage County. Petitioner was arrested on May 12, 1988, and transported to Delaware County. A jury found Petitioner incompetent to stand trial on Delaware County charges on June 16, 1988.

On September 1, 1989, a second Delaware County jury found Petitioner incompetent to stand trial. Petitioner was transferred

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to Osage County where criminal proceedings were resumed. On September 4, 1990, an Osage County jury found Petitioner competent to stand trial. Petitioner proceeded pro se at trial and was found guilty by a jury on March 22, 1991. The trial court sentenced Petitioner to ninety-nine years and one day in prison. Thereafter, Petitioner filed a timely notice of appeal and was permitted to proceed pro se on appeal. (*Motion to Reverse Conviction and Remand for New Trial Based Upon Lack of Adequate Record on Appeal*, ex. O to Respondent's Brief in Support to November 1995 Motion to Dismiss, attached to docket #20.)

For the next three and one-half years, Petitioner struggled to procure a complete record of the above proceedings for appeal.¹ The Court of Criminal Appeals granted Petitioner four extensions of time to submit his appellate brief with the last extension to expire on January 31, 1994. On January 11, 1994, Petitioner filed a *Motion to Reverse Conviction and Remand for a New Trial Based Upon Lack of Record on Appeal*. The Court of Criminal Appeals denied the motion on March 2, 1994, and on October 19, 1994, dismissed the appeal because it had not been timely perfected in accordance with Rule 3.4.

On September 21, 1995, Petitioner filed the instant habeas action. He contends he was denied the right to a direct appeal in

¹ The Court does not summarize Petitioner's repeated attempts to obtain a complete record of his competency proceedings in Delaware and Osage Counties. Respondent, however, acknowledges that Petitioner did not obtain a complete copy of all the records until after the Court of Criminal Appeals dismissed his direct appeal.

violation of due process and equal protection because of numerous delays in obtaining the record necessary for his direct appeal. (Docket #1.) On November 7, 1995, Petitioner amended the petition to add eight grounds for habeas relief. He alleges as follows:

(1) the Osage County District Court assumed subject matter jurisdiction of Petitioner in violation of the Fifth Amendment; (2) Petitioner was released without treatment, training and therapy in violation of the Fourteenth Amendment; (3) The District Attorney of Osage County violated Petitioner's Due Process and Equal Protection when he threatened and intimidated an expert witness; (4) the trial court appointed a states expert witness who could not testify as to Petitioner's sanity at the time of the offense; (5) Petitioner was denied the effective assistance of counsel in preparing for trial; (6) Petitioner was denied effective assistance of counsel when he was allowed to proceed pro se at trial and on direct appeal, and (7) Petitioner was denied due process of law by the trial court incorrectly finding him competent to stand trial.

(Docket #8.)²

Respondent has moved to dismiss for failure to exhaust state remedies. It contends Petitioner has been provided with all the documents necessary to raise any claims of error in State Court, albeit with some delay, and thus Petitioner should file an application for post-conviction relief and request an appeal out of time in Osage County District Court. Petitioner objects. He argues he has been denied his only right to a direct appeal and thus, should be released from custody.

² This is Petitioner's third habeas action in the U.S. District Court for the Northern District of Oklahoma. Petitioner's previous motions were dismissed without prejudice. Since Petitioner challenges his competency hearing in Osage County, he may have a claim under Cooper v. Oklahoma, 116 S.Ct. 1373 (1996). In Cooper, the United States Supreme Court held that the standard of proof utilized by the Oklahoma state courts in making competency determination was unconstitutional.

II. ANALYSIS

Under 28 U.S.C. § 2254, a federal court may not review the substantive merits of an applicant's claim for collateral relief unless "the applicant has exhausted the remedies available in the courts of the state." 28 U.S.C. § 2254(b); see Rose v. Lundy, 455 U.S. 509, 510 (1982); Picard v. Connor, 404 U.S. 270 (1971). This requirement is not a jurisdictional limitation, but is predicated on principles of judicial comity, and is "designed to protect the state courts' role in the enforcement of federal law and [to] prevent [the] disruption of state judicial proceedings." Rose, 455 U.S. at 518. The habeas statute provides, however, that exhaustion of state remedies is not necessary if "there is either an absence of available state corrective processes or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner." 28 U.S.C. § 2254(b); see White v. Meachum, 838 F.2d 1137, 1138 (10th Cir. 1988).

Petitioner has a remedy available under the post-conviction procedure act. Oklahoma courts have interpreted Okla. Stat. tit. 22, § 1086 to permit the Court of Criminal Appeals to hear time barred appeals if a petitioner files an application for post-conviction relief in the county of conviction followed by an application or "appeal" with the Court of Criminal Appeals. See White v. Meachum, 838 F.2d 1137, 1138 (10th Cir. 1988) (citing Smith v. State, 611 P.2d 276, 277 (Okla. Crim. App. 1980)). The standard is denial of an appeal through no fault of his own.

Petitioner contends he is not seeking an out-of-time appeal,

but an order directing his release from custody. He argues that an "appeal through any other remedy, is not a [guaranteed] right such as . . . the first direct appeal" and therefore the only available remedy is release from custody. (Petitioner's Response to Motion to Dismiss, docket #13, at 7.) Yet, Petitioner has cited no precedent in which a court has caused the release of a prisoner for delay in providing the necessary records for appeal. The remedy of discharge is more appropriate where constitutional infirmities affect the conviction itself.

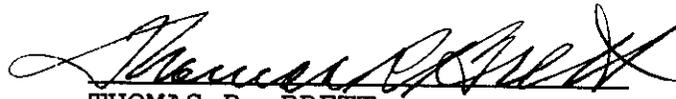
Moreover, an appeal out of time would vindicate Petitioner's right to a direct appeal and afford him the complete appellate review he would have received but for the delay in obtaining the necessary records and transcripts. See Baker v. Kaiser, 929 F.2d 1495 (10th Cir. 1991). Even where a defendant is denied his statutory right to a complete and accurate transcript, the appropriate relief is remanding the case to the trial court for a new trial not releasing Petitioner from custody. See Whitmire-Harris v. State, 863 P.2d 1255, 1257 (Okla. Crim. App. 1993) (inability to provide complete transcript due to numerous inaudible, unintelligible, and missing words, required reversal of conviction and remand for a new trial); Hixon v. State, 456 P.2d 117 (Okla. Crim. App. 1969) (new trial was warranted were defendant sought to challenge sufficiency of affidavit on which search warrant was based, but, through no fault of his own, district court

files containing affidavit could not be located).³

Although the record in this case justified granting an appeal out of time, comity requires that state courts be given the first opportunity to make that decision. Therefore, the Court dismisses this action without prejudice to permit Petitioner to file a petition for post-conviction relief in Osage County District Court, seeking an appeal out of time. If Petitioner cannot obtain such relief, after appealing any denial to the Court of Criminal Appeal, he will be free to refile this action in this Court.

Accordingly, Respondent's motion to dismiss for failure to exhaust state remedies (docket #6 and #14) is GRANTED and this action is hereby DISMISSED WITHOUT PREJUDICE to permit Petitioner to return to State court to exhaust his state remedies and seek an appeal out of time.

SO ORDERED THIS 13 day of June, 1996.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

³ In Harris v. Champion, 15 F.3d 1538, 1566 (10th Cir. 1994), the Tenth Circuit Court of Appeals recognized that the most appropriate remedy when a petitioner establishes a due process violation arising from delay in adjudicating his state appeal is to grant a conditional writ, releasing the petitioner if the State does not decide the appeal within a specified period of time. The Court could not grant a conditional writ in this case because the Court of Criminal Appeals dismissed Petitioner's appeal on October 19, 1994.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)

JUN 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

vs.)

ORPAH QUALLATE aka ORPAH)
 FELESIA TERHUNE; MAX ALLEN)
 TERHUNE; STATE OF OKLAHOMA ex)
 rel DEPARTMENT OF HUMAN)
 SERVICES; TEXAS DEPARTMENT OF)
 HUMAN SERVICES; YOLANDA)
 SANDOVAL; COUNTY TREASURER,)
 Mayes County, Oklahoma; BOARD OF)
 COUNTY COMMISSIONERS, Mayes)
 County, Oklahoma,)

ENTERED ON DOCKET
JUN 14 1996
DATE _____

Defendants.) Civil Case No. 95-CV 937B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 13 day of June,

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, Mayes County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Mayes County, Oklahoma, appear by Charles A. Ramsey, Assistant District Attorney, Mayes County, Oklahoma; and the Defendants, ORPAH QUALLATE aka Orpah Felesia Terhune, MAX ALLEN TERHUNE, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, TEXAS DEPARTMENT OF HUMAN SERVICES and YOLANDA SANDOVAL, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES,

acknowledged receipt of Summons and Complaint on September 20, 1995, by Certified Mail; that the Defendant, TEXAS DEPARTMENT OF HUMAN SERVICES, acknowledged receipt of Summons and Complaint on September 21, 1995, by Certified Mail; that the Defendant, YOLANDA SANDOVAL, acknowledged receipt of Summons and Complaint on September 21, 1995.

The Court further finds that the Defendants, ORPAH QUALLATE aka Orpah Felesia Terhune and MAX ALLEN TERHUNE, were served by publishing notice of this action in The Daily Times, a newspaper of general circulation in Mayes County, Oklahoma, once a week for six (6) consecutive weeks beginning February 27, 1996, and continuing through April 2, 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, ORPAH QUALLATE aka Orpah Felesia Terhune and MAX ALLEN TERHUNE, 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, ORPAH QUALLATE aka Orpah Felesia Terhune and MAX ALLEN TERHUNE. 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, Mayes County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Mayes County, Oklahoma, filed their Answer and Cross-Claim on October 3, 1995; and that the Defendants, ORPAH QUALLATE aka Orpah Felesia Terhune, MAX ALLEN TERHUNE, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, TEXAS DEPARTMENT OF HUMAN SERVICES and YOLANDA SANDOVAL, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, ORPAH QUALLATE, is one and the same person as Orpah Felesia Terhune, and will hereinafter be referred to as "ORPAH QUALLATE. The Defendants, ORPAH QUALLATE and MAX ALLEN TERHUNE, are both single unmarried persons.

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

The East 48 feet of Lot Numbered Eleven, and the West 38 feet of Lot Numbered Twelve, in Block Numbered Three, of the Meredith Addition to the Town of Chouteau, Mayes County, State of Oklahoma,

according to the official survey and Plat thereof, filed for record in the office of the County Clerk of said County and State;

The Court further finds that on November 13, 1987, the Defendants, MAX ALLEN TERHUNE and ORPAH QUALLATE (then Terhune), executed and delivered to SEARS MORTGAGE CORPORATION, their mortgage note in the amount of \$40,850.00, payable in monthly installments, with interest thereon at the rate of Ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, MAX ALLEN TERHUNE and ORPAH QUALLATE (the Terhune), then husband and wife, executed and delivered to SEARS MORTGAGE CORPORATION, a mortgage dated November 13, 1987, covering the above-described property. Said mortgage was recorded on November 18, 1987, in Book 680, Page 435, in the records of Mayes County, Oklahoma.

The Court further finds that on May 15, 1989, SEARS MORTGAGE CORPORATION, assigned the above-described mortgage note and mortgage to the SECRETARY OF HOUSING AND URBAN DEVELOPMENT of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on June 13, 1989, in Book 702, Page 177, in the records of Mayes County, Oklahoma.

The Court further finds that on April 18, 1989, the Defendant, ORPAH QUALLATE, 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 April 27, 1990.

The Court further finds that the Defendants, ORPAH QUALLATE and MAX ALLEN TERHUNE, 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, ORPAH QUALLATE and MAX ALLEN TERHUNE, are indebted to the Plaintiff in the principal sum of \$68,836.78, plus interest at the rate of 10 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 Defendants, ORPAH QUALLATE, MAX ALLEN TERHUNE, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, TEXAS DEPARTMENT OF HUMAN SERVICES and YOLANDA SANDOVAL, are in default, and have no right, title or interest in the subject real property.

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

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, ORPAH QUALLATE and MAX ALLEN TERHUNE, in the principal sum of \$68,836.78, plus interest at the rate of 10 percent per annum from April 1, 1995 until judgment, plus interest thereafter

at the current legal rate of 5.62 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, ORPAH QUALLATE, MAX ALLEN TERHUNE, STATE OF OKLAHOMA, ex rel. DEPARTMENT OF HUMAN SERVICES, TEXAS DEPARTMENT OF HUMAN SERVICES, YOLANDA SANDOVAL, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Mayes 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, ORPAH QUALLATE and MAX ALLEN TERHUNE, 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;

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.

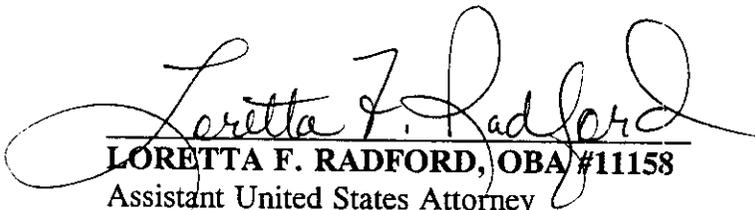
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

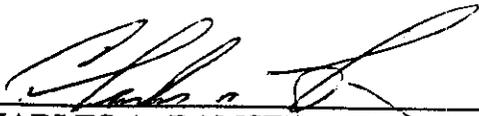
STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

3460 U.S. Courthouse
Tulsa, Oklahoma 74103

(918) 581-7463



CHARLES A. RAMSEY, OBA #10116

Assistant District Attorney

P.O. Box 845

Pryor, OK 74362

(918) 825-2171

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Mayes County, Oklahoma

Judgment of Foreclosure

Civil Action No. 95CV 937B

LFR:flv

F I L E D

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

JUN 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THE SUM OF TWO THOUSAND)
 FOUR HUNDRED NINETEEN)
 AND NO/100 DOLLARS)
 (\$2,419.00) IN UNITED)
 STATES CURRENCY,)
)
 Defendant.)

CIVIL ACTION NO. 96-C-0024-B

CLERK'S ENTRY OF DEFAULT

ENTERED ON DOCKET
6-14-96

It appearing from the files and records of this Court as of June 13, 1996, and the Declaration of Assistant United States Attorney Catherine Depew Hart, that all parties in interest, if any, to the following-described defendant currency, to-wit:

The Sum of Two Thousand
Four Hundred Nineteen and
no / 100 Dollars
(\$2,419.00) in United
States Currency,

against which judgment for affirmative relief is sought in this action, have failed to plead or otherwise defend as to the defendant currency, as provided by the Federal Rules of Civil Procedure:

I, PHIL LOMBARDI, Clerk of said Court, pursuant to the requirements of Rule 55(a) of said rules, do hereby enter default as to the above-described defendant currency as to all persons

and/or entities, by virtue of their failure to file Claims to said defendant currency, if any.

DATED at Tulsa, Oklahoma, this 13 day of June, 1996.

PHIL LOMBARDI,
Clerk, U. S. District Court

By: _____



N:\UDD\CHOOK\FC\WISE2\05327

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

F I L E D

JUN 12 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

RIVER THAMES INSURANCE)
COMPANY,)

Plaintiff,)

vs.)

MIKE JACKSON and JOE RUARK,)
individually and as partners, d/b/a Gobblers,)
and DARREN FAULCONER,)

Defendants.)

Case No. 96-CV-461C

ENTERED ON DOCKET

DATE JUN 13 1996

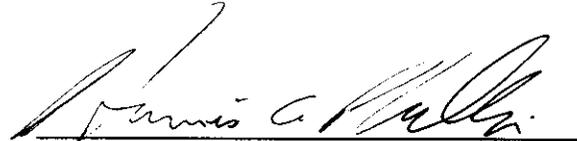
NOTICE OF DISMISSAL

Pursuant to Fed.R.Civ.P. 41(a)(1)(i), the plaintiff, RIVER THAMES INSURANCE COMPANY, hereby gives notice that the defendant, JOE RUARK, is dismissed without prejudice to further litigation in this matter.

Respectfully submitted,

NIEMEYER, ALEXANDER & AUSTIN

By



Harris A. Phillips, OBA No. 14134
Three Hundred North Walker
Oklahoma City, OK 73102-1800
Telephone: (405) 232-2725
Facsimile: (405) 239-7185

ATTORNEYS FOR PLAINTIFFS

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

BENNY LOLLIS,)
)
Plaintiff,)
)
v.)
)
LIBERTY MUTUAL INSURANCE)
COMPANY,)
)
Defendant.)

Case No. 95-C-449K

ENTERED ON DOCKET
DATE JUN 13 1996

FILED

JUN 12 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

Upon stipulation of the Plaintiff, this cause is hereby
dismissed with prejudice, each party to bear its own costs.

Dated this 11 day of June, 1996.

s/ TERRY C. KERN

Honorable Terry C. Kern
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEAN E. NEWBERRY; 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 JUN 13 1996

F I L E D

JUN 12 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil Case No. 96CV 154K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 11 day of June,

1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, STATE OF OKLAHOMA, *ex rel.* OKLAHOMA TAX COMMISSION, appears not having previously filed a Disclaimer; the Defendant, CITY OF BROKEN ARROW, Oklahoma, appears by Michael R. Vanderburg, City Attorney, Broken Arrow, Oklahoma; and the Defendant, DEAN E. NEWBERRY, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, DEAN E. NEWBERRY, signed a Waiver of Summons on March 4, 1996; that the

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

Defendant, CITY OF BROKEN ARROW, Oklahoma, acknowledged receipt of Summons and Complaint on February 29, 1996, by Certified Mail.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on March 18, 1996; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, filed its Answer on March 8, 1996; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, filed its Disclaimer on March 21, 1996; and that the Defendant, DEAN E. NEWBERRY, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, DEAN E. NEWBERRY, is a single unmarried person.

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 TWELVE (12), BLOCK THREE(3),
WINDSOR ESTATES SECOND, AN ADDITION
TO THE CITY OF BROKEN ARROW, TULSA
COUNTY, STATE OF OKLAHOMA,
ACCORDING TO THE RECORDED PLAT
THEREOF.**

A/K/A 4913 SOUTH POPLAR, BROKEN ARROW, OKLAHOMA 74011

The Court further finds that on May 9, 1986, Monte K. Miron and Judith Ann Miron, executed and delivered to FIRSTIER MORTGAGE CO., their mortgage note in the amount of \$72,100.00, payable in monthly installments, with interest thereon at the rate of Nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, Monte K. Miron and Judith Ann Miron, husband and wife, executed and delivered to FIRSTIER MORTGAGE CO., a mortgage dated May 9, 1986, covering the above-described property. Said mortgage was recorded on May 13, 1986, in Book 4941, Page 2627, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 31, 1987, FIRSTIER MORTGAGE CO., assigned the above-described mortgage note and mortgage to LEADER FEDERAL SAVINGS & LOAN ASSOCIATION. This Assignment of Mortgage was recorded on September 28, 1987, in Book 5054, Page 819, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 28, 1988, LEADER FEDERAL SAVINGS & LOAN ASSOCIATION, assigned the above-described mortgage note and mortgage to the SECRETARY OF HOUSING AND URBAN DEVELOPMENT, his successors in office and assigns. This Assignment of Mortgage was recorded on October 28, 1988, in Book 5136, Page 2342, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendant, DEAN E. NEWBERRY and Aleta L. Newberry, then husband and wife, became the record owners of the subject property by virtue of a General Warranty Deed, dated October 30, 1987, and recorded on October 30, 1987, in Book 5061, Page 463, in the records of Tulsa County, Oklahoma. The Defendant, DEAN E. NEWBERRY, is now the current record owner of the subject property by virtue of a Quit-Claim Deed executed by Aleta L. Newberry, pursuant to a Divorce Decree. The Defendant, DEAN E. NEWBERRY, is the current assumpor of the subject indebtedness.

The Court further finds that on November 1, 1988, the Defendant, DEAN E. NEWBERRY, entered into an agreement with the Plaintiff lowering the amount of the monthly

installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on November 1, 1989, November 1, 1990 and September 1, 1991.

The Court further finds that the Defendant, DEAN E. NEWBERRY, 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, DEAN E. NEWBERRY, is indebted to the Plaintiff in the principal sum of \$120,073.63, plus interest at the rate of 9 percent per annum from March 22, 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 \$24.00 which became a lien on the property as of July 5, 1989 and a lien in the amount of \$21.00 which became a lien on the property as of July 2, 1990. Said liens are inferior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendant, DEAN E. NEWBERRY, is in default, and has no right, title or interest in the subject real property.

The Court further finds that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, disclaims any right, title or interest in the subject real property.

The Court further finds that the Defendant, 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, DEAN E. NEWBERRY, in the principal sum of \$120,073.63, plus interest at the rate of 9 percent per annum from March 22, 1995 until judgment, plus interest thereafter at the current legal rate of 5.62 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 \$45.00, plus costs and interest, for personal property taxes for the years 1988 and 1989, plus the costs of this action.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, DEAN E. NEWBERRY, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION 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, DEAN E. NEWBERRY, to satisfy the judgment In Rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

Third:

In payment of Defendant, COUNTY TREASURER,
Tulsa County, Oklahoma, in the amount of \$45.00,
personal property taxes which are currently due and
owing.

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

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

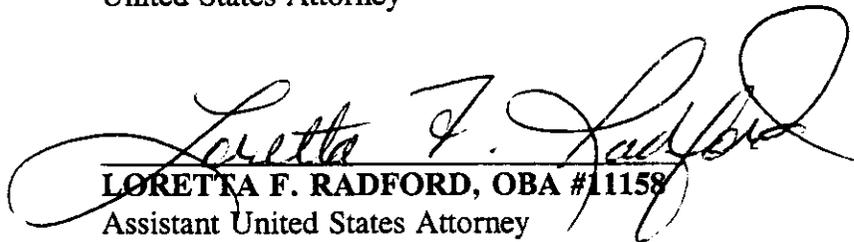
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under and by virtue of this judgment
and decree, all of the Defendants and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of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

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

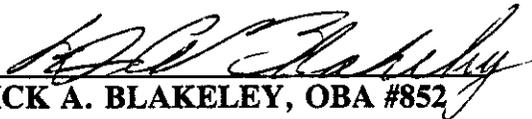
APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney
3460 U.S. Courthouse
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Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



MICHAEL R. VANDERBURG, OBA #9180

City Attorney, Broken Arrow, Oklahoma
220 S. First Street
Broken Arrow, Oklahoma 74012
(918) 251-5311
Attorney for Defendant,
City of Broken Arrow, Oklahoma

Judgment of Foreclosure
Civil Action No. 96CV 154K

LFR:flv

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

FILED

JUN 12 1996

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

KENDALL D. BARBER, Plaintiff, v. ALBERTSONS, INC., Defendant.

Case No. 96-C-354(H)

ORDER

This matter comes before the Court on Defendant's petition for removal. Plaintiff originally brought this action in the District Court for Washington County. Plaintiff's petition alleges one cause of action and claims damages "in excess of \$10,000.00" for this cause of action. Defendant Albertsons, Inc. ("Albertsons") filed a petition for removal stating that removal is proper on the basis of diversity jurisdiction.

1 In pertinent part, the statute governing "procedure for removal" states that:

[t]he United States district court in which [the notice for removal] is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the prosecution as justice shall require.

See also 28 U.S.C. § 1447(c) (procedure after removal) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.").

2 In Oklahoma, the general rules of pleading require that:

[e]very pleading demanding relief for damages in money in excess of Ten Thousand Dollars (\$10,000.00) shall, without demanding any specific amount of money, set forth only that the amount sought as damages is in excess of Ten Thousand Dollars (\$10,000.00), except in actions sounding in contract.

Okla. Stat. Ann. tit. 12, § 2008(2) (West 1993).

It appears that complete diversity of citizenship exists between the parties. The question remaining for the Court is whether the jurisdictional amount is satisfied under 28 U.S.C. § 1332(a).

I.

Initially, the Court notes that federal courts are courts of limited jurisdiction. Further, “[d]efendant’s right to remove and plaintiff’s right to choose his forum are not on equal footing; for example, unlike the rules applied when plaintiff has filed suit in federal court with a claim that, on its face, satisfies the jurisdictional amount, removal statutes are construed narrowly; where plaintiff and defendant clash about jurisdiction, uncertainties are resolved in favor of remand.” Burns v. Windsor Ins. Co., 31 F.3d 1092, 1095 (11th Cir. 1994).

In order for a federal court to have diversity jurisdiction, the amount in controversy must exceed \$50,000. 28 U.S.C. § 1332(a). The Tenth Circuit has clarified the analysis which a district court should undertake in determining whether an amount in controversy is greater than \$50,000. The Tenth Circuit stated:

[t]he amount in controversy is ordinarily determined by the allegations of the complaint, or, where they are not dispositive, by the allegations in the notice of removal. (citation omitted). The burden is on the party requesting removal to set forth, in the notice of removal itself, the “underlying facts supporting [the] assertion that the amount in controversy exceeds \$50,000.” (citation omitted) Moreover, there is a presumption against removal jurisdiction. (emphasis in original)

Laughlin v. Kmart Corp., 50 F.3d 871, 873 (10th Cir.), cert. denied, 116 S. Ct. 174 (1995); e.g., W.L. Hughes & Lucille A. Hughes v. E-Z Serve Petroleum Marketing Co., No. 95-C-1240-H (N.D. Okla. 1996) (applying Laughlin and remanding case); Melissa F. Martin v. Missouri Pacific R.R. Co. d/b/a Union Pacific R.R. Co., No. 95-C-289-H (N.D. Okla. 1996) (same); Herber v. Wal-Mart Stores, 886 F. Supp. 19, 20 (D. Wyo. 1995) (same); Lawrence J. Homolka v. Hartford Ins. Group, Individually and d/b/a Hartford Underwriters Ins. Co., No. 95-C-727(H) (N.D. Okla. 1995) (same); Travis Johnson v. Wal-Mart Stores, Inc., No. 95-C-1176(H) (N.D. Okla. 1995)

(same); Maxon v. Texaco Ref. & Marketing Inc., 905 F. Supp. 976 (N.D. Okla. 1995) (Holmes, J.) (same).

In Laughlin, the plaintiff originally brought his action in state court. Defendant removed to federal court based on diversity jurisdiction. The court granted summary judgment to defendant, and plaintiff appealed. On appeal, the Tenth Circuit raised the issue of subject matter jurisdiction and remanded the case to state court. Neither the petition nor the notice of removal had established the requisite jurisdictional amount. The petition alleged that the amount in controversy was "in excess of \$10,000" for each of two claims. The notice of removal did not refer to an amount in controversy, but did contain a reference to the removal statute, 28 U.S.C. § 1441. In its brief on the issue of jurisdiction, Kmart set forth facts alleging that, at the time of removal, the amount in controversy was well above the jurisdictional minimum of \$50,000. However, Kmart failed to include those facts in its notice of removal.

The Tenth Circuit held that:

Kmart's economic analysis of Laughlin's claims for damages, prepared after the motion for removal and purporting to demonstrate the jurisdictional minimum, does not establish the existence of jurisdiction at the time the motion was made. Both the requisite amount in controversy and the existence of diversity must be affirmatively established on the face of either the petition or the removal notice.

Laughlin, 50 F.3d at 873.

In Laughlin, Kmart attempted to rely on Shaw v. Dow Brands, Inc., 994 F.2d 364 (7th Cir. 1993). The Shaw court held that "the plaintiff had conceded jurisdiction because he failed to contest removal when the motion was originally made, and because he stated in his opening appellate brief that the amount in controversy exceeded \$50,000." The Tenth Circuit distinguished Shaw, stating:

[w]e do not agree, however, that jurisdiction can be "conceded." Rather, we agree with the dissenting opinion that "subject matter jurisdiction is not a matter of equity or of conscience or of efficiency," but is a matter of the "lack of judicial power to decide a controversy." (citation omitted)

Laughlin, 50 F.3d at 874.

II.

The Tenth Circuit's interpretation of 28 U.S.C. § 1441, the statute governing a party's removal of a lawsuit to federal court predicated on diversity jurisdiction, is in accord with the views of other federal courts. In a comprehensive, well-reasoned opinion, the Sixth Circuit held that, where the amount of damages in the lawsuit is not specified, the removing party bears the burden of proving by a preponderance of the evidence that the amount in controversy exceeds \$50,000. Gafford v. General Elec. Co., 997 F.2d 150, 157-60 (6th Cir. 1993); accord Allen v. R & H Oil & Gas Co., 63 F.3d 1326, 1335 (5th Cir. 1995) (where the complaint does not allege a specific amount of damages, the removing defendant must prove by a preponderance of the evidence that the amount in controversy exceeds \$50,000); Shaw, 994 F.2d at 366 (adopting preponderance of the evidence standard; removing defendant must produce proof to a reasonable probability that jurisdiction exists); McCorkindale v. American Home Assurance Co./A.I.C., 909 F. Supp. 646, 653 (N.D. Iowa 1995) (same); cf. Burns, 31 F.3d at 1097 (where plaintiff alleges a specific claim for damages in an amount less than the jurisdictional amount, to establish removal jurisdiction, defendant must prove to a legal certainty that, if plaintiff were to prevail, she would not recover less than \$50,000).

In Gafford, a witness on behalf of the removing defendant, the Senior Counsel for Labor and Employment at the GE facility where Plaintiff was employed, testified at the pretrial hearing on jurisdiction that, if the Plaintiff were to prevail on her claims, she would be entitled to damages in an amount greater than \$50,000. Plaintiff did not present any evidence contradicting that testimony. Id. at 160-61. On that basis, the Sixth Circuit upheld the district court's finding of removal jurisdiction. Id. at 161.

The Gafford court noted that its holding (that the appropriate burden of proof born by the removing party is the preponderance of the evidence) comports with the views expressed by the

United States Supreme Court in McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936). Quoting McNutt, the Gafford court stated:

[t]he authority which the statute vests in the court to enforce the limitations of its jurisdiction precludes the idea that jurisdiction may be maintained by mere averment or that the party asserting jurisdiction may be relieved of his burden by any formal procedure. If his allegations of jurisdictional facts are challenged by his adversary in an appropriate manner, he must support them by competent proof. And where they are not so challenged the court may still insist that the jurisdictional facts be established or the case be dismissed, and for that purpose the court may demand that the party alleging jurisdiction justify his allegations by a preponderance of the evidence.

997 F.2d at 160.

To the extent that both Laughlin and Gafford represent the requirement that underlying facts be utilized by the removing party to satisfy its burden of proof, the Fifth Circuit is in accord. See Asociacion Nacional de Pescadores a Pequena Escala o Artesanales de Colombia (Anpac) v. Dow Quimica de Colombia S.A., 988 F.2d 559, 566 (5th Cir. 1993), cert. denied, 114 S. Ct. 685 (1994). In Anpac, a group of Colombian fishermen sued a chemical manufacturer and its Colombian subsidiary in Texas state court for personal injuries such as "skin rashes" allegedly arising out of a pesticide spill. The complaint did not specify an amount of damages. Defendant Dow filed a notice of removal which stated simply that "the matter in controversy exceeds \$50,000 exclusive of interest and costs." Id. at 565. This conclusory statement did not establish that removal jurisdiction was proper. Id. The Fifth Circuit articulated its analysis in Allen, 63 F.3d at 1335, stating:

[f]irst, a court can determine that removal was proper if it is facially apparent that the claims are likely above \$50,000. (citations omitted). If not, a removing attorney may support federal jurisdiction by setting forth the facts in controversy -- preferably in the removal petition, but sometimes by affidavit -- that support a finding of the requisite amount. (citation omitted).

Removal, however, cannot be based simply upon conclusory allegations. (citation omitted). Finally, under any manner of proof, the jurisdictional facts that support removal must be judged at the time of the removal, and any post-petition affidavits are allowable only if relevant to that period of time. (citation omitted).

See also Lupo v. Human Affairs Int'l, Inc., 28 F.3d 269, 273-74 (2d Cir. 1994) ("We hold that if the jurisdictional amount is not clearly alleged in the plaintiff's complaint, and the defendant's notice of removal fails to allege facts adequate to establish that the amount in controversy exceeds the jurisdictional amount, federal courts lack diversity jurisdiction as a basis for removing the plaintiff's action from state court.") (emphasis added); Reid v. Delta Gas, Inc., 837 F. Supp. 751, 752 (M.D. La. 1993) (motion to remand denied where removing party introduced deposition testimony of plaintiff and letter from neurosurgeon to establish federal jurisdiction).

These views of other federal courts are consistent with the central holding of Laughlin, as expressed by the Tenth Circuit's statement that "[t]he burden is on the party requesting removal to set forth, in the notice of removal itself, the underlying facts supporting [the] assertion that the amount in controversy exceeds \$50,000." 50 F.3d at 873.

III.

In the instant case, neither the allegations in the petition nor the allegations in the removal documents, establish the requisite jurisdictional amount. The petition alleges one claim. Plaintiff seeks damages "in excess of \$10,000" for this claim. Thus, on its face, the petition does not establish that the amount in controversy is greater than \$50,000.00.

In the removal documents, Albertsons has not complied with the requirements set forth in Laughlin and the other authorities described above. The petition for removal does not allege any underlying facts whatsoever with respect to Plaintiff's claims for damages. Instead, Albertsons offers only a conclusory statement of Plaintiff's damages allegations in the petition for removal and states that Plaintiff's response to Defendant's first request for admissions will substantiate Defendant's claim that the value of the case exceeds \$50,000. The request for admission asks Plaintiff to "[a]dmit that the amount in controversy in this action, including all claims for damages made by Plaintiff, does not exceed the sum or value of \$50,000.00 exclusive of interest and costs." In response, Plaintiff denies this request for admission.

The effect of this denial is that Plaintiff has refused to admit that the amount in controversy does not exceed \$50,000.00. The Court concludes that this response by Plaintiff, standing alone, does not affirmatively establish that the amount in controversy exceeds \$50,000 for purposes of diversity jurisdiction.³

IV.

Where the face of the complaint does not affirmatively establish the requisite amount in controversy, the plain language of Laughlin requires a removing defendant to set forth, in the removal documents, not only the defendant's good faith belief that the amount in controversy exceeds \$50,000, but also facts underlying defendant's assertion. In other words, a removing defendant must set forth specific facts which form the basis of its belief that there is more than \$50,000 at issue in the case. The removing defendant bears the burden of establishing federal court jurisdiction. Laughlin, 50 F.3d at 873. And the Tenth Circuit has clearly stated what is required to satisfy that burden.

Here, Albertsons relies upon Plaintiff's response to its request for admission as the underlying fact supporting its conclusion that the amount in controversy exceeds \$50,000.00. The Court believes, however, that under Laughlin, this is not adequate. As set out in Johnson v. Wal-Mart Stores, Inc., No. 95-C-1176(H) (N.D. Okla. 1995), if the face of the petition does not affirmatively establish that the amount in controversy exceeds \$50,000.00, then the rationale of Laughlin contemplates that the removing party will undertake to perform an economic analysis of the alleged damages with underlying facts. This requirement for removal is certainly not onerous. Indeed, in many cases, the removing party may be able to satisfy its burden by simply parsing out the elements of damages claimed in the petition, assuming, of course, that the total of these

³ In its removal petition, Albertsons argues that it is appropriate to use a response to a request for admission to establish the amount in controversy, relying on Judy Flood v. Wal-Mart Stores, Inc., No. 92-C-325-E (N.D. Okla. July 28, 1992). Laughlin, however, was decided three years later, in 1995, and is now binding authority upon this Court. Clearly, any reliance upon outdated district court authority is misplaced.

elements exceeds \$50,000.00. E.g., Herber, 886 F. Supp. at 20 (“Practitioners in Wyoming should be made aware that, under Laughlin, the jurisdictional allegation is determined as of the time of filing the Notice of Removal. An affidavit setting forth underlying facts will properly support a Notice of Removal.”). In other cases, the removing party may seek to establish the necessary facts underlying the damages claim through discovery requests which produce “underlying facts”, rather than the vague and legally insufficient response to Albertsons’ request for admission, which response was tendered to this Court in connection with Defendant’s claim of diversity jurisdiction.

In this case, Albertsons could have specifically addressed each of Plaintiff’s claims for damages set forth in the petition and sought to establish the requisite jurisdictional amount accordingly. In pertinent part, the petition states:

[a]s a direct and proximate cause of the Defendant’s failure to properly fill the medication prescription provided by Plaintiff to Defendant, and the resulting seizures, the Plaintiff suffered a left shoulder injury. The muscles, tendons, ligaments, soft tissue, bony structure, blood vessels, and nerve centers of the Plaintiff were torn, pulled, strained, traumatized, and their functions impaired. Said injuries are permanent, painful, and progressive. When injured, the Plaintiff, KENDALL D. BARBER, was 48 years of age with a life expectancy of 27.9 additional years.

As a direct and proximate cause of the negligence of the Defendant, and the inappropriate filling of Plaintiff’s medicine prescription and injuries caused thereby, the Plaintiff has been damaged in that he has incurred hospital, medical, and physicians bills, and he will hereafter incur additional medical bills and he has been permanently impaired due to the nature of the injuries and the extent of the injuries which he has received. The Plaintiff has incurred to date medical bills, and which medical bills are still being incurred at this time, and the Plaintiff reserves the right to submit his claim for medical and hospital bills at the time of trial.

The Plaintiff, KENDALL D. BARBER, has been delayed and hindered in his business and occupation, and he has lost time therefrom, and by such reason has been deprived of wages and gains and profits, which he would otherwise have acquired had he not been so injured, and the Plaintiff reserves the right to submit his claim for lost wages and reduced earning capacity at the time of trial.

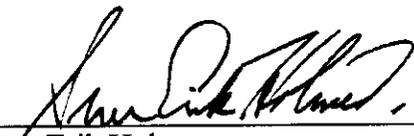
The injuries which the Plaintiff, KENDALL D. BARBER, has suffered, have caused and continue to cause the Plaintiff great physical and mental pain and suffering. The Plaintiff, KENDALL D. BARBER, in the future, and in all probability, for the remainder of his life, will suffer pain and agony, both mental and physical, as a result of his injuries, and his life will, and has been permanently changed and altered as a result of all his injuries.

Thus, from the face of the petition, it is clear that Plaintiff seeks damages for hospital bills, physical and emotional pain and suffering, and lost wages and future earning capacity. Initial discovery might have focused on these elements of the petition to determine whether the amount of Plaintiff's claims exceeds \$50,000.00.

Based upon a review of the record, the Court concludes that Albertsons has not met its burden, as defined by the court in Laughlin. Thus, the Court is without subject matter jurisdiction and lacks the power to hear this matter. As a result, this Court must remand the action to the District Court of Washington County. The Court hereby orders the Court Clerk to remand the case to the District Court in and for Washington County.

IT IS SO ORDERED.

This 12TH day of JUNE, 1996.



Sven Erik Holmes
United States District Judge

o:\holmes\orders\96cv354.rem

6-13-96

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

F I L E D

JUN 12 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

C. R. "TAD" YOUNG, an)
 individual)
)
 Plaintiff,)
)
 vs.)
)
 THE MEAD CORPORATION,)
 ZELLERBACH DIVISION, an)
 Ohio Corporation,)
)
 Defendants.)

Case No. 95-C-1066H

**JOINT STIPULATION OF
DISMISSAL WITH PREJUDICE**

Plaintiff C. R. "Tad" Young and Defendants, The Mead Corporation, Zellerbach Division, by and through their respective attorneys, pursuant to Federal Rule of Civil Procedure 41, hereby stipulate to the Dismissal With Prejudice of this action. Each party shall bear his or its own attorneys' fees and costs incurred in connection with this action.

Respectfully submitted,

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

By: 

Donald L. Kahl, Esq., OBA #4855
J. Patrick Cremin, OBA #2013
T. Lane Wilson, Esq.
Hall, Estill, Hardwick,
Gable, Golden & Nelson, P.C.
320 South Boston Avenue
Suite 400
Tulsa, OK 74103-3708
(918) 594-0400

ATTORNEYS FOR PLAINTIFFS

PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR

By: 

Randall G. Vaughan
Kevin P. Doyle
900 ONEOK Plaza
100 West 5th Street
Tulsa, Oklahoma 74103-4218
(918) 581-5500

ATTORNEYS FOR DEFENDANTS

SAC

ENTERED ON DOCKET
DATE 6/13/96

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 12 1996 SAC

KAREN LONG,

Plaintiff,

v.

JOHNSON BROKERS & ADMINISTRATORS, INC.)

Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 96-CIV-214-M ✓

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COME NOW Plaintiff herein, Karen Long, and pursuant to Fed. R. Civ. P. 41(a)(1), hereby dismiss, without prejudice, any and all and all claims for compensatory and/or punitive damages asserted, and which could have been asserted, against Defendant Johnson Brokers & Administrators, Inc.

RICHARD D. GIBBON AND ASSOCIATES

BY:

Richard D. Gibbon
Richard D. Gibbon, OBA #3340
1611 South Harvard
Tulsa, Oklahoma 74112
(918) 745-0687

ATTORNEY FOR PLAINTIFF

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

BY:

Ronald A. White
Ronald A. White, OBA #12037
Robert P. Fitz-Patrick,
OBA #14713
320 South Boston, Suite 400
Tulsa, Oklahoma 74103-3708
(918) 594-0452

ATTORNEYS FOR DEFENDANT

178B-1
6-12-96

COPY

PT 7-12-96
JT 8-19-96

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

JUN 11 1996

DAVID SCOTT SATTERFIELD)
)
 Plaintiff,)
 v.)
)
 THE TOWN OF CHELSEA, STATE OF)
 OKLAHOMA, ex rel., TOM HOWSE,)
 in his official capacity as)
 Chief Police, and his individual)
 capacity,)
 Defendants.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 95-C-1188-B

ENTERED ON DOCKET
DATE JUN 12 1996

STIPULATION OF DISMISSAL WITH PREJUDICE

All the parties to this action hereby stipulate that any and all causes of action and claims against the Defendants, City of Chelsea and Tom Howse, are hereby dismissed with prejudice.

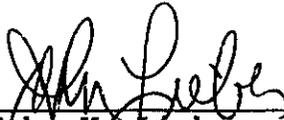
David Scott Satterfield
DAVID SCOTT SATTERFIELD, PLAINTIFF

BRIGGS & GATCHELL

By: Catherine A. Gatchell
Catherine A. Gatchell, OBA #3288
507 S. Main Plaza, Suite 605
Tulsa, Oklahoma 74103

ATTORNEY FOR PLAINTIFF
DAVID SCOTT SATTERFIELD

ELLER AND DETRICH
A Professional Corporation

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

ATTORNEYS FOR DEFENDANTS
TOWN OF CHELSEA AND TOM HOWSE

3.MAG\SATTERFI\STIP.DIS

6-12-96

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

FILED

JUN 11 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

RAE CORPORATION, an Oklahoma
corporation,

Plaintiff,

v.

CSI, INC., a Pennsylvania corporation

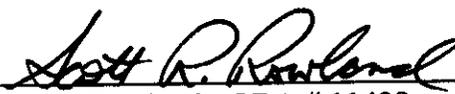
Defendant,

Case No. 95-C-116-H

JOINT STIPULATION FOR DISMISSAL

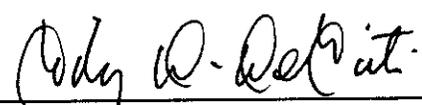
Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, it is hereby stipulated that the above-captioned action may be dismissed with prejudice, each party to bear its own costs and expenses, including attorney's fees.

DATED this 11th day of June, 1996.



Scott R. Rowland - OBA # 11498
BOONE, SMITH, DAVIS,
HURST & DICKMAN
500 ONEOK Plaza
100 W. 5th. Street
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Telephone: (918) 587-0000

ATTORNEY FOR PLAINTIFFS



Timothy D. DeGiusti - OBA # 13215
Don G. Holladay - OBA # 4294
ANDREWS DAVIS LEGG BIXLER
MILSTEN & PRICE
500 West Main Street
Oklahoma City, Oklahoma 73102
Telephone: (405) 272-9241

ATTORNEYS FOR DEFENDANTS

ENTERED ON DOCKET

DATE 6-12-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JERRY N. DURANT aka Jerry North)
Durant aka Jerry Durant; TRACY M.)
DURANT aka Tracy Marie Durant;)
STATE OF OKLAHOMA, ex rel.)
OKLAHOMA TAX COMMISSION;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

FILED

JUN 11 1996

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

Civil Case No. 95cv 1120H

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 10th day of June, 1996.

The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, appears by Kim D. Ashley, Assistant General Counsel, and the Defendants, JERRY N. DURANT aka Jerry North Durant and TRACY M. DURANT aka Tracy Marie Durant, appear not.

The Court being fully advised and having examined the court file finds that the Defendant, JERRY N. DURANT aka Jerry North Durant, was served with process a copy of Summons and Complaint on April 2, 1996; that the Defendant, TRACY M. DURANT aka

Tracy Marie Durant, was served with process a copy of Summons and Complaint on April 2, 1996.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on December 4, 1995; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, filed its Answer on November 24, 1995; and that the Defendants, JERRY N. DURANT aka Jerry North Durant and TRACY M. DURANT aka Tracy Marie Durant, filed their Answer on May 2, 1996.

The Court further finds that the Defendant, JERRY N. DURANT, is one and the same person as Jerry North Durant, and will hereinafter be referred to as "JERRY N. DURANT." The Defendant, TRACY M. DURANT, is one and the same person as Tracy Marie Durant, and will hereinafter be referred to as "TRACY M. DURANT." The Defendants, JERRY N. DURANT and TRACY M. DURANT, are husband and wife.

The Court further finds that on October 17, 1988, Jerry North Durant and Tracy Marie Durant, filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-B-3130. On February 3, 1989, the United States Bankruptcy Court for the Northern District of Oklahoma filed its Discharge of Debtor and the case was subsequently closed on March 21, 1989.

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 Fifteen (15), Block Three (3), HUNTERS RUN, an Addition in Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on August 14, 1987, the Defendants, JERRY N. DURANT and TRACY M. DURANT, executed and delivered to COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P., A LIMITED PARTNERSHIP, their mortgage note in the amount of \$50,758.00, 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, JERRY N. DURANT and TRACY M. DURANT, executed and delivered to COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P., A LIMITED PARTNERSHIP, a mortgage dated August 14, 1987, covering the above-described property. Said mortgage was recorded on August 18, 1987, in Book 5046, Page 323, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 20, 1988, COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P., LIMITED PARTNERSHIP, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on July 12, 1988, in Book 5113, Page 2128, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 27, 1988, the Defendants, JERRY N. DURANT and TRACY M. DURANT, 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 October 25, 1989, October 10, 1990, October 22, 1991, October 28, 1992 and May 27, 1994.

The Court further finds that the Defendants, JERRY N. DURANT and TRACY M. DURANT, 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, JERRY N. DURANT and TRACY M. DURANT, are indebted to the Plaintiff in the principal sum of \$66,607.14, plus interest at the rate of 9.5 percent per annum from June 8, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the 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 \$579.00, 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, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, has a lien on the property which is the subject matter of this action by virtue of state income taxes in the amount of \$785.82 which became a lien on the property as of December 14, 1988, a lien in the amount of \$722.66 which became a lien on the property as of December 11, 1992, a lien in the amount of \$973.94 which became a lien on the property as of February 23, 1995 and a lien in the amount of \$184.03 which became a lien on the property as of July 19, 1995. Said liens are inferior to the interest of the Plaintiff, United States of America.

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

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, JERRY N. DURANT and TRACY M. DURANT, in the principal sum of \$66,607.14, plus interest at the rate of 9.5 percent per annum from June 8, 1995 until judgment, plus interest thereafter at the current legal rate of 5.62 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 \$579.00, 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, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, have and recover judgment In Rem in the amount of \$2,666.45, plus accrued and accruing interest, for state income taxes, plus the costs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, JERRY N. DURANT, TRACY M. DURANT 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, JERRY N. DURANT and TRACY M. DURANT, 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 Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$579.00, 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, STATE OF OKLAHOMA, ex
rel. OKLAHOMA TAX COMMISSION, in the amount
of \$2,666.45, plus accrued and accruing interest, state
income 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.

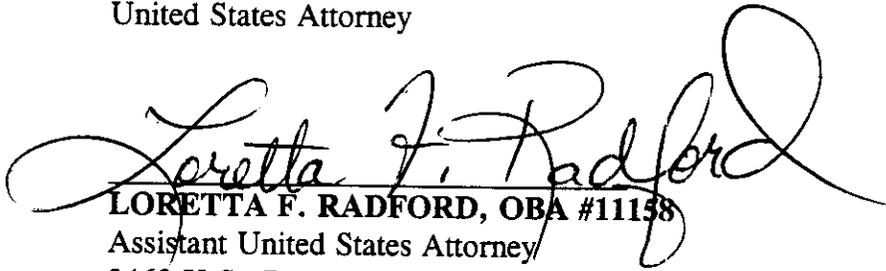
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and
after the sale of the above-described real property, under and by virtue of this judgment and
decree, all of the Defendants and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of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

S/ SVEN ERIK HOLMES

UNITED STATES DISTRICT JUDGE

APPROVED:

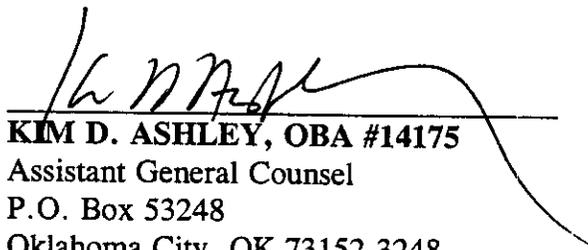
STEPHEN C. LEWIS
United States Attorney



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County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



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Oklahoma City, OK 73152-3248
(405) 521-3141
Attorney for Defendant,
State of Oklahoma, ex rel.
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 95cv 1120H

LFR:flv

ENTERED ON DOCKET

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DATE 6-12-96

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHRISTOPHER L. DAVIS aka CL Davis;)
 MARVA DAVIS aka Marva L. Davis;)
 TRIAD BANK, NA; STATE OF)
 OKLAHOMA, ex rel. OKLAHOMA TAX)
 COMMISSION; COUNTY TREASURER,)
 Osage County, Oklahoma; BOARD OF)
 COUNTY COMMISSIONERS, Osage)
 County, Oklahoma,)
)
 Defendants.)

F I L E D

JUN 11 1996

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

Civil Case No. 95cv ⁹⁷⁰ ~~670H~~

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 10th day of June,

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, Osage County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, appear by John S. Boggs, Jr., Assistant District Attorney, Osage County, Oklahoma; the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, appears not having previously filed a Disclaimer; the Defendant, TRIAD BANK, NA., appears not having previously filed a Disclaimer; and the Defendants, CHRISTOPHER L. DAVIS aka CL Davis and MARVA DAVIS aka Marva L. Davis, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, CHRISTOPHER L. DAVIS aka CL Davis, acknowledged receipt of Summons and

Complaint on January 17, 1996, by Certified Mail; that the Defendant, MARVA DAVIS aka Marva L. Davis, was served with process a copy of Summons and Complaint on April 10, 1996; that the Defendant, TRIAD BANK, NA, signed a Waiver of Summons on September 29, 1995; that Defendant, COUNTY TREASURER, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on September 28, 1995, by Certified Mail; and that Defendant, BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on September 28, 1995, by Certified Mail.

It appears that the Defendants, COUNTY TREASURER, Osage County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, filed their Answer on October 6, 1995; that the Defendant, TRIAD BANK, NA., filed its Disclaimer on October 6, 1995; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, filed its Disclaimer on October 25, 1995; and that the Defendants, CHRISTOPHER L. DAVIS aka CL Davis and MARVA DAVIS aka Marva L. Davis, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, CHRISTOPHER L. DAVIS, is one and the same person as CL Davis, and will hereinafter be referred to as "CHRISTOPHER L. DAVIS." The Defendant, MARVA DAVIS, is one and the same person as Marva L. Davis, and will hereinafter be referred to as "MARVA DAVIS." The Defendants, CHRISTOPHER L. DAVIS and MARVA DAVIS, 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 Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Two (2), Block Two (2), COUNTRY CLUB HEIGHTS, an Addition to Tulsa, Osage County, State of Oklahoma, according to the recorded Plat thereof.

a/k/a 1230 N. Olympia Ave. Tulsa, OK 74127

The Court further finds that on August 6, 1986, the Defendants, CHRISTOPHER L. DAVIS and MARVA DAVIS, executed and delivered to MORTGAGE CLEARING CORPORATION, AN OKLAHOMA CORPORATION, their mortgage note in the amount of \$36,174.00, payable in monthly installments, with interest thereon at the rate of Nine and One-Half percent (9½%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, CHRISTOPHER L. DAVIS and MARVA DAVIS, husband and wife, executed and delivered to MORTGAGE CLEARING CORPORATION, AN OKLAHOMA CORPORATION, a mortgage dated August 6, 1986, covering the above-described property. Said mortgage was recorded on August 14, 1986, in Book 700, Page 670, in the records of Osage County, Oklahoma.

The Court further finds that on May 30, 1989, MORTGAGE CLEARING CORPORATION, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on June 2, 1989, in Book 754, Page 700, in the records of Osage County, Oklahoma.

The Court further finds that on May 11, 1989, the Defendants, CHRISTOPHER L. DAVIS and MARVA DAVIS, 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 February 5, 1990, July 18, 1990 and June 1, 1992.

The Court further finds that the Defendants, CHRISTOPHER L. DAVIS and MARVA DAVIS, 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, CHRISTOPHER L. DAVIS and MARVA DAVIS, are indebted to the Plaintiff in the principal sum of \$50,812.41, plus interest at the rate of 9½ percent per annum from January 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, COUNTY TREASURER, Osage County, Oklahoma and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$27.99 which became a lien on the property as of 1990, a lien in the amount of \$30.82 which became a lien on the property as of 1991, a lien in the amount of \$27.12 which became a lien on the property as of 1992, a lien in the amount of \$31.29 which became a lien on the property as of 1993, a line int eh amount of \$10.70 which became a lien on the property as of 1994, and a lien in the amount of \$10.80 which became a lien on the property as of 1995, plus penalties and fees. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, CHRISTOPHER L. DAVIS and MARVA DAVIS, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, and TRIAD BANK, NA., disclaim any right, title or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, CHRISTOPHER L. DAVIS and MARVA DAVIS, in the principal sum of \$50,812.41, plus interest at the rate of 9½ percent per annum from January 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5.62 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, COUNTY TREASURER, Osage County, Oklahoma and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, have and recover judgment in the amount of

\$138.72, plus costs and interest, for personal property taxes for the year 138.72, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, CHRISTOPHER L. DAVIS, MARVA DAVIS, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION and TRIAD BANK, NA., 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, CHRISTOPHER L. DAVIS and MARVA DAVIS, 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 Defendants, COUNTY TREASURER, Osage County, Oklahoma and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, in the

amount of \$138.72, 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.

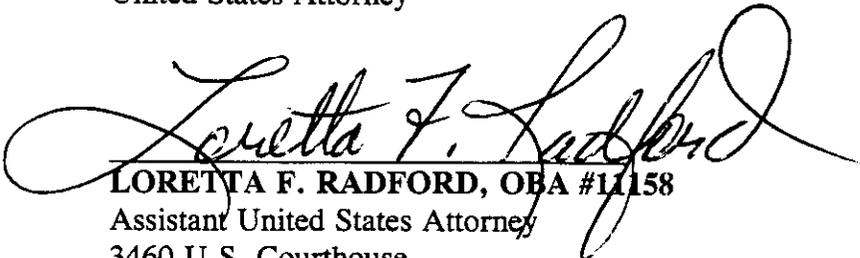
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and
after the sale of the above-described real property, under and by virtue of this judgment and
decree, all of the Defendants and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of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

S/ SVEN ERIK HOLMES

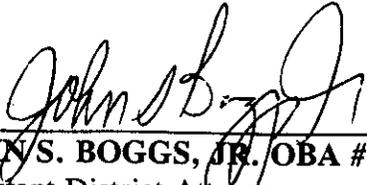
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



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



JOHN S. BOGGS, JR. OBA #0920

Assistant District Attorney

District Attorneys Office

Osage County Courthouse

Pawhuska, OK 74056

(918) 287-1510

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Osage County, Oklahoma

Judgment of Foreclosure

Civil Action No. 95CV 970H

LFR:flv

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

STEVE KITCHELL, President of)
Group K Corporation, Inc., d/b/a)
MIDNIGHT RODEO,)

Plaintiff,)

vs.)

CITY OF TULSA,)

Defendant.)

Case No. 93-C-1066-~~H~~ H

FILED

JUN 11 1996

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

ORDER OF DISMISSAL

THIS MATTER comes on for hearing on this 10th day of June, 1996,
before the undersigned Judge of the United States District Court on the Joint
Dismissal by Stipulation. The court, having read the pleadings on file herein and
being otherwise advised in the premises, finds that the following Order should
issue:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the
above-entitled cause is hereby dismissed without prejudice to refileing in the
future.

S/ SVEN ERIK HOLMES

Sven Holmes
United States District Judge
Northern District of Oklahoma

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

JUN 11 1996

OXY USA Inc., a Delaware corporation,)
)
Plaintiff,)
)
v.)
)
UNION OIL COMPANY OF CALIFORNIA, a)
California corporation, d/b/a UNOCAL,)
UNOCAL,)
)
Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 94 C 228 K

ENTERED ON DOCKET

DATE JUN 12 1996

STIPULATION OF DISMISSAL WITH PREJUDICE

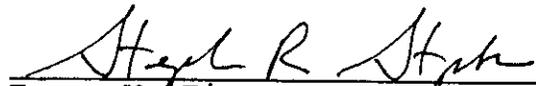
Come now the Plaintiff, OXY USA Inc., and the Defendant, Union Oil Company of California, d/b/a Unocal, pursuant to Federal Rule of Civil Procedure 41(a)(1), and hereby stipulate to dismiss all claims set forth in this case with prejudice to a future refiling and with each party to bear its own attorney fees and costs.

It is so stipulated this 11th day of June, 1996.



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Sheila M. Powers, OBA #13757
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Inc.



Terry W. Tippens, OBA #9027

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Facsimile: (405) 232-9659

Attorneys for Defendant, Union Oil
Company of California d/b/a UNOCAL

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

F I L E D

JUN 11 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

LEWIS RAINES AND K.R. BURGESS,)

Plaintiff,)

vs.)

) Case No. 96-C-128-C ✓

THE WALT DISNEY COMPANY;)
DISNEY PUBLISHING; and)
WESTERN PUBLISHING COMPANY,)

Defendants.)

ENTERED ON DOCKET

DATE JUN 12 1996

ORDER

Before the Court is a motion to dismiss filed by the defendants The Walt Disney Company and Disney Publishing asserting lack of in personam jurisdiction. The defendants contend that they do not have sufficient minimum contacts with the State of Oklahoma nor do they transact business within this state sufficient for the Court to exercise jurisdiction over them.

The Walt Disney Company filed the affidavit of David Thompson, the Assistant Secretary of Disney Enterprises, Inc., in support of dismissal. Mr. Thompson attests that he has personal knowledge of the activities of The Walt Disney Company and various other subsidiaries. Based on that knowledge, Mr. Thompson states that The Walt Disney Company, is a Delaware corporation with its principal place of business in Burbank, California; that The Disney Company's business is the licensing of copyright fanciful characters; and that it conducts its business in Burbank, California. Mr. Thompson further states that The Walt Disney Company does not sell or distribute books, videos, films or

other materials within the State of Oklahoma, nor maintain any assets or service agents within this state.

Disney Publishing filed the affidavit of Marsha Reed, the Assistant Secretary of Disney Book Publishing, Inc. in support of dismissal. Ms. Reed attests that she has personal knowledge of the activities of Disney Book Publishing, Inc. Based on that knowledge, Ms. Reed states that Disney Book Publishing is a California corporation which maintains its principal place of business in California; that Disney Book Publishing's business is publishing and that it does not sell or distribute books or other products within the State of Oklahoma. Ms. Reed states that Disney Book Publishing does not maintain any assets or service agents within the State of Oklahoma.

In response to defendants' affidavits, the plaintiffs furnish select pages of the annual report published by The Walt Disney Company for the years 1992 through 1995, a Disney Fact Book and various other documents which exhibit "The Walt Disney Company" logo or trademark. Based on general statements contained in the annual reports and the presence in Oklahoma of certain products bearing a trademark of "The Walt Disney Company", plaintiffs assert that the defendants conduct business within this forum.

The Court has reviewed plaintiffs' exhibits in support of their claim of in personam jurisdiction over these defendants. Based on this review, the Court concludes that the annual reports of The Walt Disney Company contain general information applicable to The Disney Company, and various subsidiaries. However, the annual reports do not clearly distinguish and identify each such subsidiary and its separate business activities. Rather, the plaintiffs ask the Court to consider as a whole the general statements contained in the

reports and conclude that The Walt Disney Company and various subsidiaries transacts business in the State of Oklahoma. Plaintiffs assertions are conjectural and speculative. Plaintiffs have failed to furnish affidavits or particularized corporate records to support their conclusion. The annual reports furnished by the plaintiffs are inconclusive. Plaintiffs have not clearly identified any specific subsidiary nor pointed to any particular activity of that subsidiary which transacts business in Oklahoma. For purposes of establishing in personam jurisdiction, the Court is not permitted to engage in guesswork by lumping together the combined functions of a corporate conglomerate and conclude that the products of its subsidiaries ultimately enter into its forum.

In this instance, affidavits have been furnished by officers of the corporate entity specifically denying such entities presence within the forum. Plaintiffs therefore have the burden of producing competent evidence to establish the identity and presence of the particular corporate unit named in the complaint, its relationship to the parent corporation, its activities conducted within the forum and the relationship of such activities to the allegations contained in the complaint.

Defendants state that The Walt Disney Company and its subsidiaries comply with all legal formalities in order to maintain their separate corporate identities. Plaintiffs have failed to provide any competent evidence to the contrary. In Oklahoma, absent circumstances justifying disregard of the corporate form, a parent company is treated as a legal entity separate from each of its subsidiaries. See, Seitsinger v. Dockum Pontiac, 894 P.2d 1077 (Okla.1995) and Puckett v. Cornelson, 897 P.2d 1154 (Okla.App.1995). The Court will not disregard affidavits which indicate corporate formalities are followed.

As stated by the Tenth Circuit in Skidmore, Owings & Merrill v. Canada Life Assurance Co.,
907 F.2d 1026, 1027 (10th Cir.1990):

Disregarding the corporate form is a drastic remedy. This court recently stated, '[C]orporate veils exist for a reason and should be pierced only reluctantly and cautiously.' The law permits the incorporation of businesses for the very purpose of isolating liabilities among entities.

See, also, Quarles v. Fugua Industries, Inc., 504 F.2d 1358 (10th Cir.1974).

Accordingly, the Court finds and concludes that the motion to dismiss filed by The Walt Disney Company and Disney Publishing should be and hereby is, granted.

IT IS SO ORDERED this 11th day of June, 1996.



H. DALE COOK
Senior United States District Judge

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

FILED

JUN 11 1996

DIANE MARTIN,)
)
 Plaintiff,)
)
 vs.)
)
 AMERICAN MANAGEMENT, INC.,)
)
 Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. 95-C-1245-E

ENTERED ON DOCKET

DATE JUN 12 1996

ORDER OF DISMISSAL

On this 11th day of June, 1996, Plaintiff having failed to comply with the Court's Order dated May 13, 1996, and filed May 14, 1996, and specifically having failed to have additional appearance of counsel filed in her behalf or election to proceed as pro se litigant, this action should be and is hereby dismissed at cost to Plaintiff.

S/ JAMES O. ELLISON

JAMES O. ELLISON
Judge, U.S. District Court

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

DOME CORPORATION, AN OKLAHOMA CORPORATION, NEODYNE DRILLING CORPORATION, AN OKLAHOMA CORPORATION, THOMAS G. WATSON, AS AN INDIVIDUAL, AND AS A DIRECTOR AND OFFICER OF DOME OIL CORPORATION AND NEODYNE DRILLING CORPORATION, AND THOMAS C. JOHNS, AN INDIVIDUAL

Plaintiff(s)

vs.

COMPTON K. KENNARD, AS AN OFFICER AND DIRECTOR OF SOUTH FLORIDA PUMP SERVICES, INC., A FLORIDA CORPORATION, VIRGINIA W. KENNARD, AN OFFICER AND DIRECTOR OF SOUTH FLORIDA PUMP SERVICE, INC., A FLORIDA CORPORATION, AND GARY HERMANN, AN INDIVIDUAL

Defendant(s)

Case No.96CV0097E

ENTERED ON DOCKET

DATE JUN 12 1996

FILED

JUN 11 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

There comes on before the Court the Joint Motion of the Plaintiffs and Defendant Virginia W. Kennard seeking leave for the Plaintiffs to dismiss their claims against Virginia W. Kennard with prejudice. The Court, having examined the pleadings, premises considered and for good cause shown hereby grants the Joint Motion and dismisses the Plaintiffs' claims against Virginia W. Kennard with prejudice.

S/ JAMES O. ELLISON

THE HONORABLE JAMES ELLISON,
JUDGE OF THE UNITED STATES DISTRICT COURT

6-12-96

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 11 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.

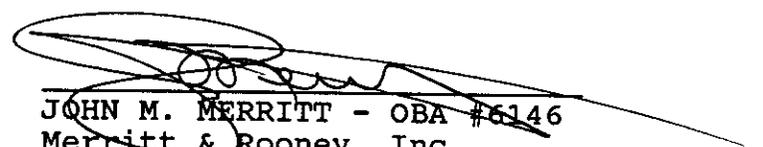
CASE NO. 94-C-1059-H

PARTIAL STIPULATED DISMISSAL WITHOUT PREJUDICE

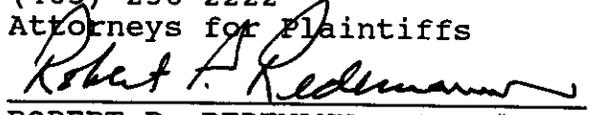
COME(S) NOW the Plaintiff, **Joe David Najera**, only and the defendants, **SUN COMPANY, INC. (R&M)**, and **SUN COMPANY INC.**, pursuant to Fed.R.Civ.P. 41(a)(1), and stipulate to the dismissal of all claims of such Plaintiff(s) against such Defendant(s) without prejudice.

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 6-12-96

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

CONTINENTAL ASSURANCE COMPANY,)
a Foreign Corporation,)
)
Plaintiff,)
)
v)
)
YASSER ALHAMZAWI,)
an Individual,)
)
Defendant.)

JUN 11 1996
Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 95-C-834H

STIPULATION OF DISMISSAL WITH
PREJUDICE OF ALL CLAIMS AND COUNTERCLAIMS

Pursuant to Rule 41, Federal Rules of Civil Procedure, the Plaintiff, Continental Assurance Company (hereinafter "Continental") and the Defendant, Counterclaimant Yasser Alhamzawi (hereinafter "Alhamzawi") advise this Court that the parties have reached settlement of all claims and counterclaims, known and unknown, stated and unstated including, but not limited to, claims by Continental to rescind, cancel, nullify and deny coverage under a specific policy of disability insurance, and by Alhamzawi against Continental to recover under said policy, and relating to bad faith insurance claims processing, fraud and/or abuse of process. The parties have entered a Settlement Agreement and Release of All Claims and hereby stipulate that the terms of the settlement as fully set forth therein.

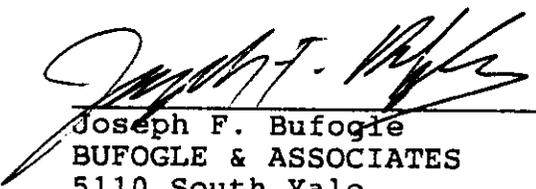
RECITALS

On or about August 25, 1995, Continental filed a Complaint in this Court, seeking a declaratory decree holding that no payments or other benefits are or ever have been due and owing to Alhamzawi under Continental Assurance Company Disability Income

Protection Policy No. OD335545, and further requesting the Court enter a decree cancelling, rescinding, nullifying and otherwise holding for naught said policy. On or about January 23, 1996, Alhamzawi filed his Amended Answer and Counterclaim for breach of contract. In the Amended Answer and counterclaim, Alhamzawi made specific reference to and requested leave of Court to Amend his Answer and Counterclaim at the close of discovery to include, if warranted, claims against Continental for bad faith insurance claims processing, fraud and/or abuse of process.

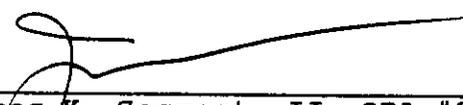
Pursuant to the settlement referenced above, the parties hereby Stipulate to the Dismissal With Prejudice, of this action including any and all claims, actions, counterclaims causes of action, stated by either party, as well as any action for bad faith claims processing or other acts of Continental, its employees, agents, assigns or attorneys alleged by Alhamzawi to constitute bad faith, fraud or abuse of process by Continental.

Respectfully submitted,



Joseph F. Bufogle
BUFOGLE & ASSOCIATES
5110 South Yale
Suite 400
Tulsa, OK 74135

ATTORNEY FOR DEFENDANT/
COUNTERCLAIMANT



James K. Secrest, II, OBA #8049
Gerald M. Bender, OBA #014471
SECRET, HILL & FOLLUO
7134 South Yale, Suite 900
Tulsa, OK 74136

ATTORNEY FOR PLAINTIFF

Yasser Al Hamzawi

Yasser Alhamzawi

DEFENDANT/COUNTERCLAIMANT

stipul.001

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

FILED

JUN 7 1996 LC

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JAVIER GONZALEZ,)
)
 Defendant.)

No. 93-CR-15-C ✓

96-C-293-C ✓

ENTERED ON DOCKET
DATE JUN 11 1996

ORDER

Currently pending before the Court is the motion filed by defendant, Javier Gonzalez, seeking to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Gonzalez was convicted in Count Five of the Superseding Indictment of carrying or using a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1). Gonzalez contends that his conviction for use of a firearm during a drug trafficking crime should be vacated because he did not "use" any firearm during the commission of any drug trafficking act. See, Bailey v. U.S., 116 S.Ct. 501 (1995). Hence, Gonzalez attacks the five year consecutive sentence imposed under Count Five of the Superseding Indictment as invalid due to intervening change in law resulting from the Bailey decision. The government concedes that Gonzalez's motion should be granted and joins Gonzalez in requesting the Court to vacate the five year consecutive sentence imposed under Count Five.

Accordingly, Gonzalez's motion to vacate, set aside, or correct sentence is hereby **GRANTED**, and Gonzalez's conviction under Count Five for use of a firearm during a drug trafficking crime pursuant to 18 U.S.C. § 924(c)(1) is hereby **VACATED**. The judgment is modified to delete from the sentence the sixty months for the § 924(c)(1) conviction imposed under Count Five. All other portions of the judgment shall remain in full effect. The Probation Office is hereby

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directed to prepare an amended judgment consistent with this Order and submit the same for this Court's consideration within twenty (20) days.

IT IS SO ORDERED this 6th day of June, 1996.


H. DALE COOK
United States District Judge

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

F I L E D

JUN 10 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORAL ROBERTS UNIVERSITY,)
an Oklahoma corporation,)
)
Plaintiff,)

v.)

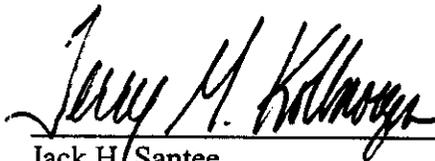
CASE NO. 96CV0094K

UNITED STATES LEASING)
INTERNATIONAL, INC., formerly)
UNITED STATES LEASING)
CORPORATION, a Delaware)
corporation; and CREDIT)
RECOVERY SYSTEMS, INC.,)
a Georgia corporation,)
)
Defendants.)

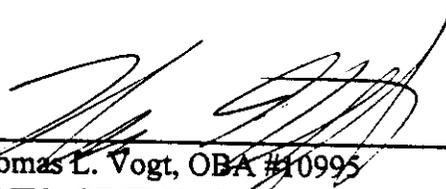
ENTERED ON DOCKET
DATE JUN 11 1996

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41 of the Federal Rules of Civil Procedure, the parties to this action hereby stipulate that all claims asserted in this cause are hereby dismissed with prejudice. Each party agrees to bear its own costs and attorneys' fees.



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ATTORNEYS FOR DEFENDANT UNITED
STATES LEASING INTERNATIONAL,
INC., formerly UNITED STATES LEASING
CORPORATION

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

F I L E D

JUN 10 1996

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

BRITTAIN BROTHERS, INC.,)
an Oklahoma corporation,)

Plaintiff,)

v.)

Case No. 96C 302BU

MARK CRAWFORD and KAY)
CRAWFORD, Husband and Wife,)
d/b/a NAPA ECONOMY AUTO PARTS)
OF AMARILLO,)

ENTERED ON DOCKET

DATE JUN 11 1996

Defendant.)

ORDER ALLOWING A TRANSFER

On the 10 day of June, 1996, counsel for Plaintiff, Brittain Brothers, Inc., and counsel for Defendants, Mark and Kay Crawford, came before this Court for consideration on the parties Joint Application to Transfer pursuant to 28 U.S.C. § 1404(a). The Court, after holding that jurisdiction has attached in the United States District Court, finds that venue is proper in the United States District Court for the Western District of Oklahoma and hereby orders the Clerk of the Court to effect transfer in compliance with this Order, with costs to the Plaintiff.

It is so Ordered.

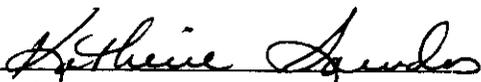
Entered this 10 day of June, 1996.

s/ MICHAEL BURRAGE

Hon. Michael Burrage
U.S. District Judge

AGREED AS TO FORM:

ATTORNEYS FOR PLAINTIFF



Kenneth M. Brune, OBA No. 1249
Katherine Saunders, OBA No. 14808
BRUNE & NEFF, P.C.
401 S. Boston, Suite 230
Tulsa, Oklahoma 74103-4032
(918) 599-8600

ATTORNEY FOR DEFENDANTS



Howard F. Saunders III
Counsel for Mark and Kay Crawford
1800 Washington Building., Ste. 200F
Amarillo, Texas 79105

ENTERED ON 17
DATE 6-11-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 10 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
on behalf of the Secretary of Veterans Affairs,)
)
Plaintiff,)
)
v.)
)
GERALD LEE COBB aka Gerald L. Cobb, et al.,)
)
Defendants.)

CIVIL ACTION NO. 95-C-1150-H

CLERK'S ENTRY OF DEFAULT

It appearing from the files and records of this Court as of June 10 1996 and the declaration of Cathryn D. McClanahan, Assistant United States Attorney, that the Defendants, **Gerald Lee Cobb aka Gerald L. Cobb; Lori D. Cobb aka Lori Deana Cobb nka Lori Deana Clark; Community Builders, Inc.; and Thomas Clark, III, Spouse of Lori Deana Clark**, against whom judgment for affirmative relief is sought in this action have failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure; now, therefore,

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

Dated at Tulsa, Oklahoma, this 10th day of June, 1996.

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

By J. Adamski
Deputy

Clerk's Entry Of Default
Case No. 95-C-1150-H (Cobb)

CDM:cas