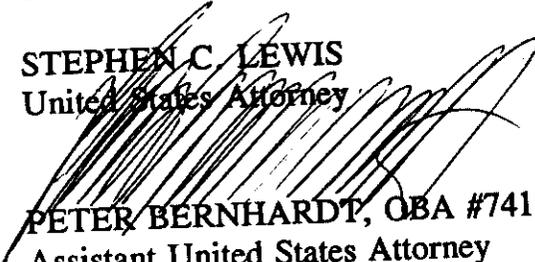


SUBMITTED BY:

STEPHEN C. LEWIS
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney
333 W. Fourth St., Suite 3460
Tulsa, OK 74103-3809

ENTERED ON DOCKET

DATE 7/31/96

UNITED STATES DISTRICT COURT FOR THE **FILED**
NORTHERN DISTRICT OF OKLAHOMA JUL 30 1996 *SA*

RADHA R. M. NARUMANCHI; and
RADHA B. D. NARUMANCHI,

Plaintiffs,

v.

KINARK CORPORATION, a Delaware corporation;
PAUL CHASTAIN, individually; JOHN Q. HAMMONS,
individually; JAMES M. REED, individually; HALL,
ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, an
Oklahoma professional corporation,

Defendants.

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. 95-C-220-J ✓

ORDER

Now before the Court are the following motions: (1) Plaintiffs' "Motion for Permission to let Plaintiffs File 'Contempt of Court' proceedings against Defendants, in Plaintiffs' Illinois Case No. 1:96-CV-01085 or in the alternative Motion for Order Requiring Defendants to Reimburse Plaintiffs Costs (\$236.00) as Ordered by U.S. District Court for Central District of Illinois in Case No. 1:96-CV-1085" [sic] [Doc. Nos. 111-1 and 111-2]; and (2) Plaintiffs' "Motion for Rule 11 Sanctions against all Defendants and their Attorneys for filing a Frivolous Opposition to Plaintiffs' 7-10-1996 Motion." [sic] [Doc. No. 115-1].

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Plaintiffs filed an action substantially similar to this action in the United States District Court for the Central District of Illinois. The defendants in each case are identical. In the Illinois action, Plaintiffs apparently requested that Defendants waive service of summons in accordance with the procedures outlined in Fed. R. Civ. P. 4(d). The pertinent paragraph of Rule 4(d) provides as follows:

If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

Fed. R. Civ. P. 4(d)(2).

Apparently, Defendants ran afoul of the requirement of Rule 4(d)(2) because on June 5, 1996, Magistrate Judge Robert J. Kauffman of the Central District of Illinois entered the following minute order:

[G]ranted motion for order for costs of service of summons & complaint on Defendants due to their failure to grant waivers [4-1]. Defendants are to reimburse plaintiff's cost of service as follows: Defendant Kinark Corp in the amount of \$50.00; defendant James M Reed in the amount of \$42.00; defendant Paul R. Chastain in the amount of \$42.00; defendant Hall, Estill in the amount of \$42.00; defendant John Q Hammons in the amount of \$60.00. Total costs to be reimbursed: \$236.00.

See Minute Order attached to Doc. No. 111 [sic].

On June 18, 1996, this Court enjoined Plaintiffs from proceeding further with their prosecution of the Illinois action. [Doc. No. 107]. Defendants have not yet complied with Judge Kauffman's June 5 Order. Plaintiffs are now asking this Court for a partial lifting of the June 18th injunction so that they can file a contempt citation

in the Illinois action. Defendants only response to Plaintiff's request for a partial lifting of the injunction is as follows:

Although the award of costs to Plaintiffs in the Illinois action is subject to a number of defenses and/or setoffs, a determination of who the prevailing parties are in this action must be made prior to any final order awarding costs to any party. In that regard, Defendants request the Court wait until this proceeding is terminated to issue a final order directing payment of costs to the prevailing party.

See Doc. No. 112, ¶ 2.

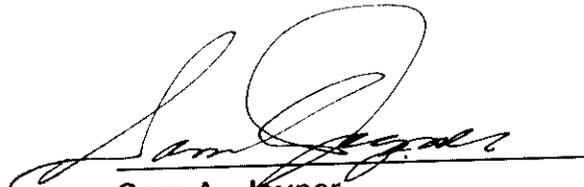
The Court finds Defendants' argument unpersuasive. Defendants are confusing prevailing party costs awardable pursuant to Fed. R. Civ. P. 54(d)(1) with a penalty imposed under Fed. R. Civ. P. 4(d)(2) for failure to waive service of summons. The two are distinct. The penalty under Rule 4(d)(2) in no way turns on who prevails in this or the Illinois action. More importantly, however, Defendants are faced with a direct order by a federal judge in Illinois to pay Plaintiffs a total of \$236.00. Plaintiffs are entitled to enforce that order.

Plaintiffs' motion for leave to file contempt proceedings in Illinois is GRANTED. [Doc. No. 111-1]. Plaintiffs' motion for an order from this Court directing Defendants to pay the \$236.00 ordered to be paid by the Illinois court is DENIED. [Doc. No. 111-2]. Anytime after 11 days from the date this Order is filed, Plaintiffs may take whatever action is necessary in the Central District of Illinois to enforce Judge Kauffman's June 5, 1996 Order.

Plaintiffs also filed a motion for sanction pursuant to Fed. R. Civ. P. 11. [Doc. No. 115-1]. Plaintiffs allege that Defendants' response to Plaintiffs' motion for permission to file a contempt citation in Illinois [doc. no. 112] violates the requirements of Rule 11. Plaintiffs' motion is **DENIED** because Plaintiffs failed to demonstrate their compliance with the procedural requirements of Fed. R. Civ. P. 11(c)(1)(A).

IT IS SO ORDERED.

Dated this 30 day of July 1996.


Sam A. Joyner
United States Magistrate Judge

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

ENTERED ON DOCKET
DATE JUL 31 1996

JOSEPH W. HAFF, JR.,

Plaintiff,

vs.

MAYES COUNTY SHERIFF'S DEPARTMENT,
GEORGE KLATT, and JASON THOMPSON,

Defendants.

No. 96-CV-606-K

FILED

JUL 30 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Plaintiff, a pro se inmate at the Mayes County Jail, has filed a motion for leave to proceed in forma pauperis and a civil rights complaint against the Mayes County Sheriff's Department, George Klatt, and Deputy Jason Thompson. He alleges that Thompson indirectly sprayed him with pepper gas while trying to punish a fellow inmate, Mike Fidler. Plaintiff contends that the unjustified spraying affects him to this day. He seeks \$20,000 in damages.¹

The Prison Litigation Reform Act of 1996, added a new section to the in forma pauperis statute, entitled "Screening." See 28 U.S.C. § 1915A. That section requires the Court to review prisoner complaints before docketing, or as soon as practicable after docketing, and "dismiss the complaint, or any portion of the complaint, if the complaint . . . is frivolous, malicious, or fails to state a claim upon which relief may be granted. Id. A suit is frivolous if "it lacks an arguable basis in either law or fact."

¹ The Court liberally construes the complaint to allege a claim against George Klatt, although he was named only on the summons and U.S. Marshal form.

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 suit 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 claim against Thompson for the pepper gas spraying lacks an arguable basis in law. First, Plaintiff is barred from bringing a civil rights action "for mental or emotional injury suffered while in custody without a prior showing of physical injury." See The Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996). Second, de minimis applications of force, such as the use of pepper gas in this case, 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).

As to George Klatt, the Court notes that Plaintiff has neither named him in the complaint nor explained if he was involved in the incident at issue in this action. It is well established that a defendant may not be held liable under section 1983 unless the defendant caused or participated in the alleged constitutional deprivation. Housley v. Dodson, 41 F.3d 597, 600 (10th Cir. 1994).

Mere supervisory status, without more, will not create liability in a section 1983 action. Ruark v. Solano, 928 F.2d 947, 950 (10th Cir. 1991); Meade v. Grubbs, 841 F.2d 1512, 1527-28 (10th Cir. 1988). Therefore, Plaintiff has not alleged an arguable basis in law to sue Defendant Klatts and he must be dismissed from this action.

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's complaint is DISMISSED as frivolous pursuant to 28 U.S.C. § 1915(e)(2). The Clerk shall MAIL to Plaintiff a copy of the complaint.

IT IS SO ORDERED this 29 day of July, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

FILED
JUL 30 1996

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JESUS VALENZUELA,

Plaintiff,

Case No.: 95-C-1164-K ✓

v.

BUILDERS TRANSPORT, INC., a
foreign corporation, and
STEVEN D. DUNLAP,

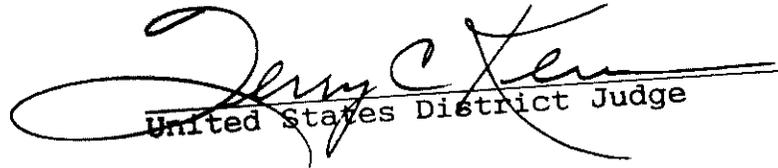
Defendants.)

ENTERED ON DOCKET

DATE JUL 31 1996

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 29 day of July, 1996, it appearing to
the Court that this matter has been compromised and settled, this
case is herewith dismissed with prejudice to the refiling of a
future action.


United States District Judge

8

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

FILED
JUL 30 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

PAMELA (WOODS) INGRAM,
Plaintiff,
vs.
FEDERAL EXPRESS CORPORATION,
Defendant.

Case No. 95-C-783 E ✓

ENTERED ON DOCKET
DATE JUL 31 1996

ORDER OF DISMISSAL

UPON the Joint Stipulation for Dismissal With Prejudice
filed herein by the parties, it is hereby,
ORDERED, that this case is dismissed with prejudice, each
party to bear her or its own costs and attorneys' fees.

DATED: This 29th day of July, 1996.

James DeLeon
United States District Judge

Submitted by:

Leslie C. Rinn
2121 S. Columbia, Suite 710
Tulsa, OK 74114-3521
(918) 742-4486

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LORI ANN LITTLE; ROUSSEAU
MORTGAGE CORPORATION; CITY OF
BROKEN ARROW, Oklahoma; COUNTY
TREASURER, Tulsa County, Oklahoma;
BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

RECORDED ON DOCKET
JUL 31 1996

FILED

JUL 30 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil Case No. 96-C 74K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 29 day of July,

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, Rousseau Mortgage Corporation, appears not having previously been dismissed; and the Defendant, Lori Ann Little, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, Lori Ann Little, signed a Waiver of Summons on February 28, 1996; that the Defendant, City of Broken Arrow, Oklahoma, acknowledged receipt of Summons and Complaint on February 5, 1996, by Certified Mail.

NOTE: THIS ORDER IS TO BE MAILED
BY COURIER TO THE COUNSEL AND
FILED IMMEDIATELY
UPON RECEIPT.

It appears that the Defendants, **County Treasurer, Tulsa County, Oklahoma,** and **Board of County Commissioners, Tulsa County, Oklahoma,** filed their Answers on February 14, 1996; that the Defendant, **City of Broken Arrow, Oklahoma,** filed its Answer on February 8, 1996; that the Defendant, **Rousseau Mortgage Corporation,** filed its Disclaimer and Stipulation of Dismissal on March 7, 1996; and that the Defendant, **Lori Ann Little,** has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, **Lori Ann Little,** is a single unmarried person.

The Court further finds that on February 16, 1988, the Defendant, **Lori Ann Little,** executed and delivered to **COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P.,** her mortgage note in the amount of \$72,141.00, payable in monthly installments, with interest thereon at the rate of 8.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, **Lori Ann Little, A SINGLE PERSON,** executed and delivered to **COMMONWEALTH MORTGAGE COMPANY OF AMERICA L.P.,** a real estate mortgage dated February 16, 1988, covering the following described property, situated in the State of Oklahoma, Tulsa County:

LOT FORTY (40), BLOCK FOUR (4), INDIAN SPRINGS ESTATES 4TH ADDITION, AN ADDITION TO THE CITY OF BROKEN ARROW, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF. ALSO KNOWN AS 8612 SOUTH FAWNWOOD COURT, BROKEN ARROW, OKLAHOMA 74012.

This mortgage was recorded on February 17, 1988, in Book 5081, Page 731, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 9, 1991, COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P. assigned the above-described mortgage note and mortgage to THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT OF WASHINGTON, D.C., his successors and assigns. This Assignment of Mortgage was recorded on May 9, 1991, in Book 5328, Page 181, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 2, 1991, the Defendant, **Lori Ann Little**, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on September 4, 1991, and March 13, 1992.

The Court further finds that the Defendant, **Lori Ann Little**, 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, **Lori Ann Little**, is indebted to the Plaintiff in the principal sum of \$103,275.33 representing an Unpaid Principal of \$70,793.84, Accrued Interest of \$27,312.85, and Penalties of \$5,168.64, plus interest at the rate of 8.5 percent per annum from March 14, 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, **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, **Lori Ann Little**, is in default, and has no right, title or interest in the subject real property.

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

The Court further finds that 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, **Lori Ann Little**, in the principal sum of \$103,275.33, plus interest at the rate of 8.5 percent per annum from March 14, 1995 until judgment, plus interest thereafter at the current legal rate of 5.81 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 Defendants, **Lori Ann Little, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma**, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

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

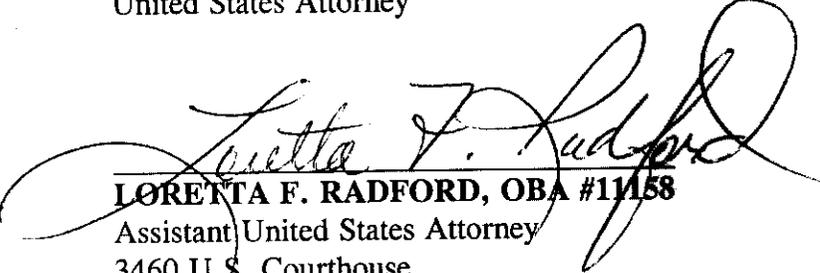
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORENTA F. RADFORD, OBA #11158

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



DICK A. BLAKELEY, OBA #852

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



MICHAEL R. VANDERBURG

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. 96-C 74K

LFR:flv

ENTERED ON DOCKET
DATE 7-31-96

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

FILED
JUL 30 1996
Phil Lombardi, Clerk
U.S. DISTRICT COURT

THE AMERICAN RED CROSS and
DON GILSTRAP,

Plaintiffs,

vs.

BLUELINCS HMO,

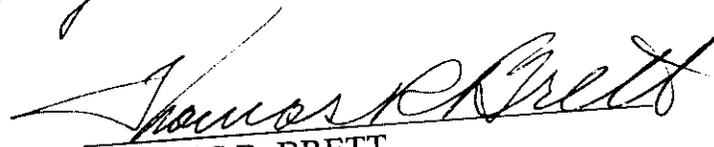
Defendant.

No. 94-C-735-B ✓

JUDGMENT

In accordance with the Findings of Fact and Conclusions of Law filed contemporaneous herewith, Judgment is entered in favor of the Defendant, BlueLincs HMO, and against the Plaintiffs, The American Red Cross and Don Gilstrap. Costs are awarded Defendant against the Plaintiffs, if timely applied for pursuant to Local Rule 54.1.

DATED this 30th day of July, 1996


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ONE

F I L E D

JUL 30 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

THE AMERICAN RED CROSS and
DON GILSTRAP,

Plaintiffs,

vs.

BLUELINCS HMO,

Defendant.

ENTERED ON DOCKET

DATE 7-31-96

No. 94-C-735-B ✓

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

This subrogation action commenced by American Red Cross was tried to the Court without a jury on Thursday, July 25, 1996. The issue centers in whether the Defendant, BlueLincs' decision that American Red Cross' employee, Don Gilstrap's intracranial aneurysm and subarachnoid hemorrhage of August 8, 1992, resulted from on-the-job related trauma, was arbitrary and capricious. If BlueLincs' decision was arbitrary and capricious, BlueLincs' employment-related health insurance coverage owes the \$53,466.90 medical expense in dispute; if not, the subject medical expense is the obligation of the Plaintiff's employer, American Red Cross, as the self-insured worker's compensation carrier. After considering the evidence and the applicable legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT

1. At all times relevant hereto, Don J. Gilstrap ("Gilstrap") was an employee of the American Red Cross ("ARC") and a beneficiary of an employee welfare benefit plan written and issued by BlueLincs HMO ("Bluelincs"). BlueLincs was a fiduciary under the plan, as it retained the right to interpret the plan and authority to grant or deny payments. The plan provided health insurance for medical conditions which were not work-related.
2. Under ARC's plan, BlueLincs has discretionary authority to interpret the plan and to determine the plan's benefits.
3. On February 18, 1992, while at work, Gilstrap suffered a subarachnoid hemorrhage and rupture of an intracranial aneurysm.
4. Immediately prior to the hemorrhage, a nurse's kit weighing about 10-20 pounds, had fallen off an overhead shelf in the storeroom where Gilstrap was working, striking Gilstrap on the neck near the base of the skull.
5. Gilstrap reported the injury to his supervisor and was taken to Saint Francis Hospital's emergency room. At the emergency room the contusion on his neck was noted and he was diagnosed as suffering from "acute subarachnoid hemorrhage."
6. On February 18, 1992, Gilstrap was admitted as an in-patient to Saint Francis Hospital. His assigned neurosurgeon, Dr. David Fell, reported on that date that Gilstrap had suffered a "post-traumatic" subarachnoid hemorrhage "secondary to" the nurse's case striking him.

7. On February 18, 1992, and at all times pertinent thereafter, Gilstrap's primary care physician under ARC's plan was Peter E. Lantz, M.D.

8. On February 24, 1992, ARC filed a Workers' Compensation Court Form 2, "Employer's First Notice of Injury," concerning the injury to Gilstrap on February 18, 1992. In the Form 2, ARC informed the court that Gilstrap was injured "while cleaning up an area, Employee reached for a dust pan--a nursing kit with steel reinforced corner fell and struck back of neck. Weight 10 lbs."

9. On March 20, 1992, BlueLincs spoke by telephone with a representative of Dr. Lantz and learned that Dr. Lantz had been brought in on Gilstrap's care on February 18, 1992, the day of his admittance to the emergency room. BlueLincs was told by Dr. Lantz's representative that Gilstrap's condition was due to a job-related injury:

Spoke w/Linda Lantz' off: Have been brought in on Mbr's care from ER admit Feb 92; Workmen's comp case for a head injury 2ndary to being struck in the head w/briefcase. Sustained subarachnoid hemorrhage w/remaining aneurysm. Mbr's assigned PCP was Loveless. Per Mbr Serv. Not. Above, Mbr switched per his request to Lantz, since Loveless had never treated Mbr. Linda aware Change OK and will advise Andrea/COB [Coordination of Benefits] of Workmen's comp issues.

10. Dr. Fell concluded that Gilstrap's symptoms were due to the rupture of an intracranial aneurysm. After Gilstrap was discharged from Saint Francis Hospital, Dr. Fell referred him to Joseph Zabramski, M.D., a neurosurgeon in Phoenix, who performed surgery to repair the ruptured aneurysm in April 1992, at St. Joseph's Hospital in Phoenix.

11. ARC paid the medical and hospital bills for diagnosis, treatment, and repair of

Gilstrap's ruptured aneurysm.

12. On April 24, 1992, Crawford & Company, workers' compensation adjuster for ARC, wrote a letter to BlueLincs, stating *inter alia* that "the claimant's [Gilstrap] treating physician, Dr. David Fell, cannot make the determination as to whether or not the claimant's medical condition is related to the alleged work-related injury." On the same date, April 24, 1992, Crawford & Company wrote a letter to Gilstrap, stating *inter alia* that "It is our understanding that your treating physician, Dr. David Fell, could not make a determination as to whether the aneurysm was a result of the work related injury."

13. During April and May 1992, Crawford & Company, acting on behalf of ARC, issued a series of checks payable to Gilstrap. Each check was payable in the same amount, \$188.51, and each stated "TTD one week" under the heading "Description/Type of payment." ARC and Gilstrap acknowledge that these checks were "temporary total disability payments."

14. On June 3, 1992, Gilstrap filed a Workers' Compensation Court Form 3, stating that the nature of his injury was "blow to the back of the head," and describing how his injury occurred, "I was bent over when a nurse's case hit me on the bottom of my skull after it fell from a high shelf." In the Form 3, Gilstrap listed "head" under the section entitled "Body Part Injured."

15. On August 4, 1992, Dr. Lantz signed a Workers' Compensation Court Form 4, stating that Gilstrap's diagnosis was "aneurysm/hypertension," and where the Form 4 asked the physician to "State, in the employee's own words, how the accident occurred,"

Dr. Lantz stated, "Patient said he received blow to head." Where the Form 4 asked "Were the employee's injuries causally connected to the above described accident?", Dr. Lantz stated "Yes."

16. On October 20, 1992, Gilstrap filed a Workers' Compensation Court Form 9, listing as trial exhibits "medical report of Dr. Zambraski[sic], Form 4 of Dr. Lantz." The report of Dr. Zabramski, dated May 13, 1992, was attached to the Form 9. In the report, Dr. Zabramski stated, "It certainly is possible" that the blow to Gilstrap's head "precipitated rupture of an already present lesion, thus leading to his problems with vasospasm and acute hypertension."

17. On October 20, 1992, Gilstrap's workers' compensation attorney sent a letter to ARC's workers' compensation attorney, stating in pertinent part:

We offer to settle this case for \$12,000 plus payment of any balance due on medical expenses. You will take separate 3rd party releases at the same time as finding by the Compensation Court of "no responsibility."

18. On November 18, 1992, BlueLincs sent a letter to Gilstrap and his workers' compensation attorney, affirming BlueLincs' denial of his claim and citing, *inter alia* the job-related nature of his injury.

19. On March 10, 1993, BlueLincs issued a letter to Gilstrap's workers' compensation attorney, maintaining BlueLincs' position that Gilstrap's injury was work-related and, therefore, specifically excluded under ARC's plan. The letter stated that if the Workers' Compensation Court found the injury not to be job-related, BlueLincs could

consider Gilstrap's claim.

20. Gilstrap's workers' compensation case was set for trial on May 12, 1993, but Gilstrap did not appear in person on that date and no testimony was presented. Gilstrap and his attorney negotiated a settlement with ARC in the Workers' Compensation Court of Oklahoma in which it was agreed that in addition to the temporary total weekly benefits paid ARC would commit to pay all Gilstrap's medical expense plus \$12,000.00, for a complete release of all claims. It was further agreed to have the assigned Workers' Compensation Court judge enter an order finding no job-related injury. Gilstrap had no permanent partial disability. The Workers' Compensation Court judge entered such an order in a nonadversarial proceeding. This was done by prearrangement between Gilstrap and ARC's counsel as a predicate to ARC seeking subrogation from BlueLincs, contending that Gilstrap's hemorrhage was not compensable under workers' compensation.

21. On February 18, 1994, an Order, signed by Judge Kimberly West, was filed in Gilstrap's workers' compensation case which recites *inter alia*:

Now on this 10th day of August, 1993, this cause comes on for consideration pursuant to regular assignment and hearing on May 12, 1993, before Judge Kimberly West at Tulsa, Oklahoma, at which time the claimant appeared in person and by counsel, Gene Seigel, and respondent and insurance carrier appeared by counsel, John A. MacKenzie.

The Order concludes that "the claimant did not sustain an injury from a stroke arising out of the claimant's employment with the above named respondent" and "that the claim in the above styled case is thereby denied." This Order was an agreed denial.

22. ARC's plan expressly states that benefits are excluded for "any injury or illness occurring in the course of employment if whole or partial benefits or compensation are or might have been available under the laws of any governmental unit, any policy of workers' compensation insurance, or according to any recognized legal remedy arising from an Employer-Employee relationship." The plan also provides that each participant "agrees to...take no action prejudicing the rights and interests of BlueLincs HMO. . ."

23. Ralph Richter, M.D., a qualified neurologist, has concluded that the trauma of the nurse's case striking Gilstrap's head could have caused, and "likely" did cause, the rupture of Gilstrap's pre-existing intracranial aneurysm. Dr. Richter believes that it would be "a highly unusual coincidence" if the blow to Gilstrap's head was causally unrelated to the simultaneous rupture of his aneurysm.

24. Notwithstanding his hospital admission note to the contrary, David Fell, M.D., Gilstrap's initial neurosurgeon, believes that "head trauma does not cause rupture of an intracranial aneurysm," which was a pre-existing congenital defect.

25. Apparently, qualified physicians may have contrary opinions regarding trauma causing intracranial aneurysm subarachnoid hemorrhaging.

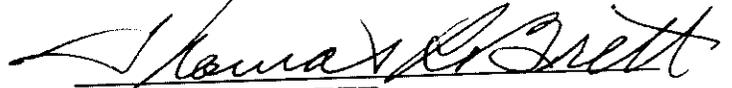
26. BlueLincs' conclusion that Gilstrap's hemorrhaging of February 18, 1992, was a work-related on-the-job injury was not unreasonable, arbitrary and/or capricious.

27. ARC does not have unclean hands.

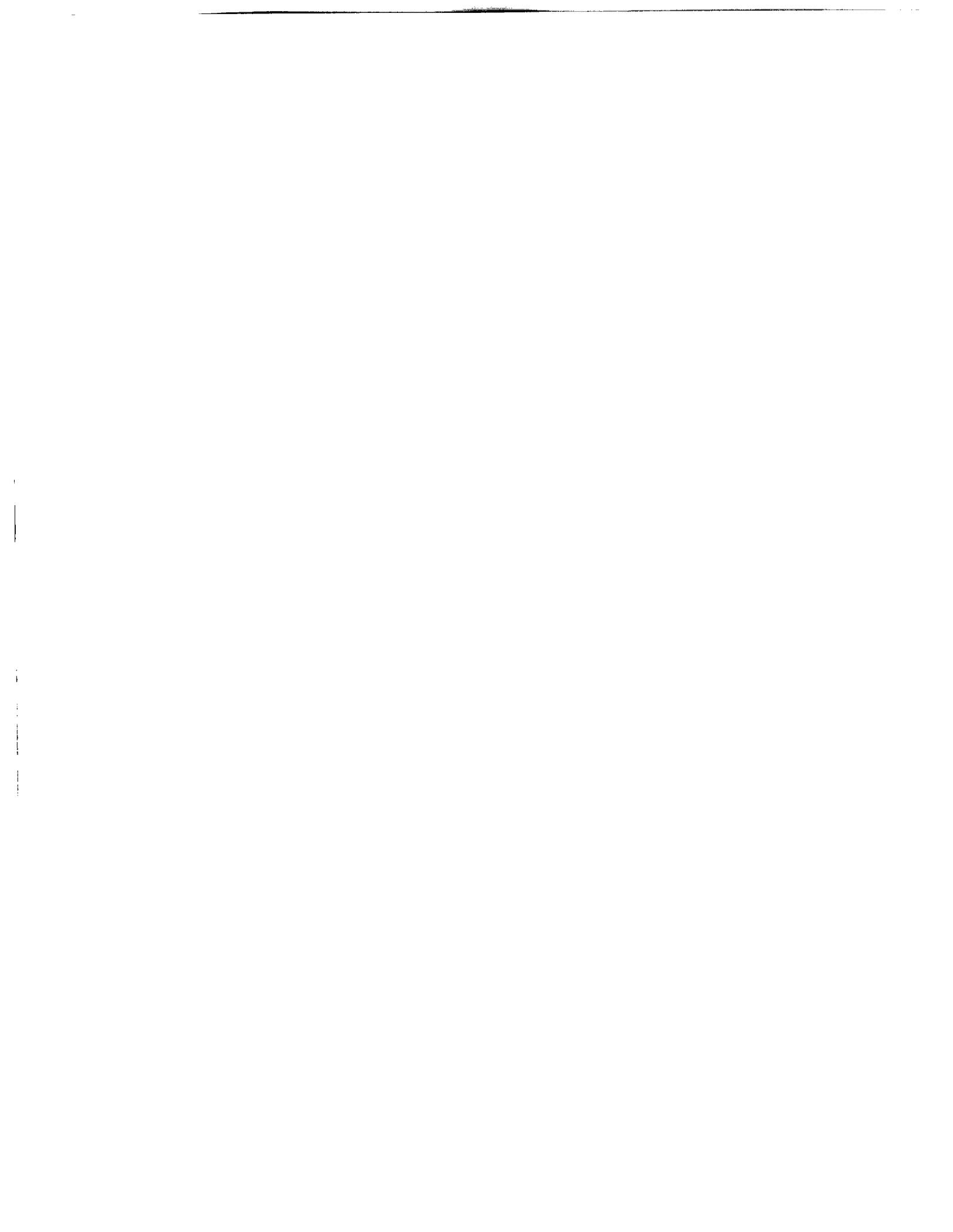
CONCLUSIONS OF LAW

1. This court has federal-question subject matter jurisdiction under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*
2. This Court has personal jurisdiction of the parties, and venue is proper within this judicial district.
3. Any Finding of Fact which might be characterized a Conclusion of Law is incorporated herein.
4. As BlueLincs has the right under the contract to interpret the terms of the contract, the application legal standard is arbitrary and capricious. *See, Firestone Tire and Rubber Company v. Burch*, 109 S.Ct. 948 (1989); *Winchester v. Prudential Life Insurance Company*, 975 F.2d 1479 (10th Cir. 1992); *Jader v. Principal Mutual Life Insurance Company*, 723 F.Supp. 1338 (D. Minn. 1989); and *McLean Hospital Corp. v. Lasher*, 819 F.Supp. 110 (D. Mass. 1993).
5. BlueLincs' conclusion that Gilstrap's intracranial aneurysm subarachnoid hemorrhaging was an on-the-job work-related injury was not unreasonable, arbitrary and/or capricious.
6. A Judgment in favor of the Defendant, BlueLincs, and against the Plaintiffs, American Red Cross and Don Gilstrap, shall be entered contemporaneously herewith.

IT IS HEREBY SO ORDERED this 30th day of July, 1996.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE



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

ENTERED ON DOCKET
DATE 7-31-96

F I L E D

JUL 30 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DON AUSTIN, an individual,)
BARBARA WILLIS, an individual,)
DOROTHY COOKS, an individual, and)
KAREN SNAP, an individual, and)
other JOHN DOE or JANE DOE)
Plaintiffs as they become known,)

Plaintiffs,)

vs.)

SUN REFINING AND MARKETING)
COMPANY,)

Defendant.)

Case No. 92-C-258-H

RELEASE AND SATISFACTION OF JUDGMENT

Plaintiff, Dorothy Cooks, does hereby acknowledge receipt from the defendant, Sun Refining and Marketing Company, in the above entitled cause of the amount due upon judgment rendered in said cause on January 22, 1996, in favor of the plaintiff herein and against the defendant, Sun Refining and Marketing Company, which sum is received and accepted in full payment and satisfaction of said judgment with interest and costs, and in payment and satisfaction of any and all liens and claims in said cause and in and to the proceeds of said judgment, the plaintiff, Dorothy Cooks, does hereby release, acquit and forever discharge said defendant, Sun Refining and Marketing Company, of and from all liability to and demand of the undersigned, in respect to the cause and judgment in this case.

The undersigned warrant that no promise or inducement has been offered except as is herein set forth; that this release is executed without any reliance upon any statement or representations

by Sun Refining and Marketing Company or their representatives and agents concerning the nature and extent of injuries or the legal liability therefore; that the undersigned is of legal age, legally competent to execute this release and accepts full responsibility therefore; and

Dorothy Cooks states that she has carefully read the foregoing release and knows and understands the contents. Further, plaintiff states that she has had the advice of counsel prior to executing this release.

Dated this 7 day of 22, 1996.



Dorothy Cooks
PLAINTIFF



John Merritt
ATTORNEY FOR PLAINTIFF

ENTERED ON FILE
DATE 7-31-96

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

F I L E D

JUL 30 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DON AUSTIN, an individual,)
BARBARA WILLIS, an individual,)
DOROTHY COOKS, an individual, and)
KAREN SNAP, an individual, and)
other JOHN DOE or JANE DOE)
Plaintiffs as they become known,)
Plaintiffs,)
vs.)
SUN REFINING AND MARKETING)
COMPANY,)
Defendant.)

Case No. 92-C-258-H

RELEASE AND SATISFACTION OF JUDGMENT

Plaintiff, Felicia Porter, does hereby acknowledge receipt from the defendant, Sun Refining and Marketing Company, in the above entitled cause of the amount due upon judgment rendered in said cause on January 22, 1996, in favor of the plaintiff herein and against the defendant, Sun Refining and Marketing Company, which sum is received and accepted in full payment and satisfaction of said judgment with interest and costs, and in payment and satisfaction of any and all liens and claims in said cause and in and to the proceeds of said judgment, the plaintiff, Felicia Porter, does hereby release, acquit and forever discharge said defendant, Sun Refining and Marketing Company, of and from all liability to and demand of the undersigned, in respect to the cause and judgment in this case.

The undersigned warrant that no promise or inducement has been offered except as is herein set forth; that this release is executed without any reliance upon any statement or representations

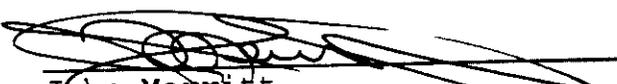
by Sun Refining and Marketing Company or their representatives and agents concerning the nature and extent of injuries or the legal liability therefore; that the undersigned is of legal age, legally competent to execute this release and accepts full responsibility therefore; and

Felicia Porter states that she has carefully read the foregoing release and knows and understands the contents. Further, plaintiff states that she has had the advice of counsel prior to executing this release.

Dated this 23 day of July, 1996.



Felicia Porter
PLAINTIFF



John Merritt
ATTORNEY FOR PLAINTIFF

ENTERED ON DOCKET
7-30-96

F I L E D

JUL 29 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

LAUREL A. SCHULTZ,

Plaintiff,

vs.

CINEMARK USA, INC.,

Defendant.

No. 95 CV 871 H

STIPULATION FOR DISMISSAL WITH PREJUDICE

Pursuant to Fed.R.Civ.P. 41, the parties, and each of them, by and through their respective counsel of record, herewith stipulate and agree to the dismissal with prejudice of said cause, including all complaints, counterclaims, cross complaints and causes of action of any type by any party against any or all of the other parties. Each party shall bear its or her own costs, expenses, and attorney fees without assessment against any other party.

Executed the respective dates shown adjacent to each signature.

Date: 7-23-96

Brian Gaskill
Brian Gaskill

Attorney for Plaintiff

Date: 7-29-96

Jo Anne Deaton
Jo Anne Deaton
RHODES, HIERONYMUS, JONES,
TUCKER & GABLE

Attorneys for Defendant

ENTERED ON DOCKET
DATE 7-30-96

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

FILED

JUL 29 1996

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

GARY B. HOBBS,)
)
 Plaintiff,)
)
 vs.)
)
 TONY M. GRAHAM, GORDON B.)
 CECIL, CATHERINE DEPEW HART,)
 SCOTT WOODWARD, DAVID JANSEN,)
 ROBERT PRUDEN, and UNITED)
 STATES OF AMERICA,)
)
 Defendants.)

No. 96-CV-545-H ✓

ORDER

Plaintiff, a federal prisoner in Alabama, has filed an action against the United States of America and several Assistant U.S. Attorneys in their individual and official capacities. The Court has granted Plaintiff leave to proceed in forma pauperis.

The Prison Litigation Reform Act of 1996, added a new section to the in forma pauperis statute, entitled "Screening." See 28 U.S.C. § 1915A. That section requires the Court to review prisoner complaints before docketing, or as soon as practicable after docketing, and "dismiss the complaint, or any portion of the complaint, if they complaint . . . is frivolous, malicious, or fails to state a claim upon which relief may be granted. Id. A suit is frivolous if "it lacks an arguable basis in either law or fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); 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 suit is factually frivolous,

on the other hand, if "the factual contentions are clearly baseless." Id.

In his pro se complaint, Plaintiff sue Defendants for taking his personal and real estate property between June 21, 1990, and October 24, 1990, without Due Process of Law and without the payment of just compensation. He seeks damages in the amount of \$2,607,500.

After liberally construing Plaintiff's pro se pleading, see Hall v. Bellmon, 935 F.2d 1106, 1100 (10th Cir. 1991), the Court concludes that Plaintiff's action lacks an arguable basis in law as it is clear from the face of the complaint that Plaintiff's claims against the individual Defendants are barred by the two-year statute of limitations. See Fratus v. Deland, 49 F.3d 673, 674-75 (10th Cir. 1995) (district court may consider affirmative defense sua sponte when the defense is "obvious from the face of the complaint" and "[n]o further factual record [is] required to be developed"). "[A] Bivens action, like an action brought pursuant to 42 U.S.C. § 1983, is subject to the statute of limitations of the general personal injury statute in the state where the action arose." Industrial Constructors Corp. v. U.S. Bureau of Reclamation, 15 F.3d 963, 968 (10th Cir. 1994). The applicable statute of limitations for civil rights actions under Oklahoma law is the two-year limitations period for "an action for injury to the rights of another." Meade v. Grubbs, 841 F.2d 1512, 1523 (10th Cir. 1988).

Plaintiff's action arose in 1990 when Defendants allegedly

took possession of his personal and real estate property. Therefore, Plaintiff's action should have been brought at the latest by October of 1992. See Hardin v. Straub, 490 U.S. 536, 540 n.8 (1989) (the State of Oklahoma has no tolling provision for civil lawsuits filed by prisoners).

Plaintiff's claims against the United States also lack an arguable basis in law because the United States is immune from suit under the doctrine of sovereign immunity. See generally United States v. Testan, 424 U.S. 392 (1975). "Sovereign immunity generally bars suits against the United States or its agencies, whether brought by a private party or by a state." Kelley v. United States ex rel. Department of Justice, 69 F.3d 1503, 1507 (10th Cir. 1995), cert. denied, 116 S.Ct. 1966 (1996). Because Plaintiff seeks money damages and does not seek "to enjoin the enforcement of an unconstitutional statute," id., a federal court lacks jurisdiction to entertain such a claim. See Neitzke v. Williams, 490 U.S. 319, 327 (1989) (noting that § 1915(d) "accords judges the authority to dismiss . . . claims against which it is clear that the defendants are immune from suit").

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's action is hereby DISMISSED as frivolous. The Clerk shall MAIL to Plaintiff a copy of the complaint.

SO ORDERED this 26TH day of July, 1996.


SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE

ENTERED

DATE 7-30-96

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

DAVID LAWRENCE DODD, JR.,
Plaintiff,
vs.
KENNY HART, C.J. COLLINS, and
SAMUEL ANAGOBU,
Defendants.

No. 96-C-385-H

FILED

JUL 29 1996

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

ORDER

Plaintiff, a pro se inmate at the Tulsa County Jail, has filed a motion for leave to proceed in forma pauperis and a civil rights complaint against Sheriff Deputy Kenny Hart and Police Officers C.J. Collins and Samuel Anagobu for false arrest and malicious prosecution. He contends defendants arrested him on January 16, 1996, for crimes he did not commit. He contends there is insufficient evidence to substantiate the charges filed against him in Tulsa County. Plaintiff requests \$10,000 in damages and the entry of an order directing that he be acquitted of all charges.

On June 24, 1996, the Court granted Plaintiff leave to proceed in forma pauperis and directed him to submit the "legal paper" referred to in Count I of the complaint. Plaintiff has failed to do so.

The Prison Litigation Reform Act of 1996, added a new section to the in forma pauperis statute, entitled "Screening." See 28 U.S.C. § 1915A. That section requires the Court to review prisoner complaints before docketing, or as soon as practicable after docketing, and "dismiss the complaint, or any portion of the

complaint, if they complaint . . . is frivolous, malicious, or fails to state a claim upon which relief may be granted. Id. 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 this action should be dismissed as it lacks an arguable basis in law. Plaintiff cannot seek money damages for the alleged invalidity of the charges pending against him in Tulsa County prior to a determination that the charges are invalid. The Supreme Court recently held in Heck v. Humphrey, 114 S.Ct. 2364, 2372 (1994), that in order to recover damages in an action brought pursuant to 42 U.S.C. § 1983 for an allegedly unconstitutional conviction or imprisonment, or for "other harm caused by actions whose unlawfulness would render a conviction or sentence invalid," a prisoner must show that the conviction or sentence has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Because the validity of Plaintiff's imprisonment

has yet to be undermined, the Court must dismiss this action as premature.

ACCORDINGLY, IT IS HEREBY ORDERED that this action is hereby **dismissed without prejudice as frivolous.**

IT IS SO ORDERED this 26th day of JULY, 1996.



SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 7/30/96

F I L E D

JUL 29 1996 SAC

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

Phil Lombardi, Clerk
U.S. DISTRICT COURT

STEVEN O. MUSGROVE,

Plaintiff,

v.

SHIRLEY S. CHATER,
Commissioner of Social Security,

Defendant.

Case No: 95-C-77-W ✓

JUDGMENT

Judgment is entered in favor of the Commissioner of Social Security in accordance with this court's Order filed July 29, 1996.

Dated this 29th day of July, 1996.



JOHN LEO WAGNER
UNITE STATES MAGISTRATE JUDGE

ENTERED ON DOCKET
DATE 7/30/96

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

JUL 29 1996 *ML*

STEVEN O. MUSGROVE,)

Plaintiff,)

v.)

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

Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 95-C-77-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(l) and 223 and supplemental security income under §§ 1602 and 1614(a)(3)(A) of the Social Security Act, as amended.

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

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.

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 disabled within the meaning of the Social Security Act.²

In the case at bar, the ALJ made his decision at the fifth step of the sequential evaluation process.³ He found that claimant had the residual functional capacity to perform the physical exertional and nonexertional requirements of work, except for work involving temperature extremes or lifting over ten pounds at a time. He concluded that claimant was unable to perform his past relevant work as a construction laborer or gas station attendant. He found that claimant was forty years

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).

old, which is defined as a younger individual, and that there were a significant number of sedentary jobs in the national economy which he could perform after a short demonstration or within thirty days which did not require special skills or experience. Having determined that there were a significant number of jobs that claimant could perform, the ALJ concluded that he was not disabled 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) The ALJ failed to consider the evidence that claimant had a frozen shoulder and a mental impairment.
- (2) The ALJ failed to show that claimant retained the capacity to perform sedentary work on a sustained basis.
- (3) The ALJ failed to take vocational testimony which was required because claimant suffers from nonexertional impairments.

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 had heart problems as a young child and underwent surgery to repair a heart valve. (TR 107-111). There is no evidence that he had additional heart problems until July 11, 1993, when he was admitted to the hospital with chest pains and diagnosed with aortic insufficiency and an ascending aortic aneurysm, unstable angina, and mitral regurgitation (TR 112-113, 163-165).

On July 21, 1993, claimant underwent a post-aortic valve and conduit replacement, repair of the aneurysm, and implantation of a pacemaker (TR 141-142).

A chest x-ray on July 31, 1993 revealed a marked enlargement of the heart (TR 138). Claimant was discharged from the hospital on August 2, 1993 in good condition, and denied having any chest pain or shortness of breath (TR 118).

On August 10, 1993, he visited his cardiologist, who reported that he "appears rather anxious." (TR 183). He was referred to Dr. Haas, who reported on August 18, 1993, that he "feels well but has multiple complaints." (TR 193). He was told to do no lifting or driving for six to eight weeks and eat a low-fat diet. (TR 193). On October 5, 1993, he called the doctor to get a letter "to get him out of jury duty," but the doctor told him "that there was no medical reason why he can't do jury duty." (TR 192). On October 25, 1993, the doctor reassured claimant that his pacemaker was working properly (TR 192).

On November 18, 1993, Dr. Vincent Roman saw claimant for a three month follow-up and reported:

He has multiple somatic complaints and is extremely anxious about every minor problem that arises. However, he has no symptoms referable to the cardiovascular system. He denies dyspnea, PND, orthopnea, or syncope. He does have occasional lightheaded episodes and occasional episodes of palpitations.

The patient also notes pain in his left shoulder which has limited his motion in that shoulder significantly. He describes it as specifically a musculoskeletal soreness and discomfort which occasionally radiates down the arm.

The left shoulder has limited range of motion, particularly abduction. There is some tenderness to palpation over the deltoid muscle.

(TR 206-207). (emphasis added).

Doctor Roman reprogrammed the pacemaker and discontinued claimant's

medication for atrial fibrillation, which had been resolved, and Tenormin to regulate blood pressure (TR 207). He recommended that claimant seek orthopedic attention for his shoulder problem (TR 208). The doctor said: "[b]ecause of limited activity in that shoulder, it has become frozen and he is going to need significant physical therapy in order to free this up. I suggested x-rays and an orthopedic evaluation before this proceeds." (TR 208).

A chest x-ray on December 21, 1993 showed cardiomegaly, mild congestive changes with edema, and an enlarged heart (TR 210). On that date, he had no complaints and reported no chest pain (TR 214). On March 14, 1994, he told his doctor he had been suffering from night sweats, fever, pain of his right shoulder and back, and pleuritic pain, and the doctor diagnosed him with medication toxicity (TR 216).

At the hearing, claimant stated that he was unable to work "[b]ecause I don't have the physical strength or the endurance to do any of the things that I've done in the past." (TR 33). He said he walks for about a mile four days a week, reads, watches television, goes out with friends, and drives (TR 34). He claimed that he can only stand for a half hour or his feet swell up, so he has to sit down for 10-15 minutes until the swelling goes down (TR 34-36). He stated that he can only lift twenty pounds before he feels lightheaded and weak and suffers heat exhaustion if he's in the sun for 15-20 minutes (TR 36). In his application, he claimed he was "very apprehensive when out in public" because he had been told "to avoid crowds because of danger of infections." (TR 98, 100).

There is no merit to claimant's contentions. There is absolutely no evidence that he has a disabling mental or shoulder condition. While he claims he was told to avoid crowds and cannot lift, pull or push, as the ALJ noted: "[t]here is no evidence in the record that any of the claimant's treating physicians have ever placed any restriction on the claimant's ability to sit, stand, walk, bend, lift, or carry. Nor is there any evidence that any of his treating physicians ever told him to avoid crowds." (TR 19). The only limitation on lifting was for six to eight weeks in August of 1993 (TR 193). In fact, Dr. Haas stated on November 18, 1993, that he had multiple somatic complaints and was extremely anxious about every minor problem that arose, but had no symptoms referable to the cardiovascular system (TR 19, 206).

While he had a frozen shoulder in November of 1993, later medical records do not mention such a restriction. Under the Social Security Act, a physical or mental impairment is defined as resulting from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 423(d)(3). There is no such evidence in the record.

Claimant's treating physicians did not refer him for counseling or a psychological evaluation. A disability examiner for the Social Security Administration investigated the claim of a mental impairment on October 27, 1993 and was told by claimant that his problems of fear of crowds and forgetfulness have "not caused him to alter his lifestyle . . . he has not sought psychiatric or psychological counseling and has not yet mentioned it to his regular doctor" (TR 76). He also said that he

had "no problems getting lost, reading, adding, or watching television" (TR 77). At the hearing, he claimed he was unable to work only because of "limited physical strength and endurance." (TR 33). It has been recognized that "some claimants exaggerate symptoms for purposes of obtaining government benefits, and deference to the fact-finder's assessment of credibility is the general rule." Frey v. Bowen, 816 F.2d 508, 517 (10th Cir. 1987).

There is substantial evidence to support the ALJ's determination that claimant has the residual functional capacity to perform sedentary work. Two consultative examiners concluded that claimant could occasionally lift fifty pounds, frequently lift 25 pounds, sit, walk, and stand for six hours of an eight-hour workday, and perform unlimited pushing/pulling motions (TR 48-55, 68-75). 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.

There is no evidence that claimant has a heart, shoulder or mental disability which precludes him from doing sedentary work, which involves only occasional standing. He admits he walks a mile four days a week and can stand a half hour. (TR 34).

There is also no merit to claimant's contention that the ALJ erred in failing to take vocational testimony. Only if a claimant suffers from an impairment or combination of impairments severe enough to preclude him from returning to his prior work activity is the ALJ under an obligation to use vocational expert testimony to determine what other employment is available to the claimant in the national economy. See Diaz v. Secretary of Health & Human Servs., 898 F.2d 774, 776 (10th Cir. 1990); Channel v. Heckler, 747 F.2d 577, 579 (10th Cir. 1984).

The ALJ properly determined that claimant had no nonexertional impairments that limited his ability to work (TR 19). "Assessment of a residual functional capacity for the claimant must and does, follow the credibility of the claimant's testimony. The Administrative Law Judge has found the claimant's testimony to be frank and sincere, but credible only to the extent that it is reconciled with his ability to perform sedentary work activities." (TR 19).

While the ALJ determined that claimant could not work in temperature extremes, the great majority of sedentary jobs are performed indoors where temperature extremes are controlled. The ALJ is not required to seek vocational expert testimony if the reduction of a claimant's residual functional capacity is insignificant. Ellison v. Sullivan, 921 F.2d 816, 820 (8th Cir. 1990).

The decision of the ALJ is supported by substantial evidence and is a correct application of the regulations. The decision is affirmed.

Dated this 26th day of July, 1996.



JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

S:\ORDERS\musgrove

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUL 26 1996

JESUS VALENZUELA,

Plaintiff,

v.

BUILDERS TRANSPORT, INC., a
foreign corporation, and
STEVEN D. DUNLAP,

Defendants.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No.: 95-C-1164-K

FILED ON DOCKET

JUL 29 1996

STIPULATION FOR ORDER OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Jesus Valenzuela, his attorney of record, John M. Lamont and Defendants' counsel, Daniel E. Holeman, and would show the Court that this matter has been compromised and settled and, therefore, moves the Court for an Order of Dismissal With Prejudice.

Jesus Valenzuela by his attorney John M. Lamont

Jesus Valenzuela

John M. Lamont

John M. Lamont
Attorney for Plaintiff

Daniel E. Holeman

Daniel E. Holeman
Attorney for Defendants

FILED

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

JUL 26 1996

CHARLENE JONES,

Plaintiff,

v.

THE TOWN OF LOCUST GROVE,
OKLAHOMA,

Defendants.

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 95-C-1233-H

ENTERED ON DOCKET

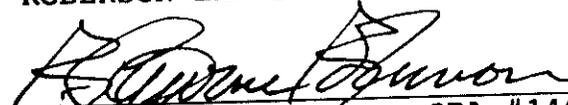
JUL 29 1996

STIPULATION OF DISMISSAL WITH PREJUDICE

All the parties to this action hereby stipulate that any and all causes of action and claims against the Defendant, Town of Locust Grove, are hereby dismissed with prejudice.

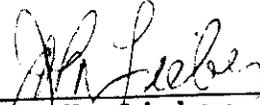

CHARLENE JONES, PLAINTIFF

THE ROBERSON LAW OFFICE

By: 
R. Lawrence Roberson, OBA #14076
3511 E. Admiral Place
Tulsa, Oklahoma 74115-8211

ATTORNEY FOR PLAINTIFF

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 DEFENDANT
TOWN OF LOCUST GROVE

F I L E D

JUL 26 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

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

Case No. 95 - C 748 H

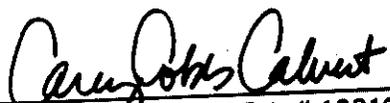
ENTERED ON BOOKS

DATE JUL 29 1996

JOINT STIPULATION OF DISMISSAL

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the Plaintiff, NRB, Inc., and the Defendants, Marah Wood Holdings, Inc., Federal Bank Loan Recoveries - Dept. A., L.P., Federal Bank Loan Recoveries - Dept. B., L.P., Federal Bank Loan Recoveries - Dept. C., L.P., Federal Bank Loan Recoveries - Dept. D., L.P.,¹ jointly stipulate and agree that this action should be and is hereby dismissed with prejudice, each side to bear its own costs, attorneys' fees and expenses.

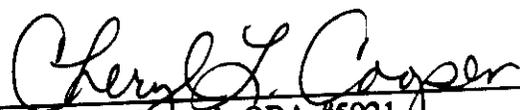
Respectfully submitted,



~~Kenneth J. Beebe, OBA # 12012~~
Carey Cobb Calvert OBA # 15000

TOM L. ARMSTRONG & ASSOCIATES
601 South Boulder, Suite 706
Tulsa, Oklahoma 74119-1337
(918) 587-3939

ATTORNEYS FOR PLAINTIFF



James L. Kincaid, OBA #5021
Cheryl L. Cooper, OBA #15745

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

ATTORNEYS FOR DEFENDANTS

¹ Defendant Commercial Financial Services, Inc. was dismissed from this lawsuit on February 23, 1996. See Order Granting Joint Motion, filed February 23, 1996.

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 1996, I mailed a true and correct copy of the above and foregoing document, postage prepaid, to the following named person(s):

H.L. "Buddy" Socks
McCamish, Deely & Rapp
300 IBC Center
130 E. Travis
San Antonio, Texas 78205

Harold C. Zuflacht
BASS, HIGDON & HARDY, INC.
9002 Wurzbach
San Antonio, Texas 78240
(210) 614-4444



ENTERED ON DOCKET

DATE 7-29-96

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

JUL 26 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

BIZJET INTERNATIONAL SALES
& SUPPORT, INC. an Oklahoma
corporation,

Plaintiff,

vs.

GOODMAN AVIATION, INC.,
a Nevada corporation,

Defendant.

Case No. 95-C-1160-E

ADMINISTRATIVE CLOSING ORDER

The parties have advised the Court that a settlement of this matter has been reached which involves the establishment of an escrow account and the repair of the defendant's Aircraft. The parties anticipate all curative work and the payment for services rendered will be completed within two (2) months and that this case can be dismissed at that time.

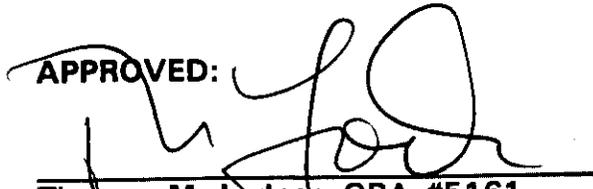
It is hereby ordered that this case be administratively closed until October 31, 1996.

DATED this 26 day of July, 1996.

S/ JAMES O. ELLISON

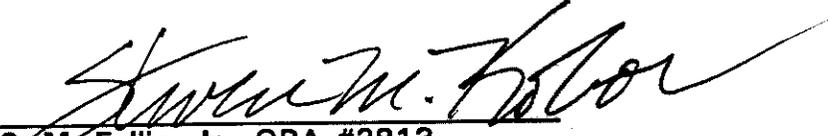
**JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE**

APPROVED:



Thomas M. Ladner, OBA #5161
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Tulsa, Oklahoma 74103
(918) 583-7571

**ATTORNEYS FOR BIZJET INTERNATIONAL
SALES & SUPPORT, INC.**



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**ATTORNEYS FOR DEFENDANT, GOODMAN
AVIATION, INC.**

bj.good.ae/mdc

F I L E D

JUL 26 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

PROCEEDS OF BANK ACCOUNTS
NO. 007890 AND 009958
AT COMMUNITY BANK & TRUST,
SENECA, MISSOURI,

Defendants.

AND
EASTERN SHAWNEE TRIBE OF
OKLAHOMA,

Plaintiff,

vs.

STEPHEN C. LEWIS, in his
official capacity as United
States Attorney for the
Northern District of
Oklahoma,

Defendant.

AND
UNITED STATES OF AMERICA,

Plaintiff,

vs.

TWENTY-FIVE (25) CALIFORNIA
GOLD SLOT MACHINES, MORE OR
LESS, WITH RELATED EQUIPMENT,
AND PROCEEDS,
and
THIRTY (30) ELECTRONIC BINGO
MACHINES, MORE OR LESS, WITH
RELATED EQUIPMENT, AND
PROCEEDS,

Defendants.

CIVIL ACTION NO. 95-C-942 C

CONSOLIDATED WITH:

CIVIL ACTION NO. 95-C-945 C

ENTERED ON DOCKET

DATE JUL 29 1996

CIVIL ACTION NO. 95-C-947 C

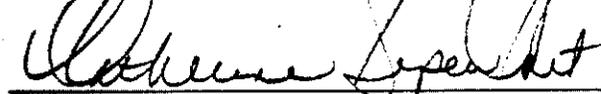
JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41 of the Federal Rules of Civil Procedure,
and subject to the terms of the letter agreement dated February 16,

1996, executed by the parties, the Eastern Shawnee Tribe of Oklahoma (the "Tribe") and Stephen C. Lewis hereby stipulate to the dismissal with prejudice of the Tribe's declaratory judgment action, case No. 95-C-945-C.

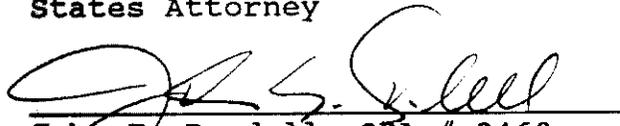
Respectfully submitted,

STEPHEN C. LEWIS
United States Attorney



Catherine Depew Hart, OBA #3836
Assistant United States Attorney
3460 U.S. Courthouse
333 W. Fourth Street
Tulsa, OK 74103

Attorneys for The United States of
America and Stephen C. Lewis, United
States Attorney



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(918) 583-2288

Attorneys for The Eastern Shawnee
Tribe of Oklahoma

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE 7-29-96

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DONALD J. KLOBUCHAR aka Donald)
Jeffrey Klobuchar; LORI D.)
KLOBUCHAR aka Lori Denise Klobuchar)
aka Lori Denise Schnaithman; TERRY)
WOODARD; MARY WOODARD;)
SAMUEL RADER dba Rader Group,)
Realtors; STATE OF OKLAHOMA, ex)
rel. OKLAHOMA TAX COMMISSION;)
CITY OF BROKEN ARROW, Oklahoma;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

F I L E D
JUL 26 1996 *h*
Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil Case No. 95-C 582E ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 26th day of July, 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, SAMUEL RADER dba Rader Group, Realtors, appears by Georgenia A. Brown; the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, appears by Kim D. Ashley, Assistant General Counsel; The Defendant, CITY OF BROKEN ARROW, Oklahoma, appears by Michael R.

23

Vanderburg, City Attorney, Broken Arrow, Oklahoma; the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA REAL ESTATE COMMISSION-EDUCATION AND RECOVERY FUND, appears by Philip Holmes; the Defendants, TERRY WOODARD and MARY WOODARD, appear not having previously filed a Disclaimer; the Defendant, JOSEPH WESLEY JONES, appears not having previously filed a Disclaimer; and the Defendants, DONALD J. KLOBUCHAR aka Donald Jeffrey Klobuchar and LORI D. KLOBUCHAR aka Lori Denise Klobuchar aka Lori Denise Schnaithman, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, MARY WOODARD, acknowledged receipt of Summons and Complaint on December 11, 1995, by Certified Mail; that the Defendant, SAMUEL RADER dba Rader Group, Realtors, signed a Waiver of Summons on July 17, 1995; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, acknowledged receipt of Summons and Complaint on June 26, 1995, by Certified Mail; the Defendant, CITY OF BROKEN ARROW, Oklahoma, acknowledged receipt of Summons and Complaint on June 26, 1995, by Certified Mail; the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA REAL ESTATE COMMISSION-EDUCATION AND RECOVERY FUND, acknowledged receipt of Summons and Complaint on September 5, 1995, by Certified Mail; and the Defendant, JOSEPH WESLEY JONES, acknowledged receipt of Summons and Complaint on December 9, 1995, by Certified Mail.

The Court further finds that the Defendants, DONALD J. KLOBUCHAR aka Donald Jeffrey Klobuchar and LORI D. KLOBUCHAR aka Lori Denise Klobuchar aka Lori Denise Schnaithman, were served by publishing notice of this action in the Tulsa Daily

Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning February 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, DONALD J. KLOBUCHAR aka Donald Jeffrey Klobuchar and LORI D. KLOBUCHAR aka Lori Denise Klobuchar aka Lori Denise Schnaithman, 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 J. KLOBUCHAR aka Donald Jeffrey Klobuchar and LORI D. KLOBUCHAR aka Lori Denise Klobuchar aka Lori Denise Schnaithman. 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 July 11, 1995; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, filed its Answer on June 29, 1995; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, filed its Answer on July 14, 1995; that the Defendant, SAMUEL RADER dba Rader Group, Realtors, filed his Answer on August 17, 1995; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA REAL ESTATE COMMISSION-EDUCATION AND RECOVERY FUND, filed its Answer on September 29, 1995; that the Defendants, MARY WOODARD and TERRY WOODARD, filed their Disclaimer on January 4, 1996; that the Defendant, JOSEPH WESLEY JONES, filed his Disclaimer on January 17, 1996; and that the Defendants, DONALD J. KLOBUCHAR aka Donald Jeffrey Klobuchar and LORI D. KLOBUCHAR aka Lori Denise Klobuchar aka Lori Denise Schnaithman, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, DONALD J. KLOBUCHAR, is one and the same person sometimes referred to as Donald Jeffrey Klobuchar, and will hereinafter be referred to as "DONALD J. KLOBUCHAR." The Defendant, LORI D. KLOBUCHAR, is one and the same person as Lori Denise Klobuchar and Lori Denise Schnaithman, and will hereinafter be referred to as "LORI D. KLOBUCHAR." The Defendants, DONALD J. KLOBUCHAR and LORI D. KLOBUCHAR, were granted a Divorce in Tulsa County District Court on November 9, 1992, in Case No. FD-92-04257, and are both single unmarried

persons. The Defendants, **TERRY WOODARD** and **MARY WOODARD**, 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 One (1), Block Seven (7), SOUTHBROOK III, 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 February 24, 1986, **Maynard Kelly Nickell, Jr. and Lori D. Nickell**, executed and delivered to **OKLAHOMA MORTGAGE COMPANY, INC.**, their mortgage note in the amount of \$68,819.00, payable in monthly installments, with interest thereon at the rate of Ten and One-Half percent (10.5%) per annum.

The Court further finds that as security for the payment of the above-described note, **Maynard Kelly Nickell, Jr. and Lori D. Nickell, husband and wife**, executed and delivered to **OKLAHOMA MORTGAGE COMPANY, INC.**, a mortgage dated February 24, 1986, covering the above-described property. Said mortgage was recorded on February 25, 1986, in Book 4926, Page 58, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 3, 1986, **OKLAHOMA MORTGAGE COMPANY, INC.**, assigned the above-described mortgage note and mortgage to **GOVERNMENT NATIONAL MORTGAGE ASSOCIATION**. This Assignment of Mortgage was recorded on February 26, 1991, in Book 5306, Page 122, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 15, 1991, GOVERNMENT NATIONAL MORTGAGE ASSOCIATION, 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 26, 1991, in Book 5306, Page 123, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendants, DONALD J. KLOBUCHAR and LORI D. KLOBUCHAR, currently hold the fee simple title to the property via mesne conveyances and are the current assumptors of the subject indebtedness.

The Court further finds that on September 1, 1990, the Defendants, DONALD J. KLOBUCHAR and LORI D. KLOBUCHAR, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on March 1, 1991 and November 1, 1991.

The Court further finds that the Defendants, DONALD J. KLOBUCHAR and LORI D. KLOBUCHAR, 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 J. KLOBUCHAR and LORI D. KLOBUCHAR, are indebted to the Plaintiff in the principal sum of \$109,276.51, plus interest at the rate of 10.5 percent per annum from April 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by

virtue of personal property taxes in the amount of \$59.00 which became a lien on the property as of June 26, 1992, a lien in the amount of \$57.00 which became a lien on the property as of June 25, 1993, and a lien in the amount of \$61.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, has a lien on the property which is the subject matter of this action by virtue of state income taxes in the amount of \$461.82, plus accrued and accruing interest, which became a lien on the property as of January 27, 1993. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, SAMUEL RADER dba Rader Group, Realtors, has a lien on the property which is the subject matter of this action by virtue of a judgment in the amount of \$3,100.00, including \$78.60 costs and \$35.00 Attorney fees, plus interest at a rate of 11.71% per annum from January 29, 1991, which became a lien on the property as of February 22, 1991. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA REAL ESTATE COMMISSION-EDUCATION AND RECOVERY FUND, has a lien on the property which is the subject matter of this action by virtue of a Judgment, in the amount of \$3,202.06, including \$750.00 Attorney fees, plus interest at a rate of 7.42% per annum, until paid, which became a lien on the property as of April 21, 1995. 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 Defendants, DONALD J. KLOBUCHAR and LORI D. KLOBUCHAR, 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 the Defendants, TERRY WOODARD, MARY WOODARD and JOSEPH WESLEY JONES, 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, DONALD J. KLOBUCHAR and LORI D. KLOBUCHAR, in the principal sum of \$109,276.51, plus interest at the rate of 10.5 percent per annum from April 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5.81 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 \$177.00, plus costs and interest, for personal property taxes for the years 1991-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, have and recover judgment In Rem in the amount of \$461.82, plus accrued and accruing interest, for state income taxes, plus the costs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, SAMUEL RADER dba Rader Group, Realtors, have and recover judgment in the amount of \$3,100.00, including \$78.60 costs and \$35.00 Attorney fees, plus interest at a rate of 11.71% per annum from January 29, 1991, for its judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA REAL ESTATE COMMISSION-EDUCATION AND RECOVERY FUND, have and recover judgment in the amount of \$3,202.06, including Attorney fees of \$750.00, plus interest at a rate of 7.42% per annum until paid, for its judgment.

IT IS FURTHER ORDER, 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, DONALD J. KLOBUCHAR, LORI D. KLOBUCHAR, TERRY WOODARD, MARY WOODARD, JOSEPH WESLEY JONES 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 J. KLOBUCHAR and LORI D. KLOBUCHAR, to satisfy the judgment In Rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

Third:

In payment of Defendant, SAMUEL RADER dba Rader Group, Realtors, in the amount of \$3,100.00 including \$78.60 costs and \$35.00 Attorney Fees, plus interest at a

rate of 11.71% per annum from January 29, 1991, for his Judgment.

Fourth:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$59.00, personal property taxes which are currently due and owing.

Fifth:

In payment of Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, in the amount of \$461.82, plus accrued and accruing interest, state income taxes which are currently due and owing.

Sixth:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$118.00, personal property taxes which are currently due and owing.

Seventh:

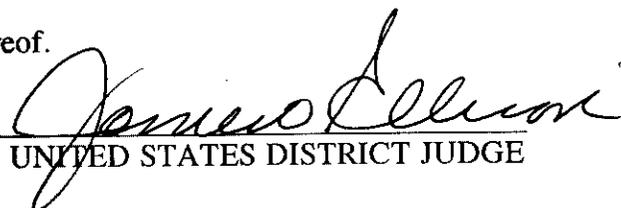
In payment of Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA REAL ESTATE COMMISSION-EDUCATION AND RECOVERY FUND, in the amount of \$3,202.06, including \$78.60 costs and \$35.00 Attorney

fees, plus interest at the rate of 7.42% per annum until
paid, for its judgment.

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

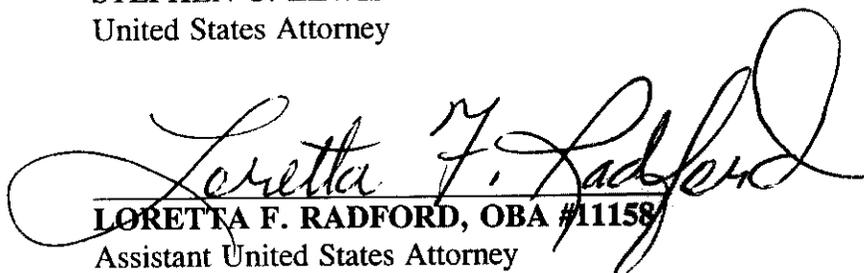
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant
to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right
to possession based upon any right of redemption) in the mortgagor or any other person
subsequent to the foreclosure sale.

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


UNITED STATES DISTRICT JUDGE

APPROVED:

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United States Attorney


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County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



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City of Broken Arrow, Oklahoma



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



GEORGENIA A. BROWN, OBA #11703

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Samuel Rader dba Rader
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PHILIP HOLMES, OBA #4326

Philip Holmes, Inc.

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Oklahoma City, OK 74112

(405) 521-1507

Attorney for Defendant,

State of Oklahoma, ex rel.

Oklahoma Real Estate Commission-

Education and Recovery Fund

Judgment of Foreclosure

Civil Action No. 95-C 582E

LFR:flv

MW
7-12

ENTERED ON DOCKET

DATE 7-29-96

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

JUL 26 1996

JS

BIZJET INTERNATIONAL SALES
& SUPPORT, INC. an Oklahoma
corporation,

Plaintiff,

vs.

GOODMAN AVIATION, INC.,
a Nevada corporation,

Defendant.

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 95-C-1160-E ✓

ADMINISTRATIVE CLOSING ORDER

The parties have advised the Court that a settlement of this matter has been reached which involves the establishment of an escrow account and the repair of the defendant's Aircraft. The parties anticipate all curative work and the payment for services rendered will be completed within two (2) months and that this case can be dismissed at that time.

It is hereby ordered that this case be administratively closed until October 31, 1996.

DATED this 26th day of July, 1996.



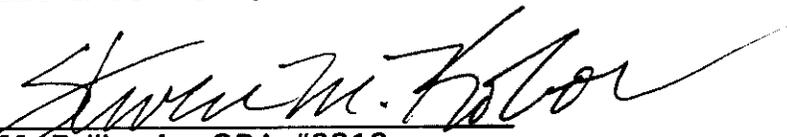
JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

16

APPROVED:


Thomas M. Ladner, OBA #5161
NORMAN & WOHLGEMUTH
2900 Mid-Continent Tower
Tulsa, Oklahoma 74103
(918) 583-7571

**ATTORNEYS FOR BIZJET INTERNATIONAL
SALES & SUPPORT, INC.**


S. M. Fallis, Jr., OBA #2813
Steven M. Kobos, OBA #14263
NICHOLS, WOLFE, STAMPER, NALLY,
FALLIS & ROBERTSON, INC.
124 East Fourth Street, Suite 400
Tulsa, OK 74103-5010
(918) 584-5182

**ATTORNEYS FOR DEFENDANT, GOODMAN
AVIATION, INC.**

bj.good.ae/mdc

DATE 7-29-96

LINDEN WOODRUFF and SHERRY
LEE WOODRUFF, individually,
and as husband and wife,

Plaintiffs,

vs.

AMERICAN ISUZU MOTORS, a
foreign corporation,

Defendant.

Case No. 95-C-1199E ✓

FILED

JUL 26 1996 *sa*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

Upon consideration of the *Joint Stipulation of Dismissal* filed herein and by agreement of the parties, for good cause shown, this Court does hereby dismiss the above styled and numbered cause without prejudice.

James DeLoach

UNITED STATES JUDGE

Approved:
Robert H. TIPS

ROBERT H. TIPS
Attorney for Plaintiffs

Bert M. Jones

BERT M. JONES
Attorney for Defendant

mm

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

FILED

JUL 26 1996

JL

Rodney Bachelder,)
)
Plaintiff,)
vs.)
)
City of Tulsa, et al.,)
)
Defendants.)

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

Case No. 95-C-1208-BU ✓

ENTERED ON DOCKET

DATE JUL 29 1996

JUDGMENT

This action came before the Court upon Defendants' Alternative Motion for Summary Judgment, and the issues having been duly considered and a decision having been duly rendered,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that judgment is entered in favor of Defendants, City of Tulsa, Tulsa Police Department, Chief Ronald Palmer, and Deputy Chief Dave Been against Plaintiff, Rodney Bachelder, and that Defendants, City of Tulsa, Tulsa Police Department, Chief Ronald Palmer and Deputy Chief Dave Been, recover of Plaintiff, Rodney Bachelder, their costs of action, if any.

Dated at Tulsa, Oklahoma, this 26th day of July, 1996.

Michael Burrage
MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

12

FILED

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

JUL 26 1996

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

MARTIN FINE,)
)
Plaintiff,)
vs.)
)
BILL E. GRIFFIN AND JACKIE)
GRIFFIN,)
)
Defendants.)

Case No. 96-C-93-BU

ENTERED ON DOCKET
~~JUL 29 1996~~
DATE _____

ADMINISTRATIVE CLOSING ORDER

As the parties have reached a settlement and compromise of this matter, it is ordered that the Clerk administratively terminate this action in his records without prejudice to the rights of the parties to reopen the proceeding for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If the parties have not reopened this case within 30 days of this date for the purpose of dismissal pursuant to the settlement and compromise, the plaintiff's action shall be deemed to be dismissed with prejudice.

Entered this 26th day of July, 1996.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

7

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

FILED

JUL 26 1996

JB

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

THOMAS HUNTER,)
)
 Plaintiff,)
)
 vs.)
)
 CLIFFORD HOPPER,)
)
 Defendant.)

No. 96-CV-623-BU ✓

ENTERED ON DOCKET

DATE JUL 29 1996

ORDER

Plaintiff, a pro se inmate at the Tulsa County Jail, has filed a motion for leave to proceed in forma pauperis and a civil rights complaint against the Honorable Clifford Hopper for violation of his speedy trial rights. He alleges he was arrested on July 21, 1995, and was set to go to trial the week of June 17, 1996. However, Judge Hopper passed him on three occasions and then reset his trial for March of 1997. Plaintiff requests an order directing the dismissal of all charges pending against him in State court.

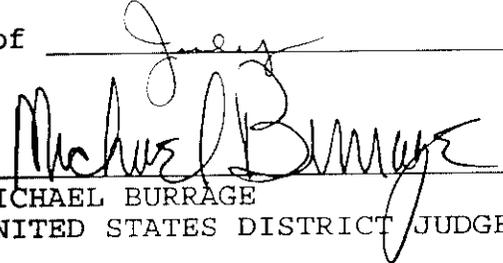
The Prison Litigation Reform Act of 1996, added a new section to the in forma pauperis statute, entitled "Screening." See 28 U.S.C. § 1915A. That section requires the Court to review prisoner complaints before docketing, or as soon as practicable after docketing, and "dismiss the complaint, or any portion of the complaint, if the complaint . . . is frivolous, malicious, or fails to state a claim upon which relief may be granted. Id.

After liberally construing Plaintiff's speedy trial claims, the Court concludes that they should be dismissed as they lack an arguable basis in law under the civil rights act, 42 U.S.C. § 1983.

Plaintiff's pre-trial habeas claims are cognizable under 28 U.S.C. § 2241(c)(3) which applies to a person in custody regardless of whether final judgment has been rendered and regardless of the present status of the case pending against him. See Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 503-04, 93 S.Ct. 1123, 1133-34, 35 (1973) (Rehnquist, J. dissenting); Capps v. Sullivan, 13 F.3d 350 (10th Cir. 1993); Dickerson v. State of Louisiana, 816 F.2d 220, 224 (5th Cir. 1987); Moore v. DeYoung, 515 F.2d 437, 441-42 (3rd Cir. 1975).

ACCORDINGLY IT IS HEREBY ORDERED that Plaintiff's motion for leave to proceed in forma pauperis is granted and that this action is dismissed without prejudice to it being refiled as a pretrial habeas action. The clerk shall mail to Plaintiff a copy of his complaint and forms and instructions for filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

SO ORDERED THIS 26th day of July, 1996.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 7/29/96

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

FILED

JANET D. COLE,)
)
Plaintiff,)
)
v.)
)
SHIRLEY S. CHATER,)
COMMISSIONER OF SOCIAL)
SECURITY,¹)
)
Defendant.)

JUL 26 1996 *SAC*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 93-C-722-W ✓

ORDER

Plaintiff's counsel has filed a Motion for Attorney fees (Docket #17), pursuant to 42 U.S.C. § 406. Defendant has responded that she has no objection to the court approving the fees requested (Docket #19).

The Motion for Attorney Fees (Docket #17) is granted. Counsel for plaintiff is awarded fees in the amount of \$3,502.50, pursuant to 42 U.S.C. § 406(b)(1).

Dated this 25th day of July, 1996.



JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

S:\orders\cole

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.

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

WAL-MART STORES, INC.,)
Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
AA ELECTRIC & PLUMBING, INC.,)
an Oklahoma corporation,)
UNDERWOOD ENGINEERING, INC.,)
an Oklahoma corporation, and)
TIMBERLAKE CONSTRUCTION)
COMPANY, INC., an Oklahoma)
corporation,)
)
Defendants.)

ENTERED ON DOCKET
JUL 26 1998
DATE

Case No. 93-C1148-K

FILED

JUL 25 1996

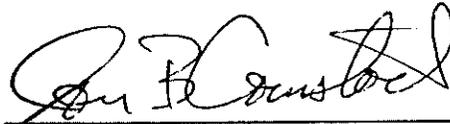
Phil Lombardi, Clerk
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL

COME NOW the Plaintiffs, Wal-Mart Stores, Inc., by and through its attorney of record, Jon B. Comstock; and Insurance Company of North America, by and through its attorney of record, Jack Freeman; and Defendants, AA Electric & Plumbing, Inc., by and through its attorney of record, Wm. Gregory James; Underwood Engineering, Inc., by and through its attorney of record, Larry Lipe; and Timberlake Construction Company, Inc., by and through its attorney of record, William S. Leach, and herewith, stipulate, pursuant to Rule 41 (a) (1) (ii), that all claims, counterclaims, and crossclaims asserted herein, including rights to appeal, may be dismissed, with prejudice to refileing, for the reason and upon the grounds that all such claims, counterclaims, and crossclaims have been settled by and between all parties to this action.

It is further stipulated by all parties to this action that each shall bear their own **respective** costs, including attorney fees.

DATED this 24th day of July, 1996.



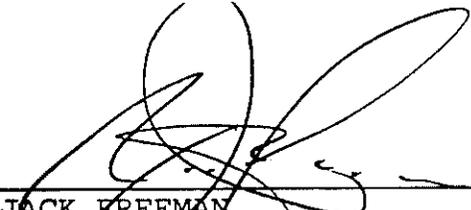
JON B. COMSTOCK

~~P. O. BOX 1866~~

Rogers, AR ~~72757-1866~~

~~Bentonville~~ ARK. 72716

ATTORNEY FOR WAL-MART STORES, INC.



JACK FREEMAN
FELDMAN HALL, FRANDEN, WOODARD
& FARRIS
525 South Main, Suite 1400
Tulsa, OK 74103-4409

ATTORNEYS FOR INSURANCE COMPANY OF
NORTH AMERICA



WM. GREGORY JAMES
PRAY, WALKER, JACKMAN, WILLIAMSON
& MARLAR

900 ONEOK Plaza
Tulsa, Oklahoma 74103
(918) 581-5500
(918) 581-5599 (Fax)

ATTORNEYS FOR AA ELECTRIC AND
PLUMBING, INC.



DAVID M. THORNTON, JR.
THORNTON AND THORNTON
525 South Main, Suite 660
Tulsa, Oklahoma 74103
(918) 587-2544
(918) 582-0551 (Fax)

ATTORNEYS FOR AA ELECTRIC AND
PLUMBING, INC.

Larry Lipe

LARRY LIPE
LIPE, GREEN, PASCHAL, TRUMP &
BRAGG

15 East 5th Street
Suite 3700
Tulsa, Oklahoma 74103

ATTORNEYS FOR UNDERWOOD ENGINEER-
ING

Bill

WILLIAM S. LEACH
RHODES, HIERONYMUS, JONES, TUCKER
& GABLE
400 ONEOK Plaza
Tulsa, OK 74121-1100
(918) 582-1173

ATTORNEYS FOR TIMBERLAKE CONSTRUCTION COMPANY, INC.

SAK
7/24/96

ENTERED ON DOCKET
DATE 7-26-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 25 1996



Phil Lombardi, Clerk
U.S. DISTRICT COURT

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.)

CIVIL ACTION NO. 94-C-591-B ✓

DEFICIENCY JUDGMENT

This matter comes on for consideration this 25 day of July, 1996, upon the Motion of the Plaintiff, United States of America, acting on behalf of the Small Business 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 Defendants, William R.

Grundy aka William Grundy aka William Ralph Grundy and Pamela R. Grundy aka Pamela Grundy, appear 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 **William R. Grundy aka William Grundy aka William Ralph Grundy, 1018 West 57th Street North, Tulsa, Oklahoma 74126, and Pamela R. Grundy aka Pamela Grundy, 18 East 44th Place North, Tulsa, Oklahoma 74106,** 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 June 28, 1995, in favor of the Plaintiff United States of America, and against Defendants, **William R. Grundy aka William Grundy aka William Ralph Grundy and Pamela R. Grundy aka Pamela Grundy,** with interest and costs to date of sale is \$8,454.44.

The Court further finds that the appraised value of the real property at the time of sale was \$3,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered June 28, 1995, for the sum of \$2,200.00 which is less than the market value.

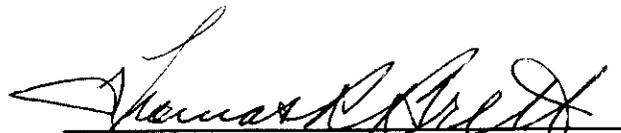
The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on JUL. 22 1996.

The Court further finds that the Plaintiff, United States of America on behalf of the Small Business Administration, is accordingly entitled to a deficiency judgment against the Defendants, **William R. Grundy aka William Grundy aka William Ralph Grundy and Pamela R. Grundy aka Pamela Grundy,** as follows:

Principal Balance Plus Pre-Judgment Interest as of June 28, 1995	\$7,615.28
Interest From Date of Judgment to Sale	304.59
Publication Fees of Notice of Sale	260.86
Publication Fees of Confirmation Hearing	48.71
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$8,454.44
Less Credit of IRS Offset Amount	2,744.00
Less Credit of Appraised Value	<u>3,000.00</u>
DEFICIENCY	\$2,710.44

plus interest on said deficiency judgment at the legal rate of 5.81 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the IRS offset amount 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 Small Business Administration have and recover from Defendants, **William R. Grundy aka William Grundy aka William Ralph Grundy and Pamela R. Grundy aka Pamela Grundy**, a deficiency judgment in the amount of **\$2,710.44**, plus interest at the legal rate of 5.81 percent per annum on said deficiency judgment from date of judgment until paid.


 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-591-B (Grundy)

PP:cm

FILED

JUL 25 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

RLI INSURANCE COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 KEN LAMP and DENISE LAMP,)
 d/b/a MID-AMERICA AVIATION;)
 CONNIE R. KING, Individually)
 and as Personal Representative)
 of the Estate of Donald W. King,)
 Deceased; JUANITA FRANKLIN,)
 Individually and as Personal)
 Representative of the Estate of)
 Kenneth W. Franklin, Deceased;)
 PHILIP DAVIS; BARBARA DAVIS;)
 ROSIE SAWYER, Individually and)
 as Personal Representative of)
 the Estate of Bradley Scott)
 Sawyer, Deceased; LONE STAR)
 INDUSTRIES, INC. and NATIONAL)
 UNION FIRE INSURANCE COMPANY OF)
 PITTSBURGH, PA.,)
)
 Defendants.)

CASE NO. 95-C-467-B

ENTERED ON DOCKET
DATE JUL 26 1996

J U D G M E N T

In accordance with the jury verdict rendered July 24, 1996, Judgment is hereby entered in favor of the Defendants, Ken Lamp and Denise Lamp, d/b/a Mid-America Aviation; Connie R. King, individually and as personal representative of the estate of Donald W. King, deceased; Juanita Franklin, individually and as personal representative of the estate of Kenneth W. Franklin, deceased; Philip Davis; Barbara Davis; Rosie Sawyer, individually and as personal representative of the estate of Bradley Scott Sawyer, deceased, and against the Plaintiff, RLI Insurance Company. Costs are assessed against Plaintiff if timely applied for pursuant to Local Rule 54.1.

DATED this 25th day of July, 1996


 THOMAS R. BRETT
 UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE 7/26/96

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

F I L E D

JUL 25 1996 *SAC*

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

WILLIAM C. GEAR,
SS# 445-54-2511

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner
Social Security Administration,

Defendant.

NO. 95-C-231-M ✓

ORDER

Plaintiff has applied for an award of attorney's fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). [Dkt. 13]. The parties have stipulated that an award in the amount of \$1,230.00 for attorney fees and \$120.00 for costs is appropriate. [Dkt. 14].

The Court finds that the parties' stipulation concerning fees and costs is reasonable. Accordingly, Plaintiff's motion for fees and costs pursuant to 28 U.S.C. § 2412(d) [Dkt. 13] is GRANTED in the total amount of \$1,350.00. In the event attorney fees and costs are also awarded under 42 U.S.C. § 406(b)(1), Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

SO ORDERED this 25th day of July, 1996.

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

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

ENTERED ON DOCKET
DATE: JUL 26 1996

DONALD R. NICHOLS and VIRGINIA)
NICHOLS, Husband and Wife; CHARLES)
BUCK; JEFF TSAY and NORA TSAY, Husband)
and Wife; AL BRYSON and MARY BRYSON;)
and HOWARD COLLINS)

Plaintiffs,)

v.)

Case No. 95-C-1126-H

G. DAVID GORDON; IRA RIMER; JOEL HOLT;)
PROGRESSIVE CAPITAL CORPORATION,)
an Oklahoma corporation; STRUTHERS)
STRUTHERS INVESTMENT ENTERPRISES;)
R. A. DEISON; GEORGE GORDON; SAMUEL)
LINDSAY, JR.; JAMES E. TURNER;)
BETTY ROSE TURNER; GLYN)
TURNER; PATTERSON ICENOGL,)
INC., an Oklahoma corporation;)
DOUG NELSON; NORTHERN OHIO)
ENGINEERING CO., a foreign)
corporation; ROBERT L. MILLER;)
HENSHAW, KLENDIA GORDON &)
GETCHEL, P.C., an Oklahoma)
professional corporation; and BAGGETT,)
GORDON & DEISON a partnership,)

Defendants.)

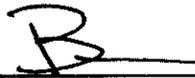
FILED

JUL 24 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Jeff Tsay and Nora Tsay hereby through stipulation of parties who have appeared in this
action dismiss their claims without prejudice.



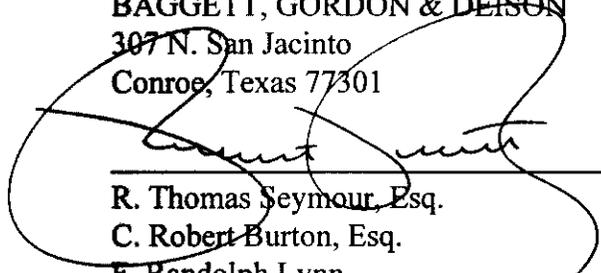
Laurence L. Pinkerton (OBA #7168)
Judith A. Finn (OBA #2923)
PINKERTON & FINN, P.C.
2000 First Place
15 East 5th Street
Tulsa, Oklahoma 74103-4367

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cb



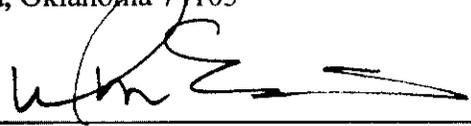
George D. Gordon, Esq.
BAGGETT, GORDON & DEISON
307 N. San Jacinto
Conroe, Texas 77301



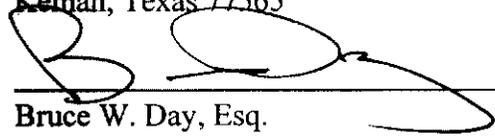
R. Thomas Seymour, Esq.
C. Robert Burton, Esq.
F. Randolph Lynn
550 ONEOK Plaza
100 West Fifth Street



Joel L. Wohl gemuth, Esq.
John E. Dowdell, Esq.
NORMAN & WOHLGEMUTH
2900 Mid-Continent Tower
Tulsa, Oklahoma 74103



William E. King, Esq.
WILLIAM E. KING, P.C.
Post Office Box 309
Kemah, Texas 77565



Bruce W. Day, Esq.
William B. Federman, Esq.
T.P. Howell, Esq.
DAY, EDWARDS, FEDERMAN,
PROPESTER & CHRISTENSEN
2900 Oklahoma Tower
210 Park Avenue
Oklahoma City, Oklahoma 73102-5605

on the other hand, if "the factual contentions are clearly baseless." Id.

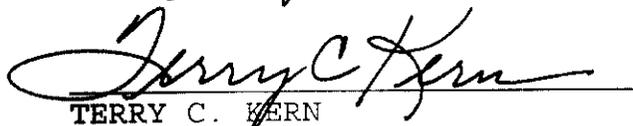
In his pro se complaint, Plaintiff contends Defendants conspired to deprive him of the necessary records and transcripts to appeal his 1991 conviction from Osage County. He alleges the record and transcripts were due in the Court of Criminal Appeals on January 31, 1994. Plaintiff requests compensatory and punitive damages.

After liberally construing Plaintiff's pro se pleading, see Hall v. Bellmon, 935 F.2d 1106, 1100 (10th Cir. 1991), the Court concludes that Plaintiff's action lacks an arguable basis in law as it is clear from the face of the complaint that Plaintiff's claims are barred by the two-year statute of limitations. See Fratus v. Deland, 49 F.3d 673, 674-75 (10th Cir. 1995) (district court may consider affirmative defense sua sponte only when the defense is "obvious from the face of the complaint" and "[n]o further factual record [is] required to be developed"); Meade v. Grubbs, 841 F.2d 1512, 1523 (10th Cir. 1988) (the applicable statute of limitations for civil rights actions under Oklahoma law is the two-year limitations period for "an action for injury to the rights of another"). Plaintiff's action arose on January 31, 1994, when the time period to perfect his direct appeal expired. The State of Oklahoma has no tolling provision for civil lawsuits filed by prisoners. See Hardin v. Straub, 490 U.S. 536, 540 n.8 (1989).

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's action is hereby DISMISSED as it lacks an arguable basis in law. The Clerk

shall MAIL to Plaintiff a copy of the complaint, brief in support, motion for appointment of counsel, and motion to effect personal service. Plaintiff's motions for appointment of counsel and to effect personal service (Docket #4 and #5) are DENIED as moot.

SO ORDERED this 24 day of July, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

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

RICK and TONI CHAPA,)
)
 Plaintiffs,)
)
 vs.)
)
 CIMARRON INSURANCE COMPANY,)
)
 Defendant.)

No. 96-C-581-K

ENTERED ON DOCKET
DATE JUL 25 1996

FILED

JUL 24 1996

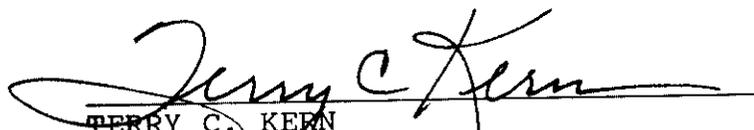
ORDER

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Before the Court is the motion of the plaintiff to remand. In its response, defendant asserts it had a good faith basis for removal, but has decided not to contest the pending motion.

It is the Order of the Court that the motion of the plaintiff to remand is hereby granted. This action is hereby remanded to the district court of Creek County, Oklahoma. Each side shall bear its own fees and costs.

ORDERED this 24 day of July, 1996.


TERRY C. KEEN
UNITED STATES DISTRICT JUDGE

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

TED B. PATTON,
Plaintiff,
vs.
STEVE VILLIGAN, an individual,
and GRANDVIEW PRODUCTS CO.,
a corporation,
Defendants.

ENTERED ON DOCKET
DATE JUL 25 1996

No. 96-C-592-K

F I L E D
JUL 24 1996

ORDER

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Now before the Court is Defendants' Motion to Dismiss for Improper Venue or in the Alternative to Transfer. Both parties agree that the proper venue for the instant lawsuit is the Western District of Oklahoma, since the alleged accident that gave rise to the lawsuit occurred in Stillwater, Oklahoma. Title 28 U.S.C. § 1406(a) provides, "The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."

Finding that transfer would serve the interest of justice, Defendants' Motion to Dismiss is DENIED, and Defendants' Motion to Transfer is GRANTED. This Court hereby ORDERS that the above captioned case be TRANSFERRED to the Western District of Oklahoma.

IT IS SO ORDERED THIS 23 DAY OF JULY, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

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

JUL 24 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

Plaintiff,)

vs.)

No. 95-C-648-C

WESTERN TEX-PACK, INC.,)
MISTLETOE TEX-PACK, EXPRESS,)
INC., CONSOLIDATED TEX-PACK,)
INC., TEX-PACK EXPRESS OF DALLAS,)
INC., and O & A TEX-PACK EXPRESS,)
INC.,)

ENTERED ON DOCKET
DATE JUL 25 1996

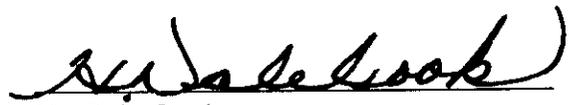
Defendants.)

JUDGMENT

This matter came before the Court for consideration of defendants' motions for directed verdict following the close of plaintiff's evidence. The issues having been duly considered and a decision having been rendered in accordance with the Order filed on July 22, 1996,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for all defendants and against plaintiff on each and every of plaintiff's claims respecting breach of oral agreement between plaintiff and defendants, the invocation of promissory estoppel, and the existence of a joint venture between plaintiff and defendants.

IT IS SO ORDERED this 27th day of July, 1996.



H. Dale Cook
U.S. District Judge

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

ENTERED ON DOCKET
DATE 7-25-96

JOHNNY RAY LAMBERT,
Plaintiff,
vs.
BILL MCKENZIE, et al.,
Defendants.

No. 96-CV-101-K

FILED
JUL 24 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

This matter comes before the Court on Defendants' motion to dismiss and/or for summary judgment, filed on June 14, 1996. Plaintiff, a pro se litigant, has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 7.1.C.¹

ACCORDINGLY, IT IS HEREBY ORDERED that the stay is LIFTED; that Defendants' motion to dismiss is GRANTED; and that this action is hereby DISMISSED WITHOUT PREJUDICE.

SO ORDERED THIS 24 day of July, 1996.

Terry C. Kern
TERRY C. KERN
UNITED STATES DISTRICT JUDGE

¹Local Rule 7.1.C reads as follows:

Response Briefs. Response briefs shall be filed within fifteen (15) days after the filing of the motion. Failure to timely respond will authorize the court, in its discretion, to deem the matter confessed, and enter the relief requested.

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

ENVIROTEK FUEL SYSTEMS, INC.,)
)
Plaintiff,)
)
vs.)
)
JESSE J. WORTEN, III, dba)
JESSE J. WORTEN, III, INC.,)
and BREWER, WORTEN, ROBINETT,)
JOHNSON, WORTEN & KING,)
)
Defendants.)

No. 95-C-654-K

ENTERED ON DOCKET

DATE 7-25-96

FILED

JUL 24 1996

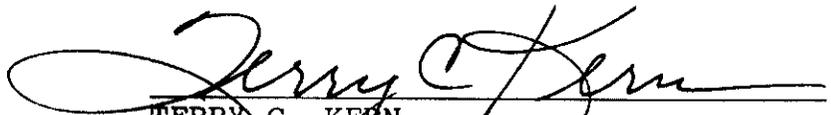
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

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

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within sixty (60) days that settlement has not been completed and further litigation is necessary.

ORDERED this 24 day of July, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

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

DWAYNE BARBER,)
)
 Plaintiff,)
)
 vs.)
)
 STAIRMASTER SPORTS/MEDICAL)
 PRODUCTS, L.P., a Delaware)
 limited partnership,)
)
 Defendant.)

No. 95-C-790-K

ENTERED ON DOCKET
DATE 7-25-96

FILED

JUL 24 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Now before this Court is Defendant's Motion to Dismiss Count III of Plaintiff's Complaint. Claim III of Plaintiff Dwayne Barber's Complaint is a wrongful termination tort claim alleging violation of Oklahoma public policy against age discrimination in employment. Defendant StairMaster Sports/Medical Products, L.P. ("StairMaster") moves to dismiss Count III for failure to state a cause of action for which relief may be granted. Rule 12(b)(6), Fed.R.Civ.P.

In 1989, the Oklahoma Supreme Court created common law causes 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. Recently, however, the Oklahoma Supreme Court held that plaintiffs could not maintain Burk actions for age discrimination. List v. Anchor Paint Manufacturing, 910 P.2d 1011 (Okla. 1996). The court held that a federal cause of action under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. § 621 et seq., provided the exclusive remedy. Id. at 1015.

List controls disposition of the instant motion. Plaintiff may not maintain a separate Burk action for age discrimination. StairMaster's motion to dismiss Count III is therefore GRANTED, and Count III of the Complaint is hereby DISMISSED.

IT IS SO ORDERED THIS 24 DAY OF JULY, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

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

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)
)
Plaintiff,)
)
vs.)
)
VICKIE A. WILLIAMS, et. al.,)
)
Defendants.)

ENTERED ON DOCKET
DATE 7-25-96

Case No. 95-C-0034K

F I L E D

JUL 24 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER APPROVING SETTLEMENT AND
DISMISSAL WITH PREJUDICE

This matter comes before the Court to order a distribution of interpled funds. Having been fully advised of the premises, the Court orders that the funds interpled by the Defendant in this matter be distributed as follows, to wit:

1. \$10,000.00 to Vickie A. Williams for her personal injury claim, less poundage fee.
2. \$25,500.00 to Vickie A. Williams for the death of her husband, Phillip Anthony Williams, less poundage fee.
3. \$34,000.00 to Verna Maxine Amis for her personal injury claim, less poundage fee.
4. \$500.00 to Brenda McIntosh, as parent and guardian of Sammi Jo McIntosh, for her personal injury claim, less poundage fee.
5. \$30,000.00 to Donna E. Shalala, Secretary of Department of Health and Human Services for the subrogation interest of Medicare payments to Verna Maxine Amis, less poundage fee.

new date 8/2/96
Jorn
VFL

IT IS FURTHER ORDERED that any interest in the interpled funds be assessed and distributed to each defendant equally in one-fifth shares.

IT IS ORDERED that said sums are to be distributed pursuant to this order as soon as practicable after the next renewal date.

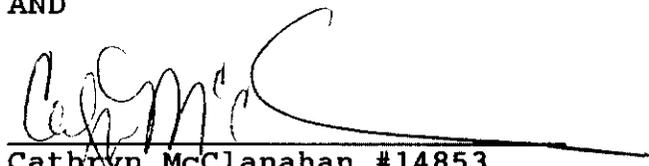
Dated at Tulsa, Oklahoma, this 24 day of July, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

Agreed as to Form:


Cheryl Bisbee #15726
Attorney for Vickie Williams,
Verna Maxine Amis and Samantha
Jo McIntosh

AND


Cathryn McClanahan #14853
Assistant United States Attorney
Attorney for Secretary of Department
of Health and Human Services

DSF/tsr

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUL 24 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ROBERT G. SCRUTCHFIELD,

Plaintiff,

vs.

Case No. 95-C-837-K

**STERLING DRUG, INC., d/b/a
NATIONAL LABORATORIES, LEHN &
FINK PRODUCTS, CO., a
Delaware corporation,**

and

**RECKITT & COLMAN, INC., d/b/a
NATIONAL LABORATORIES, LEHN &
FINK PRODUCT, CO., a Delaware
corporation,**

Defendants.

ENTERED ON DOCKET

DATE 7-25-96

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 24 day of July, 1996, the parties' Application for Order Dismissing Case With Prejudice comes on for consideration before the undersigned Judge of the District Court. For good case shown, the Court hereby enters its Order dismissing this case with prejudice to future refileing.


JUDGE OF THE DISTRICT COURT

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JUDITH ANN TARVER fka JUDITH)
 ANN SCALES-PITTS; CLIFTON)
 TARVER; CITY OF TULSA, Oklahoma;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

F I L E D

JUL 24 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE 7-25-96

Civil Case No. 95-C 699K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 24 day of July, 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 Defendant, County Treasurer, Tulsa County, Oklahoma, appears by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, appears not, having previously claimed no right, title or interest in the subject property; the Defendant, City of Tulsa, Oklahoma, appears not, having previously filed a Disclaimer; and the Defendants, Judith Ann Tarver fka Judith Ann Scales-Pitts and Clifton Tarver, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, City of Tulsa, Oklahoma, acknowledged receipt of Summons and Complaint via certified mail on July 27, 1995; and that the Defendant, Clifton Tarver, executed a Waiver of Service of Summons on July 28, 1995.

The Court further finds that the Defendant, **Judith Ann Tarver fka Judith Ann Scales-Pitts**, 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 15, 1996, and continuing through March 21, 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, **Judith Ann Tarver fka Judith Ann Scales-Pitts**, 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, **Judith Ann Tarver fka Judith Ann Scales-Pitts**. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Secretary of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon

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

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on August 14, 1995; that the Defendant, City of Tulsa, Oklahoma, filed its Disclaimer on August 4, 1995; and that the Defendants, Judith Ann Tarver fka Judith Ann Scales-Pitts and Clifton Tarver, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on October 28, 1986, Judith Ann Tarver and her former husband, Leroy Herschel Pitts, filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 86-2901B. On March 10, 1987, the debtors were discharged on May 10, 1987, and the case was closed in November 1987. On November 14, 1989, the Defendant, Judith Ann Tarver, filed her petition for Chapter 7 relief, case number 89-3440C, in the United States Bankruptcy Court for the Northern District of Oklahoma, the debtor discharged on February 22, 1990, and the case was closed on June 26, 1990.

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 Nineteen (19), VALLEY VIEW
ACRES ADDITION to the City of Tulsa, Tulsa County,
State of Oklahoma, according to the recorded Plat thereof.**

The Court further finds that on April 19, 1984, the Defendant, **Judith Ann Tarver fka Judith Ann Scales-Pitts**, executed and delivered to Charles F. Curry Company her mortgage note in the amount of \$29,000.00, payable in monthly installments, with interest thereon at the rate of 12.5 percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, **Judith Ann Tarver fka Judith Ann Scales-Pitts**, executed and delivered to Charles F. Curry Company a mortgage dated April 19, 1984, covering the above-described property. Said mortgage was recorded on April 24, 1984, in Book 4784, Page 2092, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, **Judith Ann Tarver fka Judith Ann Scales-Pitts**, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, **Judith Ann Tarver fka Judith Ann Scales-Pitts**, is indebted to the Plaintiff in the principal sum of \$39,054.08, plus interest at the rate of 12.5 percent per annum from August 19, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$267.87 for publication fees.

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 \$16.00 which became a lien on the property as of June 26, 1992; \$7.00 which became a lien on the property as of June 25, 1993; and \$7.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, **United States of America**.

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

The Court further finds that the Defendant, City of Tulsa, Oklahoma, disclaims any right, title or interest in the subject real property.

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

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment in rem against the Defendant, Judith Ann Tarver fka Judith Ann Scales-Pitts, in the principal sum of \$39,054.08, plus interest at the rate of 12.5 percent per annum from August 19, 1994 until judgment, plus interest thereafter at the current legal rate of 5.81 percent per annum until paid, plus the costs of this action in the amount of \$267.87 for publication fees, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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 for personal property taxes for the year 1991; \$7.00 for personal property

taxes for the year 1992; and \$7.00 for personal property taxes for the year 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Board of County Commissioners, Tulsa County, Oklahoma, and City of Tulsa, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Clifton Tarver, is in default and has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without 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 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 for personal property taxes for the year 1991; \$7.00 for personal property taxes for the year 1992; and \$7.00 for personal property taxes for the year 1993, 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.

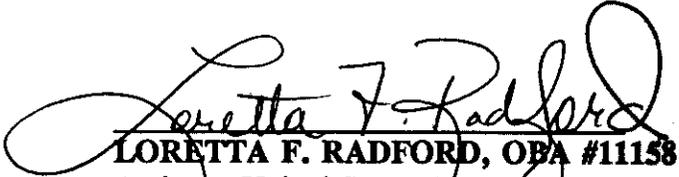
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

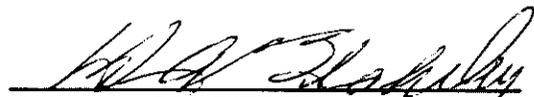
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of 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
333 W. 4th St., Ste. 3460
Tulsa, Oklahoma 74103
(918) 581-7463


DICK A. BLAKELEY, OBA #852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-C 699K

LFR/esf

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

IT-TULSA HOLDINGS, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 BIG FOUR FOUNDRIES CORP.,)
 an Oklahoma corporation, and)
 TULSA-SAPULPA UNION RAILWAY)
 CO., an Oklahoma corporation,)
)
 Defendants.)

No. 94-C-498-K

ENTERED ON DOCKET
DATE JUL 25 1996

FILED
JUL 24 1996
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

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

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within sixty (60) days that settlement has not been completed and further litigation is necessary.

ORDERED this 24 day of July, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

CLM

COPY

TKB-1
7-24-96

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

BOBBIE FAULK,

Plaintiff,

vs.

PRYOR PUBLISHING CO., an Oklahoma
corporation; JEFFERSONIAN PRINTING;
HENRY GOODMAN; and MITCHELL
GOODMAN,

Defendants.

ENTERED ON DOCKET

DATE JUL 24 1996

Case No. 95-C-551-B

F I L E D

JUL 24 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JOINT STIPULATION OF DISMISSAL

It is hereby stipulated by the Plaintiff, BOBBIE FAULK, and the Defendants, PRYOR PUBLISHING CO., JEFFERSONIAN PRINTING, HENRY GOODMAN and MITCHELL GOODMAN, that the above entitled action be dismissed with prejudice.

Respectfully submitted,

Mark D. Lyons

Mark D. Lyons, OBA #5590
LYONS & CLARK
616 South Main, Suite 201
Tulsa, Oklahoma 74119-1260
(918) 599-8844

APPROVAL FOR STIPULATION OF DISMISSAL WITH PREJUDICE:

Mark D. Lyons
Mark D. Lyons, OBA #5590
LYONS & CLARK
616 South Main, Suite 201
Tulsa, Oklahoma 74119-1260
(918) 599-8844
ATTORNEYS FOR THE PLAINTIFF,
BOBBIE FAULK

Bobbie Faulk
BOBBIE FAULK, Plaintiff

J. Rick Faling
J. Rick Faling, OBA#14637
STIPE LAW FIRM
4111 N. Lincoln
Oklahoma City, Oklahoma 73105
(405) 524-2268
ATTORNEY FOR THE DEFENDANTS,
PRYOR PUBLISHING CO. AND
JEFFERSONIAN PRINTING

PRYOR PUBLISHING CO.

By: Henry S. Goodman

JEFFERSONIAN PRINTING

By: Henry S. Goodman

Henry S. Goodman
HENRY GOODMAN, Defendant

Paul E. Blevins
Paul E. Blevins, OBA #883
BLEVINS & SORDAHL
P.O. Box 870
Pryor, Oklahoma 74362
(918) 825-4750
ATTORNEY FOR THE DEFENDANTS,
HENRY GOODMAN AND
MITCHELL GOODMAN

Mitchell Goodman
MITCHELL GOODMAN, Defendant

125
106
117
124 96

IN THE UNITED STATES DISTRICT COURT
STATE OF OKLAHOMA

LARANDALL HILL,

Plaintiff,

vs.

STANLEY GLANZ, in his official
capacity as Sheriff of Tulsa
County, Oklahoma;
STATE OF OKLAHOMA DEPARTMENT
OF CORRECTIONS;
CORRECTIONAL MEDICAL SYSTEMS,
a tradename for Correctional
Medical Services, Inc., a
Missouri corporation;
OTIS ELEVATOR COMPANY, a
New Jersey corporation; and
WESTINGHOUSE ELECTRIC CORPORATION,
a Pennsylvania corporation,

Defendants.

Case No: 96 CV 458 B

FILED

JUL 23 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE JUL 24 1996

NOTICE OF DISMISSAL

COMES NOW Plaintiff, LaRandall Hill, and hereby dismisses, without prejudice, Defendant Westinghouse Electric Corporation, a pennsylvania corporation, from the above-styled and captioned matter for the said Defendant was not manufacturer or elevator servicer during the period of time specific to this cause of action.

Respectfully submitted,

PHILLIPS & ASSOCIATES
David C. Phillips, III
David C. Phillips, III
OBA #13551
115 W. 3rd St., Ste. 525
Tulsa, OK 74103
(918) 584-5062

CERTIFICATE OF MAILING

This is to certify that this 23rd day of July, 1996, a true and correct copy of the above Notice was placed in the U.S. mail, first class postage prepaid, to:

Linda Samuel-Jaha
Asst. Attorney General
(Re: OK Dept. of Corrections)
4545 N. Lincoln, Suite 260
Oklahoma City, OK 73105-3498

Michael T. Maloan
Foliart, Huff, Ottaway & Caldwell
(Re: Correctional Medical Services)
20th Floor, First National Center
120 N. Robinson
Oklahoma City, OK 73102

Robert E. Manchester
Shannon K. Emmons
(Re: Otis Elevator Company)
9th Floor, Robinson Renaissance
119 N. Robinson Avenue
Oklahoma City, OK 73102

Scott Lehman
(Re: Westinghouse Electric)
Best, Sharp, Holden, et al.
808 ONEOK Plaza
Tulsa, OK 74103

David C. Phillips, (T)

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

F I L E D

JUL 24 1996

pl

GARRY WALLER,)
)
) Plaintiff,)
)
)
 vs.)
)
) HENRY BLOMMFIELD, et al.,)
)
) Defendants.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. 96-C-524-B ✓

ENTERED ON DOCKET
DATE JUL 24 1996

ORDER

Plaintiff, a Missouri inmate, has filed a motion for leave to proceed in forma pauperis and a civil rights complaint against Osage County Sheriff Henry Bloomfield and John Doe Jailer. He contends Defendants were negligent in failing to provide him with emergency medical services following an attack by fellow inmates while a detainee at the Osage County Jail on October 5, 1994. As a result of Defendants' failure to provide medical attention until a week after the attack, Plaintiff alleges he suffered undue pain. Plaintiff seeks actual and punitive damages. Attached to the complaint are five exhibits indicating that on October 26, 1994, Plaintiff was operated at the Jane Phillips Episcopal Memorial Medical Center for an orbital rim fracture.

On July 12, 1996, the Court granted Plaintiff leave to proceed in forma pauperis. The Prison Litigation Reform Act of 1996, added a new section to the in forma pauperis statute, entitled "Screening." See 28 U.S.C. § 1915A. That section requires the Court to review prisoner complaints before docketing, or as soon as practicable after docketing, and "dismiss the complaint, or any

portion of the complaint, if they complaint . . . is frivolous, malicious, or fails to state a claim upon which relief may be granted. Id. A suit is frivolous if "it lacks an arguable basis in either law or fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); 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 suit is factually frivolous, on the other hand, if "the factual contentions are clearly baseless." Id.

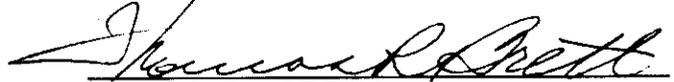
After liberally construing Plaintiff's pro se pleadings, see Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Hall v. Bellmon, 935 F.2d 1106, 1100 (10th Cir. 1991), the Court concludes that Plaintiff's allegations lack an arguable basis in law. Plaintiff's claim that Defendants were negligent in failing to provide emergency medical care does not amount to a constitutional violation. West v. Atkins, 487 U.S. 42, 48 (1988) (only the violation of a right secured by the Constitution or laws of the United States is actionable under 42 U.S.C. § 1983). Neither negligence nor gross negligence meets the deliberate indifference standard required for a violation of the cruel and unusual punishment clause of the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976); Ramos v. Lamm, 639 F.2d 559, 575 (10th Cir. 1980), cert. denied, 450 U.S. 1041 (1981).¹

¹ Under the Fourteenth Amendment Due Process Clause, pretrial detainees are entitled to the same degree of protection regarding medical care as that afforded convicted inmates under the

In any case, "delay in medical care can only constitute an Eighth Amendment violation if there has been deliberate indifference which results in substantial harm." Olson, 9 F.3d at 1477 (quoting Mendoza v. Lynaugh, 989 F.2d 191, 195 (5th Cir. 1993)). Plaintiff has neither alleged deliberate indifference to his medical condition nor substantial harm.

ACCORDINGLY, IT IS HEREBY ORDERED that this action is DISMISSED without prejudice as frivolous. The Clerk shall mail to Plaintiff a copy of the complaint.

IT IS SO ORDERED this 24th day of July, 1996.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Eighth Amendment. Martin v. Board of County Com'rs of County of Pueblo, 909 F.2d 402, 406 (10th Cir. 1990).

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

ENTERED ON DOCKET
DATE 7-24-96

THOMAS WAITE and MARGARET WAITE,

Plaintiffs,

vs.

NEOAX, INC., a Delaware corporation,
BROUGHAM SEATING, INC., FLEMING & SON
CORPORATION d/b/a METAL SPECIALTIES
MFG. COMPANY, AVM PRODUCTS, a Texas
corporation, BUCO, INC., a Texas
corporation, and DARYL HAYES,

Defendants.

FILED

JUL 23 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 95 C 263H

JOINT STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

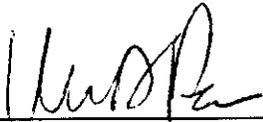
Pursuant to FED.R.CIV.P. 41, Neoax, Inc., AVM Products, Plaintiffs, and Fleming & Son Corporation d/b/a Metal Specialties Manufacturing Company, by and through their respective counsel of record, herewith stipulate and agree to the dismissal without prejudice of the respective claims pending herein against Fleming & Son Corporation d/b/a Metal Specialties Manufacturing Company, including all complaints, counterclaims, cross-complaints. Each party shall bear his, its, or her own costs, expenses, and attorney fees without assessment against any other party.

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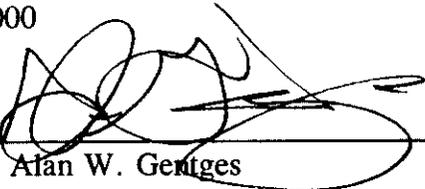
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Executed this 23rd day of July, 1996.

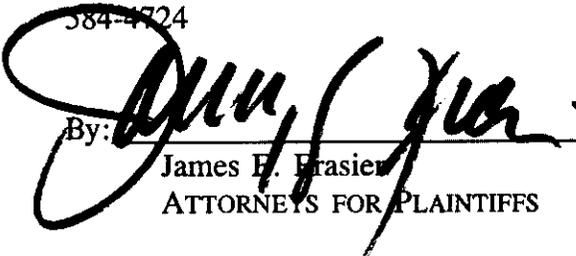
RHODES, HIERONYMUS, JONES, TUCKER & GABLE
Oneok Plaza
100 West 5th Street, Suite 400
Tulsa, Oklahoma 74103-4287
582-1173

By: 
William D. Perrine
ATTORNEYS FOR DEFENDANT
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MCNULTY, AFFELDT & GENTGES
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599-9000

By: 
Alan W. Gentges
ATTORNEYS FOR DEFENDANT
AVM PRODUCTS

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By: 
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By: Jack Y. Goree
Jack Y. Goree
ATTORNEYS FOR DEFENDANT
FLEMING & SON CORPORATION D/B/A
METAL SPECIALTIES MANUFACTURING COMPANY

g:\lit\cdp\1170\2\stip-dis.wop

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendant Neoax, Inc. herein, hereby certifies that a true and correct copy of the above and foregoing **Joint Stipulation for Dismissal without Prejudice** was served upon all parties herein by placing in the United States mail, postage prepaid, to Plaintiffs' counsel of record, as follows:

James Frasier
Walt Adams
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P. O. Box 799
Tulsa, OK 74101-0799
ATTORNEYS FOR PLAINTIFFS

H.L. Holtmann
ATTORNEY AT LAW
200 Center Plaza
Tulsa, OK 74119
ATTORNEYS FOR PLAINTIFFS

James K. Secrest
SECREST, HILL & FOLLUO
7134 S. Yale, Suite 900
Tulsa, OK 74136
ATTORNEY FOR DEFENDANT,
BROUGHAM SEATING INC.

Jack Y. Goree
GOREE, GOREE & GOREE
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ATTORNEY FOR DEFENDANT
FLEMING & SON CORPORATION D/B/A
METAL SPECIALTIES MANUFACTURING COMPANY

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ATTORNEYS FOR DEFENDANT
AVM PRODUCTS

John E. Dowell
Roger K. Eldredge
NORMAN & WOHLGEMUTH
2900 Mid-Continent Tower
Tulsa, OK 74103-4023
ATTORNEYS FOR DEFENDANT
DARYL HAYES

on this 23 day of July, 1996; with the original being filed with:

Phil Lombardi
Clerk of the U.S. District Court
for the Northern District
4411 U.S. Courthouse
333 W. 4th Street
Tulsa, OK 74103



William D. Perrine

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

ROBERT P. SANTEE,)
)
Plaintiff,)
)
vs.)
)
PATSY DARLENE WILSON,)
individually, and as)
Trustee of the Revocable)
Intervivos Trust of)
PATSY DARLENE WILSON,)
)
Defendants.)

Case No. 96-C-519-S

F I L E D

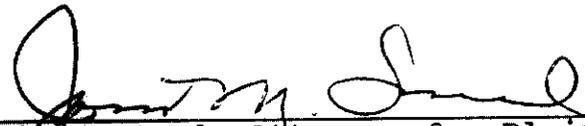
JUL 23 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

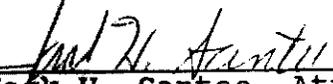
NOTICE OF DISMISSAL WITHOUT PREJUDICE

Comes now the Plaintiff herein and herewith dismisses this
action, without prejudice, pursuant to Rule 41 (a)(1), Federal
Rules of Civil Procedure.

Respectfully submitted



John M. Imel, Attorney for Plaintiff
Moyers, Martin, Santee, Imel & Tetrick
320 S. Boston
Tulsa, OK 74103



Jack H. Santee, Attorney for Plaintiff
Moyers, Martin, Santee, Imel & Tetrick
320 S. Boston
Tulsa, OK 74103

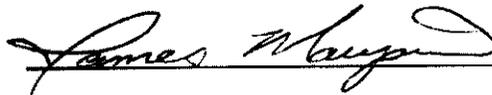


James E. Maupin, Attorney for Plaintiff
Moyers, Martin, Santee, Imel & Tetrick
320 S. Boston
Tulsa, OK 74103

CERTIFICATE OF MAILING

I certify that on the 23rd day of July, 1996, I mailed a true and correct copy of the above and foregoing Notice of Dismissal Without Prejudice with proper postage prepaid thereon to:

Patsy Darlene Wilson
P.O. Box 548
Skiatook, OK 74070

A handwritten signature in cursive script, appearing to read "James W. Wilson", is written over a horizontal line.

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

F I L E D

LAWRENCE T. HOMOLKA,)
)
 Plaintiff,)
)
 v.)
)
 HARTFORD INSURANCE GROUP,)
 Individually and d/b/a HARTFORD)
 UNDERWRITERS INSURANCE COMPANY,)
)
 Defendant.)

No. 95-C-760B

JUL 23 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
DATE JUL 24 1996

JUDGMENT

Pursuant to the Order sustaining Defendant, Hartford Underwriters Insurance Group's ("Hartford"), Motion for Attorney Fees filed this date, judgment is hereby entered in favor of Hartford and against the Plaintiff, Lawrence T. Homolka, in the amount of \$16,401.48.

IT IS SO ORDERED this 23 day of July, 1996.

S/ THOMAS R. BRETT

The Honorable Thomas R. Brett
Judge of the United States District
Court for the Northern District of
Oklahoma

FILED

JUL 23 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

LAWRENCE T. HOMOLKA,)
)
 Plaintiff,)
)
 v.)
)
 HARTFORD INSURANCE GROUP,)
 Individually and d/b/a HARTFORD)
 UNDERWRITERS INSURANCE COMPANY,)
)
 Defendant.)

No. 95-C-760B

ENTERED ON DOCKET

DATE JUL 24 1996

FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW for consideration Defendant, Hartford Underwriters Insurance Company's ("Hartford") Motion for Attorney Fees. After careful consideration of the evidence, record, and legal authorities, the Court hereby grants Hartford's Motion for Attorney Fees.

FINDINGS OF FACT

1. Hartford insured Lawrence J. Homolka (Plaintiff's father) under two automobile insurance policies. Policy No. 55-PH-703269, which covered a Ford Galaxie, provided Personal Injury Protection Coverage ("PIP") and Uninsured Motorist Coverage ("UM"). Policy No. 55-PHD-483188, which insured a Ford pickup, provided UM coverage.

2. On December 19, 1993, the Plaintiff was allegedly injured when a fire erupted near the hood of the Ford Galaxie. As a result of his injuries, the Plaintiff made a claim to recover PIP coverage and UM coverage under the subject insurance policies.

3. Hartford paid the Plaintiff the limits of all available benefits (\$33,897.00) under the PIP coverage provided by his

father's Hartford policy, with the exception of the limits of Rehabilitation Expenses. Hartford took the position that the Plaintiff's injuries were not compensable under the UM coverage provided by the policies.

4. The Plaintiff took issue with Hartford's contention that it owed no additional benefits under the PIP and UM coverages of the subject policies. The Plaintiff filed this action against Hartford seeking to recover for Hartford's alleged breach of contract in failing to pay additional PIP benefits. The Plaintiff also sought to recover UM coverage, and for Hartford's alleged breach of the implied duty of good faith and fair dealing.

5. Hartford moved for summary judgment pursuant to Fed.R.Civ.P. 56, which was granted by this Court on May 6, 1996. Judgment was entered on the docket on May 8, 1996.

6. On May 20, 1996, Hartford filed a motion for attorney fees. On June 19, 1996, this Court entered an Order directing the parties to submit briefs on the issue of whether Kansas law or Oklahoma law governed the substantive issue of attorney fees.

7. On July 8, 1996, Hartford and the Plaintiff complied with this Court's Order of June 19, 1996, and submitted briefs on the conflict of laws issue.

8. On July 12, 1996, an evidentiary hearing was held on Hartford's Motion for Attorney Fees. Hartford's attorney, Paul T. Boudreaux, testified that Hartford has incurred attorney fees in the amount of \$25,377.00 in the defense of this action.

9. Mr. Boudreaux testified that the hourly rate charged by his firm for work performed for Hartford in the defense of this action was as follows: Partners \$125 per hour; associates \$85 per hour; paralegals \$45 per hour. Mr. Boudreaux testified that based on his 14 years of practice in the community of Tulsa, the foregoing hourly rates were reasonable and commensurate with that charged by other attorneys performing similar work in the community.

10. Mr. Boudreaux testified that the time expended by his firm in the defense of Hartford in this action was reasonable and necessary. Mr. Boudreaux testified that although a precise breakdown of the attorney hours expended in the defense of each of the Plaintiff's three claims (UM claim, breach of contract/PIP claim and bad faith claim) was impossible, it was reasonable to apportion one-third of the attorney fees to each of the three claims.

11. Hartford conceded that it was not entitled to attorney fees on the Plaintiff's UM claim. Accordingly, Hartford sought to recover the total amount of \$16,901.48, which represented two-thirds of the total attorney fees incurred by Hartford in the defense of this action.

12. Hartford presented evidence consisting of detailed time records showing the work performed, and presented evidence as to the reasonable value for the services performed for the different types of legal work performed by their attorneys in the defense of this action.

CONCLUSIONS OF LAW

1. "Federal courts are bound to apply state conflicts law, and conflicts questions are decided on an issue-by-issue basis, rather than a case-by-case basis." King Resources Co. v. Phoenix Resources Co., 651 F.2d 1349, 1353 (10th Cir. 1980). See also Klaxon Co. v. Stentor Elect. Mfg. Co., 61 S.Ct. 1020, 1021 (1941).

2. The Court finds that the substantive issue of attorney fees is governed by Oklahoma law. Gay & Taylor, Inc. v. St. Paul Fire & Marine Ins., 550 F.Supp. 710 (W.D. Okl. 1981); Toland v. Technicolor, Inc., 467 F.2d 1045 (10th Cir. 1972).

3. Under Oklahoma law, Hartford is entitled to attorney fees pursuant to Okla. Stat. tit. 36 §3629. See Thompson v. Shelter Mut. Ins. Co., 879 F.2d 1460 (10th Cir. 1989); Magnum Foods, Inc. v. Continental Cas. Co., 36 F.3d 1491 (10th Cir. 1994); Shadoan v. Liberty Mutual Fire Ins. Co., 894 P.2d 1140 (Okl. App. 1994).

4. Pursuant to Okla. Stat. tit. 36 §3629, Hartford is entitled to recover attorney fees incurred in the defense of the Plaintiff's breach of contract/PIP claim, and in the defense of the Plaintiff's claim of alleged bad faith. Hartford is not entitled to recover attorney fees incurred in the defense of the Plaintiff's UM claim.

5. The Court finds that Hartford has presented detailed time records to this Court showing the work performed, and has presented evidence as to the reasonable value for the services performed based on standards within the local legal community. Hartford has therefore met the standards for the recovery of attorney fees set

forth in State Ex Rel. Burk v. City of Oklahoma City, 598 P.2d 659, 661-63 (Okla. 1979).

6. The Court finds that Hartford's apportionment of one-third of the attorney fees incurred to each of the Plaintiff's three claims is reasonable based on the legal issues and evidence presented in this action.

7. The Court finds that the attorney fees incurred by Hartford in the defense of this action were reasonable and necessary, with the exception of attorney fees in the amount of \$500.00.

After careful consideration of the evidence, record and legal authorities, it is the Order of this Court that Hartford's Motion for Attorneys Fees is hereby granted. Hartford is hereby awarded attorney fees in the amount of \$16,401.48, which represents two-thirds of the total attorney fees incurred (\$25,377.00) by Hartford in the defense of this action, less the amount of \$500.00.

IT IS SO ORDERED this 23rd day of July, 1996.



The Honorable Thomas R. Brett
Judge of the United States District
Court for the Northern District of
Oklahoma

F I L E D

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

JUL 23 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

MAX D. BIRD, D.D.S.,)
)
 Plaintiff,)
)
 vs.)
)
 ST. PAUL FIRE AND MARINE)
 INSURANCE COMPANY, a)
 Minnesota Corporation,)
)
 Defendant and Third-)
 Party Plaintiff,)
)
 vs.)
)
 JESSICA GILMORE,)
)
 Third-Party Defendant.)

CASE NO. 94-C-609-B

ENTERED ON DOCKET
JUL 24 1996
DATE _____

O R D E R

This matter comes on for consideration of Plaintiff Max D. Bird's Motion For Summary Judgment. (Docket #48)

On May 24, 1996, a pretrial conference was held wherein the parties stated to the Court that the essential issues before this Court have been resolved and the remaining issue is the damage incurred by Plaintiff by Defendant's failure to continue its legal defense of Plaintiff in the state court action (Case No. CJ-93-02030).

All parties agree that the attorney fees of Ronald D. Wood¹ in the amount of \$2,031.00 are reasonable and appropriate. Further, Plaintiff seeks damages in the amount of \$8,771.67 which represents

¹ Wood was the initial attorney hired by St. Paul Fire and Marine to defend the Gilmore Third-Party action.

attorney fees incurred by Dr. Bird for the services of Jack Herrold, the attorney that initially assisted in the defense of this action and "further represented Dr. Bird in attempting to have St. Paul cover the Third-Party action." Plaintiff candidly acknowledges that "the attorney fees of Jack Herrold would more properly have been under the area of consequential damages under the bad faith claim."² Plaintiff does not seek these damages under his claim of entitlement to a defense in the state court action.

The Court concludes the matter of damages is, in essence, agreed upon. The Court further concludes Plaintiff's Motion For Summary Judgment should be and the same is hereby GRANTED. A Judgment in conformance with the Court's Order is to be jointly prepared and submitted by parties as directed by the Court's minute order of May 24, 1996.

IT IS SO ORDERED this 23rd day of July, 1996.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

² In a prior Order, the Court has concluded that Plaintiff's bad faith claim is without merit.

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

DANNY MEYERS,
Plaintiff,

vs.

HAYSSEN MANUFACTURING COMPANY,
aka, HAYSSEN MFG. CO.,
a corporation; et al.,

Defendant.

No. 94-C-342-K

EDD 7/24/96

FILED

JUL 24 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Now before the Court are the objections of the Plaintiff to the allowance and taxation of costs. Rule 54(d)(1), Fed.R.Civ.P.; Local Rule 54.1(E). Following a jury verdict in favor of Defendant Hayssen Manufacturing Company, the Court entered judgment in favor of Defendant on April 1, 1996. On May 22, 1996, the Clerk of the Court awarded costs to Defendant in the amount of \$4,921.95.

Costs are allowed as of course to the prevailing party unless otherwise directed. Rule 54(d)(1), Fed.R.Civ.P. Upon objection to the taxation of costs, a trial court reviews *de novo* the Clerk's cost assessment. Farmer v. Arabian American Oil Co., 379 U.S. 227, 232-33 (1964). This Court has carefully considered Plaintiff's objections and has independently scrutinized the Clerk's assessment. The Clerk himself imposed a substantial reduction on the amount sought by Defendant.

This Court agrees with the Clerk's assessment of costs with the exception of the following item: taxation for the cost of daily transcripts. Since Rule 54(d) provides that costs shall be allowed as a matter of course to the prevailing party unless the

court directs otherwise, it is incumbent upon this Court, should it refuse to award costs for a particular item, to state its reasons so that the appellate court will have a basis for judging whether this Court acted within its discretion. Delano v. Kitch, 663 F.2d 990 (10th Cir.1981), cert. denied, 456 U.S. 946 (1982).

Courts have been reluctant to award costs of expedited transcripts absent special circumstances. In Farmer v. Arabian American Oil Co., 379 U.S. 227 (1964), the Supreme Court upheld the district court's refusal to make the losing party pay for overnight transcripts ordered by the prevailing party's counsel. The Court noted that the district judge had found that while these daily transcripts might have added to the convenience of counsel for the prevailing party, and perhaps even made the trial judge's task easier, "the transcripts were by no means indispensable." Id. at 234. The Court observed that the district judge's decision to refuse taxation of this expense was based on personal knowledge that the case was not particularly complicated or extended and did not require the lawyers to submit briefs or proposed findings. Id. In U.S. Industries, Inc. v. Touche Ross & Co, 854 F.2d 1223 (10th Cir. 1988), the Tenth Circuit upheld a district judge's refusal to award costs for daily transcripts.

Under [28 U.S.C.] § 1920(2), to award this premium cost for daily production, a court must find that daily copy was necessarily obtained, as judged at the time of transcription. Neither the record nor the proceedings [of the relevant date] reveal that the daily transcript was necessary for either counsels' use at trial or for the court's handling of the case. . . .

The failure to obtain court approval of a special expense prior to trial also argues against granting the daily rate of transcription. The district court properly focused on the

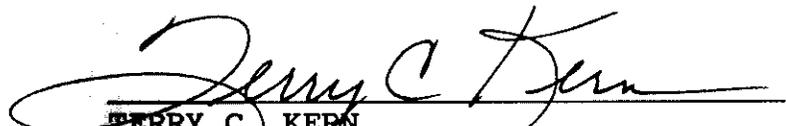
lack of a pretrial approval and whether convenience to Touche's counsel was the primary benefit, rather than a matter of necessity. If the issues in this case were so complex as to justify overlooking the lack of pretrial approval, a court could have used its discretion to award the cost where the daily copy proved invaluable to both the counsel and the court.

Id. at 1248.

Similarly, in the instant case, the proceedings of the relevant date do not demonstrate the necessity of the daily transcript. The proceedings were not particularly complicated or extended. While the availability of the transcript might have been convenient for counsel, neither the record nor the proceedings reveal that the daily transcript was necessary either for counsel's use at trial or for the Court's handling of the case. Further, Defendant did not obtain prior court approval for this special expense, and the transcript did not prove invaluable to both counsel and Court. Therefore, the cost of the daily transcript will not be allowed.

Accordingly, it is the Order of the Court that the Plaintiff's objection to allowance and taxation of costs (doc. #64) is GRANTED IN PART AND DENIED IN PART. Defendant is awarded costs against the Plaintiff in the amount of \$4,761.95.

SO ORDERED this 23 day of July, 1996.


PERRY C. KEEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT O. VARNER; STATE OF
OKLAHOMA *ex rel* OKLAHOMA TAX
COMMISSION; BANCFIRST fka FIRST
BANK & TRUST; BANCFIRST fka
BANK OF GLENPOOL; CITY OF
GLENPOOL, Oklahoma; COUNTY
TREASURER, Tulsa County, Oklahoma;
BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

ENTERED ON DOCKET
DATE JUL 24 1996

F I L E D

JUL 24 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil Case No. 96-C 69K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23 day of July,

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 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, Robert O. Varner, Bancfirst fka First Bank & Trust, Bancfirst fka Bank of Glenpool, and City of Glenpool, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Bancfirst fka First Bank & Trust acknowledged receipt of Summons and

**NOTE: THIS ORDER IS TO BE MAILED
BY THE CLERK OF COURT AND
PROCESSED IMMEDIATELY
UPON RECEIPT.**

Complaint via certified mail on February 1, 1996; the Defendant, **Bancfirst fka Bank of Glenpool**, acknowledged receipt of Summons and Complaint via certified mail on February 1, 1996; the Defendant, **City of Glenpool, Oklahoma**, acknowledged receipt of Summons and Complaint via certified mail on February 1, 1996.

The Court further finds that the Defendant, **Robert O. Varner**, 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 18, 1996, and continuing through April 22, 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, **Robert O. Varner**, 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, **Robert O. Varner**. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Secretary of Housing and Urban Development, and its attorneys, **Stephen C. Lewis**, United States Attorney for the Northern District of Oklahoma, through **Loretta F. Radford**, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the 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 February 14, 1996; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on February 16, 1996; and that the Defendants, Robert O. Varner, Bancfirst fka First Bank & Trust, Bancfirst fka Bank of Glenpool, and City of Glenpool, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

**Lot Five (5), Block Three (3), APPALOOSA ACRES
THIRD, an addition in the Town of Glenpool, Tulsa
County, State of Oklahoma, according to the recorded Plat
thereof.**

The Court further finds that on June 27, 1986, the Defendant, Robert O. Varner, and Janis A. Varner aka Janis Ann Varner, husband and wife, became the record owners of the real property involved in this action by that certain General Warranty Deed from Stephen L. Creed and Tammy M. Creed, husband and wife, to Robert O. Varner and Janis A. Varner, husband and wife as joint tenants and not as tenants in common, on the

death of one the survivor, the heirs and assigns of the survivor, to take the entire fee simple title; which General Warranty Deed was filed on July 1, 1986 in Book 4952, Page 1168 in the records of Tulsa County, Oklahoma.

The Court further finds that Janis A. Varner aka Janis Ann Varner, died on September 25, 1991, and the subject property vested in her surviving joint tenant, Robert O. Varner, by operation of law.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of Janis A. Varner aka Janis Ann Varner and of judicially terminating the joint tenancy of Janis A. Varner aka Janis Ann Varner and Robert O. Varner.

The Court further finds that on February 24, 1986, Stephen L. Creed and Tammy M. Creed executed and delivered to Harry Mortgage Co. their mortgage note in the amount of \$38,800.00, payable in monthly installments, with interest thereon at the rate of 10.5 percent (%) per annum.

The Court further finds that as security for the payment of the above-described note, Stephen L. Creed and Tammy M. Creed, Husband and Wife, executed and delivered to Harry Mortgage Co., a mortgage dated February 24, 1986, covering the above-described property. Said mortgage was recorded on March 3, 1986, in Book 4927, Page 476, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 26, 1986, Harry Mortgage Co. assigned the above-described mortgage note and mortgage to Empire of America Realty Credit Corp. This Assignment of Mortgage was recorded on March 31, 1986, in Book 4932, Page 1999, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 16, 1986, Empire of America Realty Credit Corp. assigned the above-described mortgage note and mortgage to The New York Guardian Mortgagee Corp. This Assignment of Mortgage was recorded on April 6, 1987, in Book 5013, Page 1510, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 12, 1989, the New York Guardian Mortgagee Corp. assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development, his/her successors and assigns. This Assignment of Mortgage was recorded on May 1, 1989, in Book 5180, Page 1833, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 27, 1989, the Defendant, Robert O. Varner, and Janis Varner aka Janis Ann Varner, 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 12, 1990, October 16, 1990, and May 28, 1991.

The Court further finds that on February 12, 1987, the Defendant, Robert O. Varner, and Janis A. Varner aka Janis Ann Varner, now deceased, filed their petition for Chapter 7 relief in the United States Bankruptcy Court for the Northern District of Oklahoma, case number 87-349-W, which was discharged on June 11, 1987 and closed on September 18, 1987.

The Court further finds that the Defendant, Robert O. Varner, 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, Robert O.

Varner, is indebted to the Plaintiff in the principal sum of \$65,070.03, plus interest at the rate of 10.5 percent per annum from March 10, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$275.48 for publication fees.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$37.00 which became a lien on the property as of June 26, 1992; and \$22.00 which became a lien on the property as of June 3, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendants, Bancfirst fka First Bank & Trust, Bancfirst fka Bank of Glenpool, and City of Glenpool, Oklahoma are in default and have 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, has a lien on the property which is the subject matter of this action by virtue of Warrant No. ITI9401631500, dated September 20, 1994 and filed Septmeber 29, 1994 in the amount of \$492.21 plus interest and penalties according to law.

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 death of Janis A. Varner aka Janis Ann Varner and the same hereby is judicially determined to have occurred on September 25, 1991 in the City of Glenpool, Tulsa County, Oklahoma.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the joint tenancy of Janis A. Varner aka Janis Ann Varner and Defendant, Robert O. Varner, in the above described real property be and the same hereby is judicially terminated.

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, Robert O. Varner, in the principal sum of \$65,070.03, plus interest at the rate of 10.5 percent per annum from March 10, 1995 until judgment, plus interest thereafter at the current legal rate of 5.81 percent per annum until paid, plus the costs of this action in the amount of \$275.48 for publication fees, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$37.00 which became a lien on the property as of June 26, 1992; and \$22.00 which became a lien on the property as of June 3, 1994, for personal property taxes for the years 1991 and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Warrant No. ITI9401631500,

dated September 20, 1994 and filed September 29, 1994 in the amount of \$492.21 plus interest and penalties according to law.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, claims no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **Bancfirst fka First Bank & Trust, Bancfirst fka Bank of Glenpool, and City of Glenpool, Oklahoma**, have no right, title or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without 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 \$59.00 plus interest and penalties for personal property taxes which are currently due and owing.

Fourth:

In payment of Defendant, State of Oklahoma *ex rel.*
Oklahoma Tax Commission, in the amount of \$492.21 plus
interest and penalties.

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.

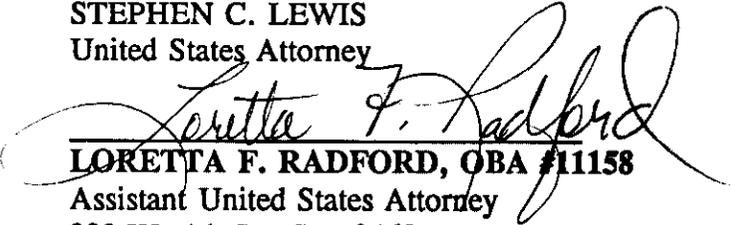
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

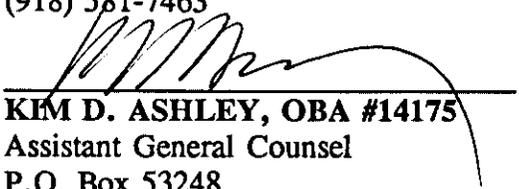
APPROVED:

STEPHEN C. LEWIS
United States Attorney



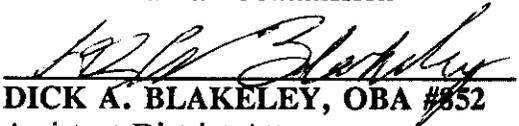
LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney
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Tulsa, Oklahoma 74103
(918) 581-7463



KIM D. ASHLEY, OBA #14175

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



DICK A. BLAKELEY, OBA #852

Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 96-C 69K

LFR/esf

FILED

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

JUL 24 1996

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

MARVIN LEE MOSLEY,)
)
 Plaintiff,)
)
 vs.)
)
 RON PALMER, SUSAN SAVAGE, and)
 TULSA CITY COUNCIL,)
)
 Defendants.)

No. 96-CV-572-BU

ENTERED ON DOCKET

DATE JUL 24 1996

ORDER

Plaintiff, a pro se inmate at the Adult Detention Center, has filed a civil rights complaint against Chief of Police Ron Palmer, Mayor Susan Savage, and the Tulsa City Council. Also before the Court is Plaintiff's motion for appointment of counsel.

In his complaint, Plaintiff contends the Defendants failed to protect him from an assault by fellow inmates although Plaintiff had informed them of threats and requested to be moved to a different cell. He further complains about the constant leaking of water in his cell from a broken air conditioner and the contraction of a rash from dirty clothing. Plaintiff seeks damages and declaratory and injunctive relief.

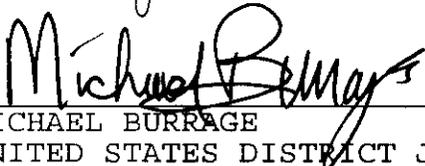
On July 15, 1996, the Court granted Plaintiff leave to proceed in forma pauperis. The Prison Litigation Reform Act of 1996, added a new section to the in forma pauperis statute, entitled "Screening." See 28 U.S.C. § 1915A. That section requires the Court to review prisoner complaints before docketing, or as soon as practicable after docketing, and "dismiss the complaint, or any portion of the complaint, if they complaint . . . is frivolous,

malicious, or fails to state a claim upon which relief may be granted. Id.

The instant complaint is practically identical to the one in Mosley v. Glanz, 96-CV-521-K, and therefore should be dismissed as duplicitous. In any event, the defendants which Plaintiff has named in this complaint are not responsible for the operation of the Tulsa County Jail and, therefore, may not be held liable under 42 U.S.C. § 1983. Housley v. Dodson, 41 F.3d 597, 600 (10th Cir. 1994) (a defendant may not be held liable under 42 U.S.C. § 1983 unless the defendant caused or participated in the alleged constitutional deprivation).

ACCORDINGLY, IT IS HEREBY ORDERED that this action is hereby DISMISSED as duplicitous and that Plaintiff's motion for appointment of counsel is DENIED as moot. The Clerk shall MAIL a copy of the complaint to Plaintiff.

IT IS SO ORDERED this 24 day of July, 1996.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

7-24-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 23 1996

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

[Handwritten signature]

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DENNIS REEDY aka DENNIS R.)
 REEDY; DONNA ANN REEDY aka)
 DONNA A. REEDY; STATE OF)
 OKLAHOMA ex rel OKLAHOMA TAX)
 COMMISSION; CITY OF OWASSO,)
 Oklahoma; COUNTY TREASURER,)
 Tulsa County, Oklahoma; BOARD OF)
 COUNTY COMMISSIONERS, Tulsa)
 County, Oklahoma,)
)
 Defendants.)

Civil Case No. 96-C 73H ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22ND day of July,

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 Defendants, DENNIS REEDY aka Dennis R. Reedy and DONNA ANN REEDY aka Donna A. Reedy, appear by their Attorney, Thomas O. Matthews; the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, appears by Kim D. Ashley, Assistant General Counsel; the Defendant, CITY OF OWASSO, Oklahoma, appears not having previously filed a Disclaimer.

9

The Court being fully advised and having examined the court file finds that the Defendant, CITY OF OWASSO, Oklahoma, acknowledged receipt of Summons and Complaint on February 7, 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 February 14, 1996; that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, filed its Answer on February 16, 1996; that the Defendant, CITY OF OWASSO, Oklahoma, filed its Disclaimer on February 23, 1996; and that the Defendants, DENNIS REEDY aka Dennis R. Reedy and DONNA ANN REEDY aka Donna A. Reedy, filed their Answer on May 20, 1996.

The Court further finds that the Defendant, DENNIS REEDY is one and the same person as Dennis R. Reedy and Dennis Ray Reedy, and will hereinafter be referred to as "DENNIS REEDY." The Defendant, DONNA ANN REEDY, is one and the same person as Donna A. Reedy, and will hereinafter be referred to as "DONNA ANN REEDY." The Defendants, DENNIS REEDY and DONNA ANN REEDY, are husband and wife.

The Court further finds that on March 11, 1996, Dennis Ray Reedy and Donna Ann Reedy, filed their voluntary petition in bankruptcy in Chapter 13 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 96-00813-C. On April 25, 1996, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

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

LOT FOURTEEN (14), BLOCK TWO (2), NICHOLS HEIGHTS, AN ADDITION TO OWASSO, COUNTY OF TULSA, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

The Court further finds that on August 31, 1983, the Defendants, DENNIS REEDY and DONNA ANN REEDY, executed and delivered to FIRST CONTINENTAL MORTGAGE CO., their mortgage note in the amount of \$29,350.00, payable in monthly installments, with interest thereon at the rate of Thirteen percent (13%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, DENNIS REEDY and DONNA ANN REEDY, husband and wife, executed and delivered to FIRST CONTINENTAL MORTGAGE CO., a mortgage dated August 31, 1983, covering the above-described property. Said mortgage was recorded on September 2, 1983, in Book 4723, Page 1423, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 14, 1983, FIRST CONTINENTAL MORTGAGE CO., assigned the above-described mortgage note and mortgage to COMMONWEALTH MORTGAGE CORPORATION. This Assignment of Mortgage was recorded on October 5, 1983, in Book 4733, Page 1514, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 2, 1984, COMMONWEALTH MORTGAGE CORPORATION, assigned the above-described mortgage note and mortgage to

THE RICHARD GILL COMPANY. This Assignment of Mortgage was recorded on June 5, 1984, in Book 4794, Page 2058, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 30, 1986, THE RICHARD GILL COMPANY, assigned the above-described mortgage note and mortgage to BANCPLUS MORTGAGE CORP. This Assignment of Mortgage was recorded on November 12, 1986, in Book 4982, Page 339, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 19, 1989, BANCPLUS MORTGAGE CORP., assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development, his successors and assigns. This Assignment of Mortgage was recorded on October 10, 1989, in Book 5212, Page 2182, in the records of Tulsa County, Oklahoma.

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

The Court further finds that the Defendants, DENNIS REEDY and DONNA ANN REEDY, 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 REEDY and DONNA ANN REEDY, are indebted to the Plaintiff in the principal sum of \$45,837.90, plus interest at the rate of 13 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 personal property taxes in the amount of \$13.00 which became a lien on the property as of June 25, 1993 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 Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, has a lien on the property which is the subject matter of this action by virtue of state income taxes in the amount of \$1,042.04 which became a lien on the property as of December 29, 1994. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, CITY OF OWASSO, disclaims any 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, 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 REEDY and DONNA ANN REEDY, in the principal sum of \$45,837.90, plus interest at the rate of 13 percent per annum from April 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5.81 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 \$26.00, plus costs and interest, for personal property taxes for the years 1992 and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, have and recover judgment In Rem in the amount of \$1.042.04, plus accrued and accruing interest, for state income taxes, plus the costs and interest.

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

First:

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

Second:

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

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$26.00, personal property taxes which are currently due and owing.

Fourth:

In Payment of Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, in the

amount of \$1,042.04, plus accrued and accruing
interest, for 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.

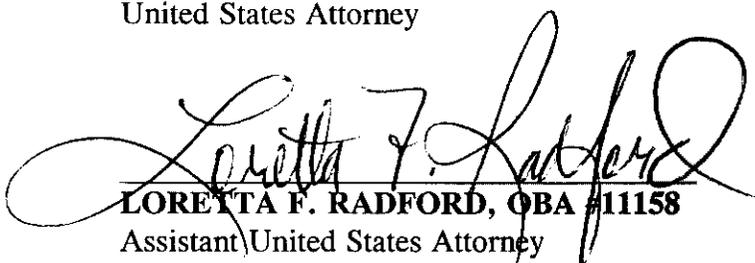
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant
to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right
to possession based upon any right of redemption) in the mortgagor or any other person
subsequent to the foreclosure sale.

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.


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



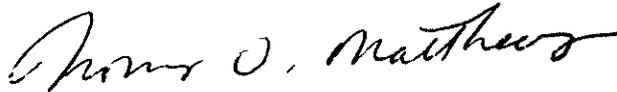
DICK A. BLAKELEY, OBA #852

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



KIM D. ASHLEY, OBA #14175

Assistant General Counsel
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(405) 521-3141
Attorney for Defendant,
State of Oklahoma, ex rel.
Oklahoma Tax Commission



THOMAS O. MATTHEWS, OBA #5788

4137 S. Harvard Ave, Suite G
Tulsa, OK 74135-2607
(918) 743-3590
Attorney for Defendants,
Dennis Reedy and
Donna Ann Reedy

Judgment of Foreclosure
Civil Action No. 96-0073H

LFR:flv

ENTERED ON DOCKET

DATE 7/23/96

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

JUL 22 1996 *AL*

LARRY D. SCARBROUGH)
)
 Plaintiff,)
)
 v.)
)
 SHIRLEY CHATER, Commissioner of the)
 Social Security Administration,)
)
 Defendant.)

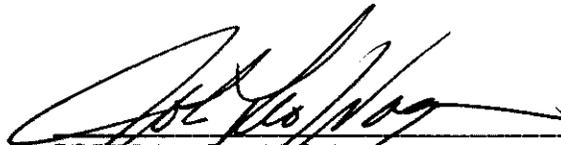
Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 96-C-440-W ✓

ORDER

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

DATED this 22nd day of July 1996.



JOHN LEO WAGNER
United States Magistrate Judge

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

SUBMITTED BY:

STEPHEN C. LEWIS
United States Attorney

A handwritten signature in black ink, appearing to read "Phil Pinnell". The signature is written in a cursive style with a large, stylized initial "P".

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

FILED
IN OPEN COURT

JUL 22 1996

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

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

RON G. DENNIS,

Plaintiff,

vs.

COMMUNITY BANK, Bristow,
Oklahoma, an Oklahoma Bank,

Defendant.

Case No. 95-C-847-BU ✓

ENTERED ON DOCKET

DATE JUL 23 1996

ADMINISTRATIVE CLOSING ORDER

As the parties have reached a settlement and compromise of this matter, it is ordered that the Clerk administratively terminate this action in his records without prejudice to the rights of the parties to reopen the proceeding for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If the parties have not reopened this case within 30 days of this date for the purpose of dismissal pursuant to the settlement and compromise, the plaintiff's action shall be deemed to be dismissed with prejudice.

Entered this 22 day of July, 1996.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

DATE July 23 96

FILED

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

JUL 22 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

HALLET MOOMEY,)
)
Plaintiff,)
)
vs.)
)
OTTAWA COUNTY SHERIFF'S DEPARTMENT,)
JAMES EDWARD WALKER, and DUANE G.)
KOEHLER,)
)
Defendants.)

No. 95-C-997-B ✓

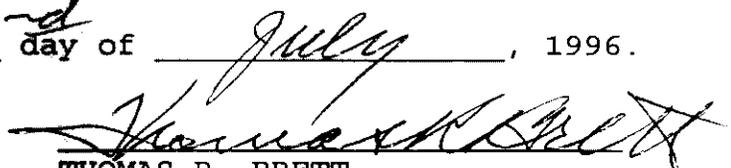
ORDER

This matter comes before the Court on the motion to dismiss of Defendant Duane G. Koehler. Plaintiff, a pro se litigant, has not objected to the motion, although on June 13, 1996, the Court granted him an extension of time to do so.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 7.1.C.¹

ACCORDINGLY, IT IS HEREBY ORDERED that Defendants' motion to dismiss (Docket #5) is GRANTED and this action is hereby DISMISSED WITHOUT PREJUDICE as to Defendant Koehler.

SO ORDERED, this 22nd day of July, 1996.


 THOMAS R. BRETT
 UNITED STATES DISTRICT JUDGE

¹Local Rule 7.1.C reads as follows:

Response Briefs. Response briefs shall be filed within fifteen (15) days after the filing of the motion. Failure to timely respond will authorize the court, in its discretion, to deem the matter confessed, and enter the relief requested.

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

F I L E D

RAYMOND D. SHRIVER,
SSN# 447-36-2582,

Plaintiff,

vs.

SHIRLEY S. CHATER,
Commissioner of Social
Security,

Defendant.

JUL 22 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 93-C-354-B ✓

ENTERED ON DOCKET

JUL 23 1996

O R D E R

This matter comes on for consideration of Plaintiff's Motion For Attorney Fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. §2412 in the amount of \$4,960.04 and costs in the amount of \$359.03 for a total of \$5,319.07. Defendant, in her response, states that she objects only to the cost sum of \$13.00 requested for reimbursement of Plaintiff's mailing expenses which are noncompensable under EAJA.

The Court concludes Plaintiff's application for attorney's fees should be granted in the amount of \$4,960.04 and costs in the amount of \$346.03 for a total of \$5,306.07.

IT IS SO ORDERED THIS 22nd DAY OF July, 1996.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

CHRISTIANA OSSOM,)

JUL 22 1996

Plaintiff,)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

v.)

No. 96-C-0126B

STATE FARM MUTUAL AUTOMOBILE)

INSURANCE COMPANY, an)

Illinois Insurance Corporation,)

and STATE FARM FIRE AND)

CASUALTY COMPANY, an Illinois)

Insurance Corporation,)

Defendants.)

REMOVED ON COURT

JUL 23 1996

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 22nd day of July 1996, it
appearing to the Court that **this** matter has been compromised and
settled, this case is herewith dismissed with prejudice to the
refiling of a future action.

S/ THOMAS R. BRETT

Judge of the District Court

ENTERED ON DOCKET
DATE 7-23-96

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

F I L E D

JUL 22 1996

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

Plaintiff,)

vs.)

WESTERN TEX-PACK, INC.,)
MISTLETOE TEX-PACK, EXPRESS,)
INC., CONSOLIDATED TEX-PACK,)
INC., TEX-PACK EXPRESS OF DALLAS,)
INC., and O & A TEX-PACK EXPRESS,)
INC.,)

Defendants.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. 95-C-648-C

ORDER

Currently pending before the Court is the motion filed by defendants at the close of plaintiff's evidence seeking a directed verdict in favor of all defendants and against plaintiff in the instant action on the grounds that plaintiff's evidence fails to demonstrate that plaintiff is entitled to any relief.

On July 14, 1995, plaintiff filed the present action against defendants, invoking diversity jurisdiction pursuant to 28 U.S.C. § 1332. Essentially, plaintiff alleges that defendants breached a business agreement with plaintiff which allegedly caused plaintiff to suffer damages in excess of \$5,000,000. The agreement at issue was entered into in March of 1990 and allegedly gave plaintiff the exclusive right to haul "Tex-Pack" freight between Northeast Oklahoma and Dallas for "as long as plaintiff performed." Defendants terminated their business relationship with plaintiff effective May 31, 1995. Plaintiff claims that this termination by defendants was wrongful and without legal justification, since plaintiff had not failed to perform.

In an Order entered on May 15, 1996, the Court disposed of several issues involved in the present case. The Court found that the substantive law of Oklahoma governs the instant case. Significantly, the Court concluded that the **alleged oral contract** which supposedly created a business relationship between plaintiff and defendants, terminable only upon plaintiff's failure to perform, to be invalid and unenforceable under the Oklahoma statute of frauds. The Court thus granted summary judgment in favor of all defendants on the issue of whether an enforceable oral contract existed in this case and whether such contract had been breached by defendants. However, the Court denied defendants' motions for summary judgment with respect to whether a joint venture agreement existed between the parties and whether promissory estoppel applies in the instant case. These remaining issues were therefore preserved for trial.

A non-jury trial commenced on June 20, 1996. Trial was held through June 27, at which time the Court continued trial to July 22. At the close of plaintiff's evidence, all defendants moved for a directed verdict in favor of defendants. The Court took defendants' motions for directed verdict under advisement.

Facts

From 1987 through 1989, plaintiff **engaged** in a business arrangement with most defendants whereby the parties would cooperate in the receiving and delivering of freight. The freight system in which plaintiff participated is widely known as the "Tex-Pack" freight system. The Tex-Pack system, which continues in operation, involves the coordination of various independent companies in a mutual effort to efficiently receive and deliver freight throughout Texas, Oklahoma, and other states within the region. Each independent **corporate** carrier in the Tex-Pack system receives freight within a particular territory and delivers that freight to a common centralized warehouse. The freight

is then picked up and delivered by a **separate** carrier serving the region in which the freight is ultimately destined.

Plaintiff is a freight and warehouse **company** operating primarily in eastern Oklahoma. After plaintiff established its relationship with **the various** companies in the Tex-Pack system in 1987, plaintiff purchased three new vehicles, hired **additional** drivers, and hired sales and customer service personnel. Plaintiff also placed the “**Tex-Pack**” logo on some of its vehicles. Plaintiff then proceeded to develop the Tex-Pack name in eastern **Oklahoma**.

Initially, plaintiff would deliver “**Tex-Pack**” freight to and receive “**Tex-Pack**” freight from Durant, Oklahoma. As such, plaintiff **engaged in a 40/60** split of revenues with the Tex-Pack carrier that coordinated shipments with plaintiff to **and from** Durant, with 40% of revenues going to plaintiff. The freight was destined to points in **eastern** Oklahoma and Texas. Subsequently, plaintiff began hauling “**Tex-Pack**” freight to a facility known as the “Dallas Terminal,” which is operated by Tex-Pack Express of Dallas, Inc. (“**Tex-Pack of Dallas**”). Tex-Pack of Dallas, in addition to running the Dallas Terminal, also receives and delivers **freight** solely within the Dallas area. Since traveling to and from Dallas was a longer haul for plaintiff, **the** revenue split increased to 50/50. That is, plaintiff would receive 50% of the revenues for **hauling** freight to and from Dallas, and the remaining 50% would go to the carrier who had either (1) **delivered** the freight to the Dallas Terminal which plaintiff then received or (2) picked up the freight **from** the Dallas Terminal that plaintiff had delivered.

As previously noted, during the **period** of 1987 through 1989, the “**Tex-Pack**” system was comprised of several independent **companies**. Specifically, the Tex-Pack freight system was comprised of O & A Tex-Pack Express, **Inc.** (“**O & A**”), Western Tex-Pack, Inc. (“**Western**”), Mistletoe Tex-Pack Express, Inc. (“**Mistletoe**”), Tex-Pack of Dallas, and a group of Tex-Pack

companies held by a company known as **Multistates**. In late 1989, the **Multistates** companies filed for bankruptcy. In February of 1990, the **Multistates** companies discontinued operations. This caused a massive disruption of service in the eastern and southern areas of Texas, which the **Multistates** companies previously served. **However**, none of the other **Tex-Pack** companies joined **Multistates** in the bankruptcy. Rather, **O & A**, **Western**, and **Mistletoe** began an attempt to salvage the **Tex-Pack** system. The **Tex-Pack Terminal** in **Dallas** continued to operate, although business decreased significantly after the bankruptcy. **However**, there was never a complete shut-down of the **Tex-Pack** system following the bankruptcy.

In January of 1990, plaintiff was informed that **Multistates** had filed for bankruptcy. Plaintiff was subsequently instructed to cease **Tex-Pack** operations in February or March of 1990. That is, plaintiff was instructed to discontinue further participation in the hauling of “**Tex-Pack**” freight. Plaintiff was out of the **Tex-Pack** business for about two weeks in 1990 following the bankruptcy.

Following the bankruptcy, **O & A**, **Western**, and **Mistletoe** formed a company known as **Consolidated Tex-Pack, Inc.** (“**Consolidated**”) in March of 1990 in order to cover the area formerly served by the **Multistates** companies. **These three Tex-Pack** companies also guaranteed a line of credit for **Consolidated** in order for **Consolidated** to form. Officers of **Consolidated** were subsequently hired by the remaining **Tex-Pack** group, and the daily operations of **Consolidated** were left to the control of these officers. **Plaintiff** did not contribute to the structuring or forming of **Consolidated**, nor did plaintiff become involved in the bankruptcy of **Multistates**.

In March of 1990, **Sheldon Tilken**, **president** of plaintiff, learned that the **Tex-Pack** group was attempting to reform and continue **full-scale** pre-bankruptcy operations with the formation of

Consolidated. Tilken phoned Charles Lynch, who serves as president of O & A, Tex-Pack of Dallas¹, and is a director of Consolidated. Tilken notified Lynch that plaintiff wanted to participate in the continuation of the Tex-Pack system and that plaintiff desired to continue its previous relationship with the Tex-Pack companies. A meeting at the Dallas Terminal was arranged between Lynch and Tilken in March of 1990. During that time, the Dallas Terminal appeared to be operational and busy even though Multistates had ceased operations and plaintiff was no longer participating in the Tex-Pack system. During the meeting, Lynch advised Tilken that Tex-Pack was regrouping with a new company by the name of Consolidated. Tilken advised Lynch that plaintiff was interested in continuing business with the Tex-Pack system, and Tilken allegedly informed Lynch that plaintiff needed a long-term commitment. According to Tilken's testimony, Lynch allegedly informed Tilken that plaintiff could have exclusive rights in eastern Oklahoma for as long as plaintiff performed². Plaintiff maintains that the *only* condition for termination of this agreement was the failure of plaintiff to perform. Hence, *any* other termination of the agreement by defendants would constitute wrongful termination of the alleged agreement. This allegation is disputed by Lynch's testimony in which Lynch testified that he never advised Tilken that plaintiff could participate for as long as plaintiff performed. Lynch testified that he would never enter into such a one-sided business agreement whereby one party could terminate at any time but the other party could not. Further, Lynch testified that there was no discussion whatsoever concerning plaintiff's exclusive rights in eastern Oklahoma. Lynch additionally testified that in March of 1990, O & A was using a company known as Beaver

¹ Lynch testified that he was not an officer of Tex-Pack Dallas in March of 1990, although he was on the Board of Directors at that time.

² This alleged statement made by Lynch is essentially the cornerstone of plaintiff's entire present lawsuit against defendants.

Express Service ("Beaver") for shipments to northeast Oklahoma. However, Lynch did testify that he agreed that plaintiff could resume interlining freight to and from Dallas with O & A, since Lynch was satisfied with plaintiff's performance in 1990. Tilken testified that he understood that Lynch had the authority to speak for and bind all Tex-Pack companies. Lynch testified that he was not authorized to enter into agreements on behalf of Mistletoe or Western, and that he did not purport to act on their behalf. No written document memorialized this alleged agreement between Lynch and Tilken. Additionally, Tilken testified that he had discussions only with Lynch concerning the agreement now at issue. That is, Tilken testified that he never discussed the terms of his agreement with any representative of any other defendant until plaintiff's services were terminated in May of 1995.

Following Tilken's meeting with Lynch, plaintiff resumed its previous arrangement with the Tex-Pack companies in March of 1990. The arrangements were virtually the same as they were prior to the bankruptcy. Plaintiff's role in the system was to deliver freight to the Dallas Terminal, which would be picked up by other Tex-Pack carriers for distribution throughout Texas. Additionally, plaintiff would receive freight in Dallas which the other companies had delivered and haul the freight to its final destination in eastern Oklahoma. Plaintiff received 50% of the freight bill revenue when plaintiff participated in a particular haul. The other carriers in the Tex-Pack system would likewise receive freight from and transport freight to the Dallas Terminal. This arrangement provided for an efficient method of hauling freight from one destination to another, with Dallas acting as a hub. The system would allow each company to serve a particular area, and interact with companies serving other areas when freight was to be delivered beyond the service area of a particular company. The revenue split of 50/50 remained in effect. Each company in the Tex-Pack network maintained its own

expenses and paid its own bills. Plaintiff and defendants carried on their own accounting for their own costs and expenses. There is no evidence that plaintiff shared in the losses or profits with the other Tex-Pack companies.

After the March 1990 meeting with Lynch, plaintiff actively participated in advertising Tex-Pack freight-hauling services in eastern Oklahoma, assured pre-bankruptcy customers that the Tex-Pack system was continuing to operate, and referred to itself as an “agent of Tex-Pack.” Plaintiff advised its customers that the Tex-Pack system was back in business and also solicited new customers for the Tex-Pack system. Plaintiff engaged in Tex-Pack marketing efforts and held itself out as a member of the Tex-Pack system. Plaintiff employed uniform Tex-Pack materials when conducting business with its customers, such as utilizing “Tex-Pack door hangers” to announce the attempted delivery of freight to an unavailable customer. Plaintiff claims that it put enormous emphasis on Tex-Pack and its growth potential. Tilken testified that plaintiff did forego other trucking and freight opportunities in pursuit of the Tex-Pack system, although Tilken offered no specifics. Tilken testified that between 1990 and 1995, the revenues from the Tex-Pack business increased approximately 20% each year. With respect to claims, initially all claims went through the Dallas Terminal, and the Terminal billed for all claims. Subsequently, the settlement of claims was handled only between the separate carriers actually involved in the claims. Additionally, the reestablishment of plaintiff’s relationship with the Tex-Pack companies in March of 1990 permitted plaintiff to utilize the same equipment and the same personnel that it was previously using with respect to its Tex-Pack operations during the period of 1987-1989.

Tex-Pack of Dallas, which is otherwise known as the Dallas Terminal, receives revenues by shipping freight within the Dallas area and by billing carriers for the use of its terminal. Prior to the

bankruptcy of Multistates, Tex-Pack of Dallas had been controlled by the Multistates group. In spring of 1990, Consolidated, Western, O & A, and Mistletoe owned Tex-Pack of Dallas. Lynch testified that plaintiff never inquired into acquiring an ownership interest in Tex-Pack of Dallas. Lynch further testified that plaintiff did not pay fees to use the Dallas Terminal, although defendants did pay such fees, and plaintiff never attended board meetings of Tex-Pack of Dallas.

From the period of March 1990 through May 1995, plaintiff participated in various meetings with other companies in the Tex-Pack system. These meetings concerned uniform rates, deregulation of the Texas intrastate weight-limit mandates, sales blitzes to attract new customers, and safety issues. A system of standard, uniform rates was adopted throughout the Tex-Pack system and employed by the various companies within the Tex-Pack system. Additionally, Carlos Byrd, an employee of O & A, was elected as national sales representative for the Tex-Pack system. Sales leads were exchanged between the various Tex-Pack companies, with Byrd coordinating these leads.

From the period of March 1990 through May 1995, the evidence reveals that while plaintiff's Tex-Pack revenues steadily increased, the amount of plaintiff's work and energies spent on the Tex-Pack system steadily decreased. As the customer base grew and as plaintiff gained larger customers and reestablished the Tex-Pack name, the time spent on the Tex-Pack system by plaintiff's personnel declined. Additionally, as plaintiff's personnel became more familiar with the Tex-Pack business, plaintiff turned its attention to other parts of plaintiff's business, such as its warehouse.

Plaintiff claims that it participated in an "equipment pool" with other Tex-Pack carriers, in which the carriers essentially shared items such as trailers. However, Lynch testified that O & A never used any of plaintiff's equipment and that plaintiff never used any of O & A's equipment. Further, Lynch testified that O & A never participated in an equipment pool.

On April 30, 1990, O & A developed and distributed a "points list," which is a list of delivery points and indicates which carrier would deliver to that point from a particular terminal. It is clear from the points list that companies other than plaintiff were scheduled to deliver "Tex-Pack" freight to points in eastern Oklahoma. Tilken testified that the points list was distributed, but that it was not utilized. Lynch testified that the points list was in fact used by the Tex-Pack system from 1990 to the present and it basically remained the same throughout the period.

In April of 1995, Ted Hendrickson and Terry Castleberry, employees of Consolidated, met with Tilken in Tulsa. During the meeting, Tilken was advised that Castleberry wanted to terminate the plaintiff's business arrangement with the Tex-Pack companies for business reasons. Prior to this meeting, plaintiff was unaware of the impending termination. Tilken testified that Castleberry informed him that the decision to terminate had nothing to do with plaintiff or plaintiff's services. Castleberry informed Tilken that it would simply be easier to have one Tex-Pack carrier in Oklahoma rather than two.³ Castleberry thus informed Tilken that plaintiff would no longer haul "Tex-Pack" freight and that Beaver would assume the Tex-Pack freight routes in eastern Oklahoma, effective May 31, 1995. There was no indication that any further relationship would be maintained between the various Tex-Pack companies and plaintiff.

Following this meeting, Tilken telephoned Lynch and informed Lynch of the impending termination. Lynch expressed his regret, but informed Tilken that Castleberry had the authority to terminate the Tex-Pack business arrangement with plaintiff. Lynch admitted that terminating plaintiff's role in the Tex-Pack business was not something that Lynch would have done. Tilken

³ No evidence was presented that plaintiff delivered freight in any part of Oklahoma other than northeast area.

informed Lynch that plaintiff had not failed to perform and, therefore, such a termination was wrongful in light of Tilken's agreement with Lynch. Lynch testified that he understood that any member of the Tex-Pack group could be terminated at any time.

In April of 1995, Tilken had a telephone conference with Lynch and Castleberry in order to discuss the timing of plaintiff's termination in the Tex-Pack business. The Tex-Pack group decided that plaintiff's role in the Tex-Pack business should terminate effective May 31, 1995, which was about forty-five days after Tilken was first informed of the decision to terminate plaintiff's role in the Tex-Pack system. Plaintiff ceased hauling "Tex-Pack" freight on May 31, 1995. Tilken testified that he had anticipated upon the continuation of plaintiff's role in the hauling of "Tex-Pack" freight and had planned on future revenues resulting from plaintiff's participation in the Tex-Pack system. Subsequently, plaintiff attempted to continue hauling freight to Texas, but the operations proved largely unproductive. Thus, effective June 14, 1996, plaintiff ceased all operations to Texas. Beaver now hauls "Tex-Pack" freight along the routes once operated by plaintiff. Plaintiff, however, has not ceased all trucking operations, and plaintiff continues to operate its warehouse.

Discussion

In considering whether to grant a motion for a directed verdict, the Court "must view the evidence in a light most favorable to the party opposing the motion." Toland v. Technicolor, Inc., 467 F.2d 1045, 1046 (10th Cir. 1972). Since the Court can find no set of facts which could conceivably allow plaintiff to prevail in this action, the Court concludes that defendants are entitled to a directed verdict as a matter of law for the following reasons.

As previously noted, this Court ruled that plaintiff's breach of contract claim against defendants could not be maintained in this action since the alleged contract itself violated the

Oklahoma statute of frauds. As such, the **alleged** contract is unenforceable. However, even if the Court had not based this determination on the statute of frauds, the Court would nonetheless conclude that the alleged agreement is not a **valid** and enforceable contract. It is elementary that in order to create an enforceable contract, **the parties** to the contract must bear some quantum of obligation to one another. “The right to **perform** must be mutual, and the right to enforce must likewise be mutual. If these conditions **do not exist** in the contract, then it cannot be enforced.” Sohio Petroleum Co. v. Brannan, 235 P.2d 279, 283 (Okla. 1951) (quoting Owens v. Wilson, 273 P. 895, 897.)

In the present case, there is simply *no* mutuality of obligation whatsoever. Even if an agreement had been entered into whereby plaintiff was given the exclusive right to haul “Tex-Pack” freight between eastern Oklahoma and Dallas for “as long as plaintiff performed,” such an agreement would impose no legal obligation on the part of plaintiff. In fact, the only obligation imposed by such an agreement would be on defendants, since defendants would never be able to terminate plaintiff’s participation unless plaintiff failed to perform. Clearly, plaintiff had no legal obligation under this type of agreement because plaintiff could simply choose to cease performing at *any* time without incurring any type of legal liability. When asked by the Court what plaintiff’s obligation was under this purported agreement, plaintiff’s counsel **reluctantly** admitted that there was, in fact, no legal obligation on the part of plaintiff. Hence, the **alleged** agreement between Tilken and Lynch is more akin to an illusory agreement rather than to a **binding** contract, and such an agreement would therefore be unenforceable on the grounds of a **total** lack of mutuality of obligation, notwithstanding the Court’s prior Order respecting the statute of frauds.

Plaintiff additionally claims that it **participated** in a joint venture with defendants, and as such,

defendants owed plaintiff a fiduciary duty of good faith and loyalty. Plaintiff further claims that the statute of frauds has no applicability to partnership/joint venture agreements. While this rule of law may be correct in Oklahoma, the Court nevertheless concludes that plaintiff failed to establish either the existence of a joint venture or a partnership between plaintiff and defendants.

According to Oklahoma law,

the essential criteria for ascertaining the existence of a joint venture relationship are: (1) joint interest in property [or project], (2) an express or implied agreement to share profits and losses of the venture and (3) action or conduct showing cooperation in the project. None of these elements alone is sufficient. . . . [T]here must be some contribution by each co-adventurer of something promotive of the enterprise. . . . The law requires little formality in the creation of a joint venture and the agreement is not invalid because it may be indefinite with respect to its details. . . . The essential test in determining the existence of a joint venture is whether the parties intended to establish such a relation.

Martin v. Chapel, et al., 637 P.2d 81, 85-86 (Okla. 1981).

“Where the facts are in dispute, the existence of a joint venture ordinarily presents a question for determination by the trier of fact, the jury or the court as the case may be.” Sigma Resources Corp. v. Norse Exploration, Inc., 852 P.2d 764, 767 (Okla.App. 1992). Further, under Oklahoma law, a partnership is an association of two or more persons to carry on as co-owners a business for profit. Johnson v. Plastex Co., 500 P.2d 596, 598 (Okla.App. 1971) (citing 54 O.S.1961 § 206).

From the evidence which plaintiff presented, it is clear that neither a joint venture nor a partnership existed in this case between plaintiff and defendants. It is certainly questionable whether there was any joint interest in property in the present case. The only conceivable joint interest relates to the interlining of freight between destinations. If the joint project was the interlining of freight, then the evidence simply demonstrates conduct showing cooperation in the project between the parties. However, there is no evidence whatsoever that there was ever an express or implied

agreement to share profits and losses of the venture. The failure to meet this element is indeed fatal to plaintiff's claim that a joint venture existed. Plaintiff only demonstrated that the Tex-Pack companies engaged in a 50/50 split of interline revenues with plaintiff when plaintiff participated in hauling "Tex-Pack" freight. Clearly, the splitting of revenues and the sharing of profits are completely distinct legal concepts. Simply showing that revenues were split does not satisfy the requirement that profits be shared. See, Cimarron Oil & Gas, Inc. v. Benson-McCown & Co., 806 P.2d 83 (Okla.App. 1989). Further, there is no evidence demonstrating that plaintiff shared in any losses with defendants. "The absence of these factors alone negates the existence of a joint venture under [Oklahoma law]." Cimarron, at 85. Moreover, the evidence does not reveal that any of defendants intended to establish a joint venture with plaintiff. Additionally, a partnership clearly does not exist between plaintiff and defendants. Plaintiff presented no evidence demonstrating that it associated with defendants to carry on as co-owners of a business for profit. On the contrary, the evidence reveals that plaintiff was never a co-owner of a business with any of the defendants. Further, the evidence demonstrates that no defendant ever referred to the Tex-Pack system as being a partnership.⁴

Rather than demonstrating the existence of a joint venture or partnership, the evidence merely shows that several legally independent companies came together as a group to form a simple business arrangement with each other. The arrangement permitted an efficient and cost-effective method of hauling freight between certain destinations. Further, the arrangement allowed for one carrier to be able to receive freight destined for delivery beyond that carrier's authorized delivery area, by way of

⁴ Moreover, the fact that plaintiff was not involved in nor affected by the bankruptcy proceedings of Multistates is further evidence that plaintiff was neither a joint venturer nor a partner with the other Tex-Pack companies.

interlining with another freight company which served the target area. This business arrangement simply provided for the mutual benefit of several shipping companies by permitting the companies to cooperate in an effort to attract and serve a wider customer base.

Plaintiff also claims that it is entitled to relief under promissory estoppel. The statute of frauds does not appear to serve as a bar to the invocation of promissory estoppel. Lacy v. Wozencraft, 105 P.2d 781, 784 (Okla. 1940). However, under Oklahoma law, it appears that the following elements must be shown in order to establish a claim under promissory estoppel: (1) there must be a false representation or concealment of facts; (2) it must have been made with knowledge of the real facts; (3) the party to whom it was made must have been ignorant of the real facts; (4) it must have been made with the intention that it should be acted upon; and (5) the party to whom it was made must have relied on or acted upon it to his prejudice. Lacy, at 783.⁵

The alleged promise in the present case was made by Lynch to Tilken during a meeting in Dallas. According to Tilken, Lynch promised that plaintiff could have exclusive rights to haul Tex-Pack freight between eastern Oklahoma and Dallas for as long as plaintiff performed. Lynch disputes the fact that such a promise was ever made, and Lynch further testified that he would never enter into such a grossly one-sided arrangement which would provide the other party with the sole ability to terminate the arrangement. Even assuming that such a promise was made by Lynch to Tilken, the

⁵ The Court notes that promissory estoppel is defined differently in a case coming out of the Court of Appeals of Oklahoma. In Bickerstaff v. Gregston, 604 P.2d 382, 384 (Okla. App. 1979), the Appeals Court defined promissory estoppel as being “a doctrine (originally of an equitable nature but now a part of the common law) whereby a person who reasonably relies to his detriment on another’s promise is given by law the benefit of a contract wherein an agreement did not come to fruition.” However, the Court concludes that this somewhat dissimilar definition of promissory estoppel, which does not appear to require a false promise, is immaterial to the Court’s decision respecting this issue. Irrespective of which definition is employed, the Court finds that Plaintiff has failed to establish promissory estoppel for the reasons stated in this Order.

Court can find no basis for enforcing it under the theory of promissory estoppel.

There is no allegation that a false promise had been made by Lynch to Tilken. During Tilken's testimony, Tilken conceded that Lynch made no false representations during Tilken's meeting with Lynch in March of 1990.⁶ There is also no evidence that a false representation was knowingly made by Lynch to Tilken during the March 1990 meeting. The fact that plaintiff participated in the Tex-Pack system for five years after the alleged promise was made is a strong indication that Lynch did not knowingly make a false promise to Tilken.

Even assuming that a false promise had been made by Lynch to Tilken during the March 1990 meeting, providing that plaintiff could participate in the Tex-Pack system for as long as plaintiff performed, there is no evidence of detrimental reliance on the part of plaintiff. As noted previously, plaintiff had participated in the Tex-Pack system since 1987.⁷ When plaintiff discontinued and subsequently resumed its participation in the Tex-Pack system in March of 1990, plaintiff simply continued utilizing the same equipment and personnel that had been utilized in plaintiff's Tex-Pack operations prior to the March 1990 meeting. Hence, plaintiff suffered no detrimental reliance upon Lynch's alleged promise. Plaintiff simply continued its operations as it had prior to the March 1990 meeting. After the March 1990 meeting, plaintiff did not purchase additional equipment nor commit additional personnel⁸ to its Tex-Pack endeavors in reliance on Lynch's alleged promise. The

⁶ As noted previously, it was at this meeting that the promise at issue was allegedly made.

⁷ Plaintiff does not claim detrimental reliance on the actions it took in 1987, when it purchased new vehicles and hired additional personnel when initiating its Tex-Pack operations.

⁸ Plaintiff did hire Sherry Wallace in 1993 as a sales representative for plaintiff's Tex-Pack endeavors. However, also in 1993, an employee of plaintiff who acted as a Tex-Pack sales representative resigned his position and was not replaced. Plaintiff stated that this employee was not replaced because Wallace was doing a good job.

equipment and personnel were already in place at the time of the meeting. Although it is true that plaintiff engaged in building a Tex-Pack customer base, such is not sufficient to establish detrimental reliance. Plaintiff received five years of return on the customer base it helped create. Thus, the evidence does not establish that plaintiff relied to its detriment on any promise allegedly made by Lynch.⁹

Furthermore, plaintiff participated in the Tex-Pack system for five years after the March 1990 meeting. Plaintiff admitted that during such time period, plaintiff's efforts in the Tex-Pack system steadily decreased while plaintiff's revenues from the Tex-Pack system steadily increased. The evidence does not establish that plaintiff suffered a legal detriment from an alleged promise that had been made five years earlier, especially since plaintiff clearly profited from that alleged promise for those five years. Moreover, plaintiff is continuing operations in the freight and warehouse business and is certainly able to continue utilizing its "Tex-Pack" equipment and personnel on other tasks. Indeed, the evidence demonstrates that plaintiff's "Tex-Pack personnel" were steadily increasing their focus on other non-Tex-Pack tasks from 1990 to 1995. Hence, the Court concludes that plaintiff suffered no detriment from Lynch's alleged promise.

The only conceivable loss to plaintiff as a result of the breach of Lynch's alleged promise is plaintiff's loss of future Tex-Pack revenues. Indeed, future loss is the only damages claimed by plaintiff. However, since the alleged agreement between plaintiff and Lynch is unenforceable, vague, and indefinite, future loss to plaintiff is largely immaterial. Promissory estoppel is certainly not designed to give one party future damages on an agreement that could have been terminated by that

⁹ Additionally, plaintiff did not present any evidence of a dollar amount actually spent on Tex-Pack endeavors.

party at *any* time. Rather, promissory estoppel, being equitable in nature, is more geared to recompensing a party for the loss suffered **directly** as a result of another's failure to honor a promise. Even if full contractual remedies were **available** under promissory estoppel, thereby permitting the awarding of future damages for breach of a **promise**, there is simply no basis upon which to calculate such damages in the present case. In order to **grant** damages for future loss, there must be some articulable and reasonable method of **calculating and measuring** such damages. In the present case, under the evidence presented, the Court is **not** able to calculate any future loss to plaintiff because plaintiff could have ceased performance at **any time**.¹⁰ Should the Court award plaintiff damages for two months of lost profits or thirty years of lost profits? There is no way to determine how long plaintiff would have performed, and, as such, there is no reliable method of calculating future loss. Hence, not only does the Court find that **plaintiff** suffered no detrimental reliance upon Lynch's alleged promise made in March of 1990, the Court further concludes that plaintiff's claim for future damages is far too speculative to be given **serious** consideration.

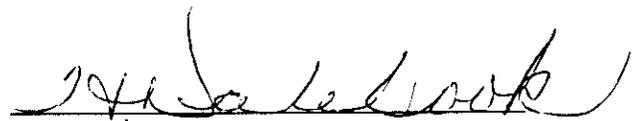
Finally, the evidence demonstrates that plaintiff's relationship with defendants was a mere business relationship of convenience. With the arrangement in place, plaintiff was able to efficiently serve a wider customer base by **cooperating with other** independent carriers. For the reasons stated above, the Court finds that this **business relationship** between plaintiff and defendants was nothing more than an arrangement terminable at will by any party. Under plaintiff's argument, defendants would be obligated to continue this **relationship** with plaintiff in perpetuity, while plaintiff possessed

¹⁰ The evidence of future loss was based primarily on Tilken's estimate of future revenues. The expert testimony which plaintiff introduced to prove future loss was unreliable because the expert's opinion failed to consider **future expenses** and costs associated with plaintiff's Tex-Pack endeavors.

the sole right to terminate at any time it wished. Such an argument clearly cannot possess legal merit, especially on the facts of this case. Further, plaintiff argues that it was guaranteed an exclusive right to haul "Tex-Pack" freight between eastern Oklahoma and Dallas. However, the "points list" noted above clearly shows an intention to the contrary, i.e., that other carriers would be permitted to haul freight into and out of plaintiff's alleged exclusive territory. There is simply no evidence to suggest that plaintiff's termination is actionable or that defendants intended to give plaintiff an exclusive "Tex-Pack" territory in perpetuity. Further, the evidence demonstrates that plaintiff was given a forty-five day notice of defendants' decision to terminate plaintiff's participation in the Tex-Pack system. Such notice is surely reasonable under any terminable at will arrangement. Although plaintiff may have anticipated upon participating in the Tex-Pack network for several years to come, the evidence presented by plaintiff is simply insufficient to justify a finding in favor of plaintiff's claims.

Accordingly, all of the defendants' motions for a directed verdict in favor of all defendants and against plaintiff are hereby GRANTED. All other pending motions in the present case are hereby rendered moot by entry of this Order.

IT IS SO ORDERED this 19th day of July, 1996.



H. Dale Cook
U.S. District Judge

ENTERED ON DOCKET

DATE 7/23/96

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

VELMA L. KIRK,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
 ex rel. INTERNAL REVENUE)
 SERVICE)
)
 vs.)
)
 JIMMY M. SMITH,)
)
 Additional defendant)
 on the counterclaim.)

No. 95-C-635-BW ✓

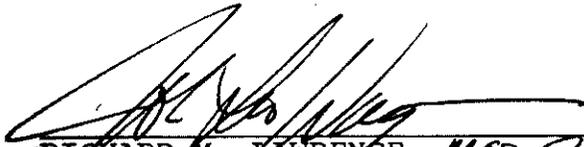
F I L E D

JUL 22 1996 *SAK*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

Pursuant to Fed. R. Civ. P. 55(b), defendant, the United States, is granted judgment against Jimmy M. Smith, the additional defendant on the counterclaim, in the amount of \$102,104.82, plus statutory interest from the dates of assessments, plus costs.



~~RICHARD M. LAWRENCE~~ *Max. Gray*
CLERK OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF OKLAHOMA

RR

ENTERED ON DOCKET
7-22-96

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

FILED

JUL 1 1996 *ja*

LINDEN WOODRUFF and SHERRY
LEE WOODRUFF, individually,
and as husband and wife,

Plaintiffs,

vs.

AMERICAN ISUZU MOTORS, a
foreign corporation,

Defendant.

Case No. 95-C-1199E ✓

STIPULATION OF DISMISSAL

COME NOW the parties hereto, Plaintiffs LINDEN WOODRUFF and SHERRY LEE WOODRUFF, individually and as husband and wife, by and through their attorney, Robert H. Tips, and the Defendant AMERICAN ISUZU MOTORS, a foreign corporation, by and through its attorney, Bert M. Jones, and hereby stipulate that the matter now pending in the above styled and numbered cause may be dismissed by the Court, without prejudice to the filing of another action by the Plaintiffs against the Defendant.

41 Federal Rules of Civil Procedure.

DATED this 11 day of July, 1996.

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Sherry Lee Woodruff
SHERRY LEE WOODRUFF, Defendant

Linden Woodruff
LINDEN WOODRUFF, Defendant

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C

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SUN COMPANY, INC., (R & M), a Delaware corporation,)
and TEXACO INC., a Delaware corporation,)

JUL 19 1996

W. J. Leffler, Clerk
U.S. DISTRICT COURT

Plaintiffs,)

vs.)

Case No. 94-C-820K

BROWNING-FERRIS, INC., a Delaware corporation, et al.,)

Defendants.)

ENTERED ON DOCKET

DATE JUL 22 1996

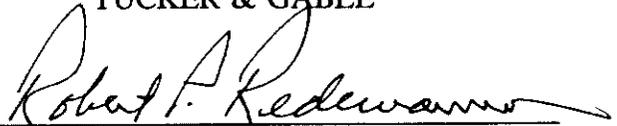
STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiffs, Sun Company, Inc. (R & M) and Texaco Inc., and Defendant, Mid-America Stockyards, Inc., pursuant to Federal Rule of Civil Procedure 41 (a)(2) hereby stipulate to an Order of Dismissal with Prejudice, dismissing Defendant Mid-America Stockyards, Inc., from the above styled case with prejudice as agreed, in good faith, by the parties and without objection by any co-Defendants in this case. Each party to this dismissal is to bear their own costs.

WHEREFORE, the parties request the Court enter an Order dismissing the Defendant, Mid-America Stockyards, Inc., with prejudice.

RHODES, HIERONYMUS, JONES
TUCKER & GABLE

By



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ATTORNEYS FOR PLAINTIFFS,
SUN COMPANY, INC. (R & M) and
TEXACO INC.

and

CARPENTER, MASON & MCGOWAN

By 

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7-22-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)

vs.)

DONALD J. KLOBUCHAR aka Donald)
 Jeffrey Klobuchar; LORI D.)
 KLOBUCHAR aka Lori Denise Klobuchar)
 aka Lori Denise Schnaithman; TERRY)
 WOODARD; MARY WOODARD;)
 SAMUEL RADER dba Rader Group,)
 Realtors; 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.)

FILED

JUL 19 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil Case No. 95-C 582E

CLERK'S ENTRY OF DEFAULT

It appearing from the files and records of this Court as of July 19, 1996 and the declaration of Loretta F. Radford, Assistant United States Attorney, that the Defendants, **Donald J. Klobuchar aka Donald Jeffrey Klobuchar and Lori D. Klobuchar aka Lori Denis Klobuchar aka Lori Denise Schnaithman**, 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 19th day of July, 1996.

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

By J. Adamski
Deputy