

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

NOV 19 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENERGY DYNAMICS, INC., a
Kansas corporation

Plaintiff,

v.

MIDWEST GAS STORAGE, INC.,
an Indiana corporation, d/b/a
MIDWEST GAS SERVICES, INC.,
MIDWEST GAS SERVICES, CO.,

MIDWEST GAS SERVICES COMPANY,
an Illinois corporation, d/b/a
MIDWEST GAS SERVICES, INC.,
MIDWEST GAS SERVICES, CO.,

DANIEL L. O'MALLEY, and
GREGORY J. FRIEDRICH,

Defendants.

Case No. 96-CV-706C

ENTERED ON DOCKET
DATE NOV 20 1996

JUDGMENT AGAINST DEFENDANT
MIDWEST GAS SERVICES, INC.

Based upon the prayer for relief contained in the Complaint filed August 5, 1996, together with the admission contained in the Answer filed September 30, 1996, Plaintiff, Energy Dynamics, Inc., is admitted to be entitled to judgment in its favor and against Defendant, Midwest Gas Services, Inc., in the amount of \$391,491.13, plus accrued interest thereon through October 11, 1996, in the amount of \$12,402.74, together with interest accruing thereafter in the amount of \$64.36 per day.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is entered for the Plaintiff Energy Dynamics, Inc. and against Defendant, Midwest Gas Services,

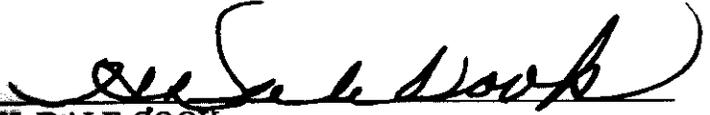
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Inc., in the amount of \$391,491.13, plus accrued interest thereon through October 11, 1996, in the amount of \$12,402.74, together with interest accruing thereafter in the amount of \$64.36 per day.

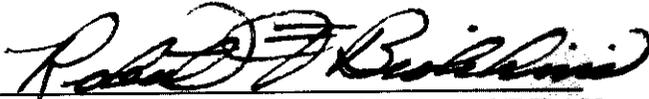
Judgment is reserved against all other Defendants.

IT IS SO ORDERED.

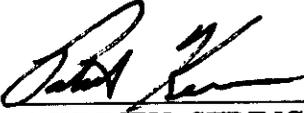
This 19 day of ~~October~~^{Nov.}, 1996.


H. DALE COOK
SENIOR UNITED STATES DISTRICT JUDGE

APPROVED:


STUART, BIOLCHINI, TURNER & GIVRAY
Robert F. Biolchini, OBA #800
Charles Greenough, OBA #12311
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(918) 528-3311

Attorneys for Plaintiffs


McKINNEY, STRINGER & WEBSTER, P.C.
Patrick H. Kernan, OBA #4983
Mid-Continent Tower, Suite 2100
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918/582-3176

Attorneys for Defendants

PHK/pab/30585.001/10013722

FILED

NOV 19 1996

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

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

ARNOLD CHAVEZ, an individual,

Plaintiff,

vs.

KIMBERLY-CLARK CORPORATION,
an Ohio corporation,

Defendant.

§
§
§
§
§
§
§
§
§
§

Case No. 96C-285B

ENTERED ON DOCKET
DATE NOV 20 1996

AGREED FINAL JUDGMENT

On this day came on to be heard the Joint Motion For Entry of Agreed Final Judgment filed by Plaintiff and Defendant, and the Court, after considering the pleadings, is of the opinion that said Motion should be granted in its entirety. It is accordingly,

ORDERED, ADJUDGED and DECREED that all claims and causes of action asserted or which could have been asserted against Defendant by Plaintiff are hereby dismissed with prejudice. It is further

ORDERED, ADJUDGED and DECREED that all costs of court shall be taxed against the party incurring same.

SIGNED this 19th day of Nov., 1996.


UNITED STATES DISTRICT JUDGE

8

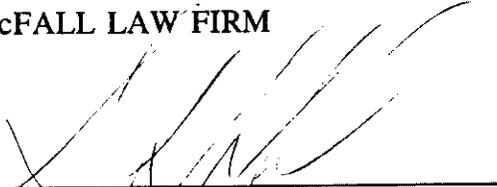
APPROVED AS TO FORM AND SUBSTANCE
AND ENTRY REQUESTED:



Brian E. Duke, Esq.
White, Hack & Duke, P.A.
111 West 5th Street
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(918) 582-7892 (Fax)

ATTORNEY FOR PLAINTIFF

McFALL LAW FIRM



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Steven L. Rahhal
Texas Bar No. 16473990
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(214) 987-3927 (Fax)

Timothy A. Carney, Esq.
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(918) 582-9201
(918) 586-8383 (Fax)

ATTORNEYS FOR DEFENDANT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHERYL A. FURLONG; GREENWOOD)
 TRUST COMPANY; CITY OF BROKEN)
 ARROW, Oklahoma; COUNTY)
 TREASURER, Tulsa County, Oklahoma;)
 BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

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

ENTERED ON DOCKET
DATE NOV 20 1996

Civil Case No. 95 C 1079B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19th day of NOVEMBER, 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, Greenwood Trust Company, appears by its Attorney, J. Michael Morgan; and the Defendants, Cheryl A. Furlong and City of Broken Arrow, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, City of Broken Arrow, Oklahoma, acknowledged receipt of Summons and Complaint on October 31, 1995, by Certified Mail; that the Defendant, Greenwood Trust Company, signed a Waiver of Summons on October 31, 1995.

The Court further finds that the Defendant, Cheryl A. Furlong, 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 April 18, 1996, and continuing through May 23, 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, Cheryl A. Furlong, and service cannot be made upon said Defendant 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, Cheryl A. Furlong. 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 Answer on November 8, 1995; that the Defendant, Greenwood Trust Company, filed its Answer on

November 7, 1995; and that the Defendants, Cheryl A. Furlong and City of Broken Arrow, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, CHERYL A. FURLONG, and William S. Furlong, were granted a Divorce on May 22, 1990, Case No. FD-89-00952, in Tulsa County, Oklahoma. The Defendant, CHERYL A. FURLONG, is a single unmarried person.

The Court further finds that on March 30, 1988, the Defendant, CHERYL A. FURLONG and William Scott Furlong, executed and delivered to MORTGAGE CLEARING CORPORATION, their mortgage note in the amount of \$36,330.00, payable in monthly installments, with interest thereon at the rate of 10 percent per annum.

The Court further finds that as security for the payment of the above-described note, William Scott Furlong and the Defendant, CHERYL A. FURLONG, husband and wife, executed and delivered to MORTGAGE CLEARING CORPORATION, a real estate mortgage dated March 30, 1988, covering the following described property, situated in the State of Oklahoma, Tulsa County:

LOT ELEVEN (11), BLOCK FOURTEEN (14), VANDEVER WEST, AN ADDITION TO THE CITY OF BROKEN ARROW, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

This mortgage was recorded on April 4, 1988, in Book 5091, Page 313, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 11, 1991, MORTGAGE CLEARING CORPORATION, assigned the above-described mortgage note and mortgage to the SECRETARY OF HOUSING AND URBAN DEVELOPMENT OF WASHINGTON, D.C., HIS SUCCESSORS AND ASSIGNS. This Assignment of Mortgage was recorded on February 12,

1991, in Book 5303, Page 1531, in the records of Tulsa County, Oklahoma. This Assignment was refiled on February 26, 1991, in Book 5306, Page 229, in Tulsa County, Oklahoma, to show the correct date.

The Court further finds that the Court further finds that on November 27, 1990, William S. Furlong, a single person, gave a Quit-Claim Deed to CHERYL A. FURLONG, a single person. This deed was recorded with the Tulsa County Clerk on April 15, 1991, in Book 5315 at Page 606.

The Court further finds that on March 1, 1991, the Defendant, CHERYL A. FURLONG, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on June 1, 1991, July 1, 1992, August 1, 1993, and January 1, 1994.

The Court further finds that the Defendant, Cheryl A. Furlong, 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, Cheryl A. Furlong, is indebted to the Plaintiff in the principal sum of \$54,531.89, plus interest at the rate of 10 percent per annum from July 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$891.00, plus penalties and interest, for the year of 1995. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$56.00 which became a lien on the property as of June 23, 1994; and a lien in the amount of \$26.00 which became a lien on the property as of June 25, 1993. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Greenwood Trust Company, has a lien on the property which is the subject matter of this action by virtue of a judgment in the amount of \$3,139.02, with interest, which became a lien on the property as of February 11, 1991. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Cheryl A. Furlong and City of Broken Arrow, Oklahoma, are in default, and have no right, title or interest in the subject real property.

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

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment **In Rem** against the Defendant, Cheryl A. Furlong, in the principal sum of \$54,531.89, plus interest at the rate of 10 percent per annum from July 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5.49 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 \$891.00, plus penalties and interest, for ad valorem taxes for the year 1995, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$82.00, 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, Greenwood Trust Company, have and recover judgment in the amount of \$3,139.02, with interest, for its judgment, plus the costs and interest.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Cheryl A. Furlong and City of Broken Arrow, Oklahoma, have no right, title or interest in the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Cheryl A. Furlong, to satisfy the In Rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of

Oklahoma, commanding him to advertise **and sell** according to Plaintiff's election with or without appraisalment the real property involved **herein** and apply the proceeds of the sale as follows:

First:

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

Second:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$891.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of Defendant, Greenwood Trust Company, in the amount of \$3,139.02, plus interest, for its judgment;

Fifth:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$82.00, personal property taxes which are currently due and owing.

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

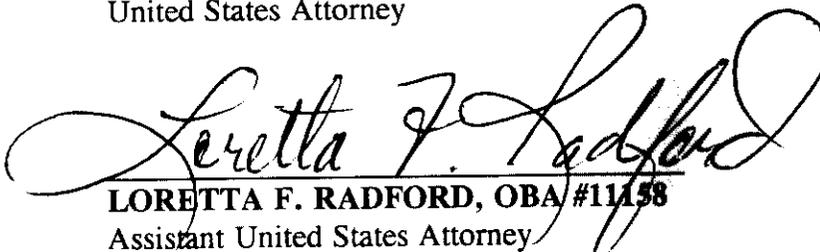
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

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


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158

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



DICK A. BLAKELEY, OBA #852

Assistant District Attorney

406 Tulsa County Courthouse

Tulsa, Oklahoma 74103

(918) 596-4842

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Tulsa County, Oklahoma



J. MICHAEL MORGAN, OBA #6391

7030 S. Yale, Ste 309

Tulsa, OK 74136-5712

Attorney for Defendant,

Greenwood Trust Company

Judgment of Foreclosure

Civil Action No. 95-C 1079B

LFR:flv

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

BHARATI NARUMANCHI; PADMINI
NARUMANCHI; BHARAT KUMAR
NARUMANCHI; and RADHA R.M.
and RADHA B.D NARUMANCHI,

Plaintiffs,

vs.

KINARK CORPORATION; PAUL R.
CHASTAIN; JOHN Q. HAMMONS;
JAMES M. REED; HALL, ESTILL,
HARDWICK, GABLE, GOLDEN &
NELSON, P.C.; and LATA
ENTERPRISES, LTD.,

Defendants.

F I L E D

NOV 18 1996

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

Case No. 95-C-220J

ENTERED ON DOCKET

DATE 11/20/96

ORDER OF DISMISSAL

The Court, being advised by all parties to this litigation that a complete and full settlement has been reached between them, and having reviewed the Stipulations of Dismissal filed by all Plaintiffs and all Defendants, finds that the parties' Settlement Agreement effectively settles any and all claims, disputes, issues or defenses raised in this litigation between any and all parties hereto and that this case should be dismissed with prejudice.

NOW, THEREFORE, the court hereby orders this case dismissed with prejudice to the refileing thereof, with respect to any and all claims, issues, damages or defenses which are in any way related to this action or which could have been filed or asserted herein by any of the parties hereto.

IT IS SO ORDERED this 18 day of November, 1996.

S/Sam A. Joyner
U.S. Magistrate

SAM A. JOYNER
UNITED STATES DISTRICT
MAGISTRATE JUDGE

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

STU DILDINE,

Plaintiff,

v.

THE TULSA STATE FAIR, TULSA
PUBLIC FACILITIES AUTHORITY,
PAT LLOYD, in his capacity as
Director of the Tulsa State
Fair, and BARBARA WOOD, in her
capacity as Public Events
Director of the Tulsa State
Fair,

Defendants.

Case No. 96-CV-0030-E

ENTERED ON DOCKET

DATE NOV 19 1996

F I L E D

NOV 18 1996

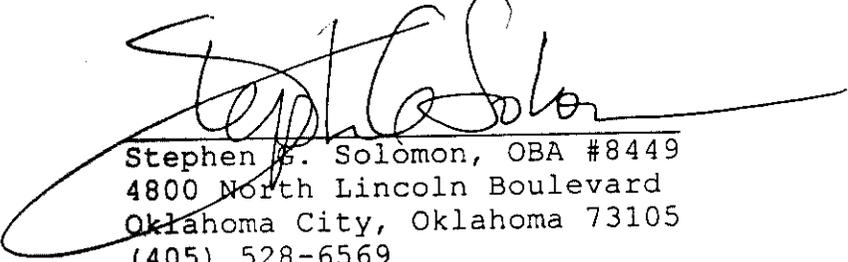
Phil Lombardi, Clerk
U.S. DISTRICT COURT

**STIPULATION OF DISMISSAL
WITH PREJUDICE BY ALL PARTIES**

COME NOW the Plaintiff, Stu Dildine, by and through his attorneys of record, and the Defendants, by and through their attorneys of record and, pursuant to Rule 41 of the Federal Rules of Civil Procedure, hereby submit and file this Stipulation of Dismissal with Prejudice to refileing. All of the parties in this case hereby stipulate and agree that this case, including any and all claims for relief or causes of action which have been asserted herein or which might have been asserted in this case, are dismissed with prejudice to refileing.

Respectfully submitted,

DERRYBERRY, QUIGLEY, SOLOMON,
BLANKENSHIP & NAIFEH



Stephen G. Solomon, OBA #8449
4800 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105
(405) 528-6569

ATTORNEYS FOR PLAINTIFF

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



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(918) 594-0457

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF MAILING

I the undersigned do hereby certify that on the 18th day of November, 1996, a true and correct copy of the above and foregoing instrument was forwarded by U.S. Mail, with proper postage thereon fully prepaid, to the following counsel of record:

Michael T. Keester
Hall, Estill, Hardwick,
Gable, Golden & Nelson, P.C.
320 South Boston, Suite 400
Tulsa, OK 74103-3708

Stephen G. Solomon
Derryberry, Quigley, Solomon,
Blankenship & Naifeh
4800 N. Lincoln Blvd.
Oklahoma City, OK 73105



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

NOV 18 1996

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

WB

TRACYE E. SCOTT, et al.,)
)
Plaintiffs,)
)
vs.)
)
PLASMA ALLIANCE, INC.,)
a Delaware Corporation,)
)
Defendant.)

Case No. 95-C-1209-BU ✓

ENTERED ON DOCKET

DATE NOV 19 1996

ORDER

This matter comes before the Court upon the motion of Defendant, Plasma Alliance, Inc., to dismiss the claims of Plaintiff, Dedra Y. Robinson, pursuant to Rule 41(b), Fed. R. Civ. P., with prejudice for failure to prosecute her claims and for an award of costs, including reasonable attorneys' fees. Plaintiff has responded to the motion and has objected to the motion insofar as it requests dismissal "with prejudice" and an award of costs, including reasonable attorneys' fees. Upon due consideration of the parties' submissions and the record herein, the Court finds that Plaintiff's claims against Defendant should be dismissed without prejudice.

The Tenth Circuit has characterized dismissal with prejudice as an "extreme sanction" and has cautioned district courts to consider a number of factors before choosing dismissal as a just sanction. Jones v. Thompson, 996 F.2d 261, 264 (10th Cir. 1993); Ehrenhaus v. Reynolds, 965 F.2d 916, 920-921 (10th Cir. 1992). These factors include (1) the degree of actual prejudice to the defendant, (2) the amount of interference with the judicial

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process, (3) the culpability of the litigant, (4) whether the Court warned the party in advance that dismissal of the action would be a likely sanction for noncompliance, and (5) the efficacy of lesser sanctions. Mobley v. McCormick, 40 F.3d 337, 340 (10th Cir. 1994).

As to the first factor, the Court concludes that Defendant has not been substantially prejudiced by Plaintiff's failure to prosecute this case. Defendant has been aware as of May 30, 1996 that Plaintiff was "dropping out" of the case. Defendant was therefore not required to conduct any discovery after May 30, 1996 in regard to Plaintiff's claims, was not required to file any dispositive motions in regard to Plaintiff's claims and was not required to defend Plaintiff's claims at trial.

The second factor to be considered is the amount of interference with the judicial process. Plaintiff's failure to prosecute her claims has not particularly interfered with the judicial process. While it is true Plaintiff did not comply with a court order directing her to respond to Defendant's Interrogatories, such non-compliance did not hinder the Court in managing its docket. It also did not hinder the parties as Defendant knew shortly thereafter that Plaintiff was dropping out of the case. In addition, the Court has been aware that Plaintiff was not pursuing her claims since the filing of Defendant's motion for summary judgment.

A litigant's culpability is the third factor. Here, it appears that the reason a dismissal was not entered prior to trial was due to the parties' inability to agree as to whether the dismissal would be with or without prejudice. It does not appear

that Plaintiff in any way acted in bad faith in this case.

The fourth factor is whether the Court warned the party in advance that dismissal would be a likely sanction. As to a dismissal, no warning was required as Plaintiff had made the decision to drop her claims in May of 1996. No warning, however, was given that Plaintiff might receive a dismissal with prejudice for her failure to prosecute her claims.

The fifth factor is efficacy of lesser sanctions. Dismissal with prejudice is a severe sanction. In the instance case, the Court concludes that dismissal without prejudice is more appropriate. Plaintiff decided to drop her case several months before trial, and thus, Defendant was not required to expend much time and effort in defending her claims. In the Court's view, Plaintiff's conduct does not warrant such a harsh sanction as a dismissal with prejudice.

As to Defendant's request for costs and attorney's fees, the Court finds that the request should be denied. The Court finds that costs, including attorneys' fees, is not appropriate as Plaintiff indicated her intention not to pursue her claims early in this litigation.

Accordingly, Defendant's Motion to Dismiss Claims of Dedra Robinson (Docket Entry #54) is GRANTED to the extent that the claims of Plaintiff, Dedra Robinson, are DISMISSED WITHOUT PREJUDICE. In all other respects, it is DENIED.

ENTERED this 18th day of November, 1996.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

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

FILED

TRACYE E. SCOTT, ANNE G. BRUNER,)
CHARLETTE D. FISHER, YOLANDA)
BLUMENBERG, RAMONA M. KING,)
DEDRA Y. ROBINSON, KIMBERLEY L.)
PRICE and EILEENE R. GAINES,)

NOV 18 1996

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

JP

Plaintiffs,)

vs.)

Case No. 95-C-1209-BU ✓

PLASMA ALLIANCE, INC.,)
a Delaware Corporation,)

ENTERED ON DOCKET

Defendant.)

DATE NOV 19 1996

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Michael Burrage, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict and the claims of Plaintiff, Dedra Y. Robinson, having been previously dismissed without prejudice,

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs, Tracye E. Scott, Anne G. Bruner, Charlette D. Fisher, Yolanda Blumenberg, Ramona M. King, Kimberley L. Price and Eileene R. Gaines, take nothing against Defendant, Plasma Alliance, Inc., that this action be dismissed on the merits, and that Defendant, Plasma Alliance, Inc., recover of Plaintiffs, Tracye E. Scott, Anne G. Bruner, Charlette D. Fisher, Yolanda Blumenberg, Ramona M. King, Kimberley L. Price and Eileene R. Gaines, its costs of action.

Dated at Tulsa, Oklahoma, this 18th day of November, 1996.

Michael Burrage
MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

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

NOV 19 1996

CURTIS SCHMELING,
Plaintiff,

vs.

NORDAM, a corporation,
Defendant.

Case No. 95-C-143-BU

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

ENTERED ON DOCKET

DATE NOV 19 1996

ORDER

In accordance with the mandate of the Tenth Circuit Court of Appeals, this matter is hereby **REMANDED** to the District Court in and for Tulsa County, State of Oklahoma. The Clerk of this Court is **DIRECTED** to mail a certified copy of this Order to the Court Clerk of the District Court in and for Tulsa County, State of Oklahoma.

ENTERED this 18th day of November, 1996.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

25

IN THE UNITED STATES DISTRICT COURT FOR THE T L E D
NORTHERN DISTRICT OF OKLAHOMA

NOV 1 1996

TOME R. HAYES,
Plaintiff,

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

vs.

Case No. 95-C-655 BU

INDEPENDENT SCHOOL DISTRICT
NO. 5 OF TULSA COUNTY,
OKLAHOMA, a/k/a JENKS PUBLIC
SCHOOLS, TERRY ALMON, BILLIE
MILLS, and MIKE FRANCISCO,

ENTERED ON DOCKET
NOV 1 9 1996
DATE _____

Defendants.

JUDGMENT

NOW ON this 18 day of November, 1996, this matter came on before the court, pursuant to a request by the plaintiff, Tome Hayes ("Hayes"), and the defendant, Independent School District No. 5 of Tulsa County, Oklahoma (the "Jenks School District"), that judgment be entered herein in favor of Hayes and against the Jenks School District pursuant to a settlement reached between and among all parties to this lawsuit.

The court, after considering the request by counsel for Hayes and the Jenks School District, and after receiving and reviewing the evidence submitted in conformance with OKLA. STAT. tit. 62, § 362 (Supp. 1996), found that the plaintiff should be awarded a judgment for \$100,000 against the Jenks School District which shall bear interest thereon at the annual statutory rate, all of which shall be paid by the defendant, Jenks School District, in accordance with OKLA. STAT. tit. 62, §§ 361 *et seq.* (1991).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff, Tome Hayes, is awarded a judgment against Independent School District No. 5 of Tulsa County, Oklahoma, in the total amount of \$100,000 with post-judgment interest on that amount at the statutory rate from the date of judgment until paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the total judgment plus accruing interest thereon is to be levied against the sinking fund of

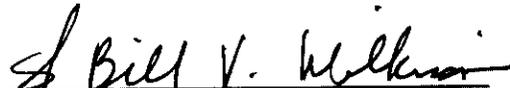
Independent School District No. 5 of Tulsa County, Oklahoma, pursuant to OKLA. STAT. tit. 62, §§ 365.2 *et seq.* (1991).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party to this action is to bear his, her or its **own** attorneys fees and costs incurred herein.

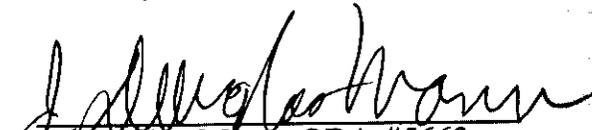
s/ MICHAEL BURRAGE

Judge of the District Court

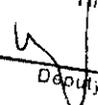
APPROVED AS TO FORM:


Bill V. Wilkinson, OBA #9621

Attorney for the Plaintiff


J. Douglas Mann, OBA #5663

Attorney for the Defendant,
Independent School District No.
5 of Tulsa County, Oklahoma

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

72
11/14/96

FILED

NOV 18 1996

LC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLA. Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
 v.)
)
)
 ONE PARCEL OF REAL PROPERTY)
 KNOWN AS 16328 SOUTH 43rd)
 EAST AVENUE, BIXBY, TULSA)
 COUNTY, OKLAHOMA, AND ALL)
 APPURTENANCES, AND IMPROVE-)
 MENTS THEREON,)
)
 Defendant.)

CIVIL ACTION NO: 96-CV-758-E ✓

ENTERED ON DOCKET
NOV 19 1996

OCCUPANCY AND INDEMNITY AGREEMENT

This agreement is made between MARK ALAN SCOTT + Amy BLACK and the UNITED STATES MARSHALS SERVICE for the NORTHERN DISTRICT OF OKLAHOMA. Whereas, on 28 OCT/ 1996, the United States Marshals Service for the Northern District of Oklahoma served a NOTICE OF POTENTIAL SEIZURE AND ARREST OF PROPERTY, WARRANT OF ARREST AND NOTICE IN REM AND SUMMONS IN A CIVIL ACTION, bearing civil number 96-CV-758-E, by posting the documents upon real property located at 16328 South 43rd East Avenue, Bixby, Tulsa County, Oklahoma. This was accomplished by the provisions and authority of 21 U.S.C., Section 881, and whereas, the undersigned presently resides on the property and desires to continue said occupancy pending the conclusion of forfeiture proceedings with respect to the above-described property.

Therefore, it is hereby agreed, upon execution of this agreement and in compliance with all terms and conditions stated herein, that the undersigned may continue to occupy the property until such time as a final disposition order is entered by the court.

TERMS AND CONDITIONS

1. The undersigned agrees to unconditionally release and hold harmless the United States Marshals Service, its officers, employees, and agents, from any and all claims, demands, damages, causes of actions or suits, of whatever kind and description, and wheresoever situated, that may now exist or hereafter exist by

(5)

reason of or growing out of or affecting, directly or indirectly, the seizure of the above-listed property and the return of the property by the United States. The United States will held harmless for any and all claims against it arising out of damage to persons or property except as directly caused by an authorized agent of the United States. The owner/occupant agrees to provide the United States Marshal, in writing, the name, relationship, and date of birth of all persons occupying the property. Only persons identified to the United States Marshal and approved by the Marshal shall occupy the property.

2. That the owner/occupant further agrees to hold and save the United States, its servants, employees, heirs, successors, or assigns harmless from any claims by any others, including costs and expenses for or on account of any and all lawsuits or claims of any character whatsoever, in connection with the seizure, detention, and forfeiture of defendant property, with all appurtenances and improvements thereon.

3. The undersigned agrees to maintain the entire property or that portion of the property which this agreement concerns, in the same condition and repair as existed as of the date this agreement, normal wear and tear excepted. The term "maintain" shall include, but not be limited to, keeping the property free of hazard and structural defects, keeping all heating, air conditioning, plumbing, electrical, gas, oil, or other power facilities in good working condition and repair, keeping the property clean and performing such necessary sanitation and waste removal, keeping the property in good condition by providing for snow removal, lawn mowing, and other ordinary and necessary items of routine maintenance.

4. The undersigned agrees to maintain all insurance policies currently in effect with respect to the property, including policies covering liability to persons injured on said property and for property damage to the defendant. The undersigned will arrange for the institution of a rider to all of the above-mentioned policies naming the United States Marshals Service as the primary beneficiary for the life of the agreement.

5. The undersigned agrees to protect, feed and provide all reasonable and necessary veterinary care for any domestic animals allowed to remain upon the property.

6. The undersigned agrees to continue to make timely payments to the appropriate institution concerning this property which are a current and continuous obligation regarding mortgage payments, home equity loan payments, utility payments, property tax payments, and such other obligations otherwise necessary for the life of this agreement and if any such payments are delinquent to immediately cure such delinquency.

7. The undersigned agrees to allow United States Marshals Service personnel or its designee, upon reasonable advance notice, the right to enter and inspect the property and all buildings thereon, on a monthly basis. The undersigned agrees to allow entry without notice on an emergency basis.

8. The undersigned agrees not to encumber or transfer any title or ownership to the property during the lifetime of this agreement.

9. Special terms and conditions:

Upon final disposition of the property either by return to the owner or by forfeiture to the government, the undersigned will be given appropriate written notice and allowed 30 days in which to vacate the property.

This agreement shall remain in effect until the forfeiture proceedings are resolved by judgement of forfeiture or by order to return the property to the claimant. Failure of the undersigned to comply with all terms and conditions of this agreement, or evidence presented to the United States Marshals Service of any violations of Title II of the Controlled Substances Act, 21 U.S.C., Section 801 et seq., or any other violation of federal law occurring upon the property, will result in immediate petition to the United States District Court for the eviction of all occupants of the property..

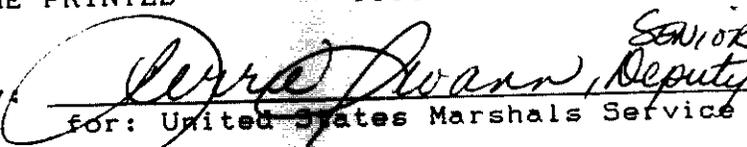
Date: 28 OCT 1996

MARK ALAN SCOTT
OCCUPANT NAME PRINTED

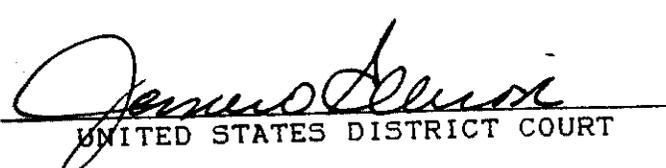
X Mark Scott
OCCUPANT SIGNATURE

Amy BLACK
OCCUPANT NAME PRINTED

X Amy Black
OCCUPANT SIGNATURE

Witnessed by:  ^{SENIOR} Deputy
for: United States Marshals Service

Entered as an Order of this Court, dated this 18th day of November, 1996.


UNITED STATES DISTRICT COURT

Occupant/Claimant Information

Full Name: Amy ~~B~~ Elizabeth Black

DOB: 11/1/70 SSN: 515-666-2140

Mailing Address: Rt. 4 Box 234

Employer: NONE

Employer Address:

Home Phone Number: 366-3862 Employer Phone Number:

Other Information:

Occupant/Claimant Information

Full Name:

MARK Alan Scott

DOB:

6-24-59

SSN:

446684858

Mailing
Address:

RT-4 Box 234 Bixby OK 74008

Employer:

S.E. MASTER chimney Sweep

Employer
Address:

SAME AS ABOVE

Home Phone
Number:

3663862

Employer Phone
Number:

SAME

Other
Information:

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
on behalf of Farm Service Agency,
formerly Farmers Home Administration,

Plaintiff,

v.

THOMAS J. JACKSON
aka Thomas Joseph Jackson;
THERESA A. JACKSON
aka Theresa Ann Jackson aka Teresa A. Jackson;
STATE OF OKLAHOMA ex rel.
Oklahoma Tax Commission;
COUNTY TREASURER, Mayes County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Mayes County, Oklahoma,

Defendants.

FILED

NOV 18 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
NOV 19 1996
DATE _____

CIVIL ACTION NO. 96-CV-472-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18th day of November

1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney; the Defendants, County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, appear by Charles A. Ramsey, Assistant District Attorney, Mayes County, Oklahoma; the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, appears not, having previously filed its Disclaimer; and the Defendants, Thomas J. Jackson aka Thomas Joseph Jackson and Theresa A. Jackson aka Theresa Ann Jackson aka Teresa A. Jackson, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Thomas J. Jackson aka Thomas Joseph Jackson, was served with Summons and Complaint by a United States Deputy Marshal on August 5, 1996; and that the Defendant, Theresa A. Jackson aka Theresa Ann Jackson aka Teresa A. Jackson, was served with Summons and Complaint by a United States Deputy Marshal on August 5, 1996.

It appears that the Defendants, County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, filed their Answer on or after May 30, 1996; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Disclaimerr on or after June 26, 1996; and that the Defendants, Thomas J. Jackson aka Thomas Joseph Jackson and Theresa A. Jackson aka Theresa Ann Jackson aka Teresa A. Jackson, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on March 22, 1991, Thomas J. Jackson filed his voluntary petition in bankruptcy in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 91-00929-C. The subject real property was shown on Schedule B - Statement Of All Property Of Debtor. A copy of this schedule was attached as Exhibit "A" in Plaintiff's Complaint. On July 2, 1992, a Discharge of Debtor was entered in this case discharging debtor from all dischargeable debts. Case No. 91-00929-C, United States Bankruptcy Court, Northern District of Oklahoma, was closed on December 7, 1992.

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

N½ of the S½ of the SW¼ of the NW¼ and the N½ of the SW¼ of the NW¼ and the SE¼ of the NW¼ and the SW¼ of the NE¼ and the N½ of the NW¼ of the SE¼, ALL in Section 26, Township 23 North, Range 19 East of the Indian Base and Meridian.

AND

Northerly 35' of Lot 5 and the Southerly 35' of Lot 6, in Block 53 of the Town of Adair, Mayes County, Oklahoma. Subject, however, to all valid outstanding easements, rights-of-way, mineral leases, mineral reservations and mineral conveyances of record.

The Court further finds that Thomas J. Jackson and Theresa A. Jackson aka Teresa A. Jackson executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Farm Service Agency, the following described promissory notes.

Loan Number	Original Amount	Date	Interest Rate
29-01	\$ 78,500.00	01/08/80	9.00%
29-21	85,313.15	06/17/85	9.00%
29-24	93,895.89	07/30/86	8.25%
29-27	104,297.66	10/16/89	8.75%
29-02	\$ 90,830.00	05/06/80	12.00%
29-04	72,402.27	04/23/82	14.25%
29-06	97,644.38	10/03/84	10.25%
29-23	97,958.64	06/17/85	10.25%
29-26	102,168.86	07/30/86	8.00%
29-29	79,155.23	10/16/89	8.50%
43-05	\$ 20,750.00	10/03/84	5.00%
43-22	21,215.51	06/17/85	5.00%
43-25	22,401.25	07/30/86	5.00%
43-28	20,790.80	10/16/89	5.00%

The Court further finds that as security for the payment of the above-described notes, Thomas J. Jackson and Theresa A. Jackson aka Teresa A. Jackson executed and delivered to the United States of America, acting on behalf of the Farmers Home Administration, now known as Farm Service Agency, the following described real estate mortgages.

Instrument	Dated	Filed	County	Book	Page
Real Estate Mortgage	01/08/80	01/10/80	Mayes	575	10
	01/08/80	01/15/80	Mayes	575	71
Real Estate Mortgage	10/03/84	10/03/84	Mayes	634	170
Real Estate Mortgage	10/16/89	03/21/90	Mayes	712	510
Real Estate Mortgage	10/16/89	03/21/90	Mayes	712	514

The Court further finds that on October 16, 1989, Thomas J. Jackson and Theresa A. Jackson executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Farm Service Agency, a Shared Appreciation Agreement.

The Court further finds that the Defendants, Thomas J. Jackson aka Thomas Joseph Jackson and Theresa A. Jackson aka Theresa Ann Jackson aka Teresa A. Jackson, made default under the terms of the aforesaid notes and mortgages, as well as the shared appreciation agreement, by reason of their failure to make the yearly installments due thereon, which default has continued, and that by reason thereof the Defendants, Thomas J. Jackson aka Thomas Joseph Jackson and Theresa A. Jackson aka Theresa Ann Jackson aka Teresa A. Jackson, are indebted to the Plaintiff in the principal sum of \$164,695.07, plus accrued interest in the amount of \$35,237.05 as of November 28, 1995, plus interest

accruing thereafter at the rate of \$23.5144 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$8.00 (fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, County Treasurer, Mayes County, Oklahoma, has liens on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$1,003.94, plus penalties and interest, for the years 1994 (\$564.80) and 1995 (\$439.14). Said liens are superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Mayes 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 \$585.99, plus penalties and interest, for the years 1994 (\$334.07) and 1995 (\$251.92). 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, Mayes County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, disclaims all right, title or interest in the subject real property.

The Court further finds that the Defendants, Thomas J. Jackson aka Thomas Joseph Jackson and Theresa A. Jackson aka Theresa Ann Jackson aka Teresa A. Jackson, are in default and therefore have no right, title or interest in the subject real property.

The Court further finds that the United States of America has a lien upon the property by virtue of an Abstract of Judgment filed September 29, 1993, in Book 768, Page 576 in the records of the Mayes County Clerk, Mayes County, Oklahoma. This lien will be

released as to the subject real property at the time of sale should the property fail to yield an amount in excess of the debt to Farm Service Agency.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of Farm Service Agency, have and recover judgment in rem against the Defendants, Thomas J. Jackson aka Thomas Joseph Jackson and Theresa A. Jackson aka Theresa Ann Jackson aka Teresa A. Jackson, in the principal sum of \$164,695.07, plus accrued interest in the amount of \$35,237.05 as of November 28, 1995, plus interest accruing thereafter at the rate of \$23.5144 per day until judgment, plus interest thereafter at the current legal rate of 5.49 percent per annum until paid, plus the costs of this action in the amount of \$8.00 (fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property and any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Mayes County, Oklahoma, have and recover judgment in the amount of \$1,003.94, plus penalties and interest, for the years 1994 (\$564.80) and 1995 (\$439.14), for ad valorem taxes, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Mayes County, Oklahoma, have and recover judgment in the amount of \$585.99, plus penalties and interest, for the years 1994 (\$334.07) and 1995 (\$251.92) for personal property taxes, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Thomas J. Jackson aka Thomas Joseph Jackson; Theresa A. Jackson aka

Theresa Ann Jackson aka Teresa A. Jackson; State of Oklahoma ex rel. Oklahoma Tax Commission; Board of County Commissioners, Mayes County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Thomas J. Jackson aka Thomas Joseph Jackson and Theresa A. Jackson aka Theresa Ann Jackson aka Teresa A. Jackson, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

In payment of the judgment rendered herein in favor of the Defendant, County Treasurer, Mayes County, Oklahoma, for ad valorem taxes;

Third:

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

Fourth:

In payment of the judgment rendered herein in favor of the Defendant, County Treasurer, Mayes County, Oklahoma, for personal property taxes.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that 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


WYN DEE BAKER, OBA #465
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


CHARLES A. RAMSEY, OBA #10116
Assistant District Attorney
P.O. Box 845
Pryor, Oklahoma 74362
(918) 825-0160
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Mayes County, Oklahoma

Judgment of Foreclosure
Case No. 96-CV-472-E (Jackson)

WDB:css

SM

ENTERED ON DOCKET
DATE 11-18-96

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

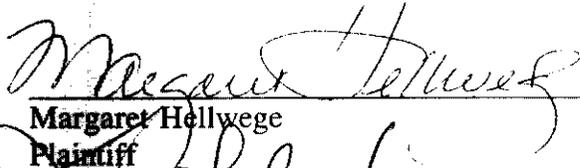
MARGARET HELLWEGE,)
)
Plaintiff,)
)
v.)
)
ALLSTATE INSURANCE COMPANY,)
)
Defendant.)

No. 95-C-1236K ✓

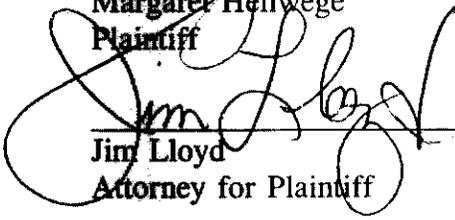
FILED
NOV 15 1996
Phil Lombardi, Clerk
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

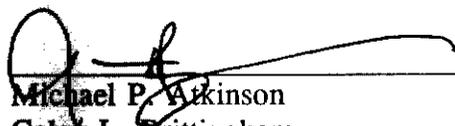
COMES NOW the Plaintiff, Margaret Hellwege, and hereby states that she has no viable cause of action against the Defendant, Allstate Insurance Company, and hereby dismisses, with prejudice, the above-styled action. The Plaintiff further stipulates and agrees that she will not pursue an appeal of any ruling or order arising out of the above-styled action, including the Order of November 12, 1996, granting partial summary judgment in favor of Allstate Insurance Company.



Margaret Hellwege
Plaintiff



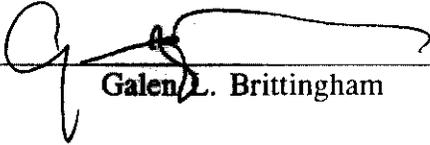
Jim Lloyd
Attorney for Plaintiff



Michael P. Atkinson
Gale L. Brittingham
Attorneys for Allstate Insurance Company

CERTIFICATE OF HAND DELIVERY

This is to certify that on this, the 15th day of November, 1996, a true, correct, and exact copy of the above and foregoing instrument was hand delivered to: Jim Lloyd, 1515 E. 71st Street, Suite 200, Tulsa, OK 74136, with proper postage thereon fully prepaid.



Galen L. Brittingham

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

LEW-ANN, LTD., a Wyoming limited
partnership, DONALD E. BUGH, an
individual, and WALTER E. SCOTT,
an individual,

Plaintiffs,

vs.

ARROW EXPLORATION COMPANY,
a Texas corporation,

Defendant.

F I L E D

NOV 15 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 95-C-1151 E

ENTERED ON DOCKET
DATE NOV 18 1996

ORDER AND JUDGMENT

Upon consideration of the **Stipulation of Dismissal With Prejudice** and **Consent to Entry of Final Judgment** among all parties who have appeared in this action,

IT IS HEREBY ORDERED AND ADJUDGED, in accordance with Rules 54, 58 and 79 of the **Federal Rules of Civil Procedure** that:

1. All claims and causes of action asserted in this action be and hereby are dismissed with prejudice, with each party to bear its own costs and attorney's fees.

2. There is no just reason for delay and the entry of Judgment is agreed upon and the **Stipulation of Dismissal With Prejudice** and **Consent to Entry of Final Judgment** and the Clerk is hereby directed to enter judgment hereon promptly.

DONE AND ORDERED this 15TH day of November, 1996.



THE HONORABLE JAMES O. ELLISON

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

NOV 15 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

TERRY DEAN BATES,

Plaintiff,

v.

LARRY L. OLIVER,

Defendant.

No. 94-C-858-E

ENTERED ON DOCKET

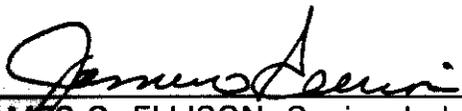
DATE NOV 18 1996

ORDER

A Report and Recommendation of the Magistrate Judge was filed on October 9, 1996. On November 8, 1996, Plaintiff filed a timely objection.

After review of the objection and the Magistrate's Report, the Court adopts the Report and Recommendation. **ACCORDINGLY, IT IS HEREBY ORDERED** that Defendant's motion to dismiss (Docket #34) is **GRANTED** and this action is hereby **DISMISSED WITHOUT PREJUDICE**. Each side is to pay its respective attorney fees and costs.

Dated this 15th day of November 1996.



JAMES O. ELLISON, Senior Judge
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jerry Fultz,)
)
Plaintiff(s),)
)
vs.)
)
Shirley Chater, Commissioner of the Social)
Security Administration)
)
Defendant(s).

ENTERED ON DOCKET

DATE 11/18/96

Case No. 96-C-570-J ✓

F I L E D

NOV 14 1996 *SAK*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

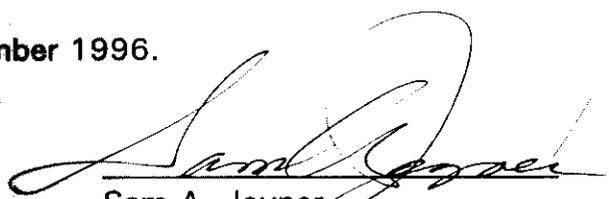
ORDER

Now before the Court is Defendant's "Out of Time Motion to Remand." [Doc. No. 6]. Defendant is requesting a **remand** before filing her answer so that Plaintiff's administrative file can be located. Plaintiff has no objection to the remand. Defendant's motion is, therefore, **GRANTED**.

This case is remanded pursuant to sentence six of 42 U.S.C. § 405(g). Defendant shall notify the Court within 30 days from the date this Order is filed whether Plaintiff's file has been located. If Plaintiff's file has not been located within 30 days, this case will be remanded pursuant to sentence four of § 405(g) for a *de novo* hearing before a Social Security Administration ALJ.

IT IS SO ORDERED.

Dated this 14 day of November 1996.


Sam A. Joyner
United States Magistrate Judge

7

ENTERED ON DOCKET

DATE 11-18-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

NOV 15 1996 *Dr*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

Plaintiff,)

v.)

RODGER GILLELAND aka Rodger E. Gilleland)
aka Roger E. Gilleland aka Rodger Edward Gilleland)
aka Harvey Edward Gilleland;)

CAROL GILLELAND aka Carol A. Gilleland)
aka Carol Ann Gilleland aka Carol Palmer Gilleland;)

JAMES I. WARREN;)

JANET L. WARREN;)

COMMERCIAL CREDIT PLAN)
INCORPORATED;)

FIDELITY FINANCIAL SERVICES;)

CHILDREN'S MEDICAL CENTER;)

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 ACTION NO. 95-C-388-K ✓

ORDER OF SALE

UNITED STATES OF AMERICA TO:

U.S. Marshal for the
Northern District of Oklahoma

On October 29, 1996, the **United States of America** recovered judgment
in rem against the Defendants, Rodger **Gilleland** aka Rodger E. Gilleland aka Roger E.
Gilleland aka Rodger Edward Gilleland **aka** Harvey Edward Gilleland and Carol Gilleland

aka Carol A. Gilleland aka Carol Ann Gilleland aka Carol Palmer Gilleland, in the above-styled action to enforce a mortgage lien upon the following described property:

LOT EIGHT (8), BLOCK TWO (2), SMITHVIEW, AN ADDITION TO THE TOWN OF OWASSO, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

The amount of the judgment is the sum of \$51,653.46, plus administrative charges in the amount of \$1,492.94, plus penalty charges in the amount of \$24.00, plus accrued interest in the amount of \$33,233.10 as of January 1, 1995, plus interest accruing thereafter at the rate of 10.50 percent per annum until judgment, plus interest thereafter at the current legal rate of 5.64 percent per annum until paid, plus the costs of this action accrued and accruing. The judgment further provides that the mortgage on the above-described property is foreclosed, and that all Defendants and all persons claiming under them are barred from claiming any right, title, interest, and equity in the property. If Defendants, Rodger Gilleland aka Rodger E. Gilleland aka Roger E. Gilleland aka Rodger Edward Gilleland aka Harvey Edward Gilleland and Carol Gilleland aka Carol A. Gilleland aka Carol Ann Gilleland aka Carol Palmer Gilleland, should fail to satisfy the in rem judgment to the Plaintiff, the judgment provides 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 the property according to Plaintiff's election with or without appraisal and to apply the proceeds to the payment of the costs of the sale; the judgment of the Plaintiff, United States of America; the judgment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission; and the judgment of the Defendant, County Treasurer, Tulsa County, Oklahoma. Any residue is to be paid to the Court Clerk to await further order of this Court.

THEREFORE, this is to **command** you to proceed according to law, to advertise and sell, with appraisal, the **above-described** real property and apply the proceeds thereof as directed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the United States District Court for the **Northern** District of Oklahoma, in my office in the City of Tulsa, Oklahoma, on the 15 day of Nov, 1996.

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

By ll
Deputy

Order of Sale
Case No. 95-C-388-K (Gilleland)

LFR:ces

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

NOV 15 1996

Le

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TERRY L. JOBE,)
)
 Defendant.)

CIVIL ACTION NO. 96CV-779B ✓

ENTERED ON DOCKET
DATE NOV 18 1996

AGREED JUDGMENT

This matter comes on for consideration this 15th
day of November, 1996, the Plaintiff, United States of
America, by Stephen C. Lewis, United States Attorney for the
Northern District of Oklahoma, through Loretta F. Radford,
Assistant United States Attorney, and the Defendant, Terry L.
Jobe, appearing pro se.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Terry L. Jobe, acknowledged
receipt of Summons and Complaint on 10-22-96. The
Defendant has not filed an Answer but in lieu thereof has agreed
that Terry L. Jobe is indebted to the Plaintiff in the amount
alleged in the Complaint and that judgment may accordingly be
entered against Terry L. Jobe in the principal amount of
\$2,645.65, plus administrative costs in the amount of \$5.65, plus
accrued interest in the amount of \$925.27, plus interest
thereafter at the rate of 8% per annum until judgment, plus
interest thereafter at the legal rate until paid, plus the costs
of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the
Plaintiff have and recover judgment against the defendant in the

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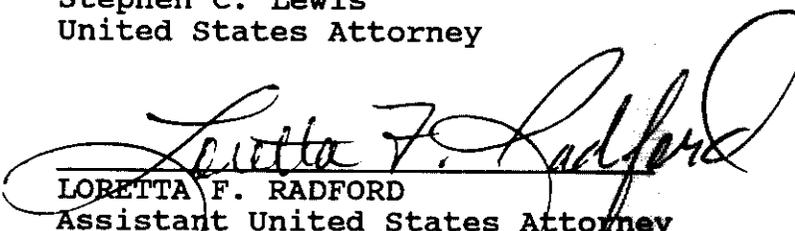
principal amount of \$2,645.65 plus administrative costs in the amount of \$5.65, plus accrued interest in the amount of \$925.27, plus interest thereafter at the rate of 8% per annum until judgment, plus interest thereafter at the current legal rate of 5.49 per annum until paid, plus the costs of this action.


UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

Stephen C. Lewis
United States Attorney


LORETTA F. RADFORD
Assistant United States Attorney


TERRY L. JOBE

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

FILED

NOV 13 1996

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

GERALD R. MILLER,

Appellant,

v.

Case No: 95-C-900-H ✓

MICHAEL E. CYR and ANITA
MARIE CYR,

Appellees.

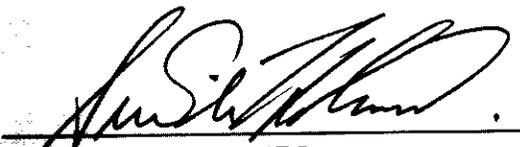
ENTERED ON DOCKET ✓

DATE NOV 15 1996

ORDER OF DISMISSAL

NOW on this 13TH day of NOVEMBER, 1996, this matter came on before me upon the Motion by the Bankruptcy Trustee to Dismiss the Appeal (Docket #7) filed herein. The court finds that the motion should be and is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-entitled cause of action is dismissed with prejudice to any future action.


SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE

S:\order/cyr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 14 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JOE RAZO; DONNA K. RAZO aka)
DONNA KAY RAZO aka DONNA)
RAZO; STATE OF OKLAHOMA ex rel)
OKLAHOMA TAX COMMISSION; CITY)
OF GLENPOOL, Oklahoma;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

ENTERED ON DOCKET
DATE NOV 15 1996

Civil Case No. 95-C 967B

JUDGMENT OF FORECLOSURE

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

1996. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, appears not having previously filed a Disclaimer; and the Defendants, Joe Razo, Donna K. Razo aka Donna Kay Razo aka Donna Razo 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, Joe Razo, acknowledged receipt of Summons and Complaint on March 19, 1996,

by Certified Mail; that the Defendant, **Donna K. Razo** aka Donna Kay Razo aka Donna Razo, was served with process a copy of **Summons and Complaint** on July 17, 1996; that the Defendant, City of Glenpool, Oklahoma, **acknowledged** receipt of **Summons and Complaint** on September 28, 1995, by Certified Mail.

It appears that the **Defendants**, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, **Tulsa County**, Oklahoma, filed their Answer on October 12, 1995; that the Defendant, State of **Oklahoma**, **ex rel.** Oklahoma Tax Commission, filed its Disclaimer on October 25, 1995; and that the **Defendants**, Joe Razo, Donna K. Razo aka Donna Kay Razo aka Donna Razo 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 the Defendant, Donna K. Razo aka Donna Kay Razo aka Donna Razo will hereinafter be referred to as "DONNA K. RAZO." On July 21, 1995, the Defendants Joe Razo and **Donna K. Razo**, were granted a judgment and decree of Divorce in case FD 92-2678, in **Tulsa County** District Court, Tulsa County, Oklahoma. The Defendants are bot single, unmarried persons.

The Court further finds that on March 16, 1992, the Defendants, Joe Razo and Donna K. Razo, filed their voluntary **petition** in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of **Oklahoma**, Case No. 92-874-C, which was Discharged on July 2, 1992 and subsequently closed on November 6, 1992.

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

Lot Eleven (11), Block Two (2), Rolling Meadows, an Addition to the Town of Glenpool, Tulsa County, Oklahoma.

The Court further finds that on February 11, 1981, the Defendants, JOE RAZO and DONNA K. RAZO, executed and delivered to MORTGAGE CLEARING CORPORATION, their mortgage note in the amount of \$43,950.00, payable in monthly installments, with interest thereon at the rate of 13.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, JOE RAZO and DONNA K. RAZO, Husband and Wife, executed and delivered to MORTGAGE CLEARING CORPORATION, a real estate mortgage dated February 11, 1981. This mortgage was recorded on February 12, 1981, in Book 4526, Page 295, in the records of Tulsa County, Oklahoma. This Mortgage was rerecorded on April 2, 1991 in Book 4536, Page 348 in the records of Tulsa County, Oklahoma.

The Court further finds that on March 24, 1988, Mortgage Clearing Corporation assigned the above-described mortgage note and mortgage to Secretary of Housing & Urban Development, His Successors and Assigns. This Assignment of Mortgage was recorded on March 28, 1988, in Book 5089, Page 960, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 1, 1988, the Defendants, JOE RAZO and DONNA K. RAZO, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on August 1, 1988, October 1, 1990, September 1, 1991, October 1, 1991, April 1, 1992, and May 1, 1992.

The Court further finds that the Defendants, Joe Razo and Donna K. Razo, 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 Defendant, Joe Razo and Donna K. Razo, are indebted to the Plaintiff in the principal sum of \$89,988.67, plus interest at the rate of 13.5 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 \$14.00 which became a lien on the property as of July 2, 1990; a lien in the amount of \$48.00 which became a lien on the property as of June 26, 1992; a lien in the amount of \$31.00 which became a lien on the property as of June 25, 1993; and a lien in the amount of \$36.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Joe Razo, Donna K. Razo 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, disclaims any right, title or interest in the subject real property.

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

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem. against the Defendants, Joe Razo and Donna K. Razo, in the principal sum of **\$89,988.67**, plus interest at the rate of 13.5 percent per annum from April 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5.49 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 \$129.00, plus costs and interest, for personal property taxes for the years 1989-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Joe Razo, Donna K. Razo, City of Glenpool, Oklahoma, State of Oklahoma, ex rel. Oklahoma Tax Commission, and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Joe Razo and Donna K. Razo, 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;

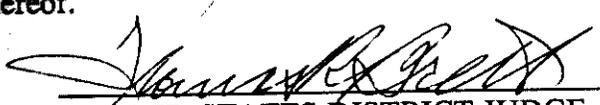
Fourth:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$129.00, personal property taxes which are currently due and owing.

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

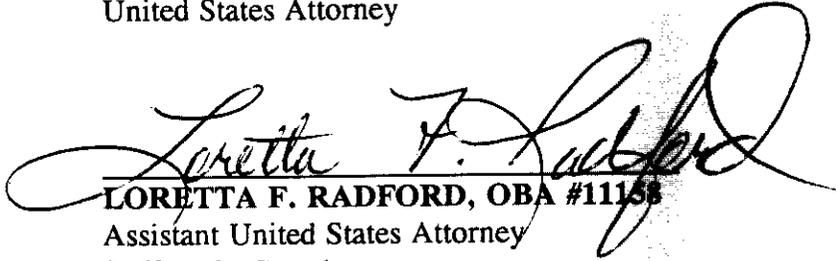
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

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


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



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



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

Judgment of Foreclosure
Civil Action No. 95-C 967B

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCK
DATE 11-15-96

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 SHELBY STANSILL; UNKNOWN)
 SPOUSE IF ANY OF SHELBY)
 STANSILL; JOE C. STANSILL;)
 UNKNOWN SPOUSE IF ANY OF JOE)
 C. STANSILL; BANCOKLAHOMA)
 MORTGAGE CORP.; COUNTY)
 TREASURER, Tulsa County, Oklahoma;)
 BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

F I L E D
NOV 14 1996 *DL*
Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil Case No. 96CV 146K ✓

JUDGMENT OF FORECLOSURE

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

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, BancOklahoma Mortgage Corp., appears not having previously filed a Disclaimer; and the Defendants, Shelby Stansill, Unknown Spouse if any of Shelby Stansill, Joe C. Stansill and Unknown Spouse if any of Joe C. Stansill, appear not, but make default.

The Court further finds that the Defendants, Shelby Stansill, Unknown Spouse if any of Shelby Stansill, Joe C. Stansill and Unknown Spouse if any of Joe C. Stansill, 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 May 17, 1996, and continuing through June 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 Defendants, Shelby Stansill, Unknown Spouse if any of Shelby Stansill, Joe C. Stansill and Unknown Spouse if any of Joe C. Stansill, and service cannot be made upon said Defendants 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, Shelby Stansill, Unknown Spouse if any of Shelby Stansill, Joe C. Stansill and Unknown Spouse if any of Joe C. Stansill. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Secretary of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on March 18, 1996; that the Defendant, BancOklahoma Mortgage Corp., filed its Disclaimer on March 18, 1996; and that the Defendants, Shelby Stansill, Unknown Spouse if any of Shelby Stansill, Joe C. Stansill and Unknown Spouse if any of Joe C. Stansill, 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 Thirty-two (32), Block Three (3), WEST HIGHLANDS IV, an Addition in Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 3, 1989, Scott Robbins and Kay Robbins, executed and delivered to Turner Corporation of Oklahoma, Inc., their mortgage note in the amount of \$51,536.00, payable in monthly installments, with interest thereon at the rate of 8.435% percent per annum.

The Court further finds that as security for the payment of the above-described note, Scott Robbins and Kay Robbins, husband and wife, executed and delivered to Turner Corporation of Oklahoma, Inc., a mortgage dated August 3, 1989, covering the above-described property. Said mortgage was recorded on August 8, 1989, in Book 5199, Page 2237, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 1, 1991, Turner Corporation of Oklahoma, Inc., assigned the above-described mortgage note and mortgage to BancOklahoma

Mortgage Corp. This Assignment of Mortgage was recorded on April 4, 1991, in Book 5313, Page 149, in the records of Tulsa County, Oklahoma. A Corrected Assignment was recorded on May 7, 1991, in Book 5320, Page 24, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 21, 1991, Bank of Oklahoma, 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 August 21, 1991, in Book 5344, Page 248, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendants, Shelby Stansill and Joe C. Stansill, currently hold the title to the property by virtue of a General Warranty Deed, dated September 15, 1990, and recorded on September 17, 1990, in Book 5277, Page 1615, in the records of Tulsa County, Oklahoma and are the current assumptors of the subject indebtedness.

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

The Court further finds that the Defendant, Shelby Stansill, 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, Shelby Stansill, is indebted to the Plaintiff in the principal sum of \$70,997.31, plus interest at the rate of 8.435 percent per annum from May 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$37.00 which became a lien on the property as of June 26, 1992, a lien in the amount of \$31.00 which became a lien on the property as of June 25, 1993; and a lien in the amount of \$35.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Shelby Stansill, Unknown Spouse if any of Shelby Stansill, Joe C. Stansill and Unknown Spouse if any of Joe C. Stansill, are in default, and have no right, title or interest in the subject real property.

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

The Court further finds that the Defendant, BancOklahoma Mortgage Corp., Disclaims any right, title or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendant, Shelby Stansill, in the principal sum of \$70,997.31, plus interest at the rate of 8.435% percent per annum from May 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5.49 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 \$103.00, plus costs and interest, for personal property taxes for the years 1991-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Shelby Stansill, Unknown Spouse if any of Shelby Stansill, Joe C. Stansill, Unknown Spouse if any of Joe C. Stansill, BancOklahoma Mortgage Corp., and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

Third:

In payment of Defendant, COUNTY TREASURER,
Tulsa County, Oklahoma, in the amount of \$103.00,
personal property taxes which are currently due and
owing.

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

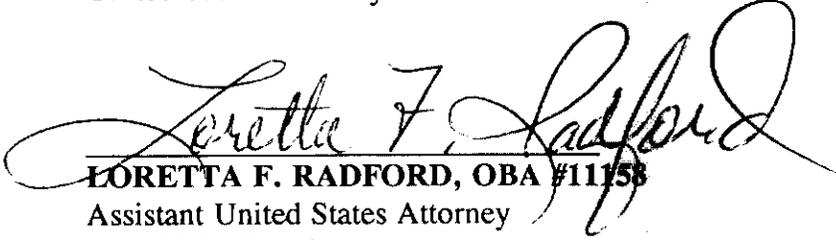
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant
to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right
to possession based upon any right of redemption) in the mortgagor or any other person
subsequent to the foreclosure sale.

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


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

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



DICK A. BLAKELEY, OBA #852

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

Judgment of Foreclosure
Civil Action No. 96CV 146K

LFR:flv

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

F I L E D

LOLETA J. KLEPPE,
SS# 513-36-7535,

Plaintiff,

v.

SHIRLEY S. CHATER,¹ Commissioner
Social Security Administration,

Defendant.

NOV 14 1995

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

NO. 95-C-470-M

ENTERED ON DOCKET

DATE 11/15/96

ORDER

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

The role of the court in reviewing the decision of the Secretary under 42 U. S. C. §405(g) is limited to determining whether the decision is supported by substantial evidence and whether the decision contains a sufficient basis to determine that the Secretary has applied the correct legal standards. *Winfrey v. Chater*, 92 F.3d 1017 (10th Cir. 1996); *Castellano v. Secretary of Health & Human Servs.*, 26 F.3d 1027, 1028 (10th Cir. 1994). Substantial evidence is "such relevant evidence as a

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

reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). The Court may neither reweigh the evidence nor substitute its discretion for that of the Secretary. *Casias v. Secretary of Health & Human Servs.*, 933 F.2d 799, 800 (10th Cir. 1991).

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

Ms. Kleppe's application for disability benefits dated March 19, 1993 was denied April 27, 1993. The denial was affirmed on reconsideration. A hearing before an ALJ was held November 17, 1993. The ALJ rendered a denial decision on September 28, 1994 and entered the findings which are the subject of this appeal. In the denial decision, the ALJ determined that Plaintiff is not able to return to her past relevant work as an office manager for a retail furniture business, but retains the residual functional capacity to perform the semiskilled and skilled sedentary work outlined by the vocational expert [R. 21]. Accordingly, the ALJ found Plaintiff was not "disabled" within the meaning of the Social Security Act on or before December 31,

1991², or at any other time relevant to the decision. The Appeals Council affirmed the findings of the ALJ on March 21, 1995. The decision of the Appeals Council represents the Secretary's final decision for purposes of further appeal. 20 C.F.R. §§ 404.981, 416.1481.

Plaintiff alleges that substantial evidence in the record does not support the determination of non-disability and that the ALJ failed to perform the correct legal analysis. Specifically, Plaintiff argues the ALJ: (1) erroneously held that Plaintiff's impairments do not meet or equal listed impairments;³ (2) misinterpreted the medical evidence in assessing Plaintiff's residual functional capacity; and (3) because of that misinterpretation, his questioning of the vocational expert was improper. In view of the Court's finding on the first error asserted by Plaintiff the issues raised in (2) and (3) above are not addressed in this Order.

The medical records establish that Plaintiff has been treated by Darwin D. Olson, M.D. since 1985. Dr. Olson assumed the family practice of Dr. W. A. Waters in 1985 who had been Plaintiff's family physician since at least 1977 [R. 335]. Plaintiff first

² Date Plaintiff was last insured.

³ Prior to July 2, 1993, the Social Security Administration's Listing of Impairments, 20 C.F.R., Part 404, Subpart P, App. 1 (Listings), contained a lupus listing at § 10.00 - Multiple Body Systems. It provided as follows:

§ 10.04 - Disseminated Lupus Erythematosus (established by a positive LE preparation or biopsy or positive ANA test) with frequent exacerbations demonstrating involvement of renal or cardiac or pulmonary or gastrointestinal or central nervous systems.

Regulations for a revised lupus listing were published on July 2, 1993 (58 Fed. Reg. 36008). The lupus listing was moved from Section 10.04 in the Multiple Body System listings to 14.00 - Immune System. "Systemic Lupus Erythematosus" is listed under 14.00B1 and the specific diagnostic features that should be documented in the clinical record are summarized at 14.02.

Both parties agree that Plaintiff's burden was to establish an impairment meeting the version of listing 10.04, which was effective during the relevant period.

noticed joint pain in 1984 [R. 52]. She stopped working August 1, 1986 because of deep fatigue, headaches, joint pain, respiratory problems, diarrhea and constant illnesses [R. 53, 62, 63, 66 - 73]. In August, 1988, Dr. Olson diagnosed lupus as the cause of Plaintiff's medical problems [R. 299, 335]. His diagnosis was confirmed by hematological testing which showed a positive ANA of 1:320 in a homogeneous pattern [R. 288]. Throughout the remainder of Dr. Olson's records, covering a treatment period of eight years, numerous notations of lupus related and exacerbation of lupus complaints are recorded [R. 147, 149, 150, 151, 152, 153, 154, 157, 162, 167, 169, 170, 171, 176, 340, 341, 343]. Annual hematological tests revealed continued elevation of the ANA in the homogeneous pattern [R. 275, 279, 336]. In a report written by Dr. Olson and presented to the ALJ at Plaintiff's hearing, a detailed account of the symptoms and treatment for lupus was given, as well as an assessment of Plaintiff's residual functional capacity for physical activity [R. 335-337].

At the hearing on November 17, 1993, Paul April, M.D., whose specialties are Internal Medicine and Rheumatology, testified as a consultative medical expert [R. 35-47]. Dr. April had not personally examined Plaintiff and based his conclusions upon his prior review of Plaintiff's medical records [R. 35, 43]. Because of time constraints, Dr. April's testimony was taken before that of Plaintiff [R. 34]. Dr. April was not present during Plaintiff's testimony [R. 47]. Dr. April testified that Dr. Olson's diagnosis of lupus had been based upon a positive ANA test and that there was no other evidence in the records to support a diagnosis of lupus [R. 35-37]. There was no description, Dr. April said, of joint swelling and no evidence of other systemic

illness or symptoms which might be expected to occur in the disease called lupus [R. 35-36]. Dr. April acknowledged that Plaintiff had other symptoms, "gastrointestinal disease, irritable bowel syndrome or whatever she had" but deduced that they were not part of what "we" would recognize as lupus induced [R. 46]. During his testimony, Dr. April was presented with the written report of Dr. Olson which summarized his eight year treatment of Plaintiff for lupus and lupus related conditions [R. 37]. Despite Dr. Olson's statement in that report that Plaintiff has "constant underlying joint swelling", Dr. April testified that his conclusion that Plaintiff does not suffer from lupus was unchanged [R. 38].

Based upon Dr. April's testimony, the ALJ found that Dr. Olson's diagnosis was based upon "a positive ANA titer" [R. 16], that "there was no description of the joints and whether they were undergoing a constant swelling" and that Dr. Olson's conclusions were "not based upon medical evidence" [R. 17]. The ALJ preferred Dr. April's opinion over that of Dr. Olson's because "Dr. April is a qualified rheumatologist whereas Dr. Olson is not." [R. 17]

The Court need not reach the question of whether the ALJ properly rejected the treating physician's opinion in favor of the opinion of the consultative physician. See 20 C.F.R. §§ 404.1527 (d)(1) and (2); *Kemp v. Bowen*, 816 F.2d 1469 (10th Cir. 1987), (Controlling weight is given to the opinion of a treating physician if it is well supported by clinical and laboratory diagnostic techniques and if it is not inconsistent with other substantial evidence in the record.) The difference of opinion between Dr. Olson and Dr. April on the proper factors to utilize in diagnosing lupus should not have

been determinative of the outcome. The Secretary's own regulations define lupus as being established by a positive ANA test, Listing § 10.04. The Secretary may not impose a stricter requirement than that which is specifically set out in the regulations, *Gambill v. Bowen*, 823 F.2d 1009 (6th Cir. 1987). There is no dispute that Plaintiff has had numerous positive ANA tests. Therefore, the ALJ should have concluded that Plaintiff has lupus as defined by the Secretary and then proceeded to conduct the second step of the analysis set forth in Listing § 10.04 to determine if the record established that Plaintiff's impairment met or equaled the listing.⁴

Further, even if Plaintiff's impairment did not meet or equal Listing § 10.04, the ALJ should have considered Plaintiff's lupus as a medically established pain producing disease in his pain analysis.

THE CASE IS REMANDED to the Commissioner for a full consideration of Plaintiff's claim of disability under established legal standards.

SO ORDERED this 14th day of Nov., 1996.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

⁴ The 6th Circuit reached the same conclusion on similar facts in an unpublished opinion, *Bogyus v. Secretary of Health and Human Services*, 996 F.2d 1214, (6th Cir. 1993) 1993 WL 216481 (6th Cir. (Ohio)).

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

DR PARTNERS,
Plaintiff,
vs.
MICHAEL B. FINE,
Defendant.

No. 96-C-774-K

ENTERED
DATE 11-15-96

FILED

NOV 13 1996

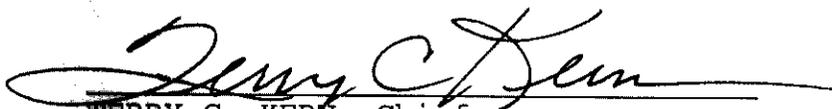
Phil Lombardi, Clerk
U.S. DISTRICT COURT

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 12th day of November, 1996.


TERRY C. KERN, Chief
UNITED STATES DISTRICT JUDGE

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11-6

ENTERED ON
DATE 11-15-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 13 1996

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 READE M. PHILLIPS,)
)
 Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 96CV676K

AGREED JUDGMENT

This matter comes on for consideration this 12th
day of November, 1996, the Plaintiff, United States of
America, by Stephen C. Lewis, United States Attorney for the
Northern District of Oklahoma, through Loretta F. Radford,
Assistant United States Attorney, and the Defendant, Reade M.
Phillips, appearing pro se.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Reade M. Phillips,
acknowledged receipt of Summons and Complaint on August 13, 1996.
The Defendant has not filed an Answer but in lieu thereof has
agreed that Reade M. Phillips is indebted to the Plaintiff in the
amount alleged in the Complaint and that judgment may accordingly
be entered against Reade M. Phillips in the principal amount of
\$1,200.00, plus accrued interest in the amount of \$294.61, plus
interest thereafter at the rate of 5% per annum until judgment,
plus interest thereafter at the legal rate until paid, plus the
costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the
Plaintiff have and recover judgment against the defendant in the
principal amount of \$1,200.00, plus accrued interest in the

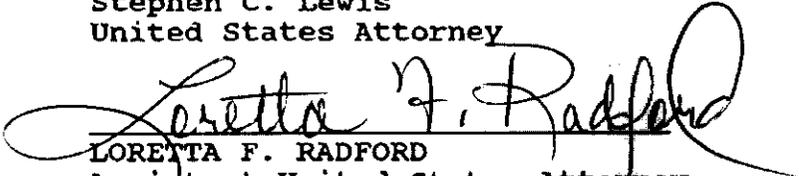
amount of \$294.61, plus interest thereafter at the rate of 5% per annum until judgment, plus interest thereafter at the current legal rate of 5.49 per annum until paid, plus the costs of this action.

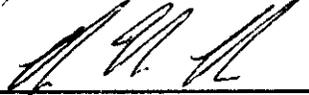

UNITED STATES DISTRICT JUDGE

APPROVED;

UNITED STATES OF AMERICA

Stephen C. Lewis
United States Attorney


LORETTA F. RADFORD
Assistant United States Attorney


READE M. PHILLIPS

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 13 1996

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

HOMER W. TATE,

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner,
Social Security Administration,

Defendant.

Civil Action No. 94-C-576-M

ENTERED ON DOCKET

DATE 11/15/96

ORDER

On October 23, 1996, this Court **remanded** this case to the Commissioner pursuant to the Tenth Circuit Order and Judgment filed **August 16, 1996** in case no. 95-5265.

Pursuant to plaintiff's application for attorneys fees under the Equal Access to Justice Act, 28 U.S.C. §2412(d), the parties have **stipulated** that an award in the amount of \$4,796.17 for attorney fees and expenses for all work **done before** the district court is appropriate.

WHEREFORE, IT IS ORDERED that plaintiff's counsel be awarded attorney's fees in the amount of \$4,474.66 and expenses in the amount of \$321.51, totalling \$4796.17. If attorney fees are also awarded under 42 U.S.C. §406(b)(1) of the Social Security Act, plaintiff's counsel shall refund the smaller award to plaintiff pursuant to Weakley v. Bowen, 803 F.2d 575, 580 (10th Cir. 1986). This action is hereby dismissed.

It is so ORDERED THIS 13th day of NOV. 1996.

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

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

40K 0702
Brink
PM. 8635

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ESTATE OF RONALD L. McMUNN,)
 Deceased, George S. Stoia,)
 Administrator; SHIRLEY ANN McMUNN,)
 individually and as personal)
 representative of the Estate of)
 Ronald L. McMunn; STEPHEN LEE)
 McMUNN; LINDA KAY MEAKES; MARC)
 McMUNN; BRAD MURRAY; LORI O'DELL;)
 BOARD OF COUNTY COMMISSIONERS OF)
 WASHINGTON COUNTY,)
)
 Defendants.)

Civil No. 96-CV-601-K

FILED

NOV 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

FILED

NOV 5 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JOINT STIPULATION AND ORDER TO DISMISS THE
BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY

Plaintiff, the United States of America, and Defendant, the Board of County Commissioners of Washington County ("Washington County"), hereby stipulate to the dismissal of Washington County from the suit, for the reason that it claims no interest in the subject real property at issue in this matter. The parties rely on the following facts in support of their joint stipulation:

1. On July 1, 1996, the United States filed suit: i) to reduce to judgment the federal income tax assessments made against taxpayers Ronald L. McMunn and Shirley A. McMunn in the total amount of \$ 12,771.74 for the taxable year 1985; and ii) to foreclose the federal tax liens against the subject real property held in the name of Ronald L. McMunn, who is now deceased.

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5-59N-5958

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2. Washington County was named as a Defendant to this action pursuant to 26 U.S.C. Section 7403(b), only insofar as it might claim an interest in the subject real property.

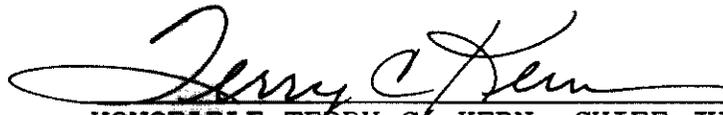
3. The subject real property is located in Washington County, Oklahoma, and is described as:

Lot Four (4), Block One (1), Lannom Addition, including a 10 foot strip on west side of Lot 4, Block 1, Bartlesville, Washington County, Oklahoma.

4. On July 19, 1996, the Board of County Commissioners of Washington County filed an answer whereby it admitted that there were no taxes owed to Washington County, and requested that the Court discharge Washington County from the suit.

WHEREFORE, the United States of America, and the Board of County Commissioners of Washington County, stipulate to the dismissal of Washington County from the above-referenced action since it claims no interest in the subject real property.

IT IS SO ORDERED this 12th day of November, 1996.


HONORABLE TERRY C. KERN, CHIEF JUDGE
United States District Court
Northern District of Oklahoma

Approved as to form:

STEPHEN C. LEWIS
United States Attorney
Northern District of Oklahoma

Virginia Navarrete Brooks
VIRGINIA NAVARRETE BROOKS
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-6499

ATTORNEY FOR THE UNITED STATES
OF AMERICA

Dated: October 11, 1996

Thomas Janer
THOMAS JANER, OBA # 11110
Assistant District Attorney
Washington County Courthouse
Fifth Street and Johnstone
Bartlesville, Oklahoma 74005
Telephone: (918) 337-2860

ATTORNEY FOR WASHINGTON COUNTY
OKLAHOMA

Dated: October _____, 1996

ENTERED ON DOCKET
11-14-96

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

F I L E D

NOV 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

MARK ZUMWALT,
as next of friend of TZ,
a minor, and STEVE NICHOLSON,
as next of friend of KN,
a minor,

Plaintiffs,

vs.

No. 96-C-108-K ✓

PARK NEWSPAPERS OF SAPULPA,
INC., an Oklahoma Corporation;
CITY OF SAPULPA, A Municipal
Corporation; SAPULPA PUBLIC
SCHOOLS, Independent School
District # 33; ART COX; and
CHARLES LAKE,

Defendants.

ORDER

Before the Court is Plaintiff's Motion for Dismissal With Prejudice Against Defendant City of Sapulpa. For good cause shown, Plaintiff's motion is hereby GRANTED, and the City of Sapulpa is dismissed with prejudice from this actions. All pending motions regarding the Defendant City of Sapulpa are hereby MOOT.

ORDERED this 12th day of November, 1996.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

11-14-96

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

EDDIE DeRIGNE and PAMELA
DeRIGNE, husband and wife,

Plaintiffs,

vs.

HEIDELBERGER DRUCKMASCHINEN
AKTIENGESELLSCHAFT, a German
corporation, and HEIDELBERG
NORTH AMERICA, INC., HEIDELBERG
HARRIS, INC., HEIDELBERG USA,
INC., and HEIDELBERG EASTERN,
INC., wholly owned United
States subsidiaries,

Defendants.

Case No. 96 CV-912-K

FILED

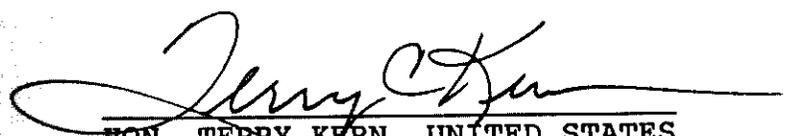
NOV 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

**ORDER DISMISSING DEFENDANTS
HEIDELBERG NORTH AMERICA, INC.
AND HEIDELBERG HARRIS, INC. ONLY**

COMES NOW before me plaintiffs' Application to dismiss
defendants HEIDELBERG NORTH AMERICA, INC. and HEIDELBERG HARRIS,
INC., only. Upon consideration of the representations in the
Application and for good cause shown, the Application is granted.
Defendants Heidelberg North America, Inc. and Heidelberg Harris,
only are hereby dismissed. The parties are to amend the style of
this action accordingly.

IT IS SO ORDERED.



HON. TERRY KERN, UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

11-14-96

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
on behalf of the Secretary of Veterans Affairs,)
)
Plaintiff,)
)
v.)
)
NATHANIEL MORROW, JR.)
aka Nathan Morrow, et al.,)
)
Defendants.)

FILED

NOV 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 96-C-233-K ✓

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Veterans Affairs, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that this action shall be dismissed without prejudice.

Dated this 12th day of November, 1996.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

for Phil Miller
WYN DEE BAKER, OBA #465
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

WDB:css

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

FILED

NOV 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

FREDERICK M. HARTLEY,
Plaintiff,
vs.
F. M. HOEL,
Defendant.

ENTERED ON DOCKET

DATE NOV 14 1996

Case No. 96-CV-749-B

PERMANENT INJUNCTION

On November 8, 1996, this matter came on for a Case Management Conference pursuant to an Order entered October 8, 1996. The Plaintiff appeared in person and by his attorneys, Nancy Nesbitt Blevins and Paul E. Blevins. The Defendant appeared not. Defendant was advised in the October 8 Order that if he failed to appear at the Case Management Conference, a permanent injunction would be entered against him and that said permanent injunction would mirror the Preliminary Injunction entered herein on September 5, 1996.

The Court therefore finds as follows:

1. On July 17, 1996, Plaintiff, Frederick M. Hartley received by certified mail from defendant, F.M. Hoel, a document dated July 15, 1996, and entitled Grievance Complaint.

2. This document purports to represent a nonjudicial proceeding commenced by Defendant against Plaintiff for illegal conversion of personal property.

3. In said document Defendant threatens to file liens against certain real property described therein and any personal property

owned by Plaintiff if Plaintiff does not do one of the following within thirty (30) days:

- a. Refute the charges made therein with a "counter affidavit of truth;"
- b. Pay to Defendant \$25,000,000.00 in "gold, silver or the equivalent in U.S. currency;"
- c. Adjudicate the lien in a court of competent jurisdiction.

4. There is no basis for this "proceeding" in the laws of any state or the United States.

5. There is no basis for this "proceeding" in fact. The rights of the parties were fully adjudicated by the District Court of Rogers County, State of Oklahoma as is set forth in the Journal Entry of Judgment and Decree Terminating Lease entered on September 23, 1988, in the case of Coal Corporation Reserve Company of Oklahoma, Inc., et al., v. F.M. Hoel, et al., Case No. C-84-481.

6. Defendant's purpose in initiating this "proceeding" against Plaintiff is to intimidate and coerce the payment of money from Plaintiff to Defendant, to cause injury to Plaintiff's property rights, and to cause Plaintiff to suffer mental distress.

7. If Defendant is not restrained and enjoined from taking the actions threatened in the subject document, Plaintiff will suffer immediate and irreparable injury, loss and damage for which there is no adequate remedy at law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant, F. M. Hoel, is hereby enjoined and restrained from filing any lien or encumbrance against any real or personal property owned in whole or in part by Plaintiff, Frederick M.

Hartley, or any corporation or entity in which he has an interest, including but not limited to Kelly Properties, Ltd.

Defendant, F.M. Hoel, is further enjoined and restrained from taking any further action to injure, coerce, intimidate, harass, or annoy the Plaintiff, Frederick M. Hartley, or any corporation or entity in which he has an interest, including but not limited to Kelly Properties, Inc.

DATED this 13th day of November, 1996.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

LEW-ANN, LTD., a Wyoming limited
partnership, DONALD E. BUGH, an
individual, and WALTER E. SCOTT,
an individual,

Plaintiffs,

vs.

ARROW EXPLORATION COMPANY,
a Texas corporation,

Defendant.

NOV 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

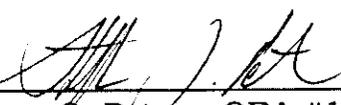
Case No. 95-C-1151 E ✓

ENTERED ON DOCKET

NOV 14 1996
DATE _____

STIPULATION OF DISMISSAL WITH PREJUDICE
AND CONSENT TO FINAL JUDGMENT

THIS Stipulation is entered between and among all parties which have appeared herein. It is hereby stipulated and agreed by and among the parties that the above captioned action, and all claims, be dismissed with prejudice, with all parties to this Stipulation to bear their own costs and attorney fees. It is further stipulated and agreed that the parties consent to the entry of an Order and Judgment in the form annexed hereto.



Stephen Q. Peters, OBA #11469
Harris, McMahan & Peters, P.C.
1924 S. Utica, Suite 700
Tulsa, Oklahoma 74104
(918) 743-6201

Attorney for Plaintiffs

11/13/96 11:43 512 477-4742 → 918 747 2965

NO.649 P003

11/12/96 10:39
NOV-12-1996 09:37 FROM HARRIS,MCMAHAN,&PETERSP.C TO

15124772271 P.04



~~Diane Sanders~~

McCall & Ritchie

816 Congress Ave., Suite 1510

Austin, Texas 78701

Attorney for Defendant

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

FILED

NOV 13 1996



Phil Lombardi, Clerk
U.S. DISTRICT COURT

JAMES EDWARD CAFFERY,)
)
Petitioner,)
)
vs.)
)
STEVE HARGETT,)
)
Respondent.)

No. 95-CV-1104-B ✓

ENTERED ON DOCKET
DATE NOV 14 1996

ORDER

Before the Court is Petitioner's notice of appeal and Petitioner's request for a certificate of probable cause, filed on November 6, 1996. Petitioner desires to appeal the decision and order of this Court denying his petition for a writ of habeas corpus.

28 U.S.C. § 2253, as amended by § 102 of the Antiterrorist and Effective Death Penalty Act of 1996, requires a petitioner to obtain a certificate of appealability before appealing a final order in a habeas corpus proceeding under 28 U.S.C. § 2254. See Lennox v. Evans, 87 F.3d 431, 432-34 (10th Cir. 1996) (holding that § 102 codifies the standard set out in Barefoot v. Estelle, 463 U.S. 880, 892-92 (1983), for issuance of a certificate of probable cause and, therefore, does not have retroactive effect within the meaning of Landgraf v. U.S.I. Film Prods, 511 U.S. 244 (1994)). Section 2253(c) instructs that the court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right," and the court "indicates which specific issue or issues satisfy [that] showing." A petitioner can satisfy that standard by demonstrating that the

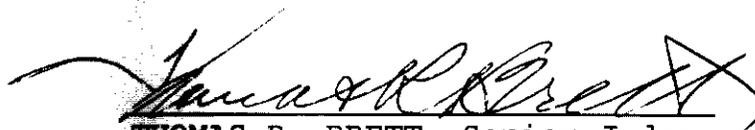


issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. Barefoot, 463 U.S. at 893.

After considering the record in this case, the Court concludes that a certificate of appealability should not issue as Petitioner has not made a substantial showing of the denial of a constitutional right. The record is devoid of any authority suggesting that the Tenth Circuit Court of Appeals would resolve the issues in this case differently.

ACCORDINGLY, IT IS HEREBY ORDERED that a certificate of appealability should be denied. See Fed. R. App. P. 22(b) as amended by § 102 of the Antiterrorist and Effective Death Penalty Act of 1996.

SO ORDERED THIS 10 day of Nov., 1996.


THOMAS R. BRETT, Senior Judge
UNITED STATES DISTRICT COURT

F I L E D

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

NOV 13 1996
[Signature]
Phil Lombardi, Clerk
U.S. DISTRICT COURT

CENTERDOR M. JACKSON,)
)
)
 Plaintiff,)
)
)
 vs.)
)
)
 RON CHAMPION, et al.,)
)
)
 Defendant.)

Case No. 95-C-1153-E ✓

ENTERED ON DOCKET
DATE NOV 14 1996

ORDER

A Report and Recommendation of the Magistrate was filed October 17, 1996. No objections have been filed by the parties. Upon review, the Court adopts the Magistrate's Report and Recommendation and grants Defendant's Motion to Dismiss [Doc. No. 5-1]. Plaintiff's cause of action is therefore **DISMISSED WITHOUT PREJUDICE.**

Dated this 13th day of November 1996.

[Signature]

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

(15)

FILED

NOV 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

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
NOV 14 1996
DATE _____

JUDGMENT

This matter comes on for the Entry of Final Judgment in connection with the above styled and entitled matter. Plaintiff, Max D. Bird, D.D.S. (Dr. Bird), filed this action originally in state court alleging two causes of action: (1) **Breach** of insurance contractual benefits, and (2) extra contractual **damages** for the breach of an obligation of good faith and fair dealing. Defendant, St. Paul Fire and Marine Insurance Company ("St. Paul"), removed this matter to federal court based upon diversity of citizenship, and, filed a Third-Party Complaint for declaratory relief.

Thereafter, St. Paul filed a Motion for Partial Summary Judgment on its action for declaratory relief. On September 13, 1995, this Court entered its Order sustaining in part and overruling in part the

Motion for Partial Summary Judgment, all as per the terms of that Order filed on September 13, 1995.

Thereafter, St. Paul filed a Motion for Summary Judgment on the issues of bad faith and punitive damages. On November 22, 1995, this Court entered its Order sustaining that Motion for Summary Judgment on the Second Cause of Action for bad faith and punitive damages.

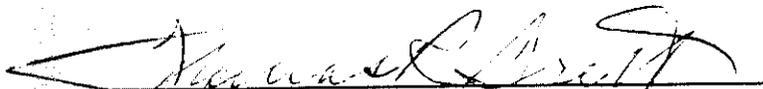
Thereafter, Dr. Bird filed his Motion for Summary Judgment on the remaining issue of his contractual damages for St. Paul's failure to continue its legal defense. The parties stipulated to the amount of actual damages of \$2,031.00, and the Court, on July 23, 1996, filed its Order sustaining the Plaintiff's Motion for Summary Judgment in that amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Orders of the Court of September 13, 1995, November 22, 1995, and July 23, 1996, should be and are hereby made the Order and Judgment of this Court in the following particulars:

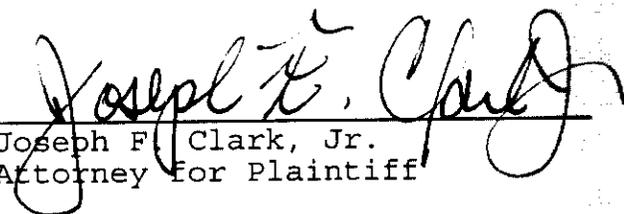
- (1) St. Paul is under no obligation to indemnify Dr. Bird for the underlying claim of Jessica Gilmore where she alleges a sexual battery;
- (2) St. Paul is obligated to defend Dr. Bird for any and all claims brought by Jessica Gilmore for the alleged sexual battery, as set forth in Tulsa County Court Case No. CJ-93-2030;
- (3) St. Paul is not in bad faith, and is not liable for punitive damages in connection with its handling of the claim and the failure to defend or indemnify;
- (4) Dr. Bird shall have judgment against St. Paul in the amount of \$2,031.00;

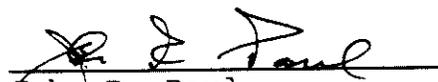
(5) Each party may make **their** application for attorney fees and costs to be **determined** by the Court, and as permitted by law.

Done this 12th day of Nov, 1996.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


Joseph F. Clark, Jr.
Attorney for Plaintiff


John R. Paul
Attorney for Defendant

[dt]pl\4838\judgment

4

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

FILED

NOV 13 1996

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

MIRIAM H. GREEN,)

Plaintiff,)

v.)

MIKE GRAVES, BILL DAUGHERTY,)
MIKE CAMPBELL, and CLIFTON BYRD,)

Defendants.)

Case No. 96-cv-27-H ✓

RECEIVED ON DOCKET

NOV 14 1996

ORDER

This matter comes before the Court on the Motion to Dismiss filed by Defendant Mike Graves¹ (Docket # 7), and the Motion to Dismiss or, in the Alternative, for Summary Judgment filed by federal Defendants Bill Daugherty, Mike Campbell, and Clifton Byrd (Docket # 8).

Plaintiff, who is acting pro se, alleges that on February 19, 1992 she sustained personal injuries when she tripped and fell on an uneven surface in the parking lot of the Veterans Administration's Tulsa outpatient clinic building. Defendant Mike Graves is the Building Maintenance Supervisor for Golden Triangle Management Group, the independent contractor responsible for maintenance of the parking lot. Defendants Bill Daugherty, Mike Campbell, and Clifton Byrd are employees of the Veterans Administration.

A plaintiff may bring a suit against the federal government or a federal agency only when the

¹Plaintiff's complaint and the federal Defendants' pleadings style this case as Miriam H. Green v. Mike Groves, et al. Mr. Graves's motion to dismiss, however, styles this case Miriam H. Green v. Mike Graves, et al. The Court assumes that use of the name Groves is a typographical error.

government has explicitly waived its sovereign immunity. The Federal Tort Claims Act ("FTCA") is a limited waiver of sovereign immunity which renders the federal government liable to the same extent as a private party for certain torts of federal employees acting within the scope of their employment. The provisions of the FTCA must be strictly construed, Pipkin v. United States Postal Serv., 951 F.2d 272 (10th Cir. 1991), and failure to bring an action within the time specified under the FTCA deprives the district court of jurisdiction, Sisseton-Wahpeton Sioux Tribe v. United States, 895 F.2d 588 (9th Cir. 1990).

Because Plaintiff asserts a tort claim against the federal government, this action is governed by the limitations period set forth in the FTCA. The FTCA provides in applicable part:

A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

28 U.S.C. § 2401(b). The incident giving rise to this action occurred on February 19, 1992. Plaintiff did not submit her claim to the United States Department of Veterans Affairs (the "VA") until August 19, 1994. The VA denied Plaintiff's claim on July 12, 1995 on the basis that the claim was time-barred. However, the VA investigated the alleged incident even though Plaintiff's claim was time-barred, and concluded that there was no evidence of negligence on the part of a VA employee acting within the scope of his or her employment that caused injury to Plaintiff, as required by the FTCA. The VA informed Plaintiff that she had six months within which to file suit in federal district court, if she so desired, and that the proper party defendant in such a suit would be the United States.

Plaintiff filed this action on January 12, 1996, naming three federal government employees and one employee of an independent government contractor as defendants. Plaintiff did not attempt

to serve any federal defendant until April 1996; however, this service was ineffective to place the federal government on notice of this FTCA claim. On May 21, 1996, the United States Attorney's Office informed Plaintiff that under Fed. R. Civ. P. 4(i) proper service upon the United States is accomplished by sending a copy of the Summons and Complaint to the Attorney General and the United States Attorney. It appears that Plaintiff still has not served the United States Attorney's Office, and the pleadings do not indicate whether the Attorney General has been served.

Pursuant to Fed. R. Civ. P. 4(m), this action is subject to dismissal for failure to properly serve a defendant, the United States, within 120 days of the filing of the action. In addition, this action is time-barred under 28 U.S.C. § 2401(b) for failure to file a claim with the VA within two years of the incident. However, even if Plaintiff had served the United States or filed her claim with the VA in a timely manner, she does not state a claim under the FTCA. The FTCA covers injuries "caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment" 28 U.S.C. § 1346(b). The Act defines government employees as employees of "any federal agency," but specifically excludes "any contractor with the United States." 28 U.S.C. § 2671. In this case, responsibility for maintenance of the parking lot lies with Golden Triangle Management Group, an independent contractor hired by the government, not with any federal government employee. Because the negligent acts alleged in this case could only have been taken by an independent contractor, Plaintiff fails to state a claim against the United States.

Furthermore, Plaintiff's claim against Defendant Mike Graves is defective. First, Plaintiff asserts no federal cause of action against Defendant Graves; thus, the only possible basis for jurisdiction is diversity under 28 U.S.C. § 1332. Because all parties to this suit are residents of Oklahoma, there is no diversity in this case. Second, Plaintiff's claim is time-barred under the

Oklahoma statute of limitations, which requires that negligence actions be filed within two years of when the cause of action accrues. The alleged incident in this case occurred on February 19, 1992, and Plaintiff did not file this suit until January 12, 1996, more than three years after her cause of action accrued.

In sum, the motions to dismiss filed by Defendant Mike Graves (Docket # 7) and the federal Defendants (Docket # 8) are hereby granted.

IT IS SO ORDERED.

This 11TH day of November, 1996.



Sven Erik Holmes
United States District Judge

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

F I L E D

NOV 13 1996 *LC*

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

AMANDA CROWELL and MEGAN)
CROWELL, both minors, by and through)
their Guardians, JAY DeHART and NORMA)
DeHART as Personal Representatives of THE)
ESTATE OF JULIE CROWELL, Deceased,)

Plaintiffs,)

vs.)

DICK SIMON TRUCKING, INC.;)
UNITED STATES FIRE INSURANCE)
COMPANY; and THE ESTATE OF RALPH)
CROWELL, Deceased,)

Defendants.)

Case No. 96-CV-816-B ✓

ENTERED ON DOCKET
DATE NOV 14 1996

ORDER

Before this Court is Plaintiffs', Amanda Crowell and Megan Crowell, both minors, by and through their Guardians, Jay DeHart and Norma DeHart, and Norma DeHart as Personal Representative of the Estate of Julie Crowell, Deceased, ("Plaintiffs") Motion to Remand the instant matter to the District Court of Ottawa County filed October 9, 1996. (Docket # 5). The response of Defendants Dick Simon Trucking, Inc. ("Simon") and United States Fire Insurance Company ("Fire") was timely filed on October 24, 1996 (Docket # 7), as was Plaintiffs' reply, filed November 4, 1996. (Docket # 8). After careful consideration of the record, the applicable legal authorities and a brief hearing held November 12, 1996, the Court hereby GRANTS Plaintiffs' Motion to Remand.

Fraudulent Joinder - Standard

In many cases, removability can be determined by the original pleadings and normally the **statement** of a cause of action against the resident defendant will suffice to prevent removal. But upon specific allegations of fraudulent joinder the court may pierce the pleadings, consider the entire record, and determine the basis of joinder by any means available. The joinder of a resident defendant against whom no cause of action is stated is **patent sham**, and though a cause of action be stated, the joinder is **similarly fraudulent** if in fact no cause of action exists. This does not mean that the federal court will pre-try, as a matter of course, **doubtful** issues of fact to determine removability; the issue must be capable of summary determination and be proven with complete certainty.

Dodd v. Fawcett Publications, Inc., 329 F.2d 82 (10th Cir. 1964) (citations omitted).

Defendants Simon and Fire claim the Estate of Ralph Crowell, deceased, was fraudulently joined in an effort to defeat diversity. However, the Court concludes Defendants Simon and Fire have not presented evidence from which it could be concluded with complete certainty that there is no evidence of negligence on the part of **Ralph Crowell, deceased**.¹ As it appears Plaintiffs have properly plead a negligence cause of action **against the Estate of Ralph Crowell, deceased**, the Court hereby GRANTS Plaintiffs' Motion to Remand to the District Court of Ottawa County.

¹Were the record to reflect by way of probative evidence the Dick Simon truck which allegedly hit the Crowell van was traveling at approximately 40-50 miles per hour and the Crowell van was traveling the opposite direction at approximately the same speed, the Court would probably be compelled to conclude that, under the circumstances, Ralph Crowell, deceased, was not in any way negligent and exercised reasonable care. The probability is the jack-knifing truck appeared in Ralph Crowell's lane so suddenly there was nothing he could do to avoid the collision. However, from the record before the Court, with its dearth of admissible, probative evidence, one cannot arrive at this conclusion.

The parties are to pay their own **respective** attorney's fees.

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

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
SENIOR UNITED STATES DISTRICT JUDGE

F I L E D
NOV 13 1996

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

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
DATE NOV 14 1996

JUDGMENT

This matter comes on for the Entry of Final Judgment in connection with the above styled and entitled matter. Plaintiff, Max D. Bird, D.D.S. (Dr. Bird), filed this action originally in state court alleging two causes of action: (1) Breach of insurance contractual benefits, and (2) extra contractual damages for the breach of an obligation of good faith and fair dealing. Defendant, St. Paul Fire and Marine Insurance Company ("St. Paul"), removed this matter to federal court based upon diversity of citizenship, and, filed a Third-Party Complaint for declaratory relief.

Thereafter, St. Paul filed a Motion for Partial Summary Judgment on its action for declaratory relief. On September 13, 1995, this Court entered its Order sustaining in part and overruling in part the

Motion for Partial Summary Judgment, all as per the terms of that Order filed on September 13, 1995.

Thereafter, St. Paul filed a Motion for Summary Judgment on the issues of bad faith and punitive damages. On November 22, 1995, this Court entered its Order sustaining that Motion for Summary Judgment on the Second Cause of Action for bad faith and punitive damages.

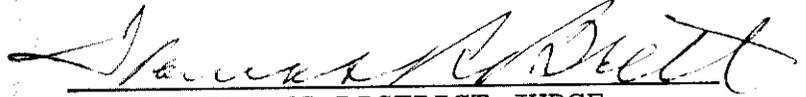
Thereafter, Dr. Bird filed his Motion for Summary Judgment on the remaining issue of his contractual damages for St. Paul's failure to continue its legal defense. The parties stipulated to the amount of actual damages of \$2,031.00, and the Court, on July 23, 1996, filed its Order sustaining the Plaintiff's Motion for Summary Judgment in that amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Orders of the Court of September 13, 1995, November 22, 1995, and July 23, 1996, should be and are hereby made the Order and Judgment of this Court in the following particulars:

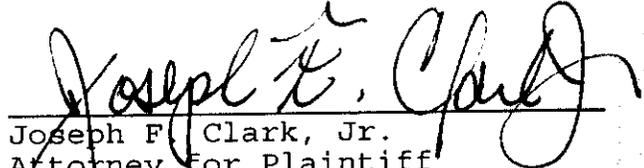
- (1) St. Paul is under no obligation to indemnify Dr. Bird for the underlying claim of Jessica Gilmore where she alleges a sexual battery;
- (2) St. Paul is obligated to defend Dr. Bird for any and all claims brought by Jessica Gilmore for the alleged sexual battery, as set forth in Tulsa County Court Case No. CJ-93-2030;
- (3) St. Paul is not in bad faith, and is not liable for punitive damages in connection with its handling of the claim and the failure to defend or indemnify;
- (4) Dr. Bird shall have judgment against St. Paul in the amount of \$2,031.00;

(5) Each party may make their application for attorney fees and costs to be determined by the Court, and as permitted by law.

Done this 12 day of Nov, 1996.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


Joseph F. Clark, Jr.
Attorney for Plaintiff


John R. Paul
Attorney for Defendant

ldt\p1\4838\judgment

FILED

NOV - 8 1996

LC

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

Phil Lombardi, Clerk
U.S. DISTRICT COURT

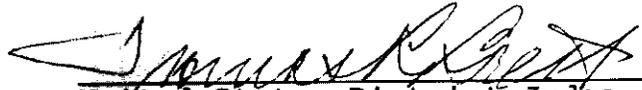
RICHARD LEE MURRAY,)
)
 Plaintiff,)
)
 v.)
)
 STATE FARM FIRE & CASUALTY)
 COMPANY,)
)
 Defendant.)

No. 94-C-837-B

ENTERED ON DOCKET
DATE NOV 13 1996

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 9th day of Nov., 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

36

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

FILED

NOV 12 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

KERRY K. ICE, a minor by and through her)
next friend, JERRY ICE,)

Plaintiff,)

vs.)

No. 95-C-812

HYUNDAI CORPORATION, an alien)
corporation, HYUNDAI MOTOR)
CORPORATION, an alien corporation,)
and HYUNDAI MOTOR AMERICA, a)
California corporation,)

Defendants.)

ENTERED ON DOCKET

DATE NOV 13 1996

ORDER

Before the Court is the motion for new trial filed by the plaintiff, Kerry K. Ice ("Ice") (Docket No. 84). Ice argues that she is entitled to a new trial pursuant to Fed.R.Civ.P. 59 based on the following errors committed by the Court: (1) instructing the jury on comparative negligence; (2) allowing testimony regarding government testing of vehicles; and (3) admitting the Malibu test video and the grab handle test into evidence. The Court addresses these objections in turn.

(1) Ice takes issue with the following jury instruction on Manufacturer's Product Liability:

THE BURDEN OF PROVING THAT THE PRODUCT WAS DEFECTIVE AND THAT THE DEFECT CAUSED THE PLAINTIFF'S INJURY BY A PREPONDERANCE OF THE EVIDENCE IS ON THE PLAINTIFF.

ALL PARTIES AGREE THAT THERE WAS NO DEFECT IN THE 1991 HYUNDAI SCOUPE AUTOMOBILE WHICH CAUSED THE INITIAL ACCIDENT. YOU ARE TO DECIDE WHETHER THE CLOSE HEAD INJURY SUSTAINED BY KERRY ICE WAS CAUSED, IN WHOLE OR IN PART, BY SOME DEFECT IN THE 1991 HYUNDAI SCOUPE, OR WHETHER THAT INJURY WAS CAUSED SOLELY BY SOME OTHER FACTOR, SUCH AS THE ACTS OR OMISSIONS OF THE DRIVER OF THE VEHICLE IN OPERATING THE VEHICLE IN AN UNSAFE MANNER, OR KERRY ICE'S ALLEGED HEAD CONTACT WITH THE GROUND.

THE FIRST QUESTION YOU MUST ANSWER IS WHETHER

93

PLAINTIFF HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT A DEFECT EXISTED IN THE DEFENDANTS' 1991 HYUNDAI SCOUPE. A PRODUCT IS DEFECTIVE WHEN IT IS NOT REASONABLY FIT FOR THE ORDINARY PURPOSES FOR WHICH SUCH PRODUCTS ARE INTENDED OR MAY REASONABLY BE EXPECTED TO BE USED.

IF YOU DETERMINE THE PRODUCT WAS DEFECTIVE, IN ORDER FOR PLAINTIFF TO RECOVER SHE MUST ALSO PROVE THAT THE DEFECT RENDERED THE PRODUCT UNREASONABLY DANGEROUS. A DEFECT RENDERS A PRODUCT UNREASONABLY DANGEROUS ONLY IF IT RENDERS THE PRODUCT MORE DANGEROUS THAN A REASONABLE CONSUMER WOULD EXPECT. A PRODUCT IS NOT UNREASONABLY DANGEROUS SIMPLY BECAUSE IT COULD BE MADE SAFER, DIFFERENT OR BETTER. IF YOU FIND A DEFECT EXISTED IN THE PRODUCT, BUT DID NOT RENDER THE PRODUCT UNREASONABLY DANGEROUS, THEN YOU FIND FOR THE DEFENDANT AND NEED PROCEED NO FURTHER IN YOUR DELIBERATIONS.

IF YOU FIND THAT PLAINTIFF HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT A DEFECT EXISTED IN THE 1991 HYUNDAI SCOUPE, THEN YOU MUST DETERMINE WHETHER THE DEFECT WAS THE DIRECT CAUSE OF KERRY ICE'S INJURY. IF YOU FIND THAT PLAINTIFF HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFECT WAS A CONTRIBUTING FACTOR IN PRODUCING KERRY ICE'S INJURY, YOU MUST THEN DECIDE WHETHER DEFENDANTS HAVE SHOWN THAT THE DIRECT CAUSE OF THE INJURY WAS SOMETHING OTHER THAN THE DEFECT IN THE SCOUPE AUTOMOBILE. THE DEFECT IS THE DIRECT CAUSE OF THE PLAINTIFF'S INJURY, IF A REASONABLE PERSON WOULD REGARD IT AS THE CAUSE OF THE INJURY. IF YOU FIND THAT THE DEFECT WAS NOT THE DIRECT CAUSE OF PLAINTIFF'S INJURY, YOU NEED PROCEED NO FURTHER IN YOUR DELIBERATIONS AND MUST FIND FOR THE DEFENDANTS.

Although Ice contends that the instruction improperly interjected the question of Jerry Ice's comparative negligence into this products liability case, the Court concludes that the instruction correctly sets forth Oklahoma law on alternative causation in "second impact" cases, such as this one, where the principal injury complained of is single and indivisible. *See Lee v. Volkswagen of America, Inc.*, 688 P.2d 1283, 1286-89 (Okla. 1984).

(2) Ice also argues that defendants were improperly allowed to present testimony of Hyundai's compliance with government safety standards, although the Court granted Ice's motion

in limine excluding evidence regarding the Federal Motor Vehicle Safety Standards (“FMVSS”). Ice contends that defendants violated the Court’s order when they presented testimony that Hyundai tested its vehicles in the same manner in which the government tests vehicles.

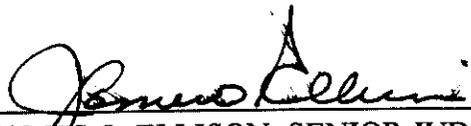
The Court finds no violation of its *in limine* order. Testimony regarding alternative types of testing were presented by both Ice in support of her claim of the insufficiency of, and defendants, in support of the adequacy of, vehicle testing; no reference was made to Hyundai’s compliance with FMVSS.

(3) Finally, Ice objects to the admission of the Malibu rollover test video and the “grab-handle” test, arguing that they were improper “recreations” of the subject accident. Specifically, Ice claims the Malibu test was prejudicial, because the excerpted 45 second portion of the tape depicted a rollover that coincided with defendants’ theory of the case, and irrelevant, because the test was not “conducted under conditions that were at least similar to those that existed at the time of the accident.” Similarly, Ice argues the grab handle test depicting the effects of various degrees of force on the grab handle in the passenger side of the vehicle was inadmissible because it showed that under “identical accident circumstances” the trim piece would be seriously bent. Further, Ice complains that the Court failed to give any limiting instruction to the jury regarding these tests.

The Court concluded at trial and again concludes that the Malibu and grab handle tests were properly admitted evidence which demonstrated relevant physical principles and measurements. In addition, contrary to Ice’s representation, the Court expressly admonished the jury prior to each presentation that the tests were demonstrations of physical principles and not demonstrations of what took place in the accident at issue in this case.

Finding no merit to the above objections, the Court denies Plaintiff’s Motion for New Trial (Docket No. 84).

IT IS SO ORDERED, this 8th day of November, 1996.



JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BUCKET

11-12-96

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 SHELBY STANSILL; UNKNOWN)
 SPOUSE IF ANY OF SHELBY)
 STANSILL; JOE C. STANSILL;)
 UNKNOWN SPOUSE IF ANY OF JOE)
 C. STANSILL; BANCOKLAHOMA)
 MORTGAGE CORP.; COUNTY)
 TREASURER, Tulsa County, Oklahoma;)
 BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED
NOV - 8 1996
Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil Case No. 96CV 146K

CLERK'S ENTRY OF DEFAULT

It appearing from the files and records of this Court as of November 8, 1996 and the declaration of Loretta F. Radford, Assistant United States Attorney, that the Defendants, **Shelby Stansill, Unknown Spouse if any of Shelby Stansill, Joe C. Stansill, Unknown Spouse if any of Joe C. Stansill**, 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 8th day of November, 1996.

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

By A. Schwelke
Deputy

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

F I L E D

JAMIE DILDINE, by and through)
her mother and next friend,)
CAROL DILDINE,)
)
Plaintiff,)

v.)

No. 96-C-0081-E

THE TULSA STATE FAIR, TULSA)
PUBLIC FACILITIES AUTHORITY,)
PAT LLOYD, in his capacity as)
Director of the Tulsa State)
Fair, and BARBARA WOOD, in her)
capacity as Public Events)
Director of the Tulsa State Fair,)
)
Defendants.)

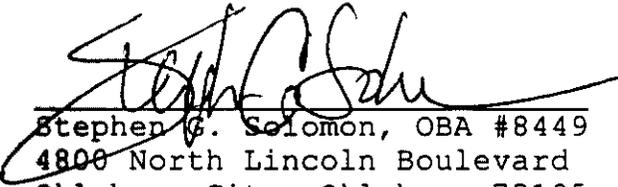
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DATE _____

**STIPULATION OF DISMISSAL
WITH PREJUDICE BY ALL PARTIES**

COME NOW the Plaintiff, Jamie Dildine, a minor, by and through her mother and next friend, Carol Dildine, by and through her attorneys of record, and the Defendants, by and through their attorneys of record and, pursuant to Rule 41 of the Federal Rules of Civil Procedure, hereby submit and file this Stipulation of Dismissal with Prejudice to refiling. All of the parties in this case hereby stipulate and agree that this case, including any and all claims for relief or causes of action which have been asserted herein or which might have been asserted in this case, are dismissed with prejudice to refiling.

Respectfully submitted,

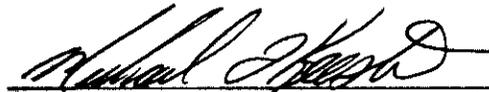
DERRYBERRY, QUIGLEY, SOLOMON,
BLANKENSHIP & NAIFEH



Stephen G. Solomon, OBA #8449
4800 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105
(405) 528-6569

ATTORNEYS FOR PLAINTIFF

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



Michael T. Keester, OBA #10869
320 South Boston, Suite 400
Tulsa, OK 74103-3708
(918) 594-0457

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF MAILING

I the undersigned do hereby certify that on the 8th day of November, 1996, a true and correct copy of the above and foregoing instrument was forwarded by U.S. Mail, with proper postage thereon fully prepaid, to the following counsel of record:

Michael T. Keester
Hall, Estill, Hardwick,
Gable, Golden & Nelson, P.C.
320 South Boston, Suite 400
Tulsa, OK 74103-3708

Stephen G. Solomon
Derryberry, Quigley, Solomon,
Blankenship & Naifeh
4800 N. Lincoln Blvd.
Oklahoma City, OK 73105

