

NO. 2002-03-0172

WALLER BROADCASTING, INC. § IN THE DISTRICT COURT OF
VS. § CHEROKEE COUNTY, TEXAS
ROBERT W. SHIVERY § SECOND JUDICIAL DISTRICT

JUDGMENT NUNC PRO TUNC

This matter came on for trial on the 3rd day of July, 2002. Plaintiff Waller Broadcasting Inc. appeared through its corporate representative and its attorney Eldridge Moak. Defendant Robert W. Shivery appeared in person and through his attorney Craig Fletcher. No jury having been demanded, all matters were submitted to the Court. After hearing the evidence and argument of counsel, it is the opinion of the court that the relief requested by Plaintiff be granted and all relief requested by Defendant be denied.

The Court finds that on or about November 28, 1997 Plaintiff and Defendant entered into a written contract called "Option Purchase Agreement" whereby Defendant granted to Plaintiff the right to purchase radio station KSIZ, now called KLJT-FM, Federal Communication Facility ID # 57204 (the "Station"). The Court further finds that in accordance with the terms of that contract, Plaintiff timely exercised its option to purchase the Station, and that Defendant breached the terms of that contract by failing and refusing to sell the Station to Plaintiff. The Court further finds that Plaintiff is entitled to the remedy of specific performance to enforce its right to purchase the Station.

By prior order of this Court Jack M. Sheridan was appointed as Receiver for the Station and the Federal Communications Commission has consented to assignment of the license for the Station to Jack M. Sheridan, Reciever. It is ordered that Jack M. Sheridan shall continue to act as Receiver of the Station. It is ordered that Jack M. Sheridan submit an application requesting consent of the Federal Communications Commission to transfer the license for the Station to Waller Broadcasting, Inc.

It is further ordered that the Receiver, Jack M. Sheridan, and Waller Broadcasting, Inc. execute a purchase agreement for the sale and transfer of ownership of the Station to Waller Broadcasting, Inc. The purchase agreement shall include such terms as required by the Option Purchase Agreement and shall be submitted to this Court and the attorney for Robert W. Shivery

within ten days of this Judgment. Robert W. Shivery, or any other party, may request a hearing and present objections to the proposed purchase agreement. The purchase agreement must be approved by this Court.

It is further ordered that Waller Broadcasting, Inc. recover from Robert W. Shivery attorney's fees in the amount of \$22,630.00 for services rendered through the trial of this case. In the event of an appeal by Robert W. Shivery to the court of appeals, if the appeal is unsuccessful, Waller Broadcasting will be further entitled to \$7,500.00 as a reasonable attorney's fee; in the event of an appeal by Robert W. Shivery to the Supreme Court of Texas, if the appeal is unsuccessful, Waller Broadcasting Inc. will be entitled to an additional \$4,000.00 for attorney's fees. The attorney's fees awarded herein to Waller Broadcasting, Inc. shall bear interest at the rate of ten percent from the date this judgment is signed until paid. Plaintiff Waller Broadcasting, Inc. shall be entitled to issuance of writ of execution and all other available process for the collection of the judgment for attorney's fees.

During the course of this case Plaintiff has deposited funds with the Clerk of this Court. It is ordered that \$4,000.00 of those funds be paid by the Clerk to the Receiver, to be credited to Plaintiff as part of the purchase price of the Station. The Receiver shall pay his fees and all other costs of court from said \$4,000.00, and the balance shall be delivered to Robert W. Shivery. It is further ordered that all remaining funds held by the Clerk be returned to and paid to Waller Broadcasting, Inc.

The Court finds that Waller Broadcasting, Inc. paid to Robert W. Shivery total of \$6,000.00 during the months of March, April and May of 2002. It is ordered that Waller Broadcasting, Inc. receive credit in the amount of said \$6,000.00 as part of the purchase price of the Station. Waller Broadcasting, Inc. shall receive a total credit of \$10,000.00 as part of the purchase price of the Station.

It is ordered that Jack M. Sheridan shall receive a fee of \$2,550.00 for his services as receiver in this case. It is further ordered that Robert W. Shivery shall pay the \$2,550.00 fee awarded to Jack M. Sheridan.

The Receiver shall continue to have the authority and responsibility as set out in the prior order of this Court appointing the Receiver. It is ordered that all authority granted herein to the Receiver shall be subject to the approval of the Federal Communications Commission.

All relief requested by Defendant Robert W. Shivery is denied. All costs of court are taxed against the defendant Robert W. Shivery, for which let execution issue.

The Judgment signed on July 15, 2002 is vacated and replaced by this Judgment Nunc Pro Tunc. The second paragraph of the July 15, 2002 Judgment contained clerical errors including an incorrect date and incorrect designation of the parties, and this Judgment Nunc Pro Tunc is entered to correct those mistakes.

SIGNED this 15th day of July, 2002.

/s/ Gerald Goodwin

JUDGE PRESIDING