

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MAILED
SUPREME COURT
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES)
Ex rel. IRVING L. FAUGHT, Administrator,)
and DOUGLAS L. JACKSON, in his capacity as)
the court appointed receiver for the investors and)
creditors of Schubert & Assoc. and for the assets)
of Marsha Schubert, individually, and doing)
business as Schubert & Associates, and for)
Schubert & Associates,)

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

FEB 13 2007

MICHAEL S. RICHIE
CLERK

FEB 13 2007

PATRICIA PRESLEY, COURT CLERK
BY: ~~Deputy~~

Plaintiffs/Appellees,

vs.

ROBERT W. MATHEWS, MARVIN L. WILCOX,)
PAMELA J. WILCOX, DETRIA J. OWENS,)
KATHLEEN GIBSON, SHERYL MERCER,)
FRANK WARD, ALICE SUE WARD, BEN J.)
ALLEN, SHARON A. ALLEN, MICHAEL)
ROGERS, BOB E. HUDSON,)
JANICE FAGG, EDWARD G. STATON,)
KENNETH LARUE, ELLA CARR, MARTIN W.)
MATHEWS, BETH ARMER, individually, and as)
trustee for the BETH ARMER REVOCABLE)
TRUST, SHANNA KINSLOW, ROY E.)
LANDWEHR, VICKI L. LANDWEHR, SCOTT A)
WILCOX, RYAN E. LANDWEHR, LINDSEY)
LANDWEHR, JOHN PUMPHREY, CAROLYN)
PUMPHREY, JUSTIN R. TARRANT, JEFFREY)
L. WILCOX, JACQUELYN BOUNDS, STEVEN)
R. ESPOLT, PHILLIP YENZER, GLENDA)
YENZER, LOYD R. JONES, RICHARD)
BRANDON SCHUBERT, HILLARY MICHELLE)
SCHUBERT, GARRETT LEE SCHUBERT, JACK)
D. SIMPSON, SUE J. SIMPSON, ROBERT J.)
OWENS, CHAD JOHNSON, SONNY HARMON)
RODNEY J. MARTIN, WANDA MARTIN,)
K.R. LARUE, DANA LARUE,)
KENNETH YOUNG, LESLIE A. YOUNG,)
ALEXANDER YOUNG, DEAN CUE,)
CLAUDETTE CUE, THERESA PITTMAN,)
DANILE JACKSON, CRYSTAL JACKSON,)
JERALD WAYNE DRAKE, REGINA KRAUS,)
LARRY E. BERRY, ROBERT E. PROCTOR, if)
living, individually and as trustee for the PROCTOR)

Case No. CJ-2005-3796

Consolidated with

Case No. CJ-2005-3299

Supreme Court No.

#104304

PETITION IN ERROR

FAMILY REVOCABLE TRUST, and if deceased,)
his unknown successors, BOBBY PROCTOR,)
individually and as trustee for the PROCTOR)
FAMILY REVOCABLE TRUST, SANDRA K.)
PHILLIPS, ELNORA VIEFHAUS, CHESTER J.)
WEEMS, BECKY DRAKE, CURTIS R.)
SANDERS, PAUL LEE, DANNY GREGORY,)
MARTHA GREGORY, LINDA K. JINDRA,)
JOSEPHINE WARD, KERRY LONG, RAYMOND)
C. LAUBACH, GARY L. SCOTT, JAMES W.)
POWELL, BILLIE A. VINCENT, TED A. PAYNE,)
JOYCE E. PAYNE, SEAN WINN, TREY A.)
ROEHRIG, ANGELA D.)
EWERS, BRENDA L. ENOS, OLIN R. RISING,)
J.M. MILLER, WILLIS LUBER, CAROL A.)
LINDLEY, MAUDIE L. COOK, BILL HARRIS,)
REBECCA HONEYMAN, TODD A. WARD,)
WILLIAM ETHERIDGE, CHRISTOPHER)
LARUE, VIOLA M. ESTES, BRIAN)
REINHARDT, TONYA REINHARDT, JAMES)
WYATT, THELMA WYATT, ARTHUR PLATT,)
BETTE MCCLURE, PHILLIP MATTHEWS,)
BRAD POLLARD, ALLEN GRIFFITH, LINDA)
ELLIOTT, LINDA STEWART, CHELSEA)
VENABLE, GAYLE VENABLE, JAMIE)
WALKER GLOVER, RICHARD LEOEUF, E.E.)
TACKETT, TIMOTHY W. RAINS, KRISTA)
RAINS, MICHAEL L. MALLOY, RENYSSA)
WINES, MIKE BOSTICK, DON POINDEXTER,)
ANITA TARRALBO, KIRSTEN ALLARD,)
MICKE RICHEY, SHAWNA ALLEN, TIMOTHY)
JACKSON, JULIA JACKSON, BETTY LAMB,)
BILL MCCUTCHEN, BRANDI POLLARD,)
CRAIG SIMMONS, BILL D. HORN, JACK)
MCNALLY, LAURA PAYNE, MANUEL)
SEGURA, KENNETH R. WILLIAMS, BERTHA)
L. COPPER, WES PRICE, TRICIA PRICE,)
TAWNAYA MERCHANT, MARGARET)
HOOLEY, JANET L. LAWHON,)
MAY FRATES, BOB PRESTRIDGE JR.,)
GERALD D. KNIGHT, JIM COPELAND, MONTE)
PHILLIPS, VINCENT H. SCOTT, TRACY)

TARRANT, ELLEN CLAY BENNER, BRIAN)
 OWENS, LLOYD AVERY, DENISE MELOY,)
 GARY L. BOUNDS, DONALD D. HALL, KEVIN)
 L. CARNES, CECIL WILLIAMS, JEFFREY)
 PALMER, MARK RICHARDS, MELINDA)
 HOBBS, JODI SHARP, and BEVERLY KEGIN,)
)
 Defendants,)
)
 ARTHUR PLATT, YVONNE PLATT,)
 MARVIN WILCOX, AND PAMELA WILCOX,)
)
 Defendants/Appellants.)

PETITION IN ERROR

 X PETITION IN ERROR
 AMENDED OR SUPPLEMENTAL PETITION
 CROSS PETITION
 COUNTER-PETITION
 DATE FIRST PETITION IN ERROR FILED: _____

I. TRIAL COURT HISTORY

COURT/TRIBUNAL: District Court
 COUNTY: Oklahoma
 CASE NO.: CJ-2005-3796 consolidated with CJ-2005-3299
 JUDGE: Patricia G. Parrish
 NATURE OF CASE: Securities action
 (e.g. Divorce, Personal Injury)

NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR:
Arthur Platt, Yvonne Platt, Marvin Wilcox, and Pamela Wilcox

THE APPEAL IS BROUGHT FROM: (Check one)
 X Judgment, Decree or Final order of District Court.
 X Appeal from order granting summary judgment or motion to dismiss
 where motion filed after October 1, 1993 (Accelerated procedure under
 Rule 1.36).
 Appeal from Revocation of Driver's License (Rule 1.21(b)).
 Final Order of Other Tribunal.

(Specify Corporation Commission, Insurance Department, Tax Commission, Court of Tax Review, Banking Board or Banking Commissioner, etc. _____)

____ Interlocutory Order Appealable by Right.

____ Other _____

II. TIMELINESS OF APPEAL

1. Date of judgment, decree or order appealed was filed: February 5, 2007
2. *If decision was taken under advisement*, date judgment, decree or order was mailed to parties: February , 2007
3. Does the judgment or order on appeal dispose of all claims by and against all parties? ___ Yes ___ No.
If not, did district court direct entry of judgment in accordance with 12 O.S. Supp.1995 994? ___ Yes ___ No.
When was this done? February 5, 2007
4. If the judgment or order is not a final disposition, is it appealable because it is an Interlocutory Order Appealable by Right? ___ Yes ___ No.
5. If none of the above applies, what is the *specific* statutory basis for determining the judgment or order is appealable? _____
6. Were any post-trial motions filed?

<u>Type</u>	<u>Date Filed</u>	<u>Date Disposed</u>
-------------	-------------------	----------------------
7. This Petition is filed by: ___ _____ Delivery to Clerk, or
_____ Mailing to Clerk by U.S. Certified Mail,
Return Receipt Requested, on _____

III RELATED OR PRIOR APPEALS

List all prior appeals involving same parties or same trial court proceeding:

Original Jurisdiction matter was filed on October 28, 2005. It was styled: Robert L. Mathews, et al v. The Honorable Patricia A. Parrish, District Court Judge for Oklahoma County, Case No.102,717, original jurisdiction not assumed; Oklahoma Department of Securities et al v. Marsha Schubert et al, Case No. 102,716, dismissed

List all related appeals involving same issues: Original Jurisdiction matter was filed on

October 28, 2005. It was styled: Robert L. Mathews, et al v. The Honorable Patricia A. Parrish, District Court Judge for Oklahoma County, Case No. 102,717, original jurisdiction not assumed; Oklahoma Department of Securities et al v. Marsha Schubert et al, Case No. 102,716, dismissed.

(Identify by Style, Appeal Number, Status, and Citation, if any. If none, so state.)

IV. SETTLEMENT CONFERENCE

Is appellant willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250? ___ Yes ___ X No

V. RECORD ON APPEAL

_____ A Transcript will be ordered.
_____ No Transcript will be ordered because no record was made and/or no transcript will be necessary for this appeal
_____ A Narrative Statement will be filed
 X Record is concurrently filed as required by Rule 1.34 (Driver's License Appeals, etc.) or Rule 1.36 (Summary judgments and motions to dismiss granted).

VI JUDGMENT, DECREE OR ORDER APPEALED – EXHIBIT “A”

(Attach as Exhibit “A” to the Petition in Error a certified copy of the judgment, decree or order from which the appeal is taken. If a post-trial motion extending appeal time under Rule 1.22 was filed, a certified copy of the order disposing of the motion must be attached also.)

VII SUMMARY OF CASE – EXHIBIT “B”

Attach as Exhibit “B” a brief summary of the case *not to exceed one 8 ½” x 11” double spaced page.*

VIII ISSUES TO BE RAISED ON APPEAL – EXHIBIT “C”

Attach as Exhibit “C” the issues proposed to be raised. Include each point of law alleged as error. Avoid general statements such as “Judgment not supported by law.”

IX NAME OF COUNSEL OR PARTY, IF PRO SE

ATTORNEYS FOR APPELLANTS

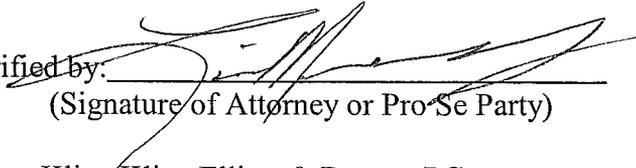
Name: G. David Bryant,
OBA No.: 01264
Name: Lisa Mueggenborg,
OBA No.: 18595
Firm: Kline Kline Elliott & Bryant, PC
Address.: 720 N.E. 63rd Street
Oklahoma City, Oklahoma 73105
Telephone: (405) 848-4448
Telecopier: (405) 842-4539

ATTORNEY FOR APPELLEES

Name: Gerri Stuckey
OBA No.: 16732
Name: Amanda Cornmesser
OBA No.: 20044
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Address: 120 North Robinson, Suite 860
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Telephone: (405) 280-7700
Telecopier: (405-280-7742

Name: Bradley E. Davenport
OBA No.: 18687
Firm: Gungoll, Jackson, Collins, Box & Devoll
Address: Post Office Box 1549
Enid, Oklahoma 73702-1549
Telephone: 580-234-0436
Telecopier: 580-233-1284

DATE: February 13, 2007

Verified by: 
(Signature of Attorney or Pro-Se Party)

Firm: Kline Kline Elliott & Bryant, PC
Address: 720 N.E. 63rd Street
Oklahoma City, Oklahoma 73105
Telephone: (405) 848-4448
Telecopier: (405) 842-4539

CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

I hereby certify that a true and correct copy of the Petition in Error was mailed this 13th day of February, 2007 to:

Amanda Cornmesser
Gerri Stuckey
Melanie Hall
First National Center, Suite 860
120 North Robinson
Oklahoma City, Oklahoma 73102

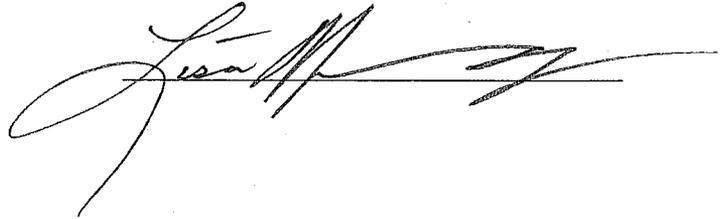
Bradley E. Davenport
323 W. Broadway Avenue
Enid, Oklahoma 73701-1549

Attorney for the Receiver,
Douglas L. Jackson

Attorneys for Oklahoma
Department of Securities

By depositing it in the U.S. Mails, postage prepaid.

I further certify that copy of the Petition in Error was filed in the Office of the Oklahoma County District Court Clerk on the 13th day of February, 2007.





FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FEB - 5 2007

PATRICIA PREBLEY COURT CLERK
by Shaw
Deputy

OKLAHOMA DEPARTMENT OF SECURITIES)
ex rel. IRVING L. FAUGHT, Administrator, et al.,)
)
Plaintiffs,)
v.)
)
ROBERT W. MATHEWS, et al.,)
)
Defendants.)

Case No. CJ-2005-3796

JOURNAL ENTRY OF JUDGMENT

NOW on the 31st day of ~~November~~ ^{January}, 2007, the *Motion for Summary Judgment* relative to Arthur and Yvonne Platt filed by the Plaintiffs, Douglas L. Jackson, in his capacity as court appointed receiver for the benefit of the claimants and creditors of Marsha Schubert and Schubert and Associates, and the Oklahoma Department of Securities, was decided by the Court without hearing pursuant to Rule 4(h) of the Rules of the District Courts of Oklahoma.

Based on the motions and briefs filed, the arguments of counsel, and being fully advised in the premises, this Court finds as follows:

1. There is no genuine issue of material fact pertaining to Plaintiffs' unjust enrichment cause of action against Defendants Arthur and Yvonne Platt; and,
2. Plaintiffs' *Motion for Summary Judgment* against Defendants Arthur and Yvonne Platt, should be and hereby is granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that summary judgment is entered, jointly and severally, against Defendants Arthur and Yvonne Platt on Plaintiffs' unjust enrichment cause of action, and Arthur and Yvonne Platt are ordered to disgorge and/or repay to Plaintiffs the amount of \$8,749.00, plus interest accruing thereon at the

B

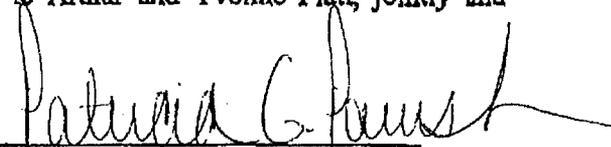


statutory rate from the date this summary judgment is entered until paid in full, and costs of the action in the amount of \$110.00.

IT IS FURTHER ORDERED that Defendants Arthur and Yvonne Platt shall disgorge and/or repay the sums of money set forth above, including interest, to Plaintiff/Receiver, Douglas L. Jackson.

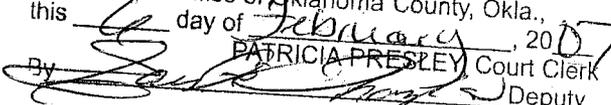
IT IS FURTHER ORDERED that there is no just reason for delay and the Court expressly directs the filing of a final judgment as to Arthur and Yvonne Platt, jointly and severally.

Date: 1/31/07


Honorable Patricia G. Parrish
Judge of the District Court

Approved as to Form:


Amanda Commesser, OBA #20044
Gerr Stuckey, OBA #16732
Melanie Hall, OBA #1209
Oklahoma Department of Securities
120 N. Robinson, Suite 860
Oklahoma City, OK 73120
(405) 280-7700 phone/(405) 280-7742
Attorneys for Plaintiff, Oklahoma Dept. of Securities
Approved as to Form:

I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerks Office of Oklahoma County, Okla., this 6 day of February, 2007
By  PATRICIA PRESLEY, Court Clerk
Deputy


Bradley E. Davenport, OBA #18687
GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.
Post Office Box 1549
Enid, Oklahoma 73702-1549
(580) 234-0436 phone/(580) 233-1284 fax
Attorneys for Plaintiff/Receiver, Douglas L. Jackson



G. David Bryant, OBA #01264

Lisa Mueggenborg, OBA #18595

Kline Kline Elliott & Bryant, PC

720 N.E. 63rd St.

Oklahoma City, OK 73105

Attorneys for Defendants, Arthur and Yvonne Platt

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of February, 2007, a true and correct copy of the above and foregoing was mailed by U.S. Mail, with postage prepaid thereon, addressed to:

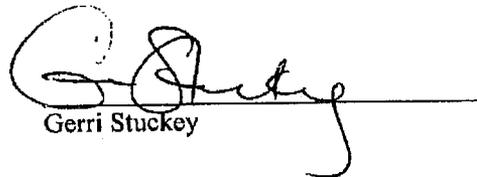
Bradley E. Davenport
Gungoll, Jackson, Collins, Box &
Devoll, P.C.
P.O. Box 1549
Enid, OK 73702-1549

G. David Bryant
Lisa M. Mueggenborg
Kline, Kline, Elliot & Bryant
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Oklahoma City, OK 73105

S Alex Yaffe
Foshee and Yaffe
PO Box 890420
Oklahoma City, OK 73189

Garrett Lee Schubert
1112 Emma Lane
Stillwater, OK 74074

Hillary Schubert
723 S. Third
Medford, OK 73759-3704

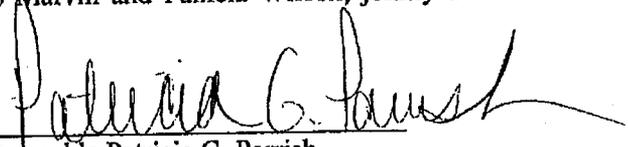

Gerri Stuckey

the statutory rate from the date this summary judgment is entered until paid in full, and costs of the action in the amount of \$110.00.

IT IS FURTHER ORDERED that Defendants Marvin and Pamela Wilcox shall disgorge and/or repay the sums of money set forth above, including interest, to Plaintiff/Receiver, Douglas L. Jackson.

IT IS FURTHER ORDERED that there is no just reason for delay and the Court expressly directs the filing of a final judgment as to Marvin and Pamela Wilcox, jointly and severally.

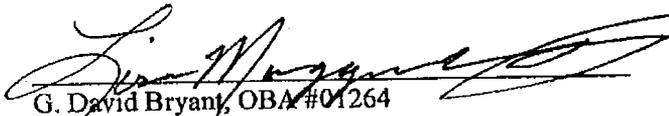
Date: 1/31/07


Honorable Patricia G. Parrish
Judge of the District Court

Approved as to Form:



Amanda Cornmesser, OBA #20044
Gerri Stuckey, OBA #16732
Melanie Hall, OBA #1209
Oklahoma Department of Securities
120 N. Robinson, Suite 860
Oklahoma City, OK 73120
(405) 280-7700 phone/(405) 280-7742
Attorneys for Plaintiff, Oklahoma Dept. of Securities

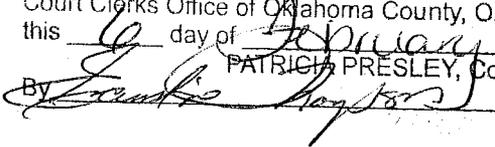

G. David Bryan, OBA #01264

Lisa Mueggenborg, OBA #18595

Kline Kline Elliott & Bryant, PC
720 N.E. 63rd St.

Oklahoma City, OK 73105

Attorneys for Defendants, Marvin and Pamela Wilcox

I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerks Office of Oklahoma County, Okla., this 6 day of February, 2007
By  PATRICIA PRESLEY, Court Clerk
Deputy

Approved as to Form:

Bradley E. Davenport
Bradley E. Davenport, OBA #18687
GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.
Post Office Box 1549
Enid, Oklahoma 73702-1549
580) 234-0436 phone/(580) 233-1284 fax
Attorneys for Plaintiff/Receiver, Douglas L. Jackson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of February, 2007, a true and correct copy of the above and foregoing was mailed by U.S. Mail, with postage prepaid thereon, addressed to:

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Devoll, P.C.
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G. David Bryant
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PO Box 890420
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Garrett Lee Schubert
1112 Emma Lane
Stillwater, OK 74074

Hillary Schubert
723 S. Third
Medford, OK 73759-3704

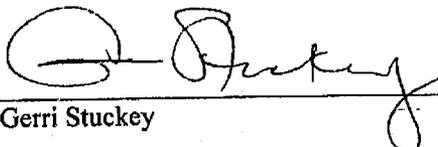

Gerri Stuckey

EXHIBIT "B" -- APPELLANTS' STATEMENT OF THE CASE

This case arises out of a dispute as to monies received by Appellants as the result of a ponzi scheme conducted by Marsha Schubert, an individual d/b/a Schubert & Associates ("Schubert"). Appellants were innocent victims of the scheme and had no knowledge of the scheme until Schubert was criminally charged. Appellee, Oklahoma Department of Securities brought this action pursuant to the Oklahoma Uniform Securities Act. A receivership action was initiated against Schubert in the District Court of Logan County. As a result of this action, the Receiver was appointed. Appellee, Receiver, brought this action pursuant to the Logan County Order of Receivership. Appellees alleged causes of action against Appellants for unjust enrichment and for fraudulent transfer under the Oklahoma Uniform Fraudulent Transfers Act. Subsequently, Appellees withdrew the fraudulent transfer claim.

Appellees admitted in their pleadings that Appellants were not violators of the Securities Act and that Appellants believed they were making investments. At no time prior to October 2004 were the Appellants aware of the wrongful acts being committed by Schubert. Appellants deposited their investment money in their investment accounts through Schubert as the registered agent of various brokerage firms. Therefore, consideration was provided by Appellants as to their individual investments. Appellants had a good faith belief that all monies received, which are now the subject of this lawsuit, were funds that rightfully belonged to them. On October 10, 2006 Appellees filed a Motion for Summary Judgment against Defendants Arthur and Yvonne Platt and filed a Motion for Summary Judgment against Defendants Marvin and Pamela Wilcox on October 24, 2006. The trial court granted Appellees' Motions for Summary Judgment and Appellants appeal therefrom.