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No. 115025

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator,
Plaintiff/Appellee,

v.

Seabrooke Investments LLC, and Oklahoma limited liability company; Seabrooke Realty LLC; and Oklahoma limited liability company; Oakbrooke Homes LLC; an Oklahoma limited liability company; Bricktown Capital LLC; an Oklahoma limited liability company; KAT Properties LLC; an Oklahoma limited liability company; Cherry Hill LLC; an Oklahoma limited liability company; Cherry Hill Apartments; Tom W. Seabrooke, individually and as trustee of the Tom Seabrooke 2007 Revocable Trust and J. Karyn Seabrooke 2007 Revocable Trust; and Judith Karyn Seabrooke, individually and as trustee of the Tom Seabrooke 2007 Revocable Trust and J. Karyn Seabrooke 2007 Revocable Trust,
Defendants,

and

Ryan Leonard,
Court Appointed Receiver/Appellee,

and

Wayne Doyle,
Intervenor/Appellant.

**Appeal from the District Court of Oklahoma County
Case No. CJ-2014-4515
Before the Honorable Patricia Parrish**

BRIEF OF THE OKLAHOMA DEPARTMENT OF SECURITIES

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SUMMARY OF RECORD

Procedural Background

On August 11, 2014, the Oklahoma Department of Securities (Department) filed a civil action against Tom W. and J. Karyn Seabrooke and their companies, Seabrooke Investments LLC; Seabrooke Realty LLC; Oakbrooke Homes LLC; Bricktown Capital LLC; KAT Properties LLC; and Cherry Hill LLC (collectively, "Defendants"), for violations of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§1-101 through 1-701 (2011). ROA, Petition, p.1-18. The Oklahoma County District Court (District Court) appointed Ryan Leonard as receiver (Receiver) for all Defendants and for their assets. ROA, Temporary Restraining Order, p.21-25; Temporary Injunction, p.34-42. Since his appointment, the Receiver has liquidated the assets of the Defendants pursuant to orders of the District Court. ROA, Receiver's Report on Claims, p.593-632.

To resolve the allegations against them, Defendants Tom Seabrooke, Seabrooke Investments LLC, Seabrooke Realty LLC, Oakbrooke Homes LLC, Bricktown Capital LLC, KAT Properties LLC and Cherry Hill LLC, consented to the issuance of a final order of permanent injunction, agreed to pay court ordered restitution to investors as to be determined by the District Court, and waived any rights to the assets, properties, and funds of the receivership estate. ROA, Final Order, Judgment and Permanent Injunction, p.579-581. Defendant J. Karyn Seabrooke consented to the issuance of a final order, wherein she also waived any rights to the assets, properties, and funds of the receivership estate. ROA, Judith Karyn Seabrooke Final Order, p.582-584.

On February 4, 2015, the District Court granted a conditional intervention in this case to Wayne Doyle (Doyle). ROA, Agreed Order Authorizing Conditional Intervention by

Wayne Doyle, p.89-103. On April 7, 2015, Doyle asked the District Court to disburse to him the proceeds from the December 2014 sale of the Bricktown Hotel and Convention Center (Bricktown Hotel), based on his claimed mortgage indebtedness. ROA, Motion to Disburse Interpled Funds, p.196-227. The Bricktown Hotel was initially an asset of the receivership but was released by agreed order of the District Court after the Receiver determined that the hotel had been operating at a deficit for at least one year and that the value of the hotel was less than the value of the hotel's existing mortgages. ROA, Order Modifying Relief, p.43-48. After releasing the Bricktown Hotel as an asset of the receivership, the District Court ordered that any excess proceeds from the sale of the hotel, after the payment of valid mortgages, be paid as investor restitution. ROA, Order Modifying Relief, p.43-48. The Receiver and the Department objected to the disbursement to Doyle claiming that the proceeds were to be paid for investor restitution as directed by the previous order of the District Court. ROA, Department's Response to Doyle Motion to Disburse Interpled Funds, p. 290-351; Receiver's combined objection to Doyle Motion to Disburse Interpled Funds, p.433-564.

On August 5 and August 10, 2015, an evidentiary hearing was held for the District Court to consider the proper disbursement of the Bricktown Hotel proceeds. ROA, Appearance Docket, p. 765-803. On August 21, 2015, the District Court issued an order that included *Findings of Fact and Conclusions of Law* (August 2015 Order) denying any disbursement to Doyle, and his wholly-owned company Remington Express, and reclassifying his funds paid stating, "all funds, regardless of whether Wayne Doyle or Remington Express contributed them and regardless of who the payee was, should be reclassified as capital contributions." ROA, Findings of Fact, p.570.

In the meantime, the District Court ordered a claims process whereby proofs of claim were filed with the Receiver by potential creditors and/or claimants of the receivership estate. ROA, Agreed Order Establishing Procedure to Notify Creditors and/or Claimants to Make Claims, p. 89-103. Numerous claims totaling over \$15 million were filed with the Receiver, including a claim from Doyle seeking \$3,288,489.38. ROA, Receiver's Report on Claims, p.602-606. Among the entries and documentation included in Doyle's Proof of Claim were the following:

mortgage advances made, accrued interest, and legal fees;

payments made for expenses noted as furniture, taxes, televisions, equipment, and air conditioning units, and miscellaneous;

payments received from sources noted as litigation settlement proceeds, reimbursement for furniture, hotel expenses, taxes and interest;

copies of checks and cashier's checks payable to Oakbrooke Homes, LLC, several to Seabrooke Investments, LLC, several to Tom Seabrooke, Quail Creek Bank, Blackmon Mooring of OKC, and two to Bricktown Capital, LLC;

Promissory Note dated April 9, 2014;

Real Estate Mortgage dated April 9, 2014;

Receipts to Doyle, Remington Express Enterprises, Bricktown Capital, LLC, and Tom Seabrooke; and

2013 Oklahoma County delinquent tax bill for Bricktown Capital, LLC.

ROA, Proof of Claim, p.233-274.

On December 22, 2015, the Receiver filed *Receiver's Report on Claims and Recommendation for Classification of Same* (Receiver's Report) regarding the distribution of the assets of the receivership estate based on the claims received. ROA, Receiver's Report on Claims, p.593-632. In the Receiver's Report, the Receiver evaluated relevant facts for all claims and made individual recommendations for each claim, including the claim of Doyle,

and recommended that Doyle's claim be denied in full. ROA, Receiver's Report on Claims, p.602-606. Doyle filed an objection. ROA, Objection to Receiver's Report on Claims and Recommendation for Classification of Claim of Wayne Doyle, p.636-650. The Receiver and Department filed responses. ROA, Department's Response to Objection to Receiver's Report on claim of Wayne Doyle, p.673-691; Receiver's Response to Objection of Wayne Doyle, p.651-672.

A hearing was held before the District Court on February 29, 2016 to consider the Receiver's Report and all objections filed thereto. ROA, Appearance Docket, p. 765-803. On March 1, 2016, the District Court emailed a decision to all relevant parties, denying the objection of Doyle. ROA, Affidavit of Robert D. Edinger, p.732. Subsequently, the Receiver notified the relevant parties that the District Court requested the submissions of proposed findings of fact and conclusions of law. ROA, Affidavit of Robert D. Edinger, p.733. On April 15, 2016, the Department submitted a proposed order to the District Court containing proposed findings of fact and conclusions of law and provided copies to all relevant parties. ROA, Affidavit of Robert D. Edinger, p.733. On April 18, 2016, the Receiver submitted his proposed order to the District Court containing proposed findings of fact and conclusions of law and provided copies to all relevant parties. ROA, Affidavit of Robert D. Edinger, p.734. The Department did not receive any communication that Doyle submitted a proposal to the District Court. On April 27, 2016, the District Court issued the *Order and Judgment Approving Receiver's Report on Claims and Authorizing Receiver's Distribution to Creditors* (Order and Judgment), denying Doyle's claim. ROA, Order and Judgment, p.709-721. Doyle appeals from this Order and Judgment of the District Court.

Doyle's Unique Relationship with Defendants

Doyle had an intricate business relationship with Defendants spanning a period of years prior to and continuing through this receivership. ROA, Findings of Fact, p.565. Doyle contributed funds to Defendants beginning in May 2009, and continued to provide funds to various Defendants through December 2014. ROA, Findings of Fact, p.565. Many of the funds were provided by Doyle without any documentation. ROA, Findings of Fact, p.565.

On December 23, 2012, Doyle sought to evidence his previously undocumented contributions to Defendants by entering into the following promissory notes with Tom Seabrooke and Bricktown Capital, LLC (Bricktown Capital):

- A. "...a Promissory Note for 'the principal sum not to exceed TWO HUNDRED NINETY FIVE THOUSAND AND 00/000 DOLLARS (\$295,000.00) together with interest thereon, ... and an additional 4% equity position in Bricktown Capital LLC.'"
- B. "...a Promissory Note for 'the principal sum not to exceed FIVE HUNDRED NINETY FIVE THOUSAND AND 00/000 DOLLARS (\$500,000.00) together with the interest thereon, ... and an additional 1% equity position in Bricktown Capital LLC.' The Note was secured, in part, by a 20% ownership interest to Doyle in Bricktown Capital, LLC."
- C. "...a Promissory Note for 'the principal sum not to exceed EIGHT HUNDRED THOUSAND and 00/000 DOLLARS (\$800,000.00) together with interest thereon. The Note was secured, in part, by a 45% ownership interest to Doyle in Bricktown Capital, LLC.'"

ROA, Findings of Fact, p.566; Intervenor Exs. #7-9. None of the promissory notes introduced into evidence were signed. ROA, Doc. 32, Findings of Fact, p.566.

On February 3, 2011, prior to entering into the three notes with Bricktown Capital, Doyle acquired a 35% ownership interest in Bricktown Capital when he entered into an agreement with Bricktown Capital, Tom Seabrooke, Ronald R. Hope and Quail Creek Bank. ROA, Findings of Fact, p.566. Pursuant to the agreement, Doyle assumed the personal

guaranty of the Quail Creek Bank mortgage on the Bricktown Hotel, knowing that the hotel was the largest asset of Bricktown Capital and that the hotel had not made a profit since 2007. ROA, Findings of Fact, p.566; 568. On February 3, 2011, Doyle also executed an Operating Agreement with Bricktown Capital whereby he became a limited liability company member of Bricktown Capital. ROA, Findings of Fact, p.566. In December 2011, Bricktown Capital, Tom Seabrooke and Doyle entered into an agreement with Quail Creek Bank to address the payment of the Bricktown Capital loan that was then in default. ROA, Findings of Fact, p.566.

On December 16, 2013, Doyle and Tom Seabrooke, as “members doing business under the firm name and style of Bricktown Capital LLC” and constituting “all members thereof”, applied to borrow \$748,500 from the United States Small Business Administration (SBA) to repair storm damage to the Bricktown Hotel. ROA, Tr. of August 5, 2015 proceedings, p.52-53, Intervenor exs. #4-6.

As a member of Bricktown Capital, Doyle paid outstanding bills of the company and provided funds for payroll expenses. ROA, 4 Findings of Fact, p.567. Among those payments were \$225,000 on March 20, 2014, to Blackman Mooring; \$23,500 on April 25, 2014, for air conditioning units; and \$50,000 on May 14, 2014, for payroll. ROA, Findings of Fact, p.567.

By April 2014, in addition to his 35% ownership interest of Bricktown Capital, Doyle had acquired an additional 45% ownership interest. ROA, Findings of Fact, p.567. On April 9, 2014, Doyle and Bricktown Capital consolidated all contributions Doyle made to Defendants by entering into a Promissory Note and mortgage in the amount of \$2,759,120.25. ROA, Findings of Fact, p.567.

As previously mentioned, the Bricktown Hotel was briefly an asset of the receivership estate and was released on September 9, 2014, when Bricktown Capital resumed the operation of the hotel. ROA, Findings of Fact, p.567. After the Bricktown Hotel was released from the receivership estate, Doyle continued to make payments on behalf of Bricktown Capital including: \$50,000 for payroll on October 6, 2014; a \$30,000 credit card payment on December 8, 2014; \$50,000 to release a lien against the hotel on December 22, 2014; and \$48,000 to Pawnee Leasing Corp. on December 30, 2014. ROA, Findings of Fact, p.568.

Doyle testified that all the funds he contributed were loans but the books of Bricktown Capital never reflected any loans by Doyle. ROA, Findings of Fact, p.568.

Between May 28, 2009 and March 27, 2014, Doyle received multiple payments totaling \$681,577.43 from Tom Seabrooke, Bricktown Capital and affiliated entities. ROA, Findings of Fact, p.568. Of this amount, Doyle testified \$228,894.66 was a bonus payment from Bricktown Capital for Doyle's "risk compensation." ROA, Findings of Fact, p.568.

ARGUMENTS AND AUTHORITIES

I.

Judgment of the District Court Was Supported by the Weight of the Evidence and Should be Upheld

The Department's case against the Defendants was an equity receivership action filed pursuant to Section 1-603 of the Act. In *State ex rel. Weatherford v. Senior Sec. Life Ins. Co.*, 1996 OK CIV APP 32, 916 P.2d 288, 290, the court considered the standard of review for an appeal relating to an equity receivership action and stated "we must examine the entire record and will not disturb the trial court's decision unless it is clearly against the weight of the

evidence or contrary to law or established principles of equity”, citing *Dumas v. Conyer*, 1968 OK 165, 448 P.2d 835.

Likewise, in *A. A. Murphy, Inc. v. Banfield*, 1961 OK 197, 363 P.2d 942, 945, another suit of equitable cognizance, the Supreme Court concluded it will examine the entire record and weigh the evidence, but unless the decree of the lower court is found to be clearly against the weight of the evidence or contrary to established principles of equity jurisprudence, it will not be disturbed on appeal. *Cox v. Sarkeys*, 1956 OK 294, 304 P.2d 979; *Frank Harber Buick, Inc. v. Miller*, 1958 OK 181, 328 P.2d 716; *McKenna v. Lasswell*, 1952 OK 393, 207 Okla. 408, 250 P.2d 208.

Over a period of a year and a half, the District Court had multiple opportunities to hear and consider the issues in this case relating to Doyle’s intricate relationship with the Defendants and the funds he contributed to the Defendants through his *Motion to Disburse Interpled Funds* and his *Objection to Receiver’s Report on Claims and Recommendation for Classification of Claim of Wayne Doyle*. The District Court copiously considered these matters relating to Doyle. The District Court had the benefit of hearing witness testimony and arguments of all relevant parties, and reviewing the evidence and briefs before issuing the Order and Judgment, including its findings of fact and conclusions of law on each issue. In such case, the judgment should be upheld on appeal. *Brown v. Lambdin*, 1975 OK 155, 531 P.2d 1386, 1392. In *Renegar v. Bruning*, 1942 OK 99, 190 Okla. 340, 123 P.2d 686, 688, where testimony was conflicting and the trial court rendered judgment for the plaintiff, the Supreme Court held that it would assume on appeal from the judgment that the trial court found all of the disputed issues of fact in favor of plaintiff. A judgment will not be disturbed on appeal if the evidence reasonably tends to support the findings of the trial court. *Boughan*

v. Herington, 1970 OK 125, 472 P.2d 434, 436. Doyle has not demonstrated that the District Court's decision is clearly against the weight of the evidence or contrary to law or established principles of equity, and the order of the District Court should be sustained. *Weatherford* at 290.

II.

Court Has Broad Equitable Discretion to Determine Appropriate Relief in Equity Receivership

Section 1-603 of the Act authorizes a district court, in a case involving a violation of the Act, to issue a permanent or temporary injunction, restraining order, or declaratory judgment; to order appropriate or ancillary relief including, but not limited to, an asset freeze, appointment of a receiver, and order of restitution or disgorgement; and to order such other relief as the court considers appropriate.

In *State ex rel. Day v. Southwest Mineral Energy, Inc.*, 1980 OK 118, 617 P.2d 1334, 1338, the Supreme Court reviewed a case brought by the Department wherein the defendants, both individual and corporate, were alleged to have engaged in violations of the registration and anti-fraud provisions of the Act. The Court quoted the Supreme Court of the United States in *Porter v. Warner Holding Company*, 328 U.S. 395, 398, 66 S.Ct. 1086, 90 L.Ed. 1332, 1336-37 (1946), stating:

Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction. And since the public interest is involved in a proceeding of this nature, those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.... Power is thereby resident in the District Court, in exercising this jurisdiction, 'to do equity and to mould each decree to the necessities of the particular case.'

The Court then went on to state:

Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative

commandUnless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. 328 U.S. 395, at 388, 66 S.Ct. 1086, at 1089, 90 L.Ed. 1332, at 1337.

The *Day* decision adopted the reasoning in *Porter v. Warner Holding Company, supra*, finding that Oklahoma districts courts have equitable powers in actions brought under the Act and, “[o]nce the equity jurisdiction of the District Court has properly been invoked, the Court possesses the necessary power to fashion appropriate remedies.” *Id.* at 1338.

Section 1-608(A) of the Act promotes the goal of state and federal uniformity, and the Oklahoma Supreme Court has acknowledged that the judicial interpretation of the federal securities acts, upon which Oklahoma’s securities laws are modeled, is properly considered in the interpretation of similar state securities provisions. *Id.* at 1339-40; *Oklahoma Department of Securities ex rel. Faught v. Blair*, 2010 OK 16, 231 P.3d 645.

One principle that has been consistently recognized in state and federal securities cases is that districts courts have “broad powers and wide discretion to determine the appropriate relief in an equity receivership,” *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992), and to craft remedies for securities violations. *SEC v. Wang*, 944 F.2d 80, 85 (2nd Cir. 1991), *Worldcom Inc. v. SEC* 467 F.3d 73, 84 (2nd Cir. 2006). According to the United States Supreme Court, in shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow. *Lemon v. Kurtzman*, 411 U.S. 192, 200, 93 S.Ct. 1463, 36 L.Ed.2d 151 (1973). Within that broad authority is the power to approve a plan of distribution proposed by a receiver. *See SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 82–83 (2d Cir. 2002) (affirming approval of distribution plan as “within the equitable discretion of the District Court”). The District Court has the authority to allocate assets in an

equity receivership and to approve any distribution plan provided it is fair and reasonable. *Wang* 944 F.2d at 85, *Worldcom* 467 F.3d at 84.

III.

Doyle's Relationships with Defendants Position Him in a Unique Creditor Class of One

Doyle claims that he is entitled to share pro rata with other members of the same class of creditors. However, there is no other claimant in the same class of creditors with Doyle. It is clear from a review of the other claims under consideration in the claims process that no other claimant had anything but an investment with Defendants, no matter how the investment was designated on documents drafted by Defendants. The District Court agreed. As this Court found in *Oklahoma Department of Securities ex rel. Faught v. Blair, supra* at 668, “[e]quity elevates substance over form.” Further, the District Court did not characterize any other claimant’s funds as capital contributions. Doyle was in a class of his own.

Doyle asserts that all investors be treated the same regardless of whether their cash advances are deemed loans or capital contributions. In *SEC v. Credit Bancorp, Ltd., supra* at 88-89, the court, in supporting a pro rata distribution of funds in an SEC receivership, stated:

Courts have favored pro rata distribution of assets where, as here, the funds of the defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders.

The court in *SEC v. Byers*, 637 F. Supp. 2d 166, 180 (S.D.N.Y. 2009), in making a determination of whether parties were similarly situated, stated, “their circumstances need not be identical, but there should be a reasonably close resemblance of facts and circumstances.” (citing *Lizardo v. Denny’s Inc.*, 270 F.3d 94, 101 (2d Cir. 2001)). The court in *McGuinness v. Lincoln Hall*, 263 F.3d 49, 53 (2d Cir. 2001), held that “similarly situated” does not mean “identical”, but rather similar “in all material respects.”

In this case, a vast set of facts distinguish Doyle from other claimants. Doyle would like the Court to believe that he was treated in a discriminatory fashion by the District Court and that his “sole distinguishing characteristic that was identified by the Trial Court was Doyle’s attempt to take a mortgage to secure the advances he had made to Seabrooke.” Nothing could be more disingenuous. The District Court heard testimony and examined documents that distinguished Doyle’s relationship with Defendants from all other claimants.

In February, 2011, Doyle became a member of the limited liability company, Bricktown Capital, and became a 35% owner of Bricktown Capital and the Bricktown Hotel. Subsequently, Doyle acquired an additional 45% ownership interest in Bricktown Capital and the Bricktown Hotel. Doyle, on behalf of Bricktown Capital and the Bricktown Hotel, guaranteed the mortgage with Quail Creek Bank. Doyle participated jointly with Tom Seabrooke to obtain an SBA loan on behalf of Bricktown Capital. Doyle paid outstanding bills and expenses of Bricktown Capital and provided funds for Bricktown Hotel payroll. He created three December 23, 2012 promissory notes with Bricktown Capital and Tom Seabrooke, that provided for a significant range of interest rates payable to him of six percent (6%), ten percent (10%), and eighteen percent (18%). In Doyle’s Proof of Claim, he provides his own details of his financial interactions with Defendants.

Of the claimants who were solicited by Defendants to invest money, none had protracted business relationships with Defendants or were able to financially protect themselves except Doyle. No other claimant was a member of a Defendant limited liability company. No other claimant had a controlling interest in or the ability to control any Defendant entity. No other claimant paid bills for or expenses of any Defendant entity. No other claimant was involved in negotiations with banks and government agencies for the

financial benefit of Defendants. No other claimant received a bonus payment from Defendants for risk compensation. Doyle was the only claimant with extensive business and financial relationships with Defendants, so much so, that he was able to seek the means to receive substantial payments from the Defendants and to draft legal documents to bolster his position. For these reasons, Doyle clearly established that he is in a claimant class of his own.

IV.

Response to Doyle's Proposition I: Equity Supports the Exclusion of Doyle's Claim Seeking Additional Funds

It is clearly established that the District Court has the authority to allocate assets in an equity receivership and to approve any distribution plan provided it is fair and reasonable. *SEC v. Wang, supra, Worldcom, Inc. v. SEC, supra* at 81. The Seabrooke claims process summarized by the Receiver in the Receiver's Report concluded that, after the liquidation of Defendants' assets, there are inadequate funds to pay all claimants in full. The parties in this case are no different than the parties in civil actions brought by the United States Securities and Exchange Commission to address violations of the federal securities laws. In *Worldcom, Inc. v. SEC, supra*, and *SEC v. Byers, supra* at 180, funds available for distribution were insufficient to pay claimants in full. *Worldcom* 467 F.3d at 84 and *Byers* 637 F. Supp. 2d at 183. As the *Worldcom* court observed, "when funds are limited, hard choices must be made." 467 F.3d at 84. The *Byers* court observed that an "equitable plan is not necessarily a plan that everyone will like," quoting *SEC v. Credit Bancorp, Ltd., supra* at 82-83. *Byers supra* at 168.

A distribution to Doyle would be at the expense of claimants who previously recovered little or nothing at all. It would be inequitable for Doyle to receive additional monies. *Worldcom Inc. V. SEC* at 84, *Byers* at 183. The most grievously injured claimants

should receive the greatest share of the available funds. *Worldcom Inc. V. SEC* at 84, citing *SEC v. Certain Unknown Purchasers of the Common Stock of & Call Options for the Common Stock of Santa Fe International Corp.*, 817 F.2d 1018, 1020-1021 (2d Cir.1987).

Doyle would like this Court to believe that the District Court found that he “invested \$2,355,200 with Seabrooke” and that the District Court “determined the amount he was repaid on his investments, establishing Doyle’s loss on his investment as \$1,673,622.60.” The District Court made no such findings. Instead, the District Court, after considering the Receiver’s Report, the objections thereto, and the briefs filed by the parties, found that Doyle and Remington, his wholly-owned company, “provided” \$2,355,200 to Tom Seabrooke and his various entities and “received” \$681,577.43 from Tom Seabrooke, Bricktown Capital, LLC, and various other entities. The District Court then found that Doyle’s contributions were capital contributions.

Doyle again urges this Court to consider that he is similarly situated to other claimants in order to receive similar treatment. He cites to the case of *Cleveland Trust Co. v. State ex rel. Hunt*, 1976 OK 135, 555 P.2d 594 in support. The case only applies when there are similarly situated creditors, fellow creditors of the same class, members of a class, and creditors of the same priority. Doyle has presented no facts to prove that he shares a common platform with any other claimant. Again, Doyle is not in the same class or similarly situated to another claimant.

Doyle cites the case of *Harding and Shelton, Inc. v. Prospective Inv. and Trading Co., Ltd.*, 2005 OK CIV APP 88 ¶25, 123 P. 3d 56, 63, and urges this Court to apply the equitable doctrine of “clean hands” to validate the mortgage Doyle created as a majority owner of Bricktown Capital. However, the clean hands doctrine was never addressed by the

District Court. Consideration of the clean hands doctrine in this appeal is outside the scope of the Order and Judgment. Additionally, it has no relevance to this appeal.

V.

Response to Doyle's Proposition II:
District Court Order and Judgment is Supported by Evidence and Law

Doyle cites no authority, as is required by Sup. Ct. R 1.11(k)(1), to support his claim that the District Court's Order and Judgment is overreaching and unsupported by the evidence presented. Contrary to statements made by Doyle, the Order and Judgment is supported by cumulative evidence and briefs presented to the District Court throughout this case. The conclusions of law outlined in the Order and Judgment are clearly supported by the findings of fact in the Order and Judgment.

Doyle incorrectly relies on the timing of funds he provided to Seabrooke in disputing Conclusion of Law #7. It is undisputed that Doyle provided funds to Seabrooke over a period of time. However, the District Court similarly treated all of Doyle's funds and ruled the funds were capital contributions. The Order and Judgment is supported by facts and evidence presented to the court below.

In attempting to discredit Conclusion of Law #8, Doyle again fails to consider the record as a whole. As outlined in the Order and Judgment, this conclusion of law is clearly supported by the findings of fact. The District Court may consider previous evidentiary hearings in issuing the Order and Judgment.

VI.
Response to Doyle's Proposition III:
Equity Supports the District Court's Subordination of Doyle's Claim

Doyle claims the District Court used an improper legal standard to determine equitable subordination for “at least that portion of Doyle’s investment with Seabrooke prior to him becoming an ‘insider’ of Bricktown Capital” but fails to provide the authority to support his argument as required by Sup. Ct. R 1.11(k)(1). The District Court found that Doyle was an insider but did not distinguish his activities as pre and post insider transactions. The District Court classified all of Doyle’s funds as capital contributions without finding any distinction in the timing of his contributions. Importantly, Doyle himself attempted to consolidate all of his contributions to Defendants, without distinguishing the timing of the contributions, in promissory notes and a mortgage with Tom Seabrooke and Bricktown Capital. Therefore, he cannot now claim a pre and post insider status that the District Court never established.

Throughout his argument, Doyle uses the term “investment” as if the District Court applied that term to Doyle’s funds. The District Court did not. A few examples of this error appear in Doyle’s Proposition III when he argues that “the August 21, 2015 Order describes and details those investments for which Doyle could not be an insider”; that “the Court ruled that the entirety of Doyle’s investments were subject to the scrutiny of an ‘insider’ of the Seabrooke entity, Bricktown Capital”; and that the “August 21, 2015 Order entered by the Trial Court provided that Doyle made the following investments with Seabrooke”. Instead, the District Court ruled that all funds provided by Doyle were capital contributions and never classified or otherwise referred to any of the funds as investments.

When the District Court recharacterized Doyle's purported loans to Defendants as capital contributions, the Court effectively ignored any label attached to the transactions and recognized their true substance. *In re: Hedged-Investments Associates*, 380 F.3d 1292 (10th Cir. 2004). The Tenth Circuit describes the result of such recharacterization to mean that the capital contributions are only repaid "after satisfying all other obligations of the corporation." *Id.* at 1297.

Similarly, in *Tanzi v. Fiberglass Swimming Pools, Inc.*, 414 A.2d 484, 489 (RI 1980), the court subordinated the receivership claim from a shareholder for repayment of "loans" to a corporation and stated, "[c]learly persons making capital contributions are not corporate creditors." In *Idaho Development, LLC v. Teton View Golf Estates, LLC*, 272 P.3d 373 (ID 2011), the court reasoned that "equitable subordination and debt recharacterization both end up reaching the same result: the insider advance is subordinated to the loans of the legitimate outside creditors." When the District Court ruled that Doyle's funds were capital contributions, those funds were equitably subordinated to the investments of other claimants.

VII.

Response to Doyle's Proposition IV: Equity was Properly Applied to Wayne Doyle

As previously stated, the District Court has the authority to allocate assets in an equity receivership and to approve any distribution plan provided it is fair and reasonable *Worldcom, Inc. v. SEC, supra*. In fashioning a fair and reasonable decision, courts often look to analogous principles found in bankruptcy and other non-federal receivership cases as the District Court did in approving the Receiver's Report. *SEC v. Management Solutions, Inc.*, 2013 WL 594738, p. 2.

It is undisputed that the District Court, in its August 2015 Order, classified as capital contributions all funds contributed by Doyle to Defendants. This is now the law of the case. To reach this conclusion of law, the District Court relied on the factors considered important to evaluate reclassification by the authority of the courts in *In Re Hedged-Investments Associates, Inc., supra* at 1292, and *In re Lexington Oil and Gas Ltd. Co.*, 423 BR 353 (Bankr. Ct. ED OK 2010). In the Order and Judgment, the District Court confirmed the reclassification by incorporating the *Findings of Fact and Conclusions of Law* from the August 2015 Order. Once the District Court reclassified the Doyle funds, the capital contributions are only to be repaid “after satisfying all other obligations of the” Defendants. *In Re Hedged-Investments Associates, Inc., supra*.

Doyle would like this Court to believe that equitable subordination was improperly applied in the District Court to his claim. However, there is no denying that the Doyle funds were recharacterized as capital contributions by the August 2015 Order. As the court described in *Idaho Development, LLC v. Teton View Golf Estates, LLC* at 405, “[e]quitable subordination and debt recharacterization both end up reaching the same result: the insider advance is subordinated to the loans of the legitimate outside creditors.” Thus, in August 2015, when the District Court recharacterized the Doyle funds as capital contributions, Doyle’s claim was subordinated to the claims of the legitimate Seabrooke investors. The District Court did not have to take additional action to subordinate the Doyle claim. No evidence of harm to other claimants was required for the subordination of his claim. The *Idaho Development LLC* court stated, when a debt is recharacterized as a capital contribution, “subordination is merely a consequence of the loan no longer being characterized as a loan,

but as a capital contribution, thereby necessarily downgrading its priority to the back of the line.” *Id.*

The District Court, in its Order and Judgment, after considering the Receiver’s Report and after a hearing on objections to the report, did apply the doctrine of equitable subordination to Doyle’s claim. When the District Court adopted the specific claims analyzed in the Receiver’s Report, the harm to the claimants was quantified. The District Court found Doyle’s conduct sufficiently inequitable and unfair to justify subordinating his claim to all other general creditors and specified the instances of his conduct. The District Court also found that this conduct resulted in substantial harm to other claimants. Doyle argues that the District Court was required to determine the amount of injury inflicted upon other claimants by his inequitable conduct citing *In Re Hedged-Investment Associates, Inc., supra*. However, the court in *In Re Hedged-Investment Associates, Inc.* never requires that the harm to other claimants be quantified. That court does cite to language from the Sixth Circuit *Beyer Corp v. MascoTech, Inc.*, 269 F.3d 726, 748-9 (6th Cir. 2001), that discusses offsetting injury by creditors in an equitable subordination context but never adopts this distinction. Instead, the court requires a finding of inequitable conduct alone as the prerequisite to ordering equitable subordination. *In Re Hedged-Investment Associates, Inc., supra*. The District Court likewise found inequitable conduct in ordering equitable subordination of Doyle’s claim.

Finally, in *Bickerstaff v. Grayson*, 1979 OK CIV APP 64, 604 P.2d 382, 384, the Court of Appeals found, “we may ignore the trial court's reasoning and affirm if the weight of the evidence warrants.” The District Court’s recharacterization, as based on the evidence, legally mandated the subordination of Doyle’s claim in not one, but two, conclusions of the District Court. The District Court, acting in equity, was not required to find substantial harm

as the Doyle funds had already been subordinated but did so in addition to the reclassification of his funds as capital contributions. The clear intention of the District Court in this case is evident from the record.

VIII.

Response to Doyle's Proposition V: District Court Equitably Distributed Receivership Assets to Claimants

In promoting equity, the Court must look upon the circumstances of an individual party. *Faught v. Blair supra* at 668. In this case the Receiver made individual recommendations for each receivership claimant. All claimants and parties were given notice of the recommendations and the opportunity to have their objections heard. After review of the pleadings and a hearing, the District Court properly ruled on the Receiver's recommendations.

The District Court never ruled on class treatment for the claimants. For Doyle to now argue that claimants should be treated similarly without presenting facts demonstrating common ground is an empty argument. *SEC v. Elliott*, 953 F.2d at 1573. Doyle's attempt to create a class treatment to fit his appellate theory is an incorrect attempt to look at only the form used by Defendants to document the investments of other claimants. As stated earlier, "equity elevates substance over form." *Faught v. Blair* at 668. As relevant facts distinguished the Seabrooke claimants from Doyle, the District Court appropriately applied the law to reach individual conclusions for each claimant. *SEC v. Elliott*, 953 F.2d at 1573.

As previously stated, Doyle is the only claimant that had his contributions of funds classified as capital contributions by the District Court. The District Court looked at numerous factors that set Doyle apart from other claimants. The Order and Judgment clearly

sets out applicable cases for the determination that Doyle's claim should be subordinated debt. Therefore, the Order and Judgment should be upheld.

CONCLUSION

It is clearly established that the District Court has the authority to allocate assets in an equity receivership and to approve any distribution plan provided it is fair and reasonable. *Worldcom, Inc. v. SEC, supra* at 81, *SEC v. Wang, supra* at 85. It is fair and reasonable that Doyle's claim was moved to the back of the line. Further, within that broad authority is the power to approve a plan of distribution proposed by a receiver. *See SEC v. Credit Bancorp, Ltd., supra* at 82-83. (affirming approval of distribution plan as "within the equitable discretion of the District Court"). *See also Quilling v. Trade Partners, Inc., 72 F.3d 293, 298 (6th Cir.2009)*. The Department prays that this Court uphold the Order and Judgment of the District Court.

Respectfully submitted,

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CERTIFICATE OF MAILING TO PARTIES

I hereby certify that a true and correct copy of the Brief of the Oklahoma Department of Securities was mailed this 30th day of January, 2017 by depositing it in the U.S. Mail, with postage prepaid or by electronic mail to:

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