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ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA
MAY 25 2016

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE
CLERK

Oklahoma Department of Securities)
ex rel. Irving L. Faight, Administrator,)

Plaintiff,)

vs.)

Case No. **#115025**

Seabrooke Investments, LLC, an)
Oklahoma limited liability company;)
Seabrooke Realty LLC, an 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;)
Judith Karyn Seabrooke, individually and as)
trustee of the Tom Seabrooke 2007)
Revocable Trust and J Karyn Seabrooke)
2007 Revocable Trust,)

Defendants,)
and)

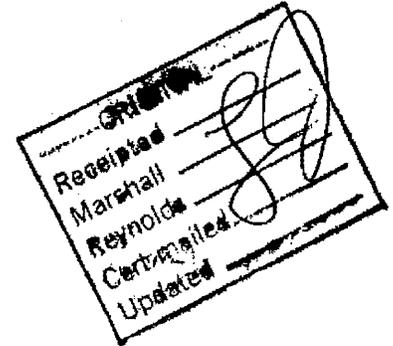
Ryan Leonard,)

Court Appointed Receiver/Appellee,)

and)

Wayne Doyle,)

Intervenor/Appellant.)



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: Oklahoma County District Court
COUNTY: Oklahoma County
CASE NO.: CJ-2014-4515
JUDGE: Honorable Patricia Parrish
NATURE OF CASE: Receivership resulting from violations of Oklahoma Securities Act

NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR:

Intervenor and Claimant/Appellants

- 1. Wayne Doyle.

THE APPEAL IS BROUGHT FROM: (Check one)

 X Judgment, Decree or Final order of District Court.
 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 judgment, decree or order appealed was filed: April 27, 2016.

2. *If decision was taken under advisement*, date judgment, decree or order was mailed to parties: April 27, 2016.
3. Does the judgment or order on appeal dispose of *all* claims by and against *all* parties?
 Yes¹ 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? _____
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? No

<u>Type</u>	<u>Date Filed</u>	<u>Date Disposed</u>
N/A		

7. This Petition is filed by: Delivery to Clerk, or
 Mailing to Clerk by U.S. Certified Mail, Return Receipt Requested, on _____
(Date)

III. RELATED OR PRIOR APPEALS

List all prior appeals involving same parties or same trial court proceeding: None.

List all related appeals involving same issues: None.

IV. SETTLEMENT CONFERENCE

Is appellant willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250? Yes 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

¹ An Order approving a receiver's report disposing of rights of parties involved in the report is appealable "final order." See *Kawfield Oil Co. v. Illinois Refining Co.*, 169 Okla. 75 (1934).

_____ A Narrative Statement will be filed
_____ 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

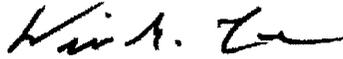
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Respectfully Submitted,

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LEWIS & DOBSON



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**X. 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 25
day of May, 2016, by depositing it in the U.S. Mails, postage prepaid, to:

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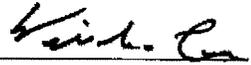
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I further certify that a copy of the Petition in Error was mailed to, or filed in, the Office of the Oklahoma County Court Clerk on the 25 day of May, 2016.



William M. Lewis



FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

APR 27 2016

TIM RHODES
COURT CLERK

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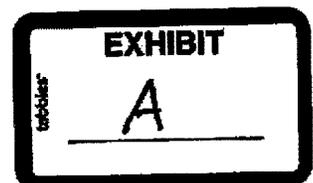
Oklahoma Department of Securities)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
)
v.)
)
Seabrooke Investments LLC, an Oklahoma)
limited liability company, et. al.)
)
Defendants.)

Case No. CJ-2014-4515

**ORDER AND JUDGMENT APPROVING RECEIVER'S REPORT ON CLAIMS
AND AUTHORIZING RECEIVER'S DISTRIBUTION TO CREDITORS**

The Receiver's report on claims and recommendations for classification of the same, and for authority to make distribution to general creditors (the "Receiver's Report") came on for hearing on August 29, 2015. The Receiver appeared personally and through his counsel, Robert Edinger. The Oklahoma Department of Securities appeared through Patricia Labarthe and Jennifer Shaw. The Defendants Seabrooke Investments, LLC, *et. al.*, appeared through their counsel of record, Mark Robertson. Claimant Wayne Doyle appeared through his counsel, William A. Lewis. Claimant First National Bank & Trust Company of Weatherford, N.A. appeared through its counsel, David L. Nunn. Claimant Advance Restaurant Finance appeared through its counsel, Scott J. Henderson. Claimant Peggy Johnston and HPJ Family Limited Partnership appeared through their counsel, Jim Slayton. Claimant Bobby McCants appeared pro se.

The following Claimants filed timely Objections or Responses to the Receiver's Report: Wayne Doyle, First National Bank & Trust Company of Weatherford, N.A. and Advance Restaurant Finance, which objections have now been considered by the Court.



The Court has also considered the late-filed claim of James Bradley in the amount of \$25,000 and the Receiver's Supplemental Report, filed March 4, 2016, showing said claimant did not receive actual notice of the bar date for filing claims, and recommending said claim receive a pro rata distribution with other general creditors. No objections having been filed to said Supplemental Report, the Court approves the claim for distribution in accordance with the Supplemental Report.

On March 31, 2016, the Receiver filed his Interim Report Regarding Status of Funds Available for Distribution. That Report discusses that the Receiver had been made aware that Wayne Doyle may appeal the Court's Order approving the Receiver's Report and that certain income tax issues would soon be resolved. The Receiver recommended that a distribution not be made until the issues surrounding the potential appeal and tax issues are resolved.

The Court, having reviewed the Receiver's Report and Objections thereto, and after hearing testimony of the Receiver and arguments of counsel, hereby approves all recommendations contained in the Receiver's Report and denies the Objections of Wayne Doyle, First National Bank & Trust Company of Weatherford, N.A. and Advance Restaurant Finance. In affirming the Receiver's Report and his Supplemental Report, the Court generally finds the following standards are applicable:

"[T]he District Courts of Oklahoma are empowered to do equity in actions brought under the Oklahoma Securities Act [71 O.S. §1-101 et seq.]" *State of Oklahoma ex. rel. Day v. Southwest Mineral Energy, Inc.*, 1980 OK 118, 617 P.2d 1334, 1338. "Once the equity jurisdiction of the District Court has been properly invoked, the Court possesses the necessary power to fashion appropriate remedies." *Id.*; see also *S.E.C. v. Byers*, 637 F. Supp.2d 166, 174 (S.D.N.Y. 2009) ("Court has broad authority to craft remedies for violations of the federal securities laws."); *S.E.C.*

v. Forex Asset Mgmt., 242 F.3d 325, 331 (5th Cir. 2001) (district court in securities fraud case “vested with broad discretionary power” to determine equitable remedy.)¹ This power includes the authority to distribute profits disgorged from defendants, and “it remains within the court’s discretion to determine how and to whom the money will be distributed[.]” *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2nd Cir. 1997); see also *S.E.C. v. Byers*, 637 F. Supp.2d at 174 citing *S.E.C. v. Wang*, 944 F.2d 80, 81 (2nd Cir. 1991) (“Court has the authority to approve any plan provided it is ‘fair and reasonable.’”). A “pro-rata” method of distribution is broadly supported in the case law. See *SEC v. Byers*, 637 F. Supp.2d at 176-78 (“pro-rata distributions are the most fair and most favored in receivership cases”); *SEC v. Credit Bancorp., Ltd.*, 290 F.3d 80, 88-89 (2nd Cir. 2002) (pro-rata distribution appropriate if investor funds are commingled and victims are similarly situated); *Commodity Futures Trading Comm’n. v. Topworth*, 205 F.3d 1107, 1116 (9th Cir. 1999) (Court approved distribution plan in a commodities fraud case that paid claimants on a pro-rata basis based on their net investment). “So long as the district court is satisfied that ‘in the aggregate, the plan is equitable and reasonable,’ the SEC may engage in the ‘kind of line-drawing [that] inevitably leaves out some potential claimants.’” *Official Committee of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 83 (2nd Cir. 2006) quoting *S.E.C. v. Wang*, 944 F.2d at 88.

As to each of the aforesaid Objections, the Court makes the following specific findings of fact and conclusions of law:²

¹ “[T]he Oklahoma Supreme Court has stated that the interpretative history of the federal securities acts, upon which Oklahoma securities laws are modeled, is properly considered in the interpretation of similar state securities provisions.” *Oklahoma Dept. of Securities ex. rel. Faught v. Blair*, 2010 OK 16, ¶8.

² Unless otherwise stated, references to “Tr-I ___” shall mean the transcript of proceedings from the hearing on August 5, 2015, and reference to “Tr-II ___” shall mean the transcript of proceedings from the hearing on August 10, 2015. References to “D.Ex. ___” shall mean the exhibits offered by Claimant Wayne Doyle and admitted at the hearings on August 5 or 10, 2015. References to “R.Ex. ___” shall mean the exhibits

CLAIM OF WAYNE DOYLE

Findings of Fact

1. The Court incorporates its previous Findings of Fact (“8/21/15 Findings of Fact”) and Conclusions of Law (“8/21/15 Conclusions of Law”) from its Order filed herein on August 21, 2015.

2. In acquiring his initial ownership of Bricktown Capital LLC (“Bricktown Capital”) on Feb. 3, 2011, Doyle acknowledged in writing that he was assuming liability, as personal guarantor, of all outstanding loans owed by Bricktown Capital, owner of the Bricktown Hotel, to Quail Creek Bank, that there were several liens and encumbrances against the Hotel and Bricktown Capital totaling an estimated \$640,000, that he was accepting liability of any and all liens and encumbrances, and that he was aware that the Hotel had not reported a profit in its previous years of existence dating back to 2007. Tr-I-114/2 thru 115/22; Exh. B to Receiver’s Combined Objection to Intervenor Doyle’s Motion to Disburse Interpled Funds and Receiver’s Motion to Retain Interpled Funds as Receivership Asset filed on August 12, 2015.

3. Also on Feb. 3, 2011, Doyle signed an Operating Agreement for Bricktown Capital in which he was designated as co-“managing partner” along with Tom Seabrooke. D.Ex.1, pg. 25. The Operating Agreement reflected that Doyle and Seabrooke were the only owners of Bricktown Capital. Id. at pg. 26. However, as of that date, there were five (5) other persons already claiming interests in Bricktown Capital as a result of investments they had previously made. Tr-II-274/13 thru 275/22, 277/11 thru 279/25, 282/19-thru 287/21; P.Exs. 2 thru 6. Doyle was aware of a 1% investor in Bricktown Capital in addition to himself and Tom Seabrooke, however Doyle never investigated to see who the other investor was, whether there were other additional investors, or

offered by the Receiver and admitted at the hearings on August 5 or 10, 2015. References to “P.Ex. ___” shall mean the exhibits offered by the Plaintiff and admitted at the hearings on August 5 or 10, 2015.

who the creditors of Bricktown Capital were. Tr-I-55/12-16, 108/2-5, 13-19; 8/21/15 Finding of Fact No. 23.

4. On Feb. 3, 2011 and thereafter for several years, Doyle contributed substantial funds to Bricktown Capital to pay down the loan debt to Quail Creek Bank, for which he was personally liable as a guarantor. Tr-I-116/14-17; 117/14-23; 118/2-6; 131/6-16. After the Receivership was imposed on August 11, 2014, Doyle contributed \$278,000 to Bricktown Capital to protect his investment by keeping the Hotel open. Doyle personally guaranteed the Quail Creek Bank loan and needed to keep the Hotel open to get a better sales price for the Hotel. Tr-I-158/24 thru 161/11; 8/21/15 Finding of Fact Nos. 17-18.

5. On December 21, 2012, Bricktown Capital, Tom Seabrooke and Doyle entered into an agreement with Quail Creek Bank because the Bank was concerned about payment of the loan because they were in default. The Agreement mentions that the Bank had filed a foreclosure action. At the time, Bricktown Capital was trying to locate an additional lender to refinance the loan but was ultimately unable to find additional financing. Doyle agreed the Bank could apply proceeds (from an insurance policy settlement for storm damage to the Hotel) to pay-down the loan debt to the Bank, which debt Doyle had personally guaranteed. Tr.-I-120/12 thru 121/8; R.Ex.9; 8/21/15 Finding of Fact No. 9.

6. All funds paid by Wayne Doyle and Remington Express have been previously reclassified by this Court as capital contributions to Bricktown Capital. 8/21/15 Conclusion of Law No. 6. Wayne Doyle received \$681,577 in payments from Bricktown Capital and other defendant entities from 5/28/2009 through 3/27/2014. Tr-I-135/18-22; 8/21/15 Finding of Fact No. 20.

7. Included in payments Wayne Doyle received from Bricktown Capital was a payment of \$228,894 on January 27, 2012. According to Doyle, this was as a bonus for Doyle's "risk compensation." The source of that payment was insurance proceeds paid to Bricktown Capital for storm damage that had caused the Bricktown Hotel to close-off a certain percentage of its rooms to customers. Doyle understood when he received the \$228,894 that there was storm damage to the Hotel rooms that was not being repaired due to lack of funds and that said damage was affecting the Hotel's ability to generate revenues. Tr-I-143/4-22; 145/7 thru 146/8; 147/2-12; 8/21/15 Finding of Fact No. 20.

8. Bricktown Capital and the Bricktown Hotel were originally subject to this Court's Receivership order and asset freeze in this proceeding. However, Bricktown Capital and the Bricktown Hotel sought a release from the receivership estate and the asset freeze in order to engage in efforts to sell the Bricktown Hotel. The release was granted on September 9, 2014, by order of this Court. Said Order provided that "the Receiver and the Plaintiff be released and indemnified from and against all liability and loss for any debts or obligations, acts or omissions, of whatsoever nature of Bricktown Capital and the Bricktown Hotel." It also provided that "if the Bricktown Hotel is sold for an amount greater than the amounts owed on valid mortgages existing as of the date of the order, the remaining funds will be used to pay, on a pro rata basis, investors restitution owed by Defendants as determined by this Court." Order Modifying Relief filed on Sept. 9, 2014.

9. On Dec. 23, 2014, the Bricktown Hotel was sold. From the sales proceeds, the full principal and interest owed on the Quail Creek loan debt was paid in full. Quail Creek Bank's Aid to the Court Regarding Quail Creek Bank's Motion for Order Instructing Escrow Agent to Disburse Funds to Quail Creek Bank, pg.4, filed herein on January 30, 2015. Remaining funds

were claimed by Wayne Doyle; then interpled with this Court, and finally distributed to the Receiver. 8/21/2015 Conclusions of Law, pg. 6.

Conclusion of Law

1. The Court incorporates its previous 8/21/15 Conclusions of Law, including that “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.” In making said determination, the Court considered the relevant factors as set forth in *In re: Hedged-Investments Associates*, 380 F.3d 1292 (10th Cir. 2004) and *In Re: Lexington Oil and Gas*, 423 BR 353 (Bankr. Ct. ED OK 2010).

2. The result of such re-characterization means that the capital contributions are only repaid “after satisfying all other obligations of the corporation.” *In re: Hedged-Investments Associates*, 380 F.3d at 1297. “[T]he insider’s advance is subordinated to the loans of the legitimate outside creditors” and its priority is “downgraded to the back of the line.” *Idaho Development, LLC v. Teton View Golf Estates, LLC*, 272 P.3d 373, 405 (ID 2011).

3. Under principles of common law, equitable subordination requires inequitable conduct, such as undercapitalization, on the part of the claimant sought to be subordinated and injury to other creditors or unfair advantage for the claimant resulting from his conduct. *In re: Hedged-Investments Associates*, 380 F.3d at 1299-1301.

4. When examining a transaction for evidence of inequitable conduct, courts apply different levels of scrutiny to “insiders and non-insiders” of the debtor company. Where the claimant is an insider, the party seeking subordination of that claim to other creditors need only show some unfair conduct and a degree of culpability on the part of the insider. *In re: Hedged-*

Investments Associates, 380 F.3d 1292; *Branch v. J.M. Capital Fin. Ltd.*, (In re *Hoffinger Indus., Inc.*), 327 B.R. 389, 415 (E.D. Ark., 2005).

5. While an “insider” includes a partner, it also includes others who have a sufficiently close relationship with the company that their conduct is made subject to closer scrutiny than those dealing at arm’s length with the company. Access to inside information about the company and a history of dealings which shows a lack of arm’s length transactions are circumstances which point to insider status. Actual legal control of the company is not necessary to show insider status. *Anstine v. Carl Zeiss Meditec AG (In re U.S. Medical, Inc.)*, 531 F.3d 1272 (10th Cir. 2008). A relevant consideration indicating insider status exists where the person has guaranteed the debts of the company and has the ability to reduce his personal liability by having the company pay the personally-guaranteed debt. *Hirsch v. Va Tarricone (In re A. Tarricone, Inc.)*, 286 B.R. 256, 2002 Bankr. LEXIS 1438 (March 14, 2002, U.S. Bankruptcy Court, S.D.N.Y.).

6. Loans re-characterized as capital contributions are “correctly subordinated to the claims of the general creditors” where the relevant transactions “bore very few earmarks of an arm’s length bargain.” *Tanzi Fiberglass Swimming Pools*, 414 P.2d 484, 491 (R.I., 1980).

7. Based on his status as a member/partner of the Company, his knowledge of the financial condition of the Company, his personal guaranty of the Company’s bank debt at a time when no commercial lender would have made a loan to the Company, and his less than arm’s length dealings with the Company, Doyle was an insider of Bricktown Capital.

8. Doyle’s conduct was sufficiently inequitable and unfair to justify subordinating his claims to all other general creditors. This conduct included undercapitalization, receiving preferential payments in return for his capital contributions to Bricktown Capital, including monies otherwise needed to repair storm damage affecting the ability of Bricktown Hotel to generate

revenues, his refusal to investigate, identify and communicate with other owners of the Company, his agreement to use hotel storm damage insurance proceeds to pay-down bank loan debt for which he was personally liable, and his attempt to use his insider status to structure his capital contributions and prior capital contributions in other entities as a secured loan to Bricktown Capital in April 2014. This conduct resulted in substantial harm to other investors, including non-insider investors in Bricktown Capital and the Bricktown Hotel.

9. Having been released from all debts and liabilities of Bricktown Capital and the Hotel by the Order, neither the Receiver nor Plaintiff is liable for the claim asserted by Doyle.

10. Accordingly, the proof of claim of Wayne Doyle is denied.

CLAIM OF FIRST NATIONAL BANK & TRUST COMPANY OF WEATHERFORD

Findings of Fact

1. First National Bank and Trust Company of Weatherford, N.A. ("FNB Weatherford") objected to the Receiver's denial of two claims related to notes and mortgages granted by Oakbrooke Homes, LLC, and guaranteed by Tom and Karyn Seabrooke. The notes and mortgages related to the "Lawton Property" and certain unsold lots that comprise the "College Park Property."

2. Orders were entered on January 29, 2015, and February 20, 2015, abandoning these properties from the receivership estate and authorizing their foreclosure.

3. On September 18, 2015, FNB Weatherford commenced non-judicial foreclosure proceedings on the remaining unsold lots that comprise the College Park Property and the Lawton Property. FNB Weatherford entered credit bids and obtained title to both properties. Following the purchase of the properties by the bank, FNB Weatherford claims an aggregate deficiency on its originally secured mortgages of \$143,766.59.

4. FNB Weatherford received a return of approximately 92% of the principal and interest owing to it at the outset of these proceedings through the sales of multiple properties by the Receiver. This sum does not include payments of principal and interest received by FNB Weatherford from the Defendants since the inception of their notes, much of which was likely paid by monies received by Defendants from investors. The percentage of return on principal received by FNB Weatherford is a substantially greater percentage of return than other approved claimants will receive on their principal investments.

Conclusions of Law

1. The purpose of these receivership proceedings “is to protect the uninformed from manipulative and deceptive practices when dealing in securities.” *State ex rel. Day v. Southwest Mineral Energy, Inc.*, 1980 OK 118, 617 P.2d 1334, 1338.

2. This Court is not bound by the bankruptcy code in determining its distribution. *See S.E.C. v. Byers*, 637 F. Supp.2d 166, 176 (S.D.N.Y. 2009) (a “bankruptcy court would have less flexibility in determining the most equitable approach to distribute assets to victims. The overriding goal of these proceedings should be fairness to the defrauded investors[.]”); *See also S.E.C. v. Enter. Trust Co.*, 2008 WL 4534154 at *3 (N.D. Ill. Oct. 7, 2008) (“There are no hard rules governing a district court’s decisions in matters like these. The standard is whether a distribution is equitable and fair in the eyes of a reasonable judge.”)

3. The Court finds that, in these equitable proceedings applying the Oklahoma Uniform Securities Act, 71 O.S. §1-101 *et seq.*, it is not obligated to award FNB Weatherford the amount of its deficiency following the sale of the properties, as the mortgages encumbering the properties are not “securities” subject to the protections applicable here. *See Reeves v. Ernst & Young*, 494 U.S. 56 (1990).

4. Since the percentage of return on principal received by FNB Weatherford is a substantially greater percentage of return than other approved claimants will receive on their principal investments, it would be inequitable for FNB Weatherford to recover more. *See S.E.C. v. Byers*, 637 F. Supp.2d at 183 (“[B]ecause the secured creditors will receive a greater percentage of their claims than the defrauded investors - due to the fact that secured creditors will be paid ahead of investors - it would be inequitable to permit the secured creditors to recover more.”)

5. Accordingly, the proof of claim of FNB Weatherford is denied.

CLAIM OF ADVANCE RESTARANT FINANCE

Findings of Fact

1. Mission Valley Bank assigned its rights under a Merchant Agreement and guaranty with Bricktown Capital to Advance Restaurant Finance a/k/a ARF Financial, LLC (“Advance”) on September 3, 2014 (the assignment occurred after the commencement of these receivership proceedings).

2. Pursuant to the Merchant Agreement and subsequent modifications, Mission Valley Bank loaned Bricktown Capital a total of \$387,488.88.

3. Bricktown Capital made payments to Mission Valley Bank and/or Advance totaling in the amount of \$328,752.34, for a net principal loss of \$58,736.54.

4. The terms of the Merchant Agreement grants the lender “a continuing first priority security interest” in all of Bricktown Capital’s personal property, including deposit accounts, “Goods, Equipment, Fixtures, Inventory[.]”

5. No UCC-1 was filed perfecting this interest.

6. Bricktown Capital and its real and personal property was released as an asset of the receivership estate pursuant to this Court’s Order of September 9, 2014. The Order provides:

"[The Temporary Injunction is modified] by releasing Bricktown Capital LLC from the asset freeze and receivership and by releasing the Bricktown Hotel from the asset freeze and receivership." It also provides that "the Receiver and the Plaintiff be released and indemnified from and against all liability and loss for any debts or obligations, acts or omissions, of whatsoever nature of Bricktown Capital and the Bricktown Hotel." Order Modifying Relief filed herein on Sept. 9, 2014.

7. Advance and/or its predecessor-in-interest received a return of nearly 85% of the principal sums loaned to Bricktown Capital, which is a substantially greater percentage of return than other approved claimants will receive on their principal investments.

Conclusions of Law

1. Having been released from debts and liabilities of Bricktown Capital and the Bricktown Hotel by the Order of September 9, 2014, neither the Receiver nor Plaintiff is liable for Advance's claim.

2. In these equitable proceedings applying the Oklahoma Uniform Securities Act, 71 O.S. §1-101 *et seq.*, the Court is not bound by the terms of the Merchant Agreement and guaranty as these instruments are not "securities" subject to the protections applicable here. *See Reeves v. Ernst & Young*, 494 U.S. 56 (1990).

3. Accordingly, the proof of claim of Advance Restaurant Financial is denied.

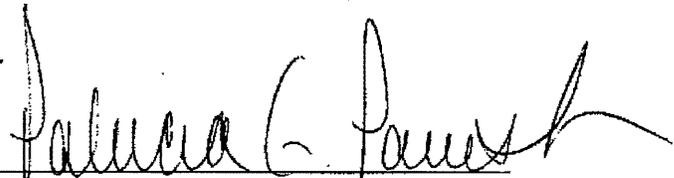
ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Court approves the Receiver's Report and recommendation contained therein and denies the Objections filed by Doyle, First National Bank & Trust Company of Weatherford, and Advance Restaurant Finance.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a late-filed claim by James Bradley in the amount of \$25,000 shall be approved for inclusion in a pro-rata distribution from the estate of the Receiver in accordance with the Receiver's Supplemental Report.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Receiver is directed to make distribution in accordance with the Receiver's Report, Supplemental Report, and Interim Report Regarding Status of Funds Available for Distribution of the net amount of funds available for distribution after payment of taxes, Receiver's fees and expenses, including fees and expenses of the Receiver's attorney and accountant. After making said distribution, the Receiver shall submit a report to the Court evidencing same and request for Order discharging the Receiver and closing the estate.

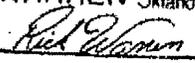
DATED this 27th day of April, 2016.


DISTRICT COURT JUDGE

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

MAY 24 2016

RICK WARREN COURT CLERK
Oklahoma County



STATEMENT OF THE CASE

The basis of this Appeal is the entry by the District Court in Oklahoma County of an Order and Judgment approving a Receiver's Report and authorizing the Receiver to pay certain claims to creditors, while rejecting other claimants in the same class of claims. The Oklahoma Department of Securities originally brought a civil action against Tom Seabrooke, his spouse and his various business entities (together, "Seabrooke") for violations of Oklahoma's security laws. Thereafter, a receiver, Ryan Leonard, was appointed to take control of the assets, liquidate the assets, and ultimately distribute the proceeds to creditors of Seabrooke.

In this matter, on April 27, 2016, following briefing and a hearing, an Order and Judgment was entered which approved the Receiver's proposed treatment of creditors. The Appellant, Wayne Doyle, was recognized as a creditor but the Receiver proposed that he be paid nothing despite being the largest creditor. However, the Receiver proposed and obtained Court approval to pay other creditors similarly situated from the same class of creditors as Appellant. The Court approved of this disparate treatment of Appellant in the April 27, 2016 Order and Judgment based upon a theory of equitable subordination of Appellant's claims.

In addition to the Order containing numerous errors in law relating to equitable subordination, the Order was entered by Judge Parrish in an irregular manner. Rather than filing a Motion to Settle Journal Entry, the Receiver apparently had an ex parte communication with Judge Parrish wherein she requested any proposed Orders be submitted directly to the Court. Prior to the Appellant having an opportunity to object to the over-reaching and unsupported form of Order submitted by the Receiver, Judge Parrish simply signed the Receiver's Order and Judgment *en banc*, and authorized the Receiver to file the same. Appellant now seeks to appeal this Order.



ISSUES TO BE RAISED ON APPEAL

1. The trial court erred in adopting the Rhode Island case of *Tanzi Fiberglass Swimming Pools*, 414 P.2d 484 (R.I. 1980) as Oklahoma law and/or as applicable to this matter.
2. The disparate treatment of a creditor of the same class as adopted and authorized by this Court is in violation of Article 2, § 7 of the Oklahoma Constitution and Amendment 14 of the United States Constitution.
3. The Court erred in failing to apply the Oklahoma case of *Dept. of Securities ex rel. Faught v. Blair*, 2010 OK 16, by allowing and approving of the receiver's disparate treatment of Appellant.
4. The trial court erred by treating creditors of the same class differently due to the subordination of Appellant when the Court previously found his investments were to be classified as capital contributions. Creditors whose claims were based on capital contributions (including those that received payments from the Seabrooke entities) were approved by the Court to participate pro-rata in the receivership estate.
5. The trial court improperly adopted additional findings of fact and conclusions of law on the basis of alleged testimony presented to this Court on or about August 5 and/or August 10, 2015, which is inconsistent with the Court's Findings of Facts and Conclusions of Law entered August 21, 2015 following those earlier hearings.
6. The trial court erred by not applying issue preclusion to the adoption of additional facts and conclusions of law in excess of those established in the Findings of Facts and Conclusions of Law entered August 21, 2015, under Oklahoma law stated in *Ouellette v. State Farm Automobile Ins. Co.*, 918 P.2d 1363 (Okla. 1994) and *Nealis v. Baird*, 996 P.2d 438 (Okla. 1999).



7. The trial court erred by providing no notice and the opportunity to be heard on certain alleged facts adopted in this Court's Order which were not submitted into evidence or presented at the hearing held February 29, 2016.

8. The Court's denial of Appellant's claim is unsupported by the evidence submitted to the Court at the hearing dated February 29, 2016.

9. The trial court erred in finding Appellant was an "insider" for the entirety of his claim due to his initial \$1,100,000 investment being made prior to his alleged "insider" status. The trial court was required to apportion his claim between insider and non-insider status and equitable subordination of the entirety of Appellant's claim based on "insider" status inappropriate pursuant to Oklahoma law.

10. The trial court erred in construing and/or applying *In re: Hedged-Investments Associates*, 380 F.3d 1292 (10th Cir. 2004) and finding equitable subordination of Appellant's claim.

11. The trial court erred in construing and/or applying *In re: Hedged-Investments Associates*, 380 F.3d 1292 (10th Cir. 2004) because no evidence was presented and/or adopted by the Court which established the amount in which other non-subordinated creditors suffered injury or damage. Pursuant to *In re: Hedged-Investments*, a claim may only be subordinated only to the extent necessary to offset injury or damage suffered by the creditor in whose favor the equitable doctrine may be effective.

13. The trial court erred in adopting the 10th Circuit bankruptcy case of *In re: Hedged-Investments Associates*, 380 F.3d 1292 (10th Cir. 2004) as Oklahoma law and/or as applicable to this matter.

14. The trial court erred in adopting the 10th Circuit case of *Anstine v. Carl Zeiss*

Meditec AG (In re U.S. Medical, Inc.), 531 F.3d 1272 (10th Cir. 2008) as Oklahoma law and/or as applicable to this matter.

15. The trial court erred in adopting the Southern District of New York bankruptcy case of *Hirsch v. Va Tarricone (In re A. Tarricone, Inc.)*, 286 B.R. 256, 2002 Bankr.LEXIS 1438 (March 14, 2002, U.S. Bankruptcy Court, S.D.N.Y.) as Oklahoma law and/or as applicable to this matter.

16. The trial court erred in adopting the Idaho case of *Idaho Development, LLC v. Teton View Golf Estates, LLC*, 272 P.3d 373, 405 (ID 2011) as Oklahoma law and/or as applicable to this matter.

17. The trial court erred in adopting the Eastern District of Oklahoma bankruptcy case of *In re: Lexington Oil and Gas*, 423 BR 353 (Bankr.Ct. ED OK 2010) as Oklahoma law and/or as applicable to this matter.

18. The Appellant was not provided notice or the opportunity to litigate the amendments and significant expansion to the Findings of Facts and Conclusions of Law which this Court adopted in its Order entered April 27, 2016, in violation of his due process rights and Oklahoma constitutional and statutory law.

19. The Order filed April 27, 2016, was entered in violation of the Seventh Judicial District Court Rule 11(D) and therefore deprived the Appellant from notice and the opportunity to be heard on the issues and properly establishing a proper record for this appeal.