

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

SEP 19 2013

TIM RHODES
COURT CLERK

Oklahoma Department of Securities,)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
)
v.)
)
2001 Trinity Fund, L.L.C. and)
Robert Arrowood,)
)
Defendants.)

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Case No. CJ-2012-6164

**DEFENDANT ROBERT ARROWOOD'S MOTION FOR PROTECTIVE ORDER
AND BRIEF IN SUPPORT**

Defendant Robert Arrowood hereby submits his Motion for Protective Order, requesting that this Court prohibit Plaintiff Oklahoma Department of Securities ("ODS") from engaging in any additional pretrial publicity with regard to Mr. Arrowood and/or his entity, Defendant 2001 Trinity Fund, LLC. In support of this Motion, Defendant Arrowood shows the Court as follows:

Factual Background

On September 28, 2012, ODS filed its Petition for Permanent Injunction and/or Other Equitable Relief against Defendants Robert Arrowood and 2001 Trinity Fund, L.L.C. The Petition claimed in part as follows:

Beginning in at least 2008, Arrowood, through the Fund, began to offer and sell securities in the form of promissory notes to investors for the stated purpose of financing the purchase of leases. Despite receiving little net revenue from the purchase and resale of leases during the relevant time period, Arrowood continued to accept money from investors and continued to spend investor money for cars, vacations, clothing, motorcycles, landscaping, jewelry, sporting event tickets, and other personal expenses.

On October 2, 2012, a local Oklahoma City television station ran a story about Defendant Robert Arrowood under the headline "Ponzi Scheme." The station reported that ODS had accused Mr. Arrowood and his company, Defendant 2001 Trinity Fund, L.L.C., of stealing millions of dollars from dozens of Oklahoma investors through the sale of oil and gas leases, and compared his activities to those of Bernie Madoff. ODS claimed in the report that Mr. Arrowood accepted money from the investors and then used it to fund what the report termed his "lavish lifestyle." Irving L. Faught, the Administrator of ODS, personally appeared in the report to condemn Mr. Arrowood. While the Petition filed by ODS against Mr. Arrowood was pictured in the report, Mr. Arrowood was not served and otherwise had no knowledge of ODS's claims against him until he was served with the Petition after the report aired.

On June 4, 2013, Defendant Arrowood filed a Motion for Summary Judgment on the basis that the notes at issue in this case were not securities as a matter of law, and thus not under the jurisdiction of ODS. That Motion was set for hearing on July 12, 2013. Just prior to the hearing, on July 7, 2013, NewsOK ran yet another lengthy report article about oil and gas scams and featured Mr. Arrowood. The article again equated his operations to a Ponzi scheme, and stated in part that:

While many schemes involve a promoter getting a larger-than-average cut of the profits or giving sweetheart deals to related parties to provide drilling and other oil-field services, others are outright Ponzi schemes....

In many cases, a business will begin as a legitimate venture, but will become a Ponzi scheme once a promoter realizes it's easier and more lucrative to run a scam.

[NewsOK Article, attached hereto as Exhibit 1].

The article specifically referred to the contents of Defendant Arrowood's summary judgment filing:

Arrowood maintains that he has done nothing to run afoul of state securities law. His attorney, Billy Bock, claims that people in several states gave him money not as investments but as business loans with fixed interest rates.

Bock has submitted promissory notes signed by Arrowood as proof of the loans in the lawsuit that the Department of Securities has filed against the 2001 Trinity Fund, as well as a signed affidavit of one Trinity backer backing up Arrowood's loan claim.

[Exhibit 1]. The article also featured photographs of ODS Administrator Irving Faught, as well as an oil rig with the caption "Slick Deal." [Exhibit 1]. There can thus be no serious question that the article was effectively sponsored by Plaintiff ODS.

In addition, a review of the docket sheet indicates that, other than the initial Petition, the only filings in this case have been instigated by Defendant Arrowood, to obtain discovery and otherwise move the case along in an attempt to clear his name. Mr. Arrowood's efforts in this regard have been thwarted at every turn by ODS. Rather than prosecute the case, Plaintiff ODS appears to be using the action as a vehicle to publicly disparage Mr. Arrowood and his company, while promoting its own efforts to combat alleged fraud.

The Arrowood case is just one of several of [*sic*] enforcement actions or investigations into suspicious oil and gas-related investment opportunities in the state the past year.

The Oklahoma Department of Securities has opened investigations or filed enforcement actions against four oil and gas related investment businesses in the past 12 months ending in July, and three such schemes in the previous 12 months.

[Exhibit 1].

This case has obviously had a devastating effect on Mr. Arrowood's reputation, both personally and professionally, and has done harm to his business that may be irreparable. That harm is compounded by every disparaging story issued by Plaintiff ODS prior to the trial of this

action, which will ultimately allow Defendant Arrowood to refute the allegations and begin to undo the damage done by ODS.

Argument and Authorities

Defendant Arrowood asserts that, under the unique facts of this case, he is entitled to an Order from the Court prohibiting Plaintiff ODS from continuing to disseminate the very damaging adverse publicity about him and his company, while simultaneously making no attempt to prosecute this action to a resolution. Courts have protected a party's right to protect himself and his reputation under analogous circumstances. In *Collier v. Reese*, 2009 OK 86, 223 P.3d 966, the plaintiff appealed the trial court's issuance of an order prohibiting the dissemination of information concerning his court proceedings to the public, the press or any other third parties. Plaintiff Collier argued that such order violated his constitutional right to respond to public allegations and comments about the case, including an article that had been written portraying him as a racist. The Oklahoma Supreme Court agreed that, under the circumstances, the trial court's order was an impermissible abuse of discretion.

In so holding, the Court stated that:

The Oklahoma Constitution, art. 2, § 22 guarantees, and precludes restraint of, freedom of speech, as does the United States Constitution. While the free-speech guarantee gives each citizen an equal right to self-expression and to participation in self-government, the right to freedom of speech has never been considered absolute. While this freedom has generally been held to require a presumption of public access to judicial proceedings, this right is likewise not absolute....Courts in this state are under a duty to ensure to its citizens a fair trial or impartial jury, and the courts possess the power to exercise that duty whenever public or private interest requires.

Id. at ¶ 18. The Court emphasized that “while judicial records of the state should always be accessible to the people for all proper purposes, *access may be restricted where the purpose is to gratify private spite or promote public scandal.*” *Id.* at ¶ 21 (emphasis added). Defendant

Arrowood submits that this is precisely what is occurring in this case. ODS is using the news media to pillory Mr. Arrowood with negative pretrial publicity, and with no realistic opportunity for him to respond in his own defense. As a result, an order limiting ODS's use of the media is appropriate in this case, and would not constitute an unconstitutional restraint. As the Oklahoma Supreme Court acknowledged in *Collier*, "[s]ome courts, including the United States Supreme Court, have recognized that in the limited context of pretrial discovery, an order prohibiting dissemination of covered information before trial is not the kind of classic prior restraint that requires the same exacting constitutional scrutiny." *Id.*

The *Collier* Court also acknowledged the important role played by lawyers, stating that "[t]his delicate balance is expressly recognized in the Oklahoma Rules of Professional Conduct, Rule 3.6, 5 O.S.2001 Ch. 1, App. 3-a, which prohibit a lawyer participating in litigation from making extrajudicial statements which have a prejudicial effect on the fact-finding process." *Id.* at ¶ 19. This is particularly true with regard to "certain subjects which are more likely than others to have a materially prejudicial effect on a proceeding," which the Court found to include "the character, credibility, [and] reputation" of a party. *Id.* at fn. 26. Defendant Arrowood asserts that the lawyers representing the Plaintiff have not been mindful of their responsibilities in this area, and thus require the supervision of this Court.

Conclusion

Given the conduct of ODS thus far, Defendant Arrowood has every reason to expect that the Department will continue to seek publicity in the future. As a result, Defendant Robert Arrowood respectfully requests that this Court prohibit Plaintiff Oklahoma Department of Securities from engaging in any additional publicity concerning the Defendants until the conclusion of this action.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September __, 2013, a true and correct copy of the foregoing Defendant Robert Arrowood's Motion for Protective Order and Brief in Support was mailed by first-class mail, postage prepaid, to:

Shaun Mullins
Gerri Kavanaugh
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