

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

MAY - 7 2015

TIM RHODES  
COURT CLERK

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

Case No. CJ-2012-6164  
 Judge Roger Stuart

**PLAINTIFF'S REPLY TO DEFENDANT ROBERT ARROWOOD'S  
 RESPONSE IN OBJECTION TO PLAINTIFF'S  
 MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff Oklahoma Department of Securities submits this reply to Defendant Robert Arrowood's response objecting to Plaintiff's Motion for Partial Summary Judgment (Motion). Defendant admits the vast majority of the undisputed facts contained in the Motion and provides no substantive response to the remainder. The record supports summary judgment.

Defendant inaccurately asserts that the note transactions involved "closely associated" individuals when, in fact, most of the investors did not know each other. See **Motion Ex. E**, *Martin Transcr. at 23:13-15 and 26:4 to 27:14*, **Motion Ex. H**, *Wade Sessions Transcr. at 18:20 to 19:18*; **Reply Ex. O**, *Byrd Transcr. at 67:23 to 71:19*, **Reply Ex. P**, *Hennersdorf Transcr. 24:22 to 25:22*; **Reply Ex. Q**, *Rapp Transcr. 18:20-20:4*; and **Reply Ex. R**, *Larry Sessions Transcr. at 37:2 to 38:1*. Likewise, Defendant asserts that his failure to pay the notes when due was the result of a strategic decision to file bankruptcy on behalf of the 2001 Trinity Fund, L.L.C. (Trinity Fund) following a judgment rendered in October of 2009. Most of the

Investments at issue were originally sold by Arrowood in late 2008 and January of 2009 and were due to be repaid many months before the judgment was rendered.

### I. Undisputed Facts

Other than his objection to Plaintiff's characterization of the securities transactions as "investments," Defendant attempts to deny only 8 of Plaintiff's 30 facts yet presents no evidence to dispute 6 of those 8 facts. Facts 11, 12, 14, 16, 17 and 19 should be deemed admitted because Defendant has failed to set out specific facts showing a genuine issue for trial. 12 O.S. § 2056(E) and Rule 13(b) of the Rules for District Courts of Oklahoma.

Defendant fails to provide acceptable evidentiary material to controvert the remaining two facts. **Fact 13.** Defendant, in his deposition, was unable to describe any specific circumstance when he or the Fund applied for a bank loan or to state with any certainty that he even had. See Plaintiff's Fact 13. **Fact 23.** Defendant, in attempting to counter Plaintiff's evidence that the Investors believed their money was being used for 2001 Trinity Fund's oil and gas business, relies on the paucity of information he gave the investors and their lack of knowledge about what he was really doing when he took their money, however that indicates the Investments were securities. *SEC v. Wallenbrock*, 313 F.3d 532, 538 (9<sup>th</sup> Cir. 2002). Repayment of the Investments was clearly tied to the success of the business, as evidenced by the Trinity Fund's bankruptcy and the fact that Defendant Arrowood neither has nor accepts any personal obligation to satisfy the Investments. Furthermore, Defendant's proffered "evidence" does not support his position. Investor Byrd, in the deposition excerpt used by Defendant, states that he thought his money was being used for leases. Investor Martin, in his quoted deposition excerpt, states it was Defendant's decision what to do with the "*business*." The deposition excerpts of Investors Rapp and Hennersdorf are taken out of context in that they relate to transactions that

occurred well after Defendant had failed to repay their initial investments. Defendant told them that the best way of getting their money back was to give him more money so he could file a lawsuit against one of his business partners. **Reply Ex. P**, *Hennersdorf Transcr. at 29:17 - 30:25*; **Reply Ex. Q**, *Rapp Transcr. at 20:10 - 22:14*

## **II. Defendant's Additional Facts**

Plaintiff admits Defendant's Facts 1, 4, and 6, asserts that Defendant's Fact 8, to the extent it might be true, is wholly irrelevant, and responds to the others as follows: **Defendant's Fact 2**. Plaintiff's Fact 15 (Admitted) clearly shows that almost all of the Investors were motivated by the interest rate. **Defendant's Fact 3**. The Investors expected the notes to be repaid, period. Plaintiff's Facts 9 (Admitted) and 23 (Uncontroverted as described above) clearly show that the Investors considered the loans to be made to the Trinity Fund business, and not to Defendant personally. The Investors, under the terms of their notes, do not have personal recourse against Defendant. **Defendant's Facts 5 and 7**. Defendant admits that the word investment was used by Investors and Defendant in connection with the note transactions. See Plaintiff's Facts 25 (Admitted), 26 (Admitted), and 27 (Admitted). Defendant and the Investors he cites have stated that they used the words loan and investment interchangeably. See Defendant's Fact 4. It is for the Court, not the Investors or Defendant, to determine whether the transactions were securities, whatever the names they were called.

## **III. Whether the Investments are Securities is a Question of Law**

*Lambrecht v. Bartlett*, 1982 OK 158, 656 P.2d 269, and *SEC v. Thompson*, 732 F.3d 1151 (10<sup>th</sup> Cir. 2013), unequivocally establish that the question of whether an investment is a security is one of law for the Court to decide. Defendant, in his quotation from *Lambrecht*, conveniently omits the following: "...whether a particular interest is a security is a question of law to be

determined by the court without aid of the jury.” *Lambrecht* at 271. The *Lambrecht* court clearly stated that the trial court should have entered a directed verdict. *Id.*

#### IV. The Investments are Securities under *Reves*

It is important to remember that notes are presumed to be securities and that the *Reves* factors are meant to evaluate whether a note bears resemblance to the list of notes that are not securities. Defendant’s notes do not bear any resemblance to the non-securities notes. Furthermore, rather than the typical commercial scenario where one professional lender enters into multiple notes, here we have multiple individual lenders/Investors and one recipient of money. **Reves Factor 1:** Defendant previously testified that he did not need Investors’ money and that he intended to use it for general business purposes. **Motion Ex. B**, *Arrowood Transcr. at 102:9-103-1* and **Motion Ex. L**, *Arrowood aff.* ¶ 3. Now, with the knowledge of case law, he wants to change his story. However, Defendant never informed investors he needed the money for cash flow problems, but rather, held himself out to be so successful that he could offer such high interest rates. **Motion Ex. I**, *Rossell aff.* ¶ 3; **Motion Ex. J**, *Dvoracek aff.* ¶ 5; **Reply Ex. S**, *Larry Sessions aff.* ¶ 3; and **Reply Ex. T**, *Wade Sessions aff.* ¶ 3. Defendant’s representations to the Investors, not his actual conduct, determine this *Reves* factor. *SEC v. Mulholland*, 2013 WL 979423, \*4 (E.D. Mich. 2013); *SEC v. Great Lakes Equities Co.*, 1990 WL 260587, \*22 (E.D. Mich). **Reves Factor 2:** Defendant asserts that because he did not use advertising or mass communications to market the Investments, he had no plan of distribution. However, a note may be a security where it is only sold by word-of-mouth. *Id.* at \*5. Defendant relies heavily on *LeBrun v. Kuswa*, 24 F.Supp. 2d 641 (E.D. LA 1998), to argue that the eighteen persons to whom Defendant sold the notes do not constitute “a broad segment of the public.” But, as this Court previously pointed out, *LeBrun* is not representative of most cases in its application of the

*Reves* factors. See cases cited in Motion. A security may be found even when there is only one investor. *Trust Co. of Louisiana V.N.N.P. Inc.*, 104 F3d 1478, 1489 (5<sup>th</sup> Cir 1997). Unlike *LeBrun*, Defendant sold notes to people whom he did not know personally, who were not involved in the oil and gas business, and who were not in the business of making loans to others. See Motion Facts 16 (Admitted), 20 (Admitted), and 21 (Admitted). **Reves Factor 3:** *LeBrun* stands alone in its determination that an investor's expectation of receiving the return of his principal and a high interest return does not suggest a note is a security. See cases cited in Motion. That the Investors "invested money expecting to get more in return" satisfies this factor. *Griffin v. Jones*, 2013 WL 5441650, \*10 (W.D. KY). **Reves Factor 4:** Defendant fails to identify any government regulatory schemes, collateral, or insurance associated with the Investments, and instead asks this Court to ignore the fourth *Reves* factor. Again, *LeBrun* stands alone in its treatment of this factor. Other courts recognize that the protections afforded by the risk-reducing factors are significant because "they operate to prevent investors from harm in the first place" or "make recovery more likely after injury." *Stoiber v. SEC*, 161 F.3d 745, 752 (D.C. Cir. 1998). The Investments certainly bear no resemblance to the types of non-securities notes listed in *Reves*. When the undisputed facts in this case are balanced and weighed under the four *Reves* factors, there is no doubt that the Investments are securities in the nature of notes.

#### V. The Investments are Securities under *Howey*

This Court is not forced to choose between application of the *Reves* test and *Howey* test to the facts at issue; they are not mutually exclusive. *Resolution Trust Corp. v. Stone*, 998 F.2d 1534 (10<sup>th</sup> Cir. 1993); *SEC v. Cross Fin. Serv., Inc.*, 908 F.Supp. 718 (C.D. Cal. 1995)(court applied both tests finding notes at issue were securities in the nature of both notes and investment contracts). The excerpt from *Reves* cited by Defendant simply precludes using the *Howey* test to

determine whether an instrument is a “note.” *Reves v. Ernst & Young*, 494 U.S. 56, 64 (1990). Likewise, *Reves* is not used to determine whether an instrument is an “investment contract.”

Furthermore, despite Defendant’s assertion to the contrary, a fixed rate of return may satisfy the “profits” element of the *Howey* test. *SEC v. Edwards*, 540 U.S. 389, 394, 397 (2004) (identifying relevant profits as those “investors seek on their investment, not the profits of the scheme in which they invest”). The court disavowed earlier opinions’ dicta suggesting otherwise, specifically citing to *United Housing Found., Inc. v. Forman*, 421 U.S. 837 (1975), relied on by the *Resolution Trust* court cited by Defendant, and held that a scheme offering a fixed rate of return can be a security in the nature of an “investment contract.” *Id.* There is no doubt that the Investments are securities in the nature of investment contracts.

The Department respectfully requests the Court grant its Motion.

Respectfully Submitted,  
OKLAHOMA DEPARTMENT OF SECURITIES



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of May 2015, the foregoing document was sent by first-class mail and by email to the following:

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF )  
SECURITIES ex rel. IRVING )  
L. FAUGHT, ADMINISTRATOR, )

Plaintiff, )

VS. )

2001 TRINITY FUND, LLC and )  
ROBERT ARROWOOD, )

Defendants. )

Case No. CJ-2012-6164  
Judge Roger Stuart

\* \* \* \* \*

DEPOSITION OF WILLIAM F. BYRD  
TAKEN ON BEHALF OF THE PLAINTIFF  
AT FORT WORTH, TEXAS

OCTOBER 28, 2014

\* \* \* \* \*

COPY

REPORTED BY: LARISSA L. MCPHEARSON, CSR

EXHIBIT

○

1 recollection?

2 A. That's my recollection.

3 Q. Okay. And the amount that's referenced in  
4 there on the page 1 of Exhibit 12 --

5 A. Uh-huh.

6 Q. -- page 1, the first physical -- the first  
7 actual page of the exhibit, right, the amount referenced  
8 there is \$140,000 is amount owed. Do you see that?

9 A. Yes.

10 Q. Is it your understanding that that was the  
11 amount -- the entire amount that was owed to you  
12 remaining unpaid by the Trinity Fund on the day of  
13 that -- on or about that day?

14 A. I would assume, yes.

15 Q. Okay. Mr. Byrd --

16 A. Yes.

17 Q. -- I'd like to go back a little bit in time to  
18 when these -- when you first were discussing this with  
19 Mr. Machina, and these are just general questions at the  
20 moment. Throughout this -- throughout 2008, let's  
21 say --

22 A. Uh-huh.

23 Q. -- did you mention the Trinity Fund to other  
24 people who might be interested in providing money to the  
25 fund?

1           A. After it worked for me that first time -- I  
2 never get other people involved unless it's worked for  
3 me personally. And it worked that one time, then I did.

4           Q. Okay. And who was that; do you recall?

5           A. It was Gary Hennersdorf, David Rapp. Those are  
6 the two. And David had a couple -- I mean, Gary had a  
7 couple of guys that he knew.

8           Q. Okay. As far as you know, did those people  
9 know of Mr. Arrowood or the fund prior to your  
10 mentioning it?

11          A. I don't -- to my best knowledge, they didn't.

12          Q. Okay. Do you know whether or not -- or were  
13 you ever present when Mr. Arrowood was discussing these  
14 types of transactions with those people?

15          A. No, I don't remember. Don't recall. It  
16 seems -- no.

17          Q. The first name you mentioned was Gary  
18 Hennersdorf; is that correct?

19          A. Yes.

20          Q. Okay. Tell me about the circumstances  
21 surrounding your mentioning the Trinity Fund to him.

22          A. I met Gary through -- his wife would go to my  
23 wife's cooking school -- cooking classes at our home. I  
24 met Gary a few times, and he's another entrepreneur,  
25 he's had his own business. You have any deals, Bill,

1 let me know. So this was a deal. So I said, hey, by  
2 the way, you know, this thing worked for me. Oh,  
3 really? That's how it happened.

4 Q. Okay. And were you pretty much -- the  
5 information you were just -- from your own personal  
6 experience?

7 A. Yes. Yes.

8 Q. And do you know --

9 A. Strictly.

10 Q. I'm sorry?

11 A. Strictly.

12 Q. And do you know whether or not -- did you have  
13 any subsequent conversations with Mr. Hennesdorf about  
14 this -- the 2001 Trinity Fund?

15 A. Oh, I'm sure. You know, he would say, well,  
16 what do you think? Do you think it's -- if we could put  
17 some money in it, do you think it would be a good  
18 investment, and are you sure you got your return the  
19 first time, and things like that, yes.

20 Q. Okay. You mentioned Gary Hennesdorf, and you  
21 said you had a couple of other people. Do you recall  
22 those people's names?

23 A. I think one name was Chip, and the other one  
24 was -- Chip. Probably on here (pointing to exhibit).  
25 Chip and -- sorry, my mind is -- hmm.

1 Q. If that's all you can recall --

2 A. That's all I remember. It's not on there.

3 Their names aren't listed there. If his name was there,  
4 I'd recall it.

5 Q. Okay. Let me run a few names by you and see if  
6 you know these names. Enos Semore?

7 A. No.

8 Q. Tommie Harris?

9 A. No.

10 Q. Alex Brown?

11 A. No.

12 Q. Ashley Perkins?

13 A. No.

14 Q. Earl Ingram?

15 A. No.

16 Q. Dusty Dvorchek?

17 A. No.

18 Q. David Pearlman?

19 A. No.

20 Q. Larry Sessions?

21 A. No.

22 Q. Richard Rossell?

23 A. No.

24 Q. James Strawn?

25 A. No.

1 Q. Jonathan Jackson?

2 A. No.

3 Q. Whitney Ingram?

4 A. No.

5 Q. Russell Smith?

6 A. No.

7 Q. Karif Carroll?

8 A. No.

9 Q. Philip Martin?

10 A. Philip Martin, no, sir.

11 Q. Harold Gernsbacher?

12 A. No.

13 Q. Edward Finstadt?

14 A. Edward Finstadt? Ed? Yeah, I think he was a  
15 friend of Richard's -- Machina's. I'm not positive of  
16 that, but the name sounds familiar.

17 Q. Okay. James Barlow?

18 A. James Barlow? Yeah, he was an attorney with  
19 David.

20 Q. At the time that you entered into these  
21 transactions with the Trinity Fund, was it a -- was it a  
22 regular part of your business to loan money? Is it  
23 something you did on a regular basis?

24 A. Not on a regular basis. Like I said before,  
25 with most of my money, I put in my own businesses.

OKLAHOMA STATE DEPARTMENT OF SECURITIES  
COUNTY OF OKLAHOMA

OKLAHOMA DEPARTMENT OF )  
SECURITIES ex rel. IRVING )  
L. FAUGHT, ADMINISTRATOR, )

Plaintiff, )

VS. )

Case No. CJ-2012-6164

2001 TRINITY FUND, LLC and )  
ROBERT ARROWOOD, )

Defendants. )

\* \* \* \* \*

DEPOSITION OF GARY A. HENNERSDORF  
TAKEN ON BEHALF OF THE PLAINTIFF  
AT FORT WORTH, TEXAS

JUNE 19, 2014

\* \* \* \* \*

REPORTED BY: LARISSA L. MCPHEARSON, CSR

1 how they were able to do that?

2 A. Simply an oil and gas investment. I don't know  
3 much further than that, if any.

4 Q. All right. Have you ever thought about the  
5 annualized rate of interest of that?

6 A. What do you mean thought about it?

7 Q. Have you ever calculated the annualized rate of  
8 interest that's referenced in that note?

9 A. No.

10 Q. Okay. What I was asking you -- the question  
11 probably wasn't very clear -- is, did he say -- did  
12 Mr. Byrd explain or did Mr. Arrowood, either one,  
13 explain that they were in it -- that the fund was in any  
14 particular type of oil and gas business, whether it be  
15 production or leases or --

16 A. No. I don't --

17 Q. -- service work?

18 A. I don't recall that.

19 Q. Okay. At the time you made your investment,  
20 what did you think that money would be used for?

21 A. Something to do with the oil and gas business.

22 Q. Before I get too far from it, I'd like to run a  
23 few names by you --

24 A. Uh-huh.

25 Q. -- see if you happen to know those names,

1 recognize those names. And when you do, if you'll just  
2 stop right there and just kind of go through each one of  
3 them as to how you might know them.

4 A. Okay.

5 Q. Richard Rossell?

6 A. No.

7 Q. David Pearlman?

8 A. No.

9 Q. James Barlow?

10 A. No.

11 Q. Tommie Harris?

12 A. No.

13 Q. Dusty Dvorchek?

14 A. No.

15 Q. Earl Ingram?

16 A. No.

17 Q. Ashley Perkins?

18 A. No. Who are these people?

19 Q. James Strawn?

20 A. No.

21 Q. Enos Semore?

22 A. No.

23 Q. Do you follow college baseball?

24 A. Just recently.

25 Q. Just recently? Okay. Thank you. I probably

1 What are the circumstances surrounding the entry of this  
2 Agreed Final Judgment that's on page 2 of Exhibit 2?

3 A. I don't understand.

4 Q. Tell me why -- what's your understanding of why  
5 this Agreed Final Judgment has -- was entered, why this  
6 case was filed.

7 A. I'm not an attorney, but I'm under the  
8 impression it protects us, the investor, the people who  
9 loaned the money.

10 Q. Okay. Well, how did that come up? How did any  
11 of this -- this Agreed Final Judgment, how did it -- how  
12 did it transpire, and why was it written the way it was?  
13 What's your understanding of that?

14 A. Suggestion by the attorney.

15 Q. And is that David Rapp you're referring to?

16 A. Uh-huh.

17 Q. Okay. Well, I understand at some point,  
18 Mr. Arrowood, didn't he approach some of the February  
19 note holders about loaning him some additional money?

20 A. Yes.

21 Q. Okay. Well, tell me what you know about that.

22 A. From what I recall, it was to be used for  
23 attorney fees.

24 Q. Okay. So you -- he did approach -- did he  
25 approach you personally requesting additional money?

1           A. You know, I don't recall if it was personally  
2 or if it was through another person in the group. I  
3 don't remember.

4           Q. Okay. Who are you talking about as the group?

5           A. Bill.

6           Q. Bill?

7           A. Uh-huh.

8           Q. Byrd?

9           A. Uh-huh.

10          Q. Okay. So at some point, you understand that  
11 Mr. Arrowood is requesting additional money?

12          A. (Moving head up and down.)

13          Q. And explain for me, please, what was the  
14 purpose of that? What was the intended purpose of that  
15 additional money?

16          A. I told you. I was under the impression it was  
17 for personal use, maybe to pay attorney fees. I -- you  
18 know --

19          Q. Okay. All right. And did you loan  
20 Mr. Arrowood additional money?

21          A. Uh-huh, yes, I did.

22          Q. How much?

23          A. 20.

24          Q. Okay. And why? Why did you agree to do that?

25          A. There again, it was a nice return on the money.

OKLAHOMA STATE DEPARTMENT OF SECURITIES  
COUNTY OF OKLAHOMA

OKLAHOMA DEPARTMENT OF )  
SECURITIES ex rel. IRVING )  
L. FAUGHT, ADMINISTRATOR, )  
 )  
Plaintiff, )

VS. )

Case No. CJ-2012-6164

2001 TRINITY FUND, LLC and )  
ROBERT ARROWOOD, )  
 )  
Defendants. )

\* \* \* \* \*

DEPOSITION OF DAVID D. RAPP  
TAKEN ON BEHALF OF THE PLAINTIFF  
AT FORT WORTH, TEXAS

JUNE 19, 2014

\* \* \* \* \*

REPORTED BY: LARISSA L. MCPHEARSON, CSR

1 note participation here? What were the dates of your  
2 loans and the amounts?

3 A. I don't remember.

4 Q. Well, let's just go with how many times.

5 A. Twice.

6 Q. Twice, okay. And the first one was \$30,000  
7 split evenly between you and your brother, Todd?

8 A. Correct.

9 Q. Okay. And the second one was how much?

10 A. I believe it was \$30,000, and that time, it was  
11 to be 10,000 for my dad, 10,000 for my brother, and  
12 10,000 for me, that we agreed to be on the hook for.

13 Q. As far as you know, does your dad know  
14 Mr. Arrowood?

15 A. He does not.

16 Q. Does your brother?

17 A. No.

18 Q. Okay.

19 A. These are all -- it's all through me.

20 Q. Okay. I'm going to go through some names. I  
21 think you previously heard those names in connection  
22 with the previous two depositions today, but I'm going  
23 to go over them with you anyway. Have you ever heard  
24 the name David Pearlman?

25 A. Other than today or if I've seen it on one of

1 the bankruptcy documents, I don't -- I don't know him,  
2 and I have no knowledge of him apart from anything I  
3 might have glanced at in the bankruptcy proceeding.

4 Q. Okay.

5 A. And that's going to be the same answer for all  
6 of them, but I'll confirm, if you want to read them off.

7 Q. No, that's okay.

8 A. I don't know any of them.

9 Q. Well, the only thing is, I think a few of those  
10 names have not filed bankruptcy claims. I --

11 A. Okay. I mean, I didn't recognize almost any of  
12 them. I mean, I didn't recognize any of -- David  
13 Pearlman's name stood out, and I'm just thinking he  
14 probably has a large claim in the bankruptcy, so I've  
15 probably seen his name a time or two, but I don't know  
16 who he is. I've never met him.

17 Q. The exception might be, during the first  
18 deposition, we mentioned Karen Barlow?

19 A. Karen Barlow.

20 Q. Karen Barlow (different pronunciation), thank  
21 you. And -- but you didn't know Ms. Barlow prior to  
22 making this investment?

23 A. Yes.

24 Q. Okay.

25 A. I was law partners with her son and her

1 husband. The reason it is in her name is because her  
2 husband initially put in \$60,000 and then he passed  
3 away, and so I asked that a new check be issued payable  
4 to her so that it would be easier for her to cash.

5 (Exhibit No. 3 marked.)

6 Q. This is Exhibit 3.

7 A. Okay.

8 Q. Tell me what you know about Exhibit 3.

9 A. It appears to be what I sent you.

10 Q. Which is an Agreed Final Judgment. Tell me why  
11 you -- why was this Agreed Final Judgment entered?

12 A. It seemed to me a smart thing to do to have a  
13 judgment against the company and Rob individually, if I  
14 could get him to agree to do that before we loaned him  
15 more money.

16 Q. And why did he -- what was the reasoning for --  
17 well, let me back up. Why was he seeking more money?

18 A. My understanding was to -- he needed money to  
19 pay lawyers for his -- the Houston lawsuit, for tuition,  
20 for other living expenses to basically stay afloat while  
21 he was fighting Carrizo.

22 Q. At the time of this additional money, did you  
23 understand it would be used for personal expenses as  
24 well?

25 A. Yes.

1 Q. And how -- where did you get that  
2 understanding?

3 A. I imagine it was from Rob as well as Bill and  
4 possibly Richard.

5 Q. Richard who?

6 A. Machina. I don't think I talked to Richard  
7 much then. I think I talked to Richard once or twice  
8 for the first round, but I don't think I talked to  
9 Richard much with respect to this.

10 Q. Okay. The first notes, they were not  
11 collateralized, were they, by anything?

12 A. I'm not sure.

13 Q. That you participated in, the ones that, for  
14 instance, were split with Todd or your father.

15 A. I guess I'm just not sure the full meaning of  
16 the word "collateralized" is my hesitation. In other  
17 words, they were collateralized -- I don't know what  
18 exactly that means.

19 Q. Okay. Were there any other documents other  
20 than those promissory notes that you might have  
21 received? Did you have anything that looks close to the  
22 deed of trust, mortgage, assignment, security agreement,  
23 fixture filing, and financing statement that's included  
24 in Exhibit 3?

25 A. No.

1 Q. Okay. Were there any similar types of  
2 instruments other than the promissory note itself?

3 A. No. And the postdated check.

4 Q. With respect to those first -- the \$30,000  
5 promissory note, other than that postdated check, was  
6 there a security interest in any of the assets of the  
7 Trinity Fund?

8 A. I'm -- for the first round?

9 Q. Yes.

10 A. I'm not -- again, I don't know what a security  
11 interest means, but no, I don't think there was anything  
12 other than the postdated check and the one-page  
13 promissory note that I received or had any dealings  
14 with.

15 Q. Let's take a very quick break. I might be  
16 finished.

17 A. Okay.

18 (Break taken from 2:13 p.m. to 2:14 p.m.)

19 MR. MULLINS: We're back on the record here  
20 after a brief break.

21 Q. Richard Machina, how do you know Mr. Machina?

22 A. I was just introduced to him by Bill.

23 Q. What was -- what occasioned that introduction?

24 A. This deal.

25 Q. Okay. Tell me the circumstances surrounding

OKLAHOMA STATE DEPARTMENT OF SECURITIES  
COUNTY OF OKLAHOMA

OKLAHOMA DEPARTMENT OF  
SECURITIES ex rel: IRVING  
L. FAUGHT, ADMINISTRATOR,

Plaintiff,

vs.

CASE NO.: CJ-2012-6164

2001 TRINITY FUND, LLC and  
ROBERT ARROWOOD,

Defendants.

The deposition of LARRY SESSIONS, taken by the attorney for the Plaintiff, commencing at approximately 1:00 p.m., on the 15th day of September, 2014, at 220 West Garden Street, Suite 801, Pensacola, Florida, before Connie L. Morse, Court Reporter and Notary Public at Large in and for the State of Florida.

COPY

1 A Yes.

2 Q For the time period beginning back in December  
3 of 2008 through July 3rd of 2009, I'd like to run a few  
4 names by you and see if you had ever heard these names  
5 before.

6 A Okay.

7 Q And keep in mind, we're talking about from the  
8 time period in December 2008 through July of 2009. Gary  
9 Hennersdorf?

10 A No.

11 Q Phil Martin?

12 A No.

13 Q David Pearlman?

14 A No.

15 Q James Barlow?

16 A No.

17 Q David Rapp?

18 A No.

19 Q R-a-p-p, Earl Ingram, I-n-g-r-a-m?

20 A No.

21 Q Enos, E-n-o-s, Semore, S-e-m-o-r-e?

22 A No.

23 Q Tommy Harris, H-a-r-r-i-s?

24 A No.

25 Q Dusty Dvorchek, D-v-o-r-c-h-e-k?

1 A No.

2 Q In December of 2008 and in January of 2009,  
3 what types of investments did you have?

4 A At that time?

5 Q Yes.

6 A Before that time I was pretty good at  
7 investing in stocks, but I saved enough money for my  
8 children in college based on my investments. But I became  
9 very smart and became speculative and lost a bunch of money.  
10 Speculation is how I got into this mess. So at that time I  
11 had bailed out of managing my own money and bought an  
12 annuity, which is where most of my money is now. My wife's  
13 money I still had in stocks at that time.

14 Q At some point in time you filed a complaint  
15 with the Oklahoma Department of Securities; did you not?

16 A Oklahoma, Florida and Texas, all three of  
17 them.

18 Q Okay. And you subsequently wrote to the  
19 Oklahoma Department of Securities withdrawing that  
20 complaint?

21 A I withdrew the complaint from all three states  
22 based on the fact that I still believed that Rob was an  
23 honest businessman, and he was not able to pay us due to the  
24 contractual difficulties he having with Carrizo Oil and Gas.  
25 And at that time he went into bankruptcy, and I used that as

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

Oklahoma Department of Securities )  
*ex rel.* Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. ) Case No. CJ-2012-6164  
 ) Judge Roger Stuart  
Trinity Fund, L.L.C. and )  
Robert Arrowood, )  
 )  
Defendants. )

AFFIDAVIT OF LARRY M. SESSIONS

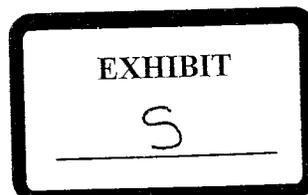
STATE OF FLORIDA )  
 ) SS.  
COUNTY OF SANTA ROSA )

I, Larry M. Sessions, of lawful age, being first duly sworn deposes and states:

1. I am a resident of the State of Florida. I am not engaged in the oil and gas business.

2. In approximately Nov. 2008, I was introduced to Robert Arrowood. Prior to the matters addressed herein, I did not know Robert Arrowood.

3. Prior to and in connection with making the investment, Mr. Arrowood represented that he used investor money to purchase oil and gas leases that he would subsequently resell at a profit. He never indicated that 2001 Trinity Fund, L.L.C. was having cash flow problems. He also never specifically identified an oil or gas lease to which my investment money would be applied.



1043

4. Mr. Arrowood repeatedly referred to the transaction as an "investment" on my part.

5. On December <sup>2</sup> ~~3~~ <sup>2008</sup>, I invested \$150,000 with Mr. Arrowood.

6. In return for the investment, I received a promissory note carrying an interest rate of 5% over a term of 45 days. The rate of return was the primary factor in my decision to invest.

7. On January 19, 2009, a new promissory note was issued with the same terms for \$165,000. This was not a new investment but rather a renewal of my first promissory note that included previously due principal and interest.

8. When the January 19, 2009, promissory note came due, I received a check from 2001 Trinity Fund, L.L.C. in the amount of \$173,250. However, the check was returned due to insufficient funds.

9. I was subsequently paid \$23,250 for interest due on the promissory notes but never received repayment of my principal.

10. After much discussion with Mr. Arrowood, I agreed to accept another promissory note dated July 3, 2009.

11. When the July 3, 2009, promissory note came due, I received a check from 2001 Trinity Fund, L.L.C. in the amount of \$173,250. However, the check was returned unpaid with the reason given as "stop payment."

12. Other than making my investment, I was not involved in any way in the business or operations of 2001 Trinity Fund, L.L.C.

13. My investment was never secured by any collateral.

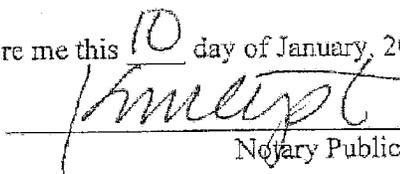
14. I am not in the business of making loans.

I hereby affirm that I am competent to make this Affidavit and that all of the foregoing is true and correct. I hereby affirm that I affix my signature to this document voluntarily and that no threat or promise of immunity or other assistance of any kind has been made by any person, to include the Administrator of the Oklahoma Department of Securities, any employee of the Oklahoma Department of Securities, and any member of the Oklahoma Securities Commission, to coerce the statements made herein.

  
Larry M. Sessions

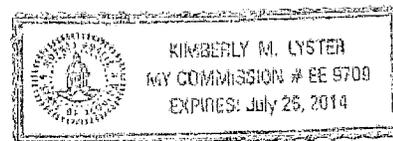
Subscribed and sworn to before me this 10 day of January, 2014.

(NOTARIAL SEAL)

  
Notary Public

My Commission Expires:

07-26-2014



IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

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

Plaintiff,

v.

Trinity Fund, L.L.C, and  
Robert Arrowood,

Defendants.

Case No. CJ-2012-6164  
Judge Roger Stuart

AFFIDAVIT OF WADE M. SESSIONS

STATE OF UTAH )  
 )  
COUNTY OF SALT LAKE ) SS.

I, Wade M. Sessions , of lawful age, being first duly sworn deposes and states:

1. I am a resident of the State of Utah. I am not engaged in the oil and gas business.

2. In approximately 10/08, I was introduced to Robert Arrowood. Prior to the matters addressed herein, I did not know Robert Arrowood.

3. Prior to and in connection with making the investment, Mr. Arrowood represented that he used investor money to purchase oil and gas leases that he would subsequently resell at a profit. He never indicated that 2001 Trinity Fund, L.L.C. was

EXHIBIT  
T

having cash flow problems. He also never specifically identified an oil or gas lease to which my investment money would be applied.

4. Mr. Arrowood repeatedly referred to the transaction as an "investment" on my part.

5. On December 1, 2008, I invested \$100,000 with Mr. Arrowood.

6. In return for the investment, I received a promissory note carrying an interest rate of 5% over a term of 45 days. The rate of return was the primary factor in my decision to invest.

7. Payment was not made following the initial 45 day term or at any time thereafter. I agreed to the issuance of two subsequent promissory notes incorporating owed principal and interest the last being due on August 18, 2009. Shortly thereafter I learned that 2001 Trinity Fund, L.L.C. had filed for bankruptcy.

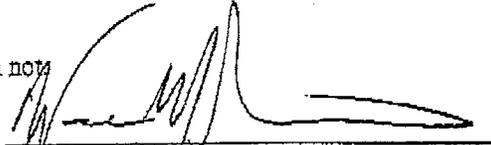
8. Other than making my investment, I was not involved in any way in the business or operations of 2001 Trinity Fund, L.L.C.

9. My investment was never secured by any collateral.

10. I am not in the business of making loans.

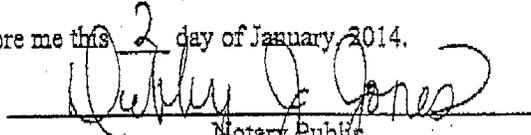
I hereby affirm that I am competent to make this Affidavit and that all of the foregoing is true and correct. I hereby affirm that I affix my signature to this document voluntarily and that no threat or promise of immunity or other assistance of any kind has been made by any person, to include the Administrator of the Oklahoma Department of Securities, any employee of the Oklahoma Department of Securities, and any member of the Oklahoma Securities Commission, to coerce the statements made herein.

Further Affiant sayeth now

  
Wade M. Sessions

Subscribed and sworn to before me this 2 day of January, 2014.

(NOTARIAL SEAL)

  
Notary Public

My Commission Expires:

02/23/2014

