

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

DEC 16 2014

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. )

Case No. CJ-2012-6164  
Judge Roger Stuart

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**REPLY TO DEFENDANT'S RESPONSE IN OPPOSITION  
TO PLAINTIFF'S MOTION TO BIFURCATE TRIAL ISSUES  
AND ESTABLISH CLAIMS PROCEDURE**

Plaintiff has moved the Court to enter an order 1) bifurcating the trial in this matter so that the issue of liability shall be tried prior to the presentation of evidence regarding the calculation of restitution, and 2) establishing a claims procedure designed to notify those persons, who may have invested with or entered into a transaction evidenced by a promissory note with Defendants, that they are required to file a proof of claim setting forth the nature and amount of their claims to be considered for any restitution award ordered (Motion). Defendant Arrowood objects.

Defendant does not dispute that he is not entitled to a jury trial on the questions of whether restitution is warranted and the amount of any restitution awarded. Instead, Defendant cites to *Faulkenberry v. Kansas City Southern Railway Co.*, 1983 OK 26, 661 P.2d 510, 513, to support his proposition that bifurcation of the issues is not appropriate in this case. *Faulkenberry*, however, merely provides that the Court has discretion to bifurcate trial issues and

that an appeals court will not second guess that discretion. *Id. Faulkenberry* does not require the Court to consider any particular special circumstances, but directs the Court to exercise its discretion in relation to the circumstances of the case. *Id.* Section 2018 of the Oklahoma Pleading Code provides that the Court's discretion is only limited by the requirement that a person's right to a jury trial be preserved. 12 O.S. § 2018. Since Defendant is not entitled to a jury trial on the questions of whether to award restitution and the amount of restitution to be awarded, no rights will be violated.

The question of whether a restitution award is warranted does not arise until liability is found. The evidence necessary to prove liability and determine that restitution should be ordered does not require an exhaustive review of every transaction between each investor and Defendant. The calculation of the amount of restitution to be ordered will require a much more in depth analysis that could add a significant amount of time to the trial. Because it is the Court and not the jury that will decide whether to award restitution and how to calculate the amount, Plaintiff is simply asking that the calculation of the amount of any restitution awarded be deferred for a later hearing. This will prevent the jury trial from being muddled with the minutia of the accounting process relating to amounts received from and distributed to multiple investors. It makes sense to bifurcate the issue of the amount of restitution until after liability has been determined and restitution has been deemed an appropriate remedy by the Court.

Furthermore, the claims process proposed by Plaintiff is the most efficient and fair way of determining the amount of any restitution to be awarded. Defendant Arrowood has testified that he did not keep accounting records relating to money received from and distributed to investors, but rather that he merely kept a copy of the most recent promissory note and that is

how he knew what he owed someone. Furthermore, he testified that not all of the transactions were evidenced by a promissory note, and that he often just kept an accounting in his head or would check his bank statements if necessary. Given the dismal record keeping practices used by Defendant, it would be unfair to investors to rely solely on the bank records currently in the Plaintiff's possession to calculate the amount of restitution.

Defendant also suggests that the investors will be repaid through the bankruptcy of the 2001 Trinity Fund, LLC and that this Court should therefore not initiate another claims process. If repayment in the bankruptcy were guaranteed, then Plaintiff would be less concerned with a restitution order. However, at this stage, the claims against the assets of the bankruptcy estate greatly exceed the amounts owed to the investors.

Most importantly, not all investors were even given notice of the bankruptcy or listed as potential claim holders in the bankruptcy schedules. This may be because some of them were repaid and no longer owed anything at the time of the bankruptcy filing. However, at least one investor, who was not listed on the bankruptcy schedules, has testified that he was told by Defendant Arrowood that Arrowood would try to keep him out of the bankruptcy and repay him another way. Plaintiff knows of three investors who were belatedly added to the bankruptcy schedules who do have claims. Plaintiff is also aware of eight other investors who were not listed in the bankruptcy schedules and who should be given the opportunity to make a claim if they believe they have one.

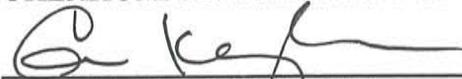
Finally, Defendant Arrowood is not himself in bankruptcy. Sections 1-301, 1-402 and 1-501 of the Oklahoma Uniform Securities Act of 2004 (the "Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2011), all impose liability for violations of the Act upon any "person" who offers

and/or sells a security in violation of the Act. Although the 2001 Trinity Fund, L.L.C. is the issuer of the securities, liability for violations of the Act attaches to Arrowood as a person who offered and sold the securities. Any order of restitution should attach to him personally. The investors were sold the securities by Arrowood and entrusted their money to him. It was the actions of Arrowood, as the sole control person of 2001 Trinity Fund, LLC, that form the basis of this civil action. If liability is found, then he should personally be liable for the restitution order, not just 2001 Trinity Fund, LLC.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order bifurcating the issue of liability from the calculation of restitution and establishing a claims procedure, as set forth in the Motion.

Respectfully Submitted,

OKLAHOMA DEPARTMENT OF SECURITIES



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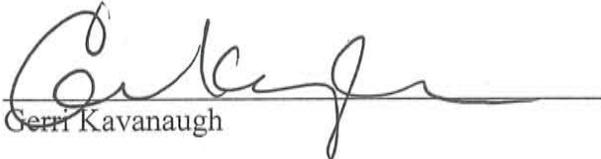
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CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> day of December, 2014, the foregoing document was sent by first-class mail to the following:

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Gerni Kavanaugh