

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

JUN - 2 2015

TIM RHODES  
COURT CLERK  
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Oklahoma Department of Securities )  
ex rel Irving L. Faught, Administrator )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Seabrooke Investments, LLC, et al., )

Case No. CJ-2014-4515

**DEFENDANT’S RESPONSE TO INTERVENORS’, PEGGY JOHNSTON AND HPJ FAMILY LIMITED PARTNERSHIP, MOTION FOR ORDER DETERMINING RIGHTS TO PROCEEDS FROM SALE OF REAL ESTATE AND BRIEF IN SUPPORT**

COMES NOW, Seabrooke Investments, LLC (“Seabrooke”), and in response to Intervenor’s, Peggy Johnston, HPJ Family Trust, and HPJ Family Limited Partnership (collectively referred to as “Intervenor’s”), Motion for Order Determining Rights to Proceeds from Sale of Real Estate (“Intervenor’s Motion”) alleges and states as follows:

**RESPONSE TO BACKGROUND**

1. Admitted.
2. Admitted.
3. Seabrooke admits that there was a mortgage executed by Tom and Judith Seabrooke

to HPJ Family Trust securing a Note on the following property:

Lots NINE (9) and TEN (10), of Block ONE (1) in HADLOCK’S SUB DITTMER to Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof.

Address: 1609 N.W. 15<sup>th</sup> Street, OKC, OK 73106

(“15<sup>th</sup> Street Property”), and that said Mortgage was released. The Note, Mortgage and Release attached to Intervenor’s Motion as Exhibits A, B and C speak for themselves. Seabrooke denies all other allegations set forth in paragraph 3.

4. Seabrooke admits that there was a mortgage executed by Tom and Judith Seabrooke to HPJ Family Trust securing a Note on the following property:

The East 14.8 feet of Lot NINETEEN (19) in Block SIX (6) and the West 27.7 feet of Lot TWENTY (20) in Block SIX (6) and the West 5 feet of the East 79.7 feet of Lot TWENTY (20) in Block SIX (6) in VERDOME ADDITION, to Oklahoma City, Oklahoma County, being an amended plat of Blocks 6 and 7, MCCLURE'S ADDITION to Oklahoma City, Oklahoma County, Oklahoma

("11<sup>th</sup> Street Property"), and that said Mortgage was released. The Note, Mortgage and Release attached to Intervenor's Motion as Exhibits D, E and F speak for themselves. Seabrooke denies all other allegations set forth in paragraph 4.

5. Denied.

6. Denied.

7. Seabrooke is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 7 of Intervenor's Motion and therefore, the allegations are denied.

8. Paragraph 8 does not assert any factual allegations against Seabrooke and, therefore, requires no response. To the extent that paragraph 8 contains allegations that require a response, those allegations are denied.

#### **ADDITIONAL BACKGROUND FACTS**

9. Intervenor's agreed with Seabrooke to release the Mortgages attached to Intervenor's Motion, so that Seabrooke could obtain an additional Mortgage on the properties.

10. The Release of Mortgage covering the 15<sup>th</sup> Street Property and attached to Intervenor's Motion as Exhibit "C" was executed by Peggy Johnston on behalf of HPJ Family Trust, and was acknowledged by Anabel Zavala, Notary Public.

11. The Release of Mortgage covering the 11<sup>th</sup> Street Property and attached to Intervenor's Motion as Exhibit "F" was executed by Peggy Johnston on behalf of HPJ Family Limited Partnership, and was acknowledged by Anabel Zavala, Notary Public.

12. Once the Releases were filed, and the additional Mortgages obtained, it was agreed between Seabrooke and Intervenor's that Intervenor's were to draft new Mortgages for Seabrooke to execute. These Mortgages were to take the place of the released Mortgages.

13. Once the Releases were filed, Seabrooke continued to make payments to Intervenor's even though the Mortgages had been released.

14. To date, Intervenor's have never presented Seabrooke with any new Mortgage covering either of the properties released by the Releases of Mortgages attached to Intervenor's Motion as Exhibits "C" and "F".

#### **BRIEF IN SUPPORT**

#### **THIS COURT HAS AUTHORITY TO DETERMINE INTERVENOR'S RIGHTS TO THE PROCEEDS FROM THE SALE OF THE 15<sup>th</sup> STREET PROPERTY AND THE 11<sup>th</sup> STREET PROPERTY**

Seabrooke does not deny that this Court has the authority to determine the rights to proceeds from the sale of the 15<sup>th</sup> and 11<sup>th</sup> Street Properties. However, Seabrooke does deny that it defrauded Intervenor's in any way which would allow them any rights to the proceeds of the sale of said properties. Intervenor's allege that they were defrauded when "someone" illegally forged a signature on Releases of Mortgage covering the properties at issue, and then filed said Releases. As stated above, the Releases of Mortgage in question were both executed by Peggy Johnston on behalf of the HPJ Family Trust and HPJ Family Limited Partnership and acknowledged by a notary. A notary's acknowledgment cannot be impeached by mere assertion by the grantor that she did not sign the

Release of Mortgage. *Eneff v. Scott*, 1926 OK 689, 120 Okla. 33, 250 P. 86. “The evidence to impeach a certificate of acknowledgment should be clear, cogent, and convincing, and such as produces a conviction amounting to a moral certainty that the certificate is false.” *Dyal v. Norton*, 47 Okla. 794, 150 P. 703. Intervenors’ assertion that “someone” forged the signatures on the Releases of Mortgage is not clear, cogent and convincing enough to impeach the acknowledgments contained therein. Without more, the Releases of Mortgage filed of record in the records of the County Clerk of Oklahoma County must be deemed valid and Intervenors given no right to the proceeds of the sale of the properties at issue.

### **INTERVENORS ARE NOT ENTITLED TO ENFORCE ANY MORTGAGE RIGHTS**

As stated in the preceding section, Intervenors’ assertion that “someone” forged the signatures on the Releases of Mortgage is not clear, cogent and convincing enough to impeach the acknowledgments contained therein. Without more, the Releases of Mortgage filed of record in the records of the County Clerk of Oklahoma County should be deemed valid and Intervenors given no rights to the proceeds of the sale of the properties at issue. Further, and also previously discussed, Intervenors were to draft new Mortgages for Seabrooke to execute that would take the place of the previously released Mortgages. Intervenors never presented Seabrooke with any new Mortgages covering the 15<sup>th</sup> or 11<sup>th</sup> Street properties, and therefore Intervenors currently possess no secured interest in the property which would warrant the payment to them of any proceeds from any sale of the subject properties.

### **INTERVENORS HAVE NO SECURED INTERESTS IN THE 15<sup>th</sup> OR 11<sup>th</sup> STREET PROPERTIES**

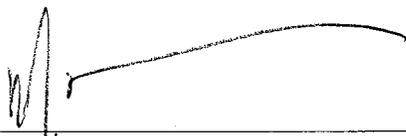
Intervenors claim that Mortgages secure all indebtedness owed by Seabrooke to Intervenors, however, no Mortgages remain that secure any debt. Again, the assertion that Releases were forged by “somebody” is not convincing enough to deem the documents forged. Since the Releases of

Mortgage should be taken at face value, Intervenor retain no secured interest in the property at issue. Therefore, whatever remedies or payment provisions were contained within the released Mortgages are moot, and proceeds made from the sale of the properties at issue should not be applied to any outstanding principal, interest, late fees, attorneys fees and/or costs associated with the said released Mortgages.

### CONCLUSION

Because Intervenor's assertion of forgery is not clear, cogent and convincing enough to impeach the acknowledgments contained therein, the Releases of Mortgage at issue herein should be deemed valid and Intervenor given no rights to the proceeds of the sales of the 15<sup>th</sup> and 11<sup>th</sup> Street properties. The Releases were given under an agreement between Seabrooke and Intervenor that allowed Seabrooke to gain additional financing on the properties with the understanding that Intervenor could file new Mortgages once said financing was secured. Intervenor's failure to obtain additional Mortgages on the property at issue should not be rewarded by allowing them any share of the proceeds gained by said sales.

WHEREFORE, Seabrooke prays this Court determine that the Releases of Mortgage described above are valid and that Intervenor take nothing from the sale of property previously secured by the Mortgages released thereby.



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**ATTORNEY FOR SEABROOKE**

CERTIFICATE OF MAILING

I hereby certify that on this 2<sup>nd</sup> day of June, 2015, a true and correct copy of the above and foregoing was hand-delivered, to:

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