

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
 STATE OF OKLAHOMA

FILED IN DISTRICT COURT
 OKLAHOMA COUNTY

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

FEB 10 2016
 TIM RHODES
 COURT CLERK
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v.)

Case No. CJ-2014-4515

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 doing business as Cherry Hill Apartments;)
 Tom W. Seabrooke, individually and as trustee of)
 Tom Seabrooke 2007 Revocable Trust and J.)
 Karyn Seabrooke 2007 Revocable Trust; and)
 Judith Karyn Seabrooke, individually and as trustee)
 of Tom Seabrooke 2007 Revocable Trust and)
 J. Karyn Seabrooke 2007 Revocable Trust,)
)
 Defendants.)

**RECEIVER’S RESPONSE TO OBJECTION OF FIRST NATIONAL BANK &
 TRUST COMPANY OF WEATHERFORD, N.A. TO RECEIVER’S REPORT ON
 CLAIMS AND RECOMMENDATION FOR CLASSIFICATION OF SAME**

COMES NOW the Receiver, Ryan Leonard (“Receiver”) and responds to the objection of First National Bank & Trust Company of Weatherford, N.A. (“FNB Weatherford”) to the Receiver’s Report on Claims and Recommendation for Classification of Same (“Receiver’s Report”), as follows:

INTRODUCTION

Through its objection, FNB Weatherford opposes the Receiver's recommendation to deny its unsecured claims totaling \$143,766.59 arising from deficiencies from the non-judicial foreclosure sales of two parcels of unimproved land previously owned by defendant Oakbrooke Homes, LLC ("Oakbrooke Homes") known as the "Lawton Property" and the "College Park Property." These properties were abandoned by the Receiver during the course of these receivership proceedings on the grounds that the amounts owed to the first mortgage holder (FNB Weatherford) far exceed the market value or any potential for recovery by the Receiver.

FNB Weatherford neglects to mention in its Objection, however, that through sales of other properties by the Receiver through this receivership, the bank has already received **more than \$1.3 million** in principal and interest pursuant to its secured interests just since this receivership began. This figure does not include \$48,897.35 FNB Weatherford was paid for six of the sixteen lots comprising the College Park Property following its abandonment by the Receiver, or \$198,700.00 in property it obtained by credit bids through the purchase of the remainder of College Park and the Lawton Property. This amount also does not include principal and interest payments made by the various defendants on their multiple secured notes prior to the receivership, many of which payments were undoubtedly made possible through monies raised from investors. In sum, if the Court accepts the Receiver's recommendation to deny the deficiency claims in the Lawton Property and College Park Property, FNB Weatherford will already have obtained \$1,618,335.37 in proceeds or real estate since this receivership began, or a **92%**

return on all principal and interest it was owed by defendants at the inception of this receivership. As a result, the Receiver respectfully submits that FNB Weatherford's claims for deficiencies should be denied because (1) this Court has broad authority sitting in equity to fashion appropriate remedies under the Oklahoma Securities Act, including to determine how and to whom monies are distributed, and; (2) approval of FNB Weatherford's deficiency claims at the expense of other investors would render an inequitable result.

ARGUMENTS AND AUTHORITIES

I. FNB WEATHERFORD SHOULD NOT BE CLASSIFIED AS A CREDITOR OF THIS RECEIVERSHIP ESTATE.

- 1. This Court, sitting in equity, has broad authority and jurisdiction to fashion appropriate remedies under the Oklahoma Securities Act, including authority to determine how and to whom to distribute the available money.**

“[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 properly been 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 (“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[.]” *S.E.C. v. Fischbach Corp.*, 133 F.3d 170, 175 (2nd Cir. 1997); *see also S.E.C. v. Byers*, 637 F.Supp.2d 166, 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.’”). “So long as the district court is satisfied that ‘in the aggregate, the plan is equitable and reasonable,’ the SEC [and in this case, the Oklahoma Department of Securities] 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 80 at 88.²

In response to FNB Weatherford’s argument that this Court should be bound by “non-receivership” or bankruptcy law in determining its distribution plan, a bankruptcy proceeding is not analogous to these proceedings. As the Court held in *S.E.C. v. Byers*, 637 F. Supp.2d at 176, *supra*, a “bankruptcy court would have less flexibility in determining the most equitable approach to distribute assets to victims. The overriding

¹ “[T]he Oklahoma Supreme Court has stated that the interpretive 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 Dep’t of Securities ex rel. Faught v. Blair*, 2010 OK 16, ¶8, 231 P.3d 645, 651; *see also Citizens State Bank v. FDIC*, 639 F.Supp. 758, 761 (W.D.Okla. 1986)(“71 O.S. §501 of the Oklahoma Securities Act mandates the construction of this Uniform Act as so to ‘coordinate the interpretation and administration of this Act with the related federal regulation.’”)

² As a result, contrary to the authority set forth by FNB Weatherford, this Court is not bound by the rigidities of “non-receivership” or bankruptcy laws.

goal of these proceedings should be fairness to the defrauded investors[.]”³ “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.” *S.E.C. v. Enter. Trust Co.*, 2008 WL 4534154, at *3 (N.D.Ill. Oct. 7, 2008).

Accordingly, this Court, sitting in equity in a securities fraud action, is not bound by the rigidities of the bankruptcy code. The purpose of these proceedings is to compensate victims of the alleged securities fraud of certain defendants. Indeed, it could even be argued that FNB Weatherford was the beneficiary of the funds raised by defendants from “investors,” as payments made to the bank prior to the receivership presumably were made at least in part from the pool of funds “invested” with the defendants. FNB Weatherford’s argument that this Court should be bound by the provisions of “non-receivership” or bankruptcy law is inconsistent with the legal authority and purpose of these proceedings. It should therefore be rejected.

2. FNB Weatherford’s deficiency claims should be denied because their approval would render an inequitable result in these proceedings.

A. FNB Weatherford has already received a return of 92% of the monies it was owed by the defendants at the inception of this receivership.

In addition to the properties owned by Oakbrooke Homes that are the subject of FNB’s Weatherford’s deficiency claims, at the inception of this receivership FNB Weatherford held secured mortgage interests on the following additional properties

³ “A reading of the Oklahoma Securities Act makes it clear that one of its purposes 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.

owned by other defendants in this receivership: 425 N.W. 11th Street, 1409 N.W. 17th Street, 1413 N.W. 17th Street, 3020 North Robinson, 1712 North Indiana and 1740 N.W. 17th Street, all in Oklahoma City, Oklahoma. **Through the sale of these properties by the Receiver, FNB Weatherford obtained the full amount of its outstanding principal and interest owed totaling \$1,370,738.02.** In addition, FNB Weatherford was paid \$48,897.35 for a short sale of six of the sixteen lots comprising that comprise the College Park Property, and obtained title to the remainder of the lots at College Park and the Lawton Property for combined credit bids of \$198,700.00. In short, of the combined \$1,762,101.97 owed to FNB Weatherford by the various defendants at the outset of this receivership, there remains a deficiency of only \$143,766.59, which translates to FNB Weatherford having received a **92% return** of all principal and interest owed by the defendants when the receivership was instituted. These sums do not even include all of the prior monies paid to FNB Weatherford by defendants since the loans were first originated, which presumably consist of substantial sums raised from “investors.”

Facing a similar situation, the Court in *S.E.C. v. Byers*, 637 F. Supp.2d 166, 183 (S.D.N.Y. 2009) adopted the Receiver’s plan to allow secured creditors to recover only out of their collateral, and prohibited them from recovering under the plan for their deficiency claims. The Court agreed with the Receiver’s argument that “because 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.” *Id.* The *Byers* court cited with approval the Second Circuit’s holding in *Official Committee of Unsecured Creditors*

of *Worldcom, Inc. v. S.E.C.*, 467 F.3d 73 (2nd Cir. 2006), in which the Court held: “[I]t is fair and reasonable that the limited funds available for distribution not be directed to those who have already recovered more than the approximately thirty-six cents on the dollar recovered by general creditors, and rather be used to increase the still-considerably smaller recovery of those covered by the proposed Distribution Plan.” *Id.* at 84. The *Byers* court cited with further approval the holding in *S.E.C. v. Credit Bancorp, Ltd.*, 2000 WL 1752979 (S.D.N.Y. Nov. 29, 2000), in which case the district judge rejected the argument advanced by a group of investors that their assets were not properly part of the receivership estate on the ground that the defendant did not have an ownership interest in those assets. *Byers*, 637 F.Supp.2d at 183. “[T]he fact that the [investors] might be entitled under other law to recover their assets does not end the inquiry in this equity receivership because equitable concerns may supersede those other rights.” *Id. citing Credit Bancorp.*, 2000 WL 1752979, at *17.

In short, a 92% return (including interest) is a substantially greater return than the other claimant/investors (whose claims for interest were disregarded by the Receiver) will receive through these proceedings. Moreover, while the claims of FNB Weatherford are for unsecured deficiencies, the bank is a sophisticated lender who made secured, commercial loans to the Defendants which are the type of transactions not subject to the protections of the securities laws. *See Reeves v. Ernst & Young*, 494 U.S. 56, 61 (1990)(“[The] purpose in enacting the securities laws was to regulate investments[.]”)(emphasis in original); *see also Reeves*, 494 U.S. 56 at 65 (“[N]ote secured by a mortgage on a home” is not a “security” subject to the protections of the

securities laws); *U.S. Commodity Futures Trading Com'n v. Privatefx Global One*, 778 F.Supp.2d 775, 786 quoting *Quilling v. Trade Partners, Inc.*, 2006 WL 3694629 (W.D.Mich. Dec. 14, 2006)("[in] an equitable matter in receivership proceedings arising out of a securities fraud, the class of fraud victims takes priority over the class of general creditors with respect to proceeds traceable to fraud.").

This Court has broad discretionary authority to fashion an equitable distribution plan, and the Receiver submits that, in light of the fact FNB Weatherford has already received at least 92% of the money it was owed when this receivership began, approving its claims for unsecured deficiencies at the expense of other claimant/investors will render an inequitable result in these proceedings. As a result, the Receiver recommends that FNB Weatherford's claims for deficiencies be denied.

WHEREFORE, for the reasons stated herein and in the Receiver's Report, the Receiver respectfully moves that the recommendation in the Report be adopted, and FNB Weatherford's claims denied.

Respectfully submitted,



Ryan Leonard, OBA #19155
Robert Edinger, OBA #2619
MEYER, LEONARD & EDINGER, PLLC
100 Park Avenue, Suite 500
Oklahoma City, OK 73102
Telephone: (405) 702-9900
Facsimile: (405) 605-8381
RECEIVER

CERTIFICATE OF SERVICE

The undersigned certifies that on this 10th day of February, 2016, a copy of this pleading was served via First Class Mail, postage prepaid, to the following counsel of record:

Ms. Patricia A. Labarthe
Ms. Jennifer Shaw
Oklahoma Department of Securities
204 North Robinson, Suite 400
Oklahoma City, OK 73102

Mr. Mark A. Robertson
Mr. Michael Paul Kirschner
Robertson & Williams
9658 N. May Avenue, Suite 200
Oklahoma City, OK 73120

Mr. Jim W. Lee
One Broadway Executive Park
201 N.W. 63rd, Suite 230
Oklahoma City, OK 73116-8237

Mr. Rollin Nash, Jr.
Nash, Cohenour
4101 Perimeter Center Dr., Suite 200
Oklahoma City, OK 73112

Mr. R. Stephen Haynes
First Commercial Bank Bldg.
3805 W. Memorial Road
Oklahoma City, OK 73134

Mr. David L. Nunn
P.O. Box 230
Edmond, OK 73083-0230

Mr. John M. Thompson
Crowe & Dunlevy
Braniff Building
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102

Mr. Billy Lewis
Lee, Goodwin, Lee, Lewis & Dobson
1300 E. 9th Ste. 1
Edmond, OK 73034

Mr. Steve Elliott
Phillips Murrah P.C.
101 North Robinson
Corporate Tower, 13th Floor
Oklahoma City, OK 73102

Ms. Kelsey Dulin
Dulin Law Firm, P.L.L.C.
15310 North May Avenue, Suite 102
Edmond, OK 73013

Mr. James Slayton
James A. Slayton, P.C.
4808 Classen Boulevard
Oklahoma City, OK 73118



Ryan Leonard