

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

FEB 16 2016

TIM RHODES
COURT CLERK

34

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

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 WAYNE DOYLE
 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 Wayne Doyle (“Doyle”) to the Receiver’s Report on Claims and Recommendation for Classification of Same (“Receiver’s Report”), as follows:

INTRODUCTION

In response to Doyle's objection to the recommendation denying his claim, the Receiver incorporates by reference the grounds for the equitable subordination of Doyle's claim set forth in the Receiver's Report (attached hereto as Exhibit 1), in addition to the arguments and factual evidence contained in "Receiver's Combined Objection to Intervenor Doyle's Motion to Disburse Interpled funds and Receiver's Motion to Retain Interpled Funds as a Receivership Asset" and "Receiver's Reply in Support of Motion to Retain Interpled Funds as a Receivership Asset," both of which were previously submitted in camera to the Court because they contain information subject to a Protective Order. For the purpose of not providing duplicative argument and factual evidence to the Court, the Receiver further incorporates by reference the Response filed by the Plaintiff, the Oklahoma Department of Securities, ex rel. Irving L. Faught, to Doyle's Objection and adopts the arguments included therein.

Through his objection, Doyle, an "insider" of Bricktown Capital, LLC ("Bricktown Capital") who owned or controlled 80% of the company, seeks to become the largest creditor of this receivership alleging a claim of \$3,288,498.38 against this estate.¹ **If the Receiver's recommendation is denied and Doyle's claim approved, Doyle would be entitled to receive 54% of all distributions from this receivership,** and distributions to all other claimant/investors would be reduced by more than half. The Receiver will not restate the authority in support of the equitable subordination of Doyle's claim, as those arguments are set forth in the Receiver's Report and above-

¹ In his Report, the Receiver recommends approval of 16 claims totaling \$2,780,654.88.

referenced pleadings. However, in his objection, Doyle asserts an alternative argument, namely that he contributed \$1,100,000 to defendants Oakbrooke Homes, LLC, Seabrooke Investments and Tom Seabrooke prior to becoming an owner and partner with Tom Seabrooke in Bricktown Capital in 2011, and therefore at least this amount should be allowed because he was not yet an “insider” in the company. As set forth herein, this argument fails 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) Doyle used his “insider” status to intentionally, improperly and to the detriment of other investors “consolidate” the earlier invested \$1,100,000 into the later promissory notes with Bricktown Capital, as well as the mortgage of April 9, 2014, filed by Doyle to purportedly encumber Bricktown Capital with \$2,759,120.25 of allegedly “secured” debt (which was subsequently disregarded by this Court in its Order of August 21, 2015). As a result of Doyle’s “insider” status with Bricktown Capital and Tom Seabrooke, in addition to his inequitable conduct vis-à-vis the other investors, the Receiver recommends that this alternative argument be rejected, and Doyle’s claim denied in its entirety.

ARGUMENTS AND AUTHORITIES

- I. **DOYLE’S CLAIM SHOULD BE EQUITABLY SUBORDINATED TO THE CLAIMS OF OTHER INVESTORS IN ITS ENTIRETY**
 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 (S.D.N.Y. 2009)(“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).² 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 at 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; *see also S.E.C. v. Enter. Trust Co.*, 2008 WL 4534154, at *3

² “[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.’”)

(N.D.Ill. Oct. 7, 2008)(“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.”).

2. **Because Doyle, as an “insider” of Bricktown Capital, used his position of control to intentionally “combine” and “consolidate” funds previously invested with other entities into improper “secured” debts of Bricktown Capital, the entirety of these funds should be equitably subordinated to the claims of other investors.**

On April 9, 2014, prior to the receivership and at a time when Doyle owned or controlled at least 80% of Bricktown Capital, Doyle prepared and filed a mortgage in the amount of \$2,759,967.97 purporting to encumber the Bricktown Hotel in his favor and to the detriment of all other investors for amounts he claims to have “loaned” to Bricktown Capital. The Receiver and the Oklahoma Department of Securities challenged Doyle’s “secured” claims arising from this mortgage, and on August 21, 2015, this Court reclassified the amounts claimed by Doyle to be “loans” to Bricktown Capital as “capital contributions.” (Order of August 21, 2015, attached as Exhibit 2). In its “Findings of Fact” in the Order, the Court also noted that Doyle invested \$1,100,000 with Tom Seabrooke and his entities in 2009 and 2010 “without any written documentation,” including even a promissory note, and “Doyle admits he does not know if any of [these funds] were used for the benefit of Bricktown, LLC.” Order of August 21, 2015, ¶¶2-3. Despite this fact, Doyle previously testified in his deposition that the promissory notes with Bricktown Capital that provided the basis for the \$2.7 million April 2014 mortgage with Bricktown were actually **“combinations” and “consolidations”** that incorporated the \$1,100,000.00 previously given to Tom Seabrooke in 2009 and 2010.

Now, having been unsuccessful in his plan to gain an improper advantage over all other investors through the filing of an unsubstantiated secured mortgage, Doyle asks this Court to disregard his inequitable conduct and treat the \$1,100,000 he himself previously incorporated into promissory notes with Bricktown Capital and mortgage filed of public record encumbering the Bricktown Hotel as an “investment [] made to entities in which Doyle was never an insider[,]” i.e. entities other than Bricktown Capital. Doyle’s Objection, p. 6. Through such suggestion, Doyle asks this Court to disregard his own position he has consistently held in this case, i.e. that the \$1,100,000 was a secured obligation of Bricktown Capital, and instead hold that these funds- evidenced by no written promissory note or other instrument other than the notes with Bricktown Capital- were really investments in other entities for which he should now be compensated through these equitable proceedings. Respectfully, Doyle’s alternative argument is wholly without merit, whether based upon the law of the case (Doyle’s own positions that the funds were the obligation of Bricktown Capital) or equity.³

“The overriding goal of these proceedings should be fairness to the defrauded investors[.]” *S.E.C. v. Byers*, 637 F. Supp.2d at 176, *supra*.⁴ Here, Doyle simply can not argue that he was a “defrauded investor,” or argue (as he does) that he is similarly situated to other investors who made loans or capital contributions whose claims were recommended for approval. Namely, at the time that he encumbered Bricktown Capital

³ If Doyle’s claim for \$1,100,000 is approved, Doyle would receive more than 25% of all distributions from this estate.

⁴ “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.

with a \$2.7 million mortgage in April 2014, Doyle owned and/or controlled 80% of the company, and was an active business partner with Tom Seabrooke. As set forth in the Receiver's Report (Exhibit 1), Doyle received a preferential payment of \$228,894.00 as "risk compensation" from Bricktown Capital that no other investor received, despite being aware there was at least one other investor in the hotel. Further, as set forth herein, Doyle used his position of control to cause the company to execute multiple promissory notes that incorporated the \$1,100,000 he now claims should be treated separately into secured obligations of Bricktown Capital. Additionally, when Doyle first acquired ownership of 35% of Bricktown Capital in February 2011 and despite being aware of the perilous financial condition of the hotel, he became the principal guarantor on approximately \$3 million in financing for Bricktown Capital provided by Quail Creek Bank, N.A., which explains his continued investments in the hotel.⁵ The 2011 transaction with Doyle, Tom Seabrooke, former owner Ron Hope and Quail Creek Bank, N.A. was thoroughly documented, and all parties warranted that they were represented by legal counsel. In short, Doyle is simply not a "defrauded investor," but rather a business partner of Tom Seabrooke in a failed enterprise. It can also be argued that Doyle's substantial role in Bricktown Capital actually allowed defendant Seabrooke's operations to continue for a much longer period than they otherwise would have, during which time many of the approved claimants in these proceedings invested with Tom Seabrooke. As

⁵ No investor other than Doyle and Ron Hope, whose claim was recommended for denial and not opposed, executed a personal guaranty of the Bricktown Capital obligations. Unlike any other investor, Doyle's continued contributions served to reduce his ultimate liability on his personal guaranty.

a result of each of these considerations, the Receiver submits that this Court should equitably subordinate the entirety of Doyle's claim to all other creditors.

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 Doyle's claim denied.

Respectfully submitted,



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Robert Edinger, OBA #2619
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RECEIVER

CERTIFICATE OF SERVICE

The undersigned certifies that on this 16th day of February, 2016, a copy of this pleading was served via First Class Mail, postage prepaid, to the following counsel of record:

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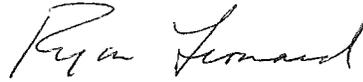
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A handwritten signature in cursive script that reads "Ryan Leonard". The signature is written in black ink and is positioned above a horizontal line.

Ryan Leonard

**IN THE DISTRICT COURT OF OKLAHOMACOUNTY
STATE OF OKLAHOMA**

Oklahoma Department of Securities)
ex rel. Irving L. Faught, Administrator,)
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 Seabrooke Investments, LLC, an Oklahoma)
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 Defendants.)

Case No. CJ-2014-4515

*RECEIVED
DISTRICT COURT
OKLAHOMA COUNTY
JULY 22 2014*

**RECEIVER’S REPORT ON CLAIMS AND
RECOMMENDATION FOR CLASSIFICATION OF SAME**

COMES NOW the Receiver, Ryan Leonard (“Receiver”), and submits the following Receiver’s Report on Claims and Recommendation for Classification of Same:

BACKGROUND

On August 11, 2014, this Court entered a “Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets and Order for Accounting” against the

payments following his investment from various entities controlled by Tom Seabrooke, including Seabrooke Investments and Oakbrooke Homes, totaling \$61,500.00.

Receiver's Recommendation: The Receiver recommends that Dennings be classified as a general creditor of the receivership estate in the amount of \$88,500.00 (principal investment less payments received), and that he be entitled to a proportionate distribution from the General Assets.

(7) **Wayne Doyle:**

Wayne Doyle ("Doyle") filed a timely claim in the amount of \$3,288,489.38 against Bricktown Capital, Tom Seabrooke, Seabrooke Investments and Oakbrooke Homes arising from capital contributions allegedly made by Doyle as a member of Bricktown Capital beginning in 2011. On April 9, 2014, Doyle, at a time in which he owned and/or controlled at least eighty percent (80%) of Bricktown Capital's membership units, prepared and filed a mortgage encumbering the Bricktown Hotel real property in favor of himself in the principal amount of \$2,759,120.25. Doyle's claim filed with the Receiver consists of an alleged \$2,683,976.97 in capital contributions to Bricktown Capital, \$714,968.37 in interest and \$13,934.00 in attorney fees, less \$124,389.96 he claims to have received from Bricktown Capital.⁹ Doyle acknowledges receiving an additional \$228,894.66 from Bricktown Capital on January 27, 2012, which he considers an "incentive" payment from a litigation settlement involving Bricktown Capital. Bank records evidence that Doyle received a total of \$681,577.43 from

⁹ Pursuant to this Court's Order of August 21, 2015, all funds invested by Doyle or Remington Express, LLC, an entity wholly-owned by Doyle, in Bricktown Capital are classified as "capital contributions."

Bricktown Capital or other Seabrooke-related entities between May 28, 2009, and March 27, 2014.

Receiver's Recommendation: On February 3, 2011, when Doyle executed an agreement to obtain at least a thirty-five percent (35%) ownership interest in Bricktown Capital, “[he] knew that the Bricktown Hotel had not made a profit since 2007.” (“Findings of Fact” entered by this Court on August 21, 2015, ¶7, citing the testimony of Doyle).¹⁰ Further, “[a]fter Doyle purchased his interest, he knew the Bricktown Hotel was operating at a loss and not doing well financially.” *Id.*¹¹ Subsequent to his initial investment in Bricktown Capital, Doyle obtained control of an additional forty-five percent (45%) of the company on a pledge of collateral from Seabrooke, and was preferentially paid \$228,894.00 as “risk compensation” at a time when the hotel desperately needed the money to open new rooms and generate revenue. On April 9, 2014, Doyle used his authority as a dominant owner to cause a \$2.7 million mortgage to

¹⁰ The Agreement executed by Doyle, Ron Hope (“Hope”) and Quail Creek Bank dated February 3, 2011, evidencing the ownership transfer from Hope to Doyle recites that Doyle actually obtained a fifty percent (50%) interest in the company, though Doyle claims only thirty-five percent (35%) was transferred. In exchange for the ownership interest, Doyle paid \$299,500.00 in outstanding debt owed by Bricktown Capital to Quail Creek Bank, N.A. (“Quail Creek Bank”), in addition to substituting himself as a personal guarantor for Hope on Bricktown Capital’s then-outstanding principal obligation of \$2,983,620.00 owed to the bank.

¹¹ Doyle was aware that at times the Hotel could not afford to pay its mortgage payments and other operating expenses as they came due, and that one of its lenders had even filed suit to foreclose on its mortgage. The K-1 tax forms issued to Doyle showed that the Hotel was suffering from consistent losses and, according to Doyle’s own testimony, he knew that payments he received from Bricktown Capital were not paid out of profits since there were not any profits. Doyle was further aware that there was at least one additional investor in Bricktown Capital other than he and Tom Seabrooke.

be filed encumbering the Bricktown hotel in his favor and to the detriment of the company, other owners and creditors.¹²

Various equitable and legal doctrines require that Doyle's equity ownership in Bricktown Capital be subordinated to other claimants and that he not receive a distribution of the General Assets in this receivership. In this regard, where there is evidence that a corporate owner has attempted to attain creditor status for loans advanced to the corporation, courts must be "particularly watchful[,] and are more likely to subordinate such loans to corporate creditors. *Tanzi v. Fiberglass Swimming Pools*, 414 P.2d 484, 488-489 (R.I. 1980). Likewise, "where the majority shareholder exercises his control to gain a benefit not shared with the minority shareholder, the burden shifts to him to prove the intrinsic fairness of the transaction." *Beard v. Love*, 2007 OK CIV APP 118, ¶29, 173 P.3d 796, 804.¹³ In the context of the doctrine of equitable subordination, a claimant does not have to breach a fiduciary duty in order to have his claim subordinated to other creditors. As the Tenth Circuit held in *In re Hedged-Investments Associates, Inc.*, 380 F.3d 1292:

"When examining a transaction for evidence of inequitable conduct, this Circuit has joined other Courts of Appeal in applying different levels of scrutiny to "insiders and "non-insiders" of the debtor corporation. Where the claimant is an insider or fiduciary, the party seeking subordination need

¹² It has been learned through these proceedings that approximately \$1.2 million of the mortgage Doyle caused to be filed against the hotel in April 2014 had nothing to do with his investments in Bricktown Capital, but rather arose from unrelated real estate transactions with the Defendants.

¹³ While the *Beard* case involved the interpretation of the "business judgment rule," at issue in *Beard* was the "entire fairness" of the majority owner's conduct, which is the same question at issue in the analysis of Doyle's claim.

only show some unfair conduct and a degree of culpability on the part of the insider.” *Id.* at 1301.

See also Bunch v. J.M. Capital Fin., Ltd., (In re Hoffinger Indus., Inc.), 327 B.R. 389, 415 (E.D.Ark. 2005)(“If a claimant is an insider of the debtor, [his] conduct is closely scrutinized and the only proof required is that [he] breached a fiduciary duty *or* engaged in conduct that is somehow unfair to other creditors.”)(emphasis added).¹⁴ “Inequity enough to justify subordination exists when it is shown that a claim which is in reality a proprietary interest is seeking to compete on an equal basis with true creditor’s claims.” *Tanzi*, 414 P.2d at 490. Further, where a corporation enters the zone of insolvency, the duties owed by its controlling stockholders extend to the corporation’s creditors and the stockholders cannot prefer themselves to other creditors. *Schnelling v. Crawford (In re James River Coal Co.)*, 360 B.R. 139 (E.D.Va. 2007); *See also Union Coal Co. v. Wooley*, 1915 OK 992, ¶9, 154 Okla. 391, 399 (“the director of an insolvent corporation is a trustee of the corporate assets for creditors, and...cannot prefer a prior unsecured debt of his to the injury of other creditors.”).

In considering Doyle’s claim, including Doyle’s own testimony, the facts unquestionably demonstrate that Doyle possessed knowledge sufficient to classify him as an “insider” of the company, and in that capacity he engaged in conduct that was unfair to Bricktown Capital, its other owners (including other claimants) and creditors. Namely, Doyle owned or controlled at least eighty percent (80%) of Bricktown Capital during the

¹⁴ While the Tenth Circuit in *In re Hedged-Investments* concluded that the transaction in that case should not be equitably subordinated, it did so based on the factual finding that the party claiming a loan was not an insider and there was no inequitable conduct because the party had no knowledge of the company’s financial straits.

relevant period, he received preferential payments that no other owner received totaling \$228,894.00 and personally orchestrated the filing by Bricktown Capital of a \$2.7 million mortgage in his favor and against the hotel at a time he knew Bricktown Capital had serious financial difficulties. Moreover, Doyle at all relevant times (including when he made his initial investment) had intimate knowledge of the financial hardships and capital needs of the company. In light of these facts and the totality of Doyle's conduct, and as set forth more fully in the "Receiver's Combined Objection to Intervenor Doyle's Motion to Disburse Interpled Funds and Receiver's Motion to Retain Interpled Funds as a Receivership Asset" submitted on May 7, 2015, and "Receiver's Reply in Support of Motion to Retain Interpled Funds as a Receivership Asset" submitted on June 12, 2015, the Receiver maintains that Doyle's claim should be equitably subordinated to the claims of the other claimants in this receivership. Because there are insufficient funds to satisfy the approved claims in full, the Receiver recommends that Doyle not receive a distribution from the General Assets.

(8) **Malene Eckhardt:**

Malene Eckhardt f/k/a Malene Nielsen ("Eckhardt") filed a timely claim in the amount of \$50,000.00 against Bricktown Capital arising from an "Agreement to Purchase Membership Shares and Share Restriction Agreement" dated May 31, 2007, executed by Tom Seabrooke pursuant to which Eckhardt obtained a 0.75% ownership interest in Bricktown Capital. A Contract Addendum was executed by Tom Seabrooke on June 8, 2007, evidencing an additional \$17,000.00 investment by Eckhardt in exchange for an additional 0.25% ownership interest in the company. Two (2) certificates evidencing



EXHIBIT
2

FILED IN DISTRICT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

AUG 21 2015

OKLAHOMA DEPARTMENT OF SECURITIES,)
ex rel. IRVING L. FAUGHT, ADMINISTRATOR,)
Plaintiff,)
vs.)
SEABROOKE INVESTMENTS, LLC, et al.,)
Defendants)

TIM RHODES
COURT CLERK
29
Case No. CJ-14-4515

FINDINGS OF FACT

1. Between 5/28/2009 and 12/20/2014, Wayne Doyle ("Doyle") and his wholly owned company, Remington Express ("Remington"), provided \$2,355,200.00 to Tom Seabrooke and various entities owned and managed by Tom Seabrooke. (See, Doyle's Exhibit No. 13.)

2. The following funds were provided by Doyle without any written documentation, including without limitation any Promissory Notes or other documentation, evidencing that they were loans, to wit:

5/28/2009	\$200,000	Oakbrooke Homes, LLC
7/14/2009	\$100,000	Seabrooke Investments, LLC
10/6/2009	\$ 50,000	Tom Seabrooke
10/27/2009	\$150,000	Seabrooke Investments, LLC
11/23/2009	\$100,000	Seabrooke Investments, LLC
1/27/2010	\$100,000	Tom Seabrooke
8/23/2010	\$400,000	Tom Seabrooke

(See, Doyle's Exhibit No. 13.)

3. Doyle admits he does not know if any of the funds paid in paragraph No. 2 were used for the benefit of Bricktown Capital, LLC. (See, Testimony of Wayne Doyle.)

4. Doyle admits the following funds were either capital contributions or were repaid and are not owed, to wit:

2/3/2011	\$299,500	Quail Creek Bank
1/10/2014	\$ 10,800	Furniture purchase
1/27/2014	\$ 27,400	Furniture purchase
2/19/2014	\$ 41,000	Ad Valorem Taxes

(See, Doyle's Exhibit No. 13 and Testimony of Wayne Doyle.)

5. According to Doyle, Tom Seabrooke with Bricktown Capital, LLC, entered the following Promissory Notes:

A. On 12/23/2010, Tom Seabrooke with Bricktown Capital, LLC and Doyle entered a Promissory Note for "the principal sum not to exceed TWO HUNDRED NINETY FIVE THOUSAND AND 00/000 DOLLARS (\$295,000.00) together with interest thereon, ... and an additional 4% equity position in Bricktown Capital LLC." (See, Doyle Exhibit No. 7.)

B. On 12/23/2010, Tom Seabrooke with Bricktown Capital, LLC, and Doyle entered a Promissory Note for "the principal sum not to exceed FIVE HUNDRED NINETY FIVE THOUSAND AND 00/000 DOLLARS (\$500,000.00) together with interest thereon, ... and an additional 1% equity position in Bricktown Capital LLC." The Note was secured, in part, by a 20% ownership interest to Doyle in Bricktown Capital, LLC. (See, Doyle Exhibit No. "8".)

C. On 12/23/2010, Tom Seabrooke with Bricktown Capital, LLC, and Doyle entered a Promissory Note for "the principal sum not to exceed EIGHT HUNDRED THOUSAND AND 00/000 DOLLARS (\$800,000.00) together with interest thereon. The Note was secured, in part, by a 45% ownership interest to Doyle in Bricktown Capital, LLC. (See, Doyle Exhibit No. 9.)

6. None of the Promissory Notes discussed above in paragraph No. 5 and introduced into evidence were signed. (See, Doyle Exhibit Nos. 7-9.)

7. On February 3, 2011, Doyle executed an Agreement with Bricktown Capital, LLC, Tom Seabrooke, Ronald R. Hope and Quail Creek Bank, NA, whereby he obtained a 35% ownership interest in Bricktown Capital, LLC. Doyle knew that the Bricktown Hotel had not made a profit since 2007. After Doyle purchased his interest, he knew the Bricktown Hotel was operating at a loss and not doing well financially. (See, Testimony of Wayne Doyle.)

8. Additionally, on February, 3, 2011, Doyle signed an Operating Agreement with Bricktown Capital, LLC. The Agreement does not reflect the amount, if any, of the initial capital contribution made by Doyle. Doyle was at all times a member but not a manager of Bricktown Capital, LLC. (See, Doyle Exhibit No. 1 and Testimony of Wayne Doyle.)

9. On December 21, 2011, Bricktown Capital, LLC, Tom Seabrooke and Doyle entered an agreement with Quail Creek Bank because the bank was concerned about payment of the loan because they were in default. The Agreement mentions that the bank had filed a foreclosure action. At this time, Bricktown Capital was trying to locate an additional lender to refinance the loan but was ultimately unable to find additional financing. (See, Receiver's Exhibit No. 9 and Testimony of Wayne Doyle.)

10. The following funds were provided by Doyle or Remington Express without any written documentation, including without limitation any Promissory Notes or other documentation, evidencing that they were loans, to wit:

4/20/2011	\$100,000	Tom Seabrooke
5/13/2011	\$ 50,000	Remington Express to Tom Seabrooke
9/25/2012	\$100,000	Remington Express to Bricktown Capital, LLC
3/20/2014	\$225,000	Blackman Mooring

(See, Doyle's Exhibit No. 13.)

11. Doyle testified he paid the Blackman Mooring invoice because the Bricktown Hotel could not afford to pay it and he wanted to avoid a legal situation. (See, Testimony of Wayne Doyle.)

12. On April 9, 2014, Doyle and Bricktown Capital, LLC, entered a Promissory Note ("2014 Promissory Note") for the amount of \$2,759,120.25. The Promissory Note and mortgage were prepared by Doyle's attorney to "preserve" his interest. Doyle did not know if an attorney for Bricktown Capital, LLC, ever reviewed the documents. (See, Doyle's Exhibit No. "10" and Testimony of Wayne Doyle.)

13. At the time of the execution of the 2014 Promissory Note, Doyle owned 35% of Bricktown Capital, LLC and had a collateral interest in an additional 45% ownership interest. (See, Testimony of Wayne Doyle.)

14. Doyle testified he made the following advances against the 2014 Promissory Note, to wit:

4/25/2014	\$23,500	Air conditioning units
5/14/2014	\$50,000	Payroll

(See, Doyle's Exhibit No. 13 and Testimony of Wayne Doyle.)

15. On August 11, 2014, the Receiver was appointed in the captioned matter. (See, Receiver's Exhibit No. 4.)

16. On 9/9/2014, the Bricktown Hotel was released from the receivership, and Bricktown Capital, LLC resumed operating the hotel.

17. After the Hotel was released from the receivership, the following funds were provided by Doyle or Remington, to wit:

9/10/2014	\$100,000	Remington Express to Bricktown Capital, LLC
10/6/2014	\$ 50,000	Bricktown Capital, LLC (payroll)
12/8/2014	\$ 30,000	Ascentium (credit card)
12/22/2014	\$ 50,000	Release of UCC for sale of Bricktown Hotel
12/30/2014	\$ 48,000	Pawnee Leasing Corp. (Release equipment Lien)

(See, Doyle's Exhibit No. 13.)

18. Doyle paid those funds in paragraph No. 17 because he wanted to protect his investment by keeping the hotel open. Doyle guaranteed the Quail Creek Bank loan and needed to keep the hotel open to get a better sales price for the hotel. (See, Testimony of Wayne Doyle.)

19. Tom Seabrooke had authority to invest all the funds paid by Doyle and Remington Express however he chose. (See, Testimony of Wayne Doyle.)

20. From 5/28/2009 through 3/27/2014, Doyle received \$681,577.43 from Tom Seabrooke, Bricktown Capital, LLC, and various other entities. Of this amount, Doyle testified \$228,894.66 was a bonus payment from Bricktown Capital, LLC, for Doyle's "risk compensation." Doyle allocated all these funds however he chose. (See, Plaintiff's Exhibit No. 1 and Testimony of Wayne Doyle.)

21. At the time of Doyle's first investment in Bricktown Capital, LLC, he knew the hotel was not doing well but saw an appraisal and thought it had promise. (See, Testimony of Wayne Doyle.)

22. Doyle testified all the funds he provided were loans. However, the books of Bricktown Capital, LLC never reflected any loans to Doyle. (See, Testimony of Wayne Doyle and Austin Fuguitt.)

23. Doyle was aware the other investors in Bricktown Capital, LLC, were Tom Seabrooke, as well as an additional 1% investor. Doyle never investigated to see who the other investor was, whether there were additional investors, or who the creditors of Bricktown Capital, LLC were. (See, Testimony of Wayne Doyle.)

24. Doyle received only sporadic interest payments from Tom Seabrooke, Bricktown Capital, LLC, and other entities, and the 2014 Promissory Note was not repaid. (Testimony, Wayne Doyle and Plaintiff's Exhibit No. 1.)

CONCLUSIONS OF LAW

1. When a member's contract with a company is challenged, the burden is on the member not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein. *Pepper v. Litton*, 308 U.S. 306 and *Beard v. Love*, 173 P.3d 796.

2. A member's loan to an entity is not *per se* invalid but is subject to strict scrutiny. *Tanzi v. Fiberglass Swimming Pools*, 414 A.2d 484 (RI 1980).

3. Remington Express is an entity separate and apart from Wayne Doyle, and any funds provided by Remington Express are not subject to the 2014 Promissory Note and mortgage.

4. Any funds paid to Tom Seabrooke, Oakbrooke Homes, LLC or Seabrooke Investments, LLC are not subject to the 2014 Promissory Note and mortgage.

5. The following factors should be considered when determining whether to reclassify a loan as a capital contribution:

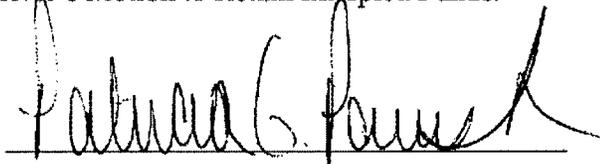
- a. Names given the documents evidencing the indebtedness.
- a. Reasonable expectation of repayment.
- b. Right to enforce repayment.
- c. Participation in management.
- d. Status of contribution in relation to other creditors.
- e. Intent of parties based on objective evidence.
- f. Thin capitalization at time of contribution.
- g. Identity of interest between creditor and member.
- h. Source and payment of interest payments.
- i. Ability to obtain other loans.
- j. Whether funds were used to acquire capital assets.
- k. Failure to repay on due date or postponement of due date.

In re: Hedged-Investments Associates, 380 F.3d 1292 (10th Cir. 2004) and *In Re: Lexington Oil and Gas LTD*, 423 BR 353 (Bankr. Ct. ED OK 2010).

6. Only one factor, participation in management, does NOT support reclassification.¹ Therefore, all funds, regardless of whether Wayne Doyle or Remington Express contributed them and regardless of who the payee was, should be reclassified as capital contributions.

7. Since the Court finds that all funds paid by Doyle or Remington Express are to be reclassified, it does not address the issue of whether the doctrine of "equitable subordination" should be applied.

WHEREFORE, PREMISES CONSIDERED, the Court denies Wayne Doyle's Motion to Disburse Interpled Funds and grants the Receiver's Motion to Retain Interpled Funds.



THE HONORABLE PATRICIA G. PARRISH
DISTRICT COURT JUDGE 8/21/15

CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of August, 2015, a copy of this Order was mailed to the following:

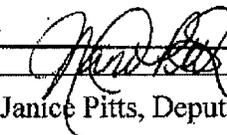
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Mr. William Lewis
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Edmond, OK 73034

Mr. Mark Robertson
9658 N. May Ave., Suite 200
Oklahoma City, OK 73120

TIM RHODES, Court Clerk

By  Deputy
Janice Pitts, Deputy Court Clerk

¹Doyle had the authority to enforce repayment under the terms of the 2014 Promissory Note, but never did so. Therefore, this factor does not weigh in Doyle's favor.