

No. 98,854

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SUPREME COURT
STATE OF OKLAHOMA
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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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

MICHAEL S. RICHIE
CLERK

Plaintiff/Appellee,

v.

ACCELERATED BENEFITS CORPORATION and
AMERICAN TITLE COMPANY OF ORLANDO,

Defendants/Appellants.

v.

TOM MORAN,
Court-Appointed Conservator/Appellee

COMBINED REPLY BRIEF OF DEFENDANTS/APPELLANTS

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE DANIEL L. OWENS, JUDGE OF THE DISTRICT COURT
CASE NO. CJ-99-2500-66
ACTION FOR VIOLATIONS OF THE OKLAHOMA SECURITIES ACT

November 13, 2003.

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NOTE ON IDENTIFICATIONS

In the Brief-in-Chief of Defendants/Appellants, Accelerated Benefits Corporation and American Title Company of Orlando, Appellants utilized certain identifications for various documents and orders. For the sake of brevity, those same identifications will be utilized in this Reply Brief. They are repeated here for the Court's reference.

For example, the "Sale Order" shall refer to the "Order Approving Sale of Conservatorship Assets" rendered on January 16, 2003. The "Original Proceedings" shall refer to the original proceedings before the Oklahoma Supreme Court styled: *Accelerated Benefits Corporation and American Title Company of Orlando, Petitioners v. The Honorable Daniel L. Owens, Judge of the District Court of Oklahoma County, Oklahoma, Respondent*, No. 98,083.

Documents filed of record in the Original Proceedings will be referred to as follows: the "Brief in Support of Application to Assume Original Jurisdiction and Petition for Writ of Prohibition in the District Court of Oklahoma County," filed by Appellants in the Original Proceedings on August 7, 2002, shall be referred to as the "Application"; Appellants' "Response to the Petitions for Rehearing filed by the Oklahoma Department of Securities and the Conservator Tom Moran," filed in the Original Proceedings on January 6, 2003, will be referred to as "Defendants' Response to Petitions for Rehearing"; and the Oklahoma Supreme Court's Order granting the Writ of Mandamus requested by Appellants, filed October 3, 2002, in the Original Proceedings shall be referred to as the "Writ."

COMBINED REPLY BRIEF OF DEFENDANTS/APPELLANTS

Defendants/Appellants, Accelerated Benefits Corporation (“ABC”) and American Title Company of Orlando (“ATCO”; collectively “Defendants”) submit this Combined Reply Brief in response to the Answer Briefs of Plaintiffs/Appellees, Oklahoma Department of Securities (the “Department”) and of the Court-Appointed Conservator/Appellee, Tom Moran (“Conservator”; collectively “Appellees”). Unless otherwise stated, the previous identifications utilized in Defendants’ Brief-in-Chief will also be utilized herein.¹

I. INTRODUCTION

The Department and the Conservator make several contentions in their Answer Briefs; however, none of them successfully overcome the two decisive and narrow issues which control the outcome of this appeal, *to wit*: (a) whether the Sale Order is void for lack of due process and jurisdiction, and (b) whether the law of the case doctrine compels this Court to so find. Among other arguments, Appellees claim that the appeal of the Sale Order is moot because the “sale” has allegedly been “consummated.” This contention is factually inaccurate, but in any event, the so-called “sale” does not moot the controversy before the Court, nor does it prevent this Court from granting the

¹*See Note on Identifications*, above at p. *iii*.

relief sought in this appeal. Defendants and thousands of investors throughout the United States have been aggrieved by the Sale Order. The relief sought by this appeal is to have the Sale Order set aside because, in the words of the Supreme Court, it "is void for lack of due process and the [district] court's lack of jurisdiction to affect the interests of [the investors]." (Writ at 1.) If the Sale Order is vacated, the sale agreement, which springs from the Sale Order, also becomes unenforceable. That will, in turn, leave the investors with two remedies, rescission or damages, and it will eliminate Defendants' exposure to contractual liability because it will allow the purchase agreements to be performed in accordance with their terms.

Further, because of the Defendants' familiarity with this litigation, and because the Oklahoma Supreme Court has previously ruled on the *same* standing issue raised by Appellees in this appeal, Defendants are in the best position to assert the arguments raised in this appeal. As in the Original Proceedings, numerous investors will join Defendants in this appeal through special appearances in the same manner which they participated in the Original Proceedings. These facts negate Appellees' argument related to standing as well as their claim that Defendants are not entitled to press this appeal.

The remaining arguments raised by Appellees in their Answer Briefs also do nothing to combat the plain fact that the Sale Order is void. It should be vacated, and the matter should be remanded to the district court to grant relief consistent with this Court's instructions.

II. ARGUMENT AND AUTHORITIES

A. Appellees' Contention of Lack of Standing Is Without Merit.

The Department and the Conservator contend that Defendants lack standing to assert the issue raised on appeal. This same argument was made in the course of the Original Proceedings and the Supreme Court rejected it. The Court stated:

Respondents argue that the thousands of investors who own interest in the proceeds of 1500 life-insurance policies, with a face value of \$140,000,000.00, lack standing to challenge the trial court's assessment of a 6% surcharge on each life-insurance policy as it matures. This surcharge contradicts the terms of the investors' purchase contracts of interest in the proceeds and puts the amount in controversy at \$8,400,000.00

Writ at 2. Based on these facts, the Oklahoma Supreme Court concluded: "The investors have standing. Their due process rights were violated by failure to give proper notice and a meaningful opportunity to appear. The order surcharging their

interest in life insurance policies is void for being jurisdictionally defective.” *Id.*
at 3.

In reaching its decision, the Oklahoma Supreme Court relied on two cases. The first, *Flast v. Cohen*, 392 U.S. 83, 99-100 (1968), held that the “emphasis in standing problems is on whether the party invoking federal court jurisdiction has ‘a personal stake in the outcome of the controversy,’ . . . and whether the dispute touches upon ‘the legal relations of parties having adverse legal interests.’” (Citations omitted.) The second case, *Matter of Estate of Doan v. Young Man’s Christian Ass’n of Greater Tulsa*, 1986 OK 15, 727 P.2d 574, 576 held:

Standing, as a jurisdictional question, may be correctly raised at any level of a the judicial process or by the court on its own motion. This Court has consistently held that standing to raise issues in a proceeding must be predicated on an interest that is “direct, immediate and substantial.” Standing determines whether the person is a proper party to request adjudication of a certain issue and does not decide the issue itself. The key element is whether the party whose standing is challenged has sufficient interest or stake in the outcome.

The facts and circumstances relating to standing in this appeal are no different than those in the Original Proceedings. Defendants sought the Writ on

behalf of themselves and their investors. Defendants paid all of the legal costs incident to those proceedings, and their counsel prosecuted the action. A relatively small number of the investors (51 out of approximately 4,500) joined the proceedings through special appearances filed in the action after the briefing cycle was completed.² The Supreme Court even struck one set of the appearances from the record because the appearances did not contain a certificate of service. Writ at 3. Notwithstanding, the Court still found that the standing requirement had been met because, as noted in the very authorities cited by the Court, standing is of minimal importance when an appellate tribunal is faced with a district court order that is void on its face. Further, the Court no doubt saw that it is logistically impossible to join some 4,500 investors scattered throughout the United States simply to satisfy a standing requirement. Indeed, it makes no sense for Appellees to rely on a standing argument when the essence of the issue before this Court is that the investors *had no meaningful opportunity to "stand" before the district court and press their opposition to the Sale Order.*

²See Appendices filed by ABC and ATCO in the Original Proceedings on September 3, 2002, September 6, 2002 and September 9, 2002.

Moreover, the Supreme Court's finding that the standing requirement was met constitutes the law of the case for the same reasons its ruling on the constitutionality of the Six Percent Order constitutes the law of the case. (*See* Defendant's Brief-in-Chief at 21-25 and authorities cited therein.) Both issues in the Original Proceedings are virtually identical to their counterparts in this appeal. The Supreme Court correctly construed the liberal nature of the standing requirement in the Original Proceedings, and this Court is compelled to reach the same result in these proceedings. Accordingly, Appellees' standing argument is without merit.

B. The Appeal of the Sale Order Is Not Moot.

The Department and the Conservator also contend that Defendants' appeal of the Sale Order has been rendered moot because the subsequent sale agreement has been executed.³ However, neither the Conservator nor the Department explain why or how execution of the sale agreement renders this Court powerless to grant relief to Defendants and the aggrieved investors. Regardless, it is plainly apparent that this contention lacks any semblance of validity. It is clear that proper and adequate relief is available to Defendants and their investors if the Sale Order is vacated. Accordingly, there exists a real and

³*See n.5, infra*, for a description of the sale agreement.

live controversy which this Court must resolve pursuant to its legislative mandate, Okla. Stat. tit. 20, § 30.1, *et seq.*, and in accordance with the legal principles set forth in the Supreme Court's Writ.

The fallacy of Appellees' argument is graphically exposed by a simple reference to the text-book definition of the word "moot." *Black's Law Dictionary* defines "moot" as follows: "to render (a question) moot or of no practical significance." *Black's Law Dictionary* (7th ed. 2000) at 1024. Neither Appellee bothers to tell this Court why the validity of the Sale Order is no longer of any "practical significance." *Id.* There are thousands of investors who would much rather have their purchase contracts enforced according to the terms of those contracts, and recover 100% of their investment, plus a reasonable rate of return, rather than being forced to accept approximately 50% of what they invested.⁴ Defendants likewise are attempting to carry out their obligations under the purchase contracts to minimize their exposure of any contractual liability. Because the Sale Order is void for lack of jurisdiction, it cannot and should not be enforced. The only practical and realistic remedy that the investors and Defendants have to achieve such a ruling is an appeal to this Court. If this Court reverses the Sale Order, the purchase contract between the Conservator and

⁴*See n.5, infra.*

Infinity Capital Services, Inc., the “buyer” of the subject life insurance policies, must be rescinded. If the contract is not formally rescinded, the investors always have the option of obtaining damages in the event the policy in which they have invested has already matured. In the first instance, the remedy (recision) is restoration of the original terms of the investors’ purchase contracts, and in the second instance, the remedy (damages) is the monetary difference between what the investors received from Infinity Capital and what they would have otherwise received had the investor’s purchase contracts been honored according to their terms.⁵

⁵The sale agreement between Infinity Capital and the Conservator is actually a “Option Purchase Agreement.” It is attached as Exhibit “A” to the Conservator’s “Application for Approval of Purchase Contract With Infinity Capital Services, Inc.” filed on February 26, 2003 in the district court. Contrary to the Appellees’ characterization of the agreement, it does not provide for a complete and absolute sale of every policy held in the conservatorship. Rather, it provides that, for a period of time, Infinity Capital will assume the obligations to pay premiums on all policies which have not yet matured. Once the policy matures, payment is made to the investors who invested in the policy, albeit roughly half of what they invested, and that percentage fluctuates as well. (See Option Purchase Agreement at pp. 4-5; Sections 6-6.6.) Further, Infinity Capital has the option to return policies that have not yet matured on a specific date in the future. (*Id.* at pp. 2-3; Sections 3-3.4.) Thus, the Option Purchase Agreement by no means assures that every investor will receive fifty percent of their original investment. As to those policies which have matured, distributions have presumably been made to them. As to those investors whose policies have not yet matured, they must await payment potentially for nearly a decade. (Transcript of Proceedings held on December 20, 2002, at 34-37; 50-55; 60-62; 65-67; 79-81.)

The cases on which Appellees rely are inapposite. (*See, e.g.,* Department's Answer Brief at 7.) All of them deal with situations where plaintiff is seeking an injunction. Those cases simply hold that where the conduct sought to be enjoined has already occurred, issuance of an injunction would be of no benefit to the party seeking the injunction. That is clearly not the situation here.

Appellees also refer to *federal* cases involving judicial sale of property under federal bankruptcy law which hold that bankruptcy courts are hesitant to reverse such a sale to a good faith purchaser. (*See* Department's Brief at 8.) These cases are inapplicable for two basic reasons. First, they are based on the proposition that Infinity Capital is a "good faith purchaser." That is clearly not the case. Infinity Capital knew, prior to acceptance of its bid on March 12, 2003, that the Oklahoma Supreme Court had previously struck down the district court's attempt to abrogate the investors purchase contracts because the court lacked the jurisdiction to do so. (The Writ was entered on October 3, 2002.) Also, before the sale agreement was executed on February 12, 2003, the Oklahoma Supreme Court had already denied Appellees' Petitions for Rehearing. (*See* Order dated February 3, 2003, rendered in the Original Proceedings.) Infinity Capital was represented by counsel in the proceedings below, and it no doubt employed sophisticated counsel to conduct due diligence and to effect the sale agreement. It was also well

aware that the Sale Order had been appealed. Thus, it cannot be deemed a “good faith purchaser.” It knew the potential pitfalls of a reversal of the Sale Order and made provisions for such an event in its sale agreement. (See Sale Agreement attached as Exhibit “A” to the Conservator’s “Application for Approval of Purchase Contract With Infinity Capital Services, Inc.” filed on February 26, 2003 in the district court, p. 9; Sections 10 and 10.2.)

Second, even if this Court were to decide that the Sale Order cannot be rescinded, as noted above, the purchasers still may resort to a damages remedy to be made whole. Thus, there is no conceivable basis to find that this appeal is moot when such relief is clearly available. More importantly, it is beyond cavil to suggest, that the question of whether the Sale Order is void, is somehow rendered insignificant by a contract which, but for the Sale Order, would otherwise be unauthorized. Appellees’ contention is utterly without merit.

C. Appellees’ Attempt to Overcome the Law of the Case Doctrine Is Unavailing.

Defendants previously demonstrated, beyond dispute, that the law of the case is applicable in this appeal and requires this Court to find that the Sale Order is void for lack of due process and jurisdiction. (See Defendant’s Brief-in-

Chief at 21-25 and authorities cited therein.) The Department argues that a “gross injustice” would occur if the Sale Order is overturned, but as explained below, that argument is not only wrong, it fails to cure the fact that the judgment is void regardless of the applicability of the law of the case doctrine. The Conservator argues that the facts underlying the jurisdictional efficacy of the Sale Order differ from those pertaining to the Six percent Order, but as Defendants previously demonstrated in their Brief-in-Chief, the facts are virtually the same.⁶

The Department’s argument rests on the “manifest injustice” exception to the law of the case doctrine. *See, e.g., Wilson v. Harlow*, 1993 OK 98, 860 P.2d 793. The only support for this contention is the naked allegation that overturning the Sale Order would be “devastating to the ABC investors.” There is no support in the record for this contention, and it is contrary to the obvious facts that are in the record. ABC’s investors stand to lose 50% of their investment as each policy in which they have invested matures. Thus, *a failure* to vacate the

⁶Defendants previously addressed the issue of whether the operative facts involving the constitutionality of the Six Percent Order are the same as those concerning the rendition of the Sale Order. (*See* Defendant’s Brief-in-Chief at 10-25 and authorities cited therein.) These points will not be re-addressed here. It suffices to say that despite the Conservator’s protestations to the contrary, the facts have not changed – the Sale Order is void for lack of due process and personal jurisdiction for the same reasons that the Six Percent Order was held to be void. (*Id.*)

Sale Order would actually be devastating to the investors. If the Sale Order is not set aside, ABC's investors stand to lose upwards of \$70,000,000.00. In short, the Department and the Conservator have failed to raise any valid argument in opposition to Defendants' law of the case proposition. This Court is duty bound to follow the Oklahoma Supreme Court's previous ruling in the Original Proceedings.

D. The Department's Other Arguments Are Equally Without Merit.

The Department's last three arguments are: (1) "the district court is vested with broad equity powers"; (2) the Sale Order does not abrogate any rights of the investors to pursue claims under the Oklahoma Securities Act; and (3) Defendants "should not profit from their illegal activities." None of these arguments overcome the law of the case, nor do these contentions do anything to cure what is obviously a void judgment.

Initially, simply because a district court is vested with "broad equity powers" does not allow it to exercise nationwide *in personam* jurisdiction over every citizen of the United States. Only where the exercise of personal jurisdiction is consistent with the United States Constitution, and with the laws of this State, may an Oklahoma district court hail into its jurisdiction a citizen of

another state. (See Defendant's Brief-in-Chief at 17-21 and authorities cited therein.)

The second argument made by the Department simply makes no sense. To say that the Sale Order does not prevent any of the investors to pursue claims under the Oklahoma Securities Act is not only wrong, it does nothing to cure the jurisdictional deficiencies of the Sale Order. Apparently the Department has forgotten that ABC sold viatical settlements to only ten Oklahoma investors. The remaining 4,490 investors, scattered throughout the country, may not come to Oklahoma and seek remedies under the Oklahoma Securities Act. They may, however, seek remedies in their own state for conduct that occurred in their state and which is sanctionable under their states' securities laws, if applicable. Moreover, even if it were true that out-of-state investors could seek remedies under the Oklahoma Securities Act for conduct which occurred in their respective states, does not suddenly turn what is otherwise a void judgment into a valid judgment.

The Department's final argument – that Defendants should not be allowed to “profit from their illegal activities” – is absurd. It is based on the false allegation that Defendants have “engaged in blatant violations of the Act and have

defrauded innocent, and mostly elderly, investors.” (Department’s Brief at 14.) Outside of the district court’s ruling, which, as noted above, involved only ten Oklahoma investors, there is no factual basis for this contention. In fact, only a *minute* percentage of ABC’s out-of-state investors have ever brought suit against ABC in their own states because ABC has abided by the terms of its agreements with the investors. However, because of the Sale Order, the district court is, in effect, causing ABC to breach its contractual obligations by unilaterally abrogating the investors’ contracts with ABC without any legal or jurisdictional basis to do so.

Further, it is ridiculous to contend that Defendants, by this appeal, are seeking to “profit” by prosecuting this appeal. All that Defendants seek to do is abide by the terms of the purchase contracts, thereby reducing any potential exposure they may have. The Department’s arguments are without merit and should be summarily dismissed.

E. The Conservator’s Other Arguments Are Also Without Merit.

The Conservator final two arguments are: (1) Defendants are estopped to assert lack of personal jurisdiction over nonresident investors because “those investors have submitted to the district court’s jurisdiction”; and

(2) Defendants attempt to “attack” the Sale Order is “untimely and improper.”
(Conservator’s Brief at 23, 25.)

The Conservator’s first argument is premised on the contention that a court which appoints a receiver to wind-up a corporation’s affairs “has jurisdiction of nonresidents claims, and that nonresidents need not be party to the controversy” This argument is premised on the supposition that this is an “*in rem*” action. (See Conservator’s Brief at 23-24, and cases cited therein.) The Conservator and the Department made this very same argument in their petitions for rehearing filed in the Original Proceedings. The Supreme Court apparently rejected Appellees’ contention when the Court denied the petitions presumably because this case is clearly not an “*in rem*” action. Contrary to the Conservator’s assertion, there is no *res* in this case over which the district court has in its possession.

The Appellees’ arguments in support of their petitions for rehearing illustrate the infirmity of this argument. The Appellees primarily relied on an Illinois Court of Appeals opinion rendered in *In re Possession & Control of Comm’r of Banks*, 764 N.E.2d 66 (Ill. App. 2001) (hereafter “*Commissioner*”). The subject matter of *Commissioner* involved millions of dollars of cash and

noncash assets deposited in an investment trust administered by Independent Trust Corporation (“Intrust”). *Id.* at 76. When an accounting revealed a shortage of funds, the Illinois Commissioner of Banks and Real Estate initiated an action against Intrust and placed its assets in receivership. Through a series of proceedings, the district court allocated the shortage of funds among the numerous account holders whose funds had been deposited with Intrust. Numerous account holders directly participated in the proceedings and were represented by counsel. Dissatisfied with the results in the district court, they appealed.

On appeal, the account holders argued, among other things, that the district court did not possess personal jurisdiction over the account holders. The court of appeals disagreed, finding that personal jurisdiction had been waived because of their participation in the proceedings. *Id.* at 86-87. Pertinent to this case, however, was the court of appeals’ alternative holding. It also affirmed the district court’s actions because it characterized the proceedings below, just as the Appellees do here, as being *in rem*. *Id.* citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 312 (1950). The court stated that “*in rem or quasi-in rem* proceedings do not require personal service of process.” *Id.* at 88. It concluded that “even though appellants were not personally named and served, under the principles of *in rem* jurisdiction, they were bound by the decision of the

trial court.” *Id.* at 89. The court then proceeded to find that the notice given to the account holders was sufficient to satisfy due process.⁷

The critical distinction between the *Commissioner* case and this case is the nature of the “property” involved. In *Commissioner*,

It [was] the disposition of property held by Intrust, including that property of the individual account holders, whose undisputed situs was in Illinois, that was before the trial court. When initiated, the direct object of the liquidation proceeding was to reach the property of Intrust and the account holders and to distribute it and settle each account holders’ interests. The liquidation was brought to enforce various parties’ rights in the property held by Intrust, then in the possession of the Commissioner. Moreover, the relief sought by the appellants, i.e., the turnover of “their” noncash assets to them, specifically sought to have the court determine the extent of their entitlement to the funds and assets held in their accounts. This claim would be sufficient in and of itself to involve the in rem or, in the alternative, the quasi in rem powers of the court. (Citations omitted.) The trial court’s jurisdiction was entirely dependent upon the location of the corporate and trust assets in Illinois.

⁷Thus, even if this case could be characterized as *in rem*, the investors still must be afforded a meaningful opportunity to defend their interests. A cursory review of the process afforded in *Commissioner* is in stark contrast to the “process” afforded to the investors with regard to contesting the Sale Order. *Id.* at 89-94.

(Emphasis supplied.) *Id.* at 89. Accordingly, the *Commissioner* court held that “even though appellants were not personally named and served, under the principles of *in rem* jurisdiction, they were bound by the decision of the trial court” if they were given sufficient notice. *Id.*

In sharp contrast, there is no specific property or *res* present in this case. Indeed, the Conservator never discloses precisely what is the “thing” which the district court currently has in its jurisdictional possession. In reality, the “thing” is nothing more than a bundle of contractual rights stemming from a string of contracts. The first contract is between a terminally ill individual and an insurance company, *i.e.*, the insurance policy. The second contract is between the insured and the viatical settlement provider. It provides that in return for a sum of money, the insured agrees to change the name of the beneficiary of the policy to a nominee beneficiary designated by the viatical settlement provider. The third contract is between an investor and the viatical settlement provider. It provides that, in return for a specified sum, the investor will receive a quantified share of the proceeds of the insurance policy when the insured dies. In short, there is no *res* in this case; rather, there are nearly 4,500 separate contracts which state that

upon the death of the insured, the purchaser will be entitled to a share of the insurance proceeds.⁸

Thus, the district court in no way holds a specific *res* over which it may assert *in rem* jurisdiction. To say otherwise would be tantamount to sanctioning the assertion of jurisdiction over any party to a contract, regardless of where that party resides or whatever contacts they may have with the judicial forum, by the simple expedient of delivering or assigning the contract to a court appointed conservator. That is nonsense. This case does not involve a specific fund of money or tangible property in which various parties assert an interest. As noted in *Commissioner*:

An “action *in rem*” is a proceeding that takes no cognizance of ownership but determines rights in specific property against all of the world, equally binding on everyone. It is true that, in a strict sense, a proceeding *in rem* is one taken directly against property, and has for its object the disposition of property, without reference to the title of individual claimants but, in a larger and more general sense, the terms are applied to actions between parties, where the direct object is to reach and dispose of property owned by them, or of some interest therein. . . . *In the strict sense of the term, a proceeding “in rem” is one which*

⁸An example of such a contract is attached as Exhibit “A” to Defendants’ Brief in Support of its Application to Assume Original Jurisdiction, filed in the Original Proceedings on August 7, 2002.

is taken directly against property or one which is brought to enforce a right in the thing itself.

(Emphasis supplied.) 764 N.E.2d at 76.

There is no such property or “thing” in this case. Contractual rights are found not in a bank vault; rather, they are intangible and arise from an understanding between two parties that, for consideration given, they agree to perform certain acts. Here, the district court is not administering a fund of any sort. The Conservator might be in possession of the specific contracts between the purchasers and ABC, but the only “thing” that was transferred to Conservator at the inception of the Conservatorship, which is what he is now poised to sell, is a contractual right to life insurance proceeds. That is not a *res*.

Indeed, taking the Conservator’s reasoning to its logical conclusion would lead to utterly absurd results. For example, suppose company “A” has 4,500 separate contracts to pay a sum certain to each of the contract holders. It would be frivolous to contend that simply by virtue of placing the company in a state court receivership, the state court is suddenly vested with jurisdiction to adjudicate the contractual claims of all 4,500 contract holders. The court might acquire jurisdiction if (a) the contract holders are duly served with process, *see*

Okla. Stat. tit. 12, § 2004; (b) there are sufficient minimum contacts to satisfy demands of due process, *see Barnes v. Wilson*, 1978 OK 97, ¶ 8, 580 P.2d 991, 993; and (c) the contract holders are given notice and opportunity to fairly defend their interests. However, those essential prerequisites are indisputably absent in this case.

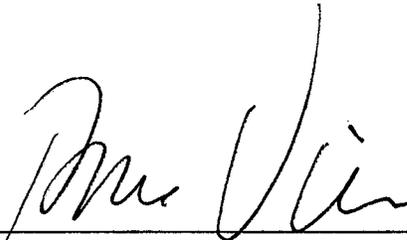
In sum, this is not an *in rem* proceeding of the type that would allow the district court to discard minimum standards of due process that have been applied for decades by this Court and the United States Supreme Court to actions that simply involve the adjudication of contractual rights among citizens of different states.

The Conservator's final contention – that Defendants' attempt to attack the Sale Order is untimely and improper – is illogical at best. The Conservator claims that Defendants are attempting a "collateral attack" against the district court's finding that the viatical settlements constitute securities within the meaning of the Oklahoma Securities Act. This appeal does not involve that issue in any form. Defendants are not contending that the district court erred in finding that the viatical settlements were securities. The only issues before this Court are whether the Sale Order is void for lack of due process and jurisdiction and

whether the Sale Order violates the law of the case. The Conservator's argument should be summarily dismissed.

III. CONCLUSION

For the reasons set forth above, the district court's Sale Order should be reversed and vacated.



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CERTIFICATE OF MAILING

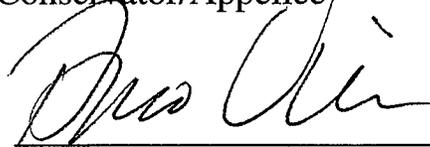
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