

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

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

APR 29 2003

Plaintiff,)

PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

v.)

Case No. CJ-2003-3174-62

B&B WORM FARM, an unincorporated)
entity, B&B WORM FARMS, INC., a)
Nevada Corporation, LYNN BRADLEY,)
an individual, and the ESTATE OF)
GREGORY MILES BRADLEY, a)
deceased individual,)

Defendants.)

**MEMORANDUM IN SUPPORT OF OBJECTION
OF LYNN BRADLEY TO APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER FREEZING ASSETS**

Defendant Lynn Bradley (“Bradley”) respectfully submits this memorandum in support of her objection to the ODS’s application for a temporary restraining order and an order freezing assets.

I. STATEMENT OF FACTS

On April 14, 2003, the Oklahoma Department of Securities (“ODS”) filed a Petition for Permanent Injunction and Other Equitable Relief against Bradley, among others, for alleged violations of the Oklahoma Business Opportunity Sales Act, Okla. Stat. Ann. tit. 71, § 801 et seq. (West Supp. 2003). The ODS supported the allegations in the petition by a verification

signed by Irving L. Faught, Administrator of the Oklahoma Department of Securities.

On April 17, 2003, the ODS filed an application for a temporary restraining order and for an order freezing assets. The ODS did not separately provide this Court with any evidentiary support for the new allegations in the application.

II. ARGUMENT

A. THE ODS'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER IS NOT SUPPORTED BY SUFFICIENT EVIDENCE

Oklahoma Statutes set forth a specific procedure for obtaining a temporary restraining order. Okla. Stat. Ann. tit. 12, § 1381 et seq. (West 1993). Section 1384.1 specifically provides the procedure necessary for obtaining a temporary restraining order:

B. A temporary restraining order may be granted without written or oral notice to the adverse party or the attorney for the adverse party only if:

1. it clearly appears from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the attorney for the adverse party can be heard in opposition. . . .

The allegations relating to the alleged dissipation of assets by Bradley in the ODS's application for a temporary restraining order are not alleged in the verified petition. The ODS verified petition provides no evidentiary support for the allegations relating to the alleged dissipation of assets. The ODS did not file an affidavit in support of the additional allegations in its application.

See ODS Application at 2; c.f. ODS Petition for Permanent Injunction. The ODS application does not provide any evidentiary allegations regarding Bradley's personal assets or bank account. Nothing in the ODS application supports any allegation that Bradley was dissipating corporate assets. The ODS's application for a temporary restraining order is therefore statutorily infirm and should be dissolved.

B. THE FACTS ALLEGED IN THE PETITION FOR PERMANENT INJUNCTION DO NOT SUPPORT THE ISSUANCE OF A TEMPORARY INJUNCTION

The ODS has not provided this Court with a sufficient factual basis for the issuance of a temporary injunction pursuant to Okla. Stat. Ann. tit. 12, § 1382, which provides:

When it appears, by the petition, that the plaintiff is entitled to the relief demanded and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. And when during the pendency of an action, it shall appear, by affidavit, that the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors, or to render the judgment ineffectual, a temporary injunction may be granted to restrain such removal or disposition. It may, also, be granted in any case where it is specially authorized by statute.

Again, as with the issuance of the temporary restraining order, the ODS has failed to provide this Court with specific facts that would support the issuance of temporary relief pending the outcome of the action for a permanent injunction. The statute specifically requires the applicant to provide sworn factual support for the extraordinary relief of temporarily freezing a party's assets pending the outcome of the litigation.

The ODS's Application for a temporary restraining order provided only unsupported allegations that "[d]uring the months of February and March, 2003, over Two and One-Half Million Dollars (\$2,500,000) was deposited into the primary business account of B & B Worm Farms, Inc. During this same period, over Three Million Six Hundred Thousand Dollars (\$3,600,000) was withdrawn from the account." ODS Application at 2. The ODS's allegations regarding the accounts of B & B Worm Farms, Inc. are not supported by any evidence, affidavit, or verified pleading. More important, the allegations do not demonstrate that Bradley appropriated any of those funds for her own personal benefit. The ODS's application does not provide any factual basis for freezing Bradley's personal bank account. Absent additional evidentiary support that Bradley has threatened or is about to "remove or dispose of [her] property with intent to defraud creditors, or render a judgment ineffectual," the Court should deny the ODS a temporary injunction.

Nothing in the ODS's pleadings provides evidentiary support that Bradley is removing or attempting to dispose of her property with intent to

defraud creditors or to render a judgment ineffectual. The Court should therefore dissolve the temporary restraining order and reject any request for a temporary injunction against Bradley.

C. THE ODS HAS AN ADEQUATE REMEDY AT LAW AND THROUGH THE BANKRUPTCY PROCESS TO RECOVER MONEY FOR GROWERS

The ODS has an adequate remedy at law to assist Growers in recovering money from B&B Worm Farms, Inc. ("B&B"). The ODS has sought an order from this Court requiring the defendants, including Bradley, to make restitution to the Growers and to disgorge any ill-gotten gains, amounts which have not been determined. The ODS has the ability to obtain money judgments against those responsible for any acts in violation of the Oklahoma Business Opportunity Sales Act. Okla. Stat. Ann. tit. 71, § 814.

On April 21, 2003, B&B Worm Farms, Inc. filed a voluntary petition pursuant to Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. The Bankruptcy Court has appointed a Trustee to recover from funds properly belonging to the Bankruptcy estate. The Trustee has sufficient powers to recover assets of the estate that have been fraudulently transferred. If Bradley has in her possession assets that properly belong to B&B Worm Farms, Inc. or to growers, through fraudulent transfers of B&B assets, the Trustee should be able to recover those assets and seek any necessary intervention by the Bankruptcy Court.

The ODS will have the ability to prove its case against the defendants and to obtain any relief to which it is entitled. Those remedies are adequate with respect to any potential liability of Bradley to the ODS.

D. THE COURT SHOULD ASSESS ATTORNEY FEES AND COSTS AGAINST THE ODS

“If a temporary restraining order is granted, the party restrained may recover the damages he sustained, including reasonable attorney’s fees, if it be finally decided that the restraining order ought not to have been granted.” Okla. Stat. Ann. tit. 12, § 1384.2 (West 1993). Upon the conclusion of this proceeding, Bradley requests an award of attorney’s fees and costs if the Court dissolves the temporary restraining order.

III. CONCLUSION

Based on the foregoing, Bradley requests that the Court enter an order dissolving the temporary restraining order, deny any request by the ODS for a temporary injunction, and award her any attorney’s fees and costs to dissolve this temporary restraining order.

Dated: April 29, 2003

Respectfully submitted,



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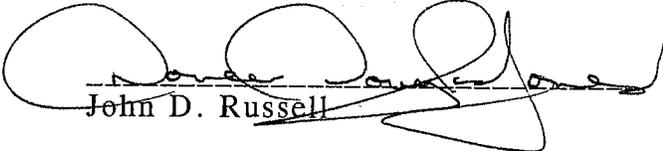
CERTIFICATE OF SERVICE

I hereby certify that on this the ___ day of April, 2003, a full, true, and correct copy of the above and foregoing instrument, **"MEMORANDUM IN SUPPORT OF OBJECTION OF LYNN BRADLEY TO APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER FREEZING ASSETS"** was sent by facsimile and by depositing same in the United States mail, with proper first-class postage there, to the following counsel of record at the following address:

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