

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

JUL 8 2003

MICHAEL S. RICHIE
CLERK

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

Plaintiff/Appellee,

v.

ACCELERATED BENEFITS CORPORATION;
C. KEITH LaMONDA; AMERICAN TITLE
COMPANY OF ORLANDO; and
DAVID PIERCEFIELD,

Defendants/Appellants

v.

TOM MORAN,

Court-Appointed Conservator/
Appellee.

Case No. 98663

Oklahoma County
Case No. CJ-99-2500-66

Honorable Daniel L. Owens

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

JUL 08 2003

PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

**MOTION TO RECONSIDER ORDER STRIKING
SURREPLY OF CONSERVATOR TOM MORAN AND
APPLICATION FOR LEAVE TO FILE SURREPLY**

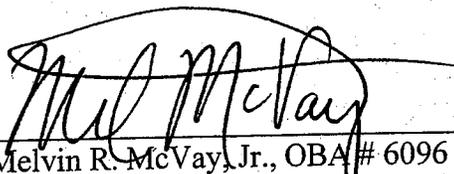
On July 3, 2003, this Court entered an order striking the Surreply of Conservator Tom Moran on the grounds that the Supreme Court's rules do not provide for surreplies. The Conservator respectfully requests that this Court reconsider its decision and grant him leave to file the Surreply to address four (4) specific and blatant misrepresentations of the record made by Defendants/Appellants in their Reply, as follows: (i) that the Joy LaMonda Affidavit was not stricken from the record, which directly contradicts the District Court's Journal Entry dated October 18, 2002 (R. 289-91); (ii) that Conservator's Counsel admitted at the September 27, 2002 hearing that the Conservator would not allow Defendants/Appellants to use investor funds to pay premiums, which is not true and does not appear in the Transcript of the Proceedings Held the September 27, 2002 (R. 272); (iii) that Defendants/Appellants had no

burden to prove they had transferred 75% of the Conservatorship Assets to the Conservator, which directly contradicts the Order Appointing Conservator and Transferring Assets entered February 7, 2002 (R. 1-8); and (iv) that the issue of whether the Conservatorship Assets may be used to offset court-approved fees and expenses is subject to the current appeal, which is not an issue subject to either an interim or final order of the District Court.

CONCLUSION

For the reasons stated herein Conservator Tom Moran respectfully requests that this Court reconsider its order striking his Surreply, and grant him leave to file a four (4) page Surreply solely to address Defendants/Appellants' blatant misrepresentations regarding the record before this Court as described herein.

Respectfully Submitted,



Melvin R. McVay, Jr., OBA # 6096

Thomas P. Manning, OBA #16117

Kay Smith, OBA #13252

PHILLIPS McFALL McCAFFREY

McVAY & MURRAH, P.C.

Twelfth Floor, One Leadership Square

211 N. Robinson

Oklahoma City, OK 73102

Telephone: (405) 235-4100

Facsimile: (405) 235-4133

ATTORNEYS FOR CONSERVATOR TOM MORAN

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the Motion to Reconsider Order Striking Surreply of Conservator Tom Moran and Application for Leave to file Surreply was mailed this ~~21~~ day of July, 2003, by depositing it in the U.S. Mails, postage prepaid, to:

Eric S. Eissenstat
Dino E. Viera
Brent M. Johnson
Fellers, Snider, Blankenship, Bailey & Tippens
100 North Broadway, Suite 1700
Oklahoma City, OK 73102-8820

Attorneys for Defendants/Appellants

Patricia A. Labarthe
Oklahoma Department of Securities
First National Center, Suite 860
120 North Robinson
Oklahoma City, OK 73102

Attorney for Plaintiff/Appellee
Oklahoma Department of Securities

With a copy hand delivered to
the Honorable Daniel L. Owens

I further certify that a copy of the foregoing was mailed to, or filed in, the Office of the Court Clerk of the Oklahoma County, Oklahoma City, Oklahoma 73105, on the __ day of July, 2003.

