

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

OKLAHOMA DEPARTMENT OF SECURITIES,)
ex rel., Irving L. Faught, Administrator,)

Plaintiffs,)

v.)

Case No.: **CJ-2006-3311**

FARMERS & MERCHANTS BANK, an)
Oklahoma banking entity; JOHN V. ANDERSON,)
Individually, and as Officer and Director of)
Farmers & Merchants Bank; and JOHN TOM)
ANDERSON, Individually, and as Officer)
and Director of Farmers & Merchants Bank,)

Defendants,)

and)

ROBERT LYNN POURCHOT, Trustee of the)
Robert Lynn Pourchot Trust; DONALD W. ORR,)
Trustee of the Pourchot Trust; THE WILL)
FOUNDATION; POURCHOT INVESTMENTS,)
LP; PHILLIP M. POURCHOT, Trustee of the)
Phillip M. Pourchot Revocable Trust; RICHARD)
REYNOLDS; RICHARD REYNOLDS, Trustee of)
the Richard Reynolds Living Trust; ANNENDA)
REYNOLDS; STEVEN B. SANDERS; VICKI L.)
SANDERS; and CRANDALL & SANDERS, INC.,)

Intervenors.)

**INTERVENORS' RESPONSE TO PLAINTIFF'S MOTION TO DEEM
CERTAIN ALLEGATIONS IN PLAINTIFF'S PETITION ADMITTED**

Intervenors, Robert Lynn Pourchot, Trustee of the Robert Lynn Pourchot Trust; Donald W. Orr, Trustee of the Pourchot Trust; the Will Foundation; Pourchot Investments, LP; Phillip M. Pourchot, Trustee of the Phillip M. Pourchot Revocable Trust; Richard Reynolds; Richard Reynolds, Trustee of the Richard Reynolds Living Trust; Annenda Reynolds; Steven B. Sanders; Vicki L. Sanders; and Crandall & Sanders, Inc. (collectively, "Intervenors") respond to Plaintiff's Motion to Deem Certain Allegations in Plaintiff's Petition Admitted (the "Motion") as follows:

I. Defendants Failed to Properly Respond To Certain Allegations Under Oklahoma Pleading Code.

Intervenors hereby adopt the factual and legal arguments set forth in the Motion and urge the Court to deem each of the improperly-answered allegations admitted. As stated in the Motion, Defendants' responses to the Disputed Allegations that "the documents speak for themselves and nay allegations contrary therewith are denied" may not be considered a denial under 12 Okla. Stat. § 2008(B). Instead, such responses to the Disputed Allegations must be deemed admitted because they were "not [properly] denied in the responsive pleading." *See* 12 Okla. Stat. § 2008(D).

This Court should not reward Defendants' failure to correctly and adequately respond to Plaintiff's Petition. Defendants' improper tactics only serve to delay and hinder a "just, speedy, and inexpensive determination of every action." *See* Oklahoma Pleading Code, 12 Okla. Stat. § 2001.

II. Defendants Did Not Perform the Requisite Diligence in Responding to Plaintiff's Petition

As stated in Plaintiff's Motion, in addition to not meeting the mandatory procedural requirements, Defendants' Answer also contained numerous responses that Defendants "are without knowledge or information sufficient to form a belief as to the trust of the allegations." Although this response is allowed under the Oklahoma Pleading Code, such response must be made in good faith. *See* Cmt. to 12 Okla. Stat. § 2008(B); 5 Wright & Miller Federal Practice and Procedure § 1262 (3d ed. 2004) ("[A] party may not assert a lack of knowledge or information if the necessary facts or data involved are within his knowledge or easily brought within his knowledge, a matter of general knowledge in the community, or a matter of public record.").

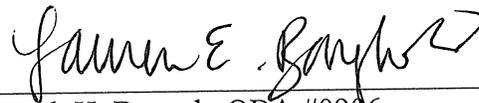
Defendants' claims of "lack of information" in paragraphs 12-15, 27-32, 57, 59, 61, 63, 65, 79, 85, 91, 119, 125, 143, 146-48, 158, 161, 162, 164, 187, 193-96, 198, 201-04, 208-11, 214-16, 219, 220 were not made in good faith, as Plaintiff's allegations specifically regarded

information that could have been found in bank account records created and produced by Defendant F&M Bank or statements made by current and former F&M Bank employees. Thus, the underlying information contained in these allegations could have easily been determined by Defendants before submitting their Answer. Since Defendants' Answer claiming "lack of information to confirm or deny" to the above allegations were not made in good faith, they should be deemed admitted under 12 Okla. Stat. § 2008(D).

CONCLUSION

For the foregoing reasons, Intervenor respectfully request that Plaintiff's Motion be granted.

Respectfully submitted this 14th day of January, 2009.



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ATTORNEYS FOR INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that on this **14th** day of **January 2009**, a true and correct copy of the foregoing was emailed and sent via U.S. First Class Mail, postage prepaid, to the following counsel of record:

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