

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FEB - 5 2009

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

Oklahoma Department of Securities )  
ex rel. Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Jerry D. Cash, )  
 )  
Defendant, )  
 )  
and )  
 )  
Sherry J. Cash, )  
 )  
Intervenor. )

Case No. CJ-2008-7963

**PLAINTIFF'S RESPONSE TO INTERVENOR'S MOTION  
TO MODIFY TEMPORARY INJUNCTION AND ORDER  
FREEZING ASSETS**

Plaintiff, Oklahoma Department of Securities, ex rel. Irving L. Faught, Administrator (Department), respectfully submits this response in opposition to *Intervenor's Motion to Modify Temporary Injunction and Order Freezing Assets*.

1. On August 29, 2008, this Court issued the *Temporary Injunction and Order Freezing Assets* ("Order") in this matter. The Order was supplemented by orders of the Court on September 9, 2008, November 4, 2008, January 20, 2009, and January 23, 2009.

2. The funds received by Defendant in the series of fraudulent financial transactions outlined in the Department's *Petition for Injunction and Other Equitable*

*Relief* were commingled with the personal funds of Defendant and Intervenor in the bank accounts now subject to the asset freeze.

3. The bank accounts of Defendant and Intervenor as well as the Nichols Road property addressed in the Intervenor's motion were made subject to the Order that provides in pertinent part as follows:

[T]he assets of Defendant, wherever located, be and hereby are, frozen ("Assets"). The freeze shall include, but not be limited to, any real property, personal property, funds and or securities located in any bank, depository institution, brokerage firm, or internet based bank, securities or other financial institution account. It shall also apply to Assets in the name of any individual or entity controlled by Defendant or Assets over which Defendant has signatory or other designated authority.

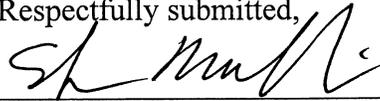
4. The assets described above were included in the freeze order to maintain the status quo and to prevent the dissipation or diversion of assets to the detriment of those for whose benefit this action was brought. Since it was anticipated that Defendant's disgorgement liability would exceed his known assets, the freeze order was necessary to preserve all of those assets for Defendant's payment of disgorgement. *See S.E.C. v. Lauer*, 2007 WL 1394001 (S.D. Fla.). It is imperative that this Court maintain control of all of Defendant's assets until final resolution of this matter. "A civil action in tort is different from a divorce proceeding. The purpose of a tort action is to establish liability for a legal wrong and to recover damages." *Miller v. Miller*, 956 P.2d 887, 897, 1998 OK 24.

5. Plaintiff further opposes the pending motion because the Intervenor has not complied with the Court's ruling of December 19, 2008, by failing to identify a frozen asset that should not have been frozen by the Court as a result of Defendant's fraudulent activity. See excerpt from hearing at paragraph 14 of Intervenor's Motion.

6. In addition, Intervenor has failed to show how she has a separate right to Eight Hundred Thousand Dollars (\$800,000) as a result of a transfer of a residential property, jointly owned by Defendant and Intervenor, in partial consideration for their purchase of the Nichols Road property. Furthermore, funds in the amount of Eight Hundred Thousand Dollars (\$800,000) do not exist in the bank accounts subject to the freeze order.

Wherefore, the Department requests that this Court deny the *Intervenor's Motion to Modify Temporary Injunction and Order Freezing Assets*.

Respectfully submitted,



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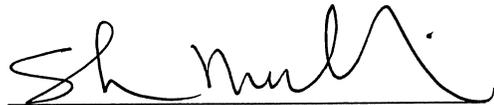
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5<sup>th</sup> day of February, 2009, a true and correct copy of the foregoing was mailed to:

Patrick J. Ryan, Esq.  
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*Attorneys for Intervenor*

A handwritten signature in black ink, appearing to read "James A. Kirk", written over a horizontal line.