

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

JAN 21 2016

TIM RHODES
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Oklahoma Department of Securities)
 ex rel. Irving L. Fraught, Administrator)
)
 Plaintiff,)
 v.)
)
 Seabrooke Investments, LLC, an Oklahoma)
 limited liability company;)
 Seabrooke Realty, LLC, an Oklahoma)
 limited liability company;)
 Oakbrooke Homes, LLC, an Oklahoma)
 limited liability company;)
 Bricktown Capital, LLC, an Oklahoma)
 limited liability company;)
 KAT Properties, LLC, an Oklahoma)
 limited liability company;)
 Cherry Hill LLC, an Oklahoma)
 limited liability company d/b/a Cherry)
 Hill Apartments; Tom W. Seabrooke,)
 individually and as Trustee of the Tom)
 Seabrooke 2007 Revocable Trust and J.)
 Karyn Seabrooke 2007 Revocable Trust;)
 and Judith Karyn Seabrooke, individually)
 and as Trustee of Tom Seabrooke 2007)
 Revocable Trust and J. Karyn)
 Seabrooke 2007 Revocable Trust)
)
 Defendants.)

Case No. CJ-2014-4515

OBJECTION TO RECEIVER'S REPORT ON CLAIMS AND
RECOMMENDATION FOR CLASSIFICATION OF SAME

COMES NOW, Claimant, ADVANCE RESTAURANT FINANCE n/k/a ARF
 FINANCIAL, LLC, a California Limited Liability Company ("ARF"), by and through its
 attorneys of record, Kevin Blaney and J. Scott Henderson of Blaney Tweedy & Tipton,
 PLLC and presents this Objection to Receiver's Report on Claims and Recommendations
 of Same (the "Report and Recommendation").

MEMORANDUM OF SUPPORT AND AUTHORITIES

Receiver, in his Report and Recommendation filed December 22, 2015, recommends denial of "...several claims from commercial entities arising from loan agreements and other transactions....such transactions are not considered investments in "securities" and are not in the class of investments the laws applicable here are designed to protect." (See Receiver's Report on Claims and Recommendation for Classification of Same, page 4, fn 3) Essentially, the Receiver intends to completely ignore an entire class of claimants in favor of equity investors. ARF respectfully submits prevailing case law dictates that ARF's claim be given priority, or, at the very least be placed on equal footing with that of the equity investors.

A. ARF does not dispute Receiver's characterization of the ARF debt.

To the extent ARF's claim for \$251,437.85 differs from the accounting of ARF's claim offered by Receiver in his Report and Recommendation, ARF agrees to accept and otherwise does not dispute the figures laid out by Receiver (See Receiver's Report on Claims and Recommendation for Classification of Same, pages 31-32).

B. Unsecured creditors should be afforded higher priority than equity investors, or, in the alternative, all creditors from both classes should be treated equally.

When called upon to determine the rights of different classes of creditors entitled to participate in the distribution of assets of an insolvent corporation, a court of equity, even in the absence of statutory provisions expressly directing the order in which debts shall be ranked, will adopt and follow wherever practicable the rule prescribed by statute relating to the allowance of debts in insolvency or bankruptcy. *Old Colony Trust Co. v. Medfield & M. St. Ry. Co.*, 215 Mass. 156, 102 N.E. 484 (1913) Courts recognize "the

similarity between an insolvency receivership and a bankruptcy proceeding...” *Commodity Futures Trading Com’n v. Lake Shore Asset Management Ltd.* 646 F.3d 401, 404 (7th Cir. 2011), citing to *Old Colony Trust Co.*, *supra* at 487. It is undisputed that in bankruptcy proceedings, unsecured creditors receive priority over equity investors. (11 U.S.C. § 507)

Distributions from a receivership’s estate are subject to orders and directions of the presiding judge who shall determine the order of payment by resorting to the rules of priority, as illustrated by the *Progress Press* case, to-wit:

The receiver, being a mere ministerial officer or instrument of the court by which he was appointed, **has no inherent authority, and, strictly speaking, is unauthorized to exercise any discretion with respect to the disposition of the funds in his hands**, rather holding the same at all times subject to the orders and directions of the court in which the power of supervisory control is vested. *Stone v. St. Louis Union Trust Co.*, 183 Mo. App. 261, 278, 166 S. W. 1091 (1914). Consequently such funds are to be paid out to the parties entitled thereto only upon an order of court after due application, notice, proof, and allowance and the order of payment is to be determined by the rules governing priorities, so that in effecting a distribution all creditors of the same class may be treated on an equal basis, and the payments, if less than for the full amount of the claims, be apportioned pro rata among them all...*Progress Press Brick & Mach. Co. v. Sprague*, 228 Mo. App. 1116, 65 S.W.2d 154, 159 (1933) (emphasis added)

Oklahoma lacks a statute expressly directing the order in which debts shall be ranked in an insolvency or fraud-related receivership. Thus, the Court should follow the rule relating to allowance of debts in bankruptcy proceedings. As an unsecured creditor, ARF should be given priority over unsecured claims held by equity investors against the General Assets.

Priorities are not favored by law and can arise only by reason of some definite statutory provision or some fixed principle of common law creating special and superior

rights in certain creditors over others. *Western Carolina Power C. v. Yount*, 208 N.C. 182, 179 S.E. 804, 805 (1935)

Receiver has offered no definite statutory authority or common law right which would afford the investors preference over unsecured creditors. As such, the Court should reject the Receiver's Recommendation to favor equity investors over unsecured creditors and apply the fixed principle used in bankruptcy proceedings, which gives preference to unsecured creditors, such as ARF, over equity investors. In the alternative, the Court should treat all unsecured classes of creditors equally, rather than arbitrarily giving preference to one class over another.

CONCLUSION

ARF's claim should properly be given priority status over the claims of investors. In the alternative, ARF's claim should be treated on equal footing with those of the unsecured investors, and all claims should be paid on a pro rata basis out of the General Assets.

Respectfully Submitted,



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CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing instrument was mailed this 21st day of January, 2016, with sufficient postage attached thereon to:

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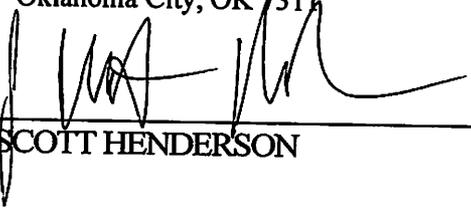
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