

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

SEP 1 2015

TIM KHOUER
COURT CLERK

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

Plaintiff,)

v.)

Case No: CJ-2014-4515

SEABROOKE INVESTMENTS, LLC,)
an Oklahoma limited liability)
company, *et al.*)

Defendants.)

APPLICATION TO INTERVENE AND BRIEF IN SUPPORT

COMES NOW Peggy Johnston, HPJ Family Trust, and HPJ Family Limited Partnership (“Movant”), pursuant to 12 O.S. §2024(a)(2) and moves this Court for an Order granting this Application to Intervene in the above-styled matter.

BACKGROUND

1. On August 11, 2014, the Oklahoma Department of Securities filed its Petition for Injunction alleging violations of the Oklahoma Securities Act by Defendants in their offering and selling of securities.
2. This Court entered a temporary injunction on September 5, 2014. That temporary injunction included the following language:

“IT IS FURTHER ORDERED that, except by leave of Court during the pendency of this Order, all creditors and other persons seeking money, damages, or other

relief from Defendants, and all others acting on behalf of any such creditor or other persons... are hereby stayed and restrained from doing any act or thing whatsoever to interfere with the Receiver or to the possession of or management by the Receiver of the Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over the Defendants.”

3. The Receiver entered into sales contracts relating to two properties of the Receivership Estate, specifically, 1609 NW 15th Street, Oklahoma City, Oklahoma (15th Street Property”) and 425 NW 11th Street, Oklahoma City, Oklahoma (“11th Street Property”). Movant held a mortgage interest in each of these properties. However, the mortgage had been fraudulently released by forged mortgage releases.
4. Rather than holding up the sales of these properties to litigate the issue of whether the mortgage liens had been properly released, Movant and Receiver reached an agreement to close the sale and continue the mortgage lien interest against the cash proceeds of the sales in the Receiver’s control.
5. Both properties have sold and funds are on deposit with the Receiver. Movant seeks to intervene in this action to enforce its secured interests in the proceeds of the 15th Street property and the 11th Street property.

BRIEF IN SUPPORT

Pursuant to 12 O.S. §2024(A)(2), “INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s

ability to protect that interest.” The requirements of this right to intervene have been clearly set forth in *Bank of Commerce v. Beakers*, 2001 OK CIV APP 45, ¶10. The *Bank of Commerce* Court identified the four requirements to intervene by right as:

1. The motion to intervene must be timely;
2. The intervener must claim a significant protectable interest relating to the property that is the subject of the action;
3. The disposition of the action will impair or impede the intervener’s ability to protect its interest; and
4. The existing parties may not adequately represent the intervener’s interest.

Bank of Commerce v. Beakers, 2001 OK CIV APP 45, ¶10.

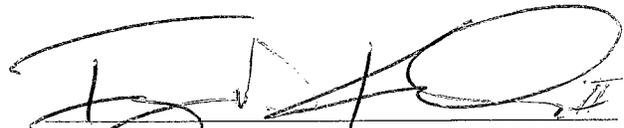
Movants satisfy the four Bank of Commerce requirements. First, Movants’ Application is timely filed. The funds from the sale of the 15th Street property are currently held by the Receiver and the sale of the 11th Street Property has not yet closed. Second, Movants claim a significant protectable interest relating to the property that is subject to the action. Movants have a mortgage lien interest in the proceeds from the sale of these two properties. The debt secured by these mortgage lien interests is approximately \$120,000. Third, Movants would have no ability to protect its mortgage lien interest without intervening in this action. The proceeds of the sale of the Properties will be distributed through the Receivership, leaving Movants with no recourse after the close of the Receivership. Finally, the existing parties’ interests do not represent the Movants’ interests. The Plaintiff’s interest is to maximize recovery for the Receivership to return to investors. Although the interests of Plaintiff and Movant are not adversarial, the Plaintiff has no reason to represent Movants’ secured interests. Certainly, the

Defendants are not representing Movants' interests.

WHEREFORE, Movants pray this court issue an Order allowing Peggy Johnston, HPJ Family Trust and HPJ Family Limited Partnership to intervene in the above-styled action, together with any additional relief this Court deems fair and just.

Respectfully Submitted,

RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS



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LIMITED PARTNERSHIP

CERTIFICATE OF SERVICE

This is to certify that on the 1st day of May, 2015, a true and correct copy of the above and foregoing document was mailed, postage prepaid, to the following:

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