

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

Oklahoma Department of Securities )  
*ex rel.* Irving L. Faught, Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Seabrooke Investments LLC, *et al.*, )  
 )  
Defendants. )

FEB 16 2016

TIM RHODES  
COURT CLERK

31

Case No. CJ-2014-4515

**OKLAHOMA DEPARTMENT OF SECURITIES' RESPONSE TO OBJECTION  
TO RECEIVER'S REPORT ON CLAIMS AND RECOMMENDATION  
FOR CLASSIFICATION OF CLAIM OF WAYNE DOYLE**

The Oklahoma Department of Securities (Department), *ex rel.* Irving L. Faught, Administrator, respectfully submits this response to Objection to Receiver's Report on Claims and Recommendation for Classification of Claim of Wayne Doyle (Doyle Objection).

**PROCEDURAL BACKGROUND**

On August 11, 2014, the Department filed a verified *Petition for Permanent Injunction and Other Relief* against the Defendants Seabrooke Investments LLC, Seabrooke Realty LLC, Oakbrooke Homes LLC, Bricktown Capital LLC, KAT Properties LLC, Cherry Hill LLC, Tom W. Seabrooke, and Judith Karyn Seabrooke (Defendants) pursuant to the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§1-101 through 1-701 (2011). On August 11, 2014, this Court appointed Ryan Leonard as Receiver (Receiver) for Defendants and the assets of the Defendants. Defendants have agreed to pay, and the Court has ordered the payment of, restitution to investors as determined by this Court. Defendants have waived any rights to the assets, properties, and funds of the receivership estate.

Since his appointment, the Receiver has liquidated the assets of the Defendants pursuant to orders of this Court. On January 22, 2015, this Court ordered a claims process to be established whereby proofs of claim could be filed by potential creditors and/or claimants (Claimants) of the receivership estate. On December 22, 2015, the Receiver filed Receiver's Report on Claims and Recommendation for Classification of Same (Report and Recommendation) regarding the distribution of the assets of the receivership estate. The Receiver recommended that Wayne Doyle (Doyle) not recover any money from the receivership estate and Doyle filed the Doyle Objection.

### **DOYLE BACKGROUND**

Doyle began providing funds to Defendants beginning in May 2009, and continued to provide funds to various Defendants through December 2014. *See Findings of Fact and Conclusions of Law, Exhibit "A" hereto.* On December 23, 2012, Doyle sought to evidence his previously undocumented contributions to Defendants by entering into the following promissory notes with Tom Seabrooke and Bricktown Capital, LLC (Bricktown Capital):

- A. "...a Promissory Note for 'the principal sum not to exceed TWO HUNDRED NINETY FIVE THOUSAND AND 00/000 DOLLARS (\$295,000.00) together with interest thereon, ... and an additional 4% equity position in Bricktown Capital LLC.'"
- B. "...a Promissory Note for 'the principal sum not to exceed FIVE HUNDRED NINETY FIVE THOUSAND AND 00/000 DOLLARS (\$500,000.00) together with the interest thereon, ... and an additional 1% equity position in Bricktown Capital LLC.' The Note was secured, in part, by a 20% ownership interest to Doyle in Bricktown Capital, LLC."
- C. "...a Promissory Note for 'the principal sum not to exceed EIGHT HUNDRED THOUSAND and 00/000 DOLLARS (\$800,000.00) together with interest thereon. The Note was secured, in part, by a 45% ownership interest to Doyle in Bricktown Capital, LLC.'"

See Findings of Fact ¶5<sup>1</sup>, *Exhibit A*.

Prior to entering into the three notes with Bricktown Capital,<sup>2</sup> Doyle entered into an agreement with Bricktown Capital, Tom Seabrooke, Ronald R. Hope and Quail Creek Bank whereby he obtained a 35% ownership interest in Bricktown Capital. See Findings of Fact, ¶ 7, *Exhibit A*. At the time of the agreement, Doyle knew that the Bricktown Hotel had not made a profit since 2007 and that the company was not doing well financially and was operating at a loss. See Findings of Fact, ¶¶ 7, 21, *Exhibit A*. At the same time as this agreement, Doyle executed an Operating Agreement with Bricktown Capital and became a member of Bricktown Capital. See Findings of Fact, ¶ 8, *Exhibit A*. In December 2011, Bricktown Capital, Tom Seabrooke and Doyle entered into an agreement with Quail Creek Bank to address the bank's concerns about the payment of the Bricktown Capital loan that was in default. See Findings of Fact, ¶ 9, *Exhibit A*.

As a member of Bricktown Capital, Doyle paid outstanding bills of the company and provided funds for payroll expenses. See Findings of Fact, ¶¶ 10, 11, and 14, *Exhibit A*. Specifically, these included pre-receivership payments of \$225,000 on March 20, 2014, to Blackman Mooring; \$23,500 on April 25, 2014, for air conditioning units; and \$50,000 on May 14, 2014, for payroll. See Findings of Fact, ¶¶ 10, 14, *Exhibit A*.

The Bricktown Hotel was briefly in the Receivership estate. It was released on September 9, 2014, and Bricktown Capital resumed operating the hotel. See Findings of Fact, ¶ 16, *Exhibit A*. After the Bricktown Hotel was released from the receivership estate, Doyle continued to make payments on behalf of Bricktown Capital including: \$50,000 for payroll

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<sup>1</sup> The Court's August 21, 2015 order incorrectly references the dates of the notes as December 23, 2010. A review of Doyle Exhibit No. 7, Doyle Exhibit No. 8, and Doyle Exhibit No. 9, indicates the dates to be December 23, 2012.

<sup>2</sup> None of the Promissory Notes were signed. See Findings of Fact ¶6, *Exhibit A*.

on October 6, 2014; a \$30,000 credit card payment on December 8, 2014; \$50,000 to release a lien against the hotel on December 22, 2014; and \$48,000 to Pawnee Leasing Corp. on December 30, 2014. See Findings of Fact ¶ 17, *Exhibit A*.

By April 2014, Doyle owned 35% of Bricktown Capital and had a collateral interest in an additional 45% ownership interest. See Findings of Fact, ¶ 13, *Exhibit A*. On April 9, 2014, Doyle and Bricktown Capital consolidated all contributions Doyle made to Defendants that they evidenced by entering into a Promissory Note and mortgage in the amount of \$2,759,120.25. See Findings of Fact, ¶ 12, *Exhibit A*.

Between 5/28/2009 and 3/27/2014, Doyle received \$681,577.43 from Tom Seabrooke, Bricktown Capital and various other entities. Of this amount, Doyle testified \$228,894.66 was a bonus payment from Bricktown Capital for Doyle's 'risk compensation.'" Findings of Fact, ¶ 20, *Exhibit A*.

### **DOYLE CLAIM**

Doyle initially filed a claim against the receivership estate for \$3,288,489.38. The claim describes Doyle's contribution of funds to the Defendants and payments made to him by Defendants from May 2009 through December 2014. Subsequently, on August 5 and August 10, 2015, a hearing was held on Doyle's motion for the disbursement to him of funds interpled after the sale of the Bricktown Hotel by Bricktown Capital (Bricktown Hotel Hearing). On August 21, 2015, this Court issued *Findings of Fact and Conclusions of Law*, reclassifying all funds contributed to any Defendant payee from Doyle and his wholly owned company, Remington Express (Remington), to be capital contributions and not loans. See Conclusions of Law, ¶ 6, 7, *Exhibit A*. This Court found therein that Doyle and Remington's capital contributions totaled \$2,355,200. See Findings of Fact, ¶ 1, *Exhibit A*.

## AUTHORITIES AND ARGUMENT

### I.

#### **Capital Contributions Are Paid After All Other Receivership Obligations**

Critical to the consideration of the Doyle claim is the fact that his funds have already been wholly classified by this Court as capital contributions, not loans. When this Court recharacterized Doyle's purported loans to Defendants as capital contributions, the Court effectively ignored the label attached to the transactions and recognized their true substance. *In re: Hedged-Investments Associates*, 380 F.3d 1292 (10<sup>th</sup> Cir. 2004). The Tenth Circuit describes the result of such a recharacterization to mean that the capital contributions are only repaid "after satisfying all other obligations of the corporation." *Id.* at 1297.

Similarly, in *Tanzi v. Fiberglass Swimming Pools, Inc.*, 414 A.2d 484, 489 (RI 1980), the court subordinated the receivership claim from a shareholder for repayment of "loans" to a corporation and stated, "[c]learly persons making capital contributions are not corporate creditors." Doyle advances the theory that his claim should not be equitably subordinated. However, even without a determination of equitable subordination, his funds have already been subordinated by this Court in its *Findings of Fact and Conclusions of Law, Exhibit "A"*. In *Idaho Development, LLC v. Teton View Golf Estates, LLC*, 272 P.3d 373 (ID 2011), the court reasoned that "equitable subordination and debt recharacterization both end up reaching the same result: the insider advance is subordinated to the loans of the legitimate outside creditors." The court goes on to say that when a debt is recharacterized as a capital contribution, its priority is "downgraded to the back of the line." *Id.* at 405.

The Department urges the Court to recall that Doyle was the Claimant who rolled all of his capital contributions into Bricktown Capital promissory notes and ultimately into a mortgage against the Bricktown Hotel to gain a financial advantage for himself as circumstances became dire. Doyle knew the deteriorating financial condition of Bricktown Capital and the Bricktown Hotel and continued to advance funds for operations. See Findings of Fact, ¶ 21, *Exhibit A*. In addition, Doyle took money in the sum of \$228,894.66 from Bricktown Capital in spite of the fact that the money was critically needed for the repair of the hotel. See Findings of Fact, ¶ 20, *Exhibit A*.

It has been clearly established that this Court has the authority to allocate assets in an equity receivership and to approve any distribution plan provided it is fair and reasonable. *Official Comm. of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006), *SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991). It is fair and reasonable that Doyle should go to the back of the line.

## II.

### **The Receiver and the Department Have Been Released and Indemnified From All Debts and Obligations of Bricktown Capital and the Bricktown Hotel**

Bricktown Capital and the Bricktown Hotel were originally subject to the receivership order and the asset freeze. However, Bricktown Capital and the Bricktown Hotel sought a release from the receivership estate and the asset freeze in order to engage in efforts to sell the Bricktown Hotel. The release was granted on September 9, 2014, by order of this Court (Modification Order). At the time of the Modification Order, the Receiver had reported to the Court that the Bricktown Hotel had been operating at a deficit for over a year. The Department and the Receiver also reported to the Court that they believed the current value

of the Bricktown Hotel was less than the value of the Bricktown Hotel's existing mortgages. The Modification Order included the following language in releasing the Bricktown Hotel:

“IT IS FURTHER ORDERED that the Receiver and the Plaintiff be released and indemnified from and against all liability and loss for any debts or obligations, acts or omissions, of whatever nature of Bricktown Capital LLC and the Bricktown Hotel.”

On December 23, 2014, the Bricktown Hotel was sold. From the sales proceeds, two mortgages were paid in full. Remaining funds were claimed by Doyle, then were interpled with this Court, and finally were distributed to the Receiver after the Bricktown Hotel Hearing. Because Bricktown Capital, the Bricktown Hotel, together with all improvements and fixtures on the property, are no longer assets of the receivership estate, the Receiver has no basis to further consider Doyle's claim. Doyle should not be permitted to attempt to transfer the obligations of Bricktown Capital and the Bricktown Hotel back to the receivership estate.

### III.

#### **Court Has Broad Equitable Discretion to Determine Appropriate Relief in Equity Receivership**

Section 1-603 of the Act authorizes a district court, in a case involving a violation of the Act, to issue a permanent or temporary injunction, restraining order, or declaratory judgment, and to order appropriate or ancillary relief including, but not limited to, an asset freeze, appointment of a receiver, and order of restitution or disgorgement. In *State ex rel. Day v. Sw. Mineral Energy, Inc.*, 1980 OK 188, 617 P.2d 1334, 1338, the Oklahoma Supreme Court reviewed a case brought by the Department wherein the defendants, both individual and corporate, were alleged to have engaged in violations of the registration and anti-fraud provisions of the Act. The Court stated that Oklahoma districts courts have

equitable powers in actions brought under the Act and, “[o]nce the equity jurisdiction of the District Court has properly been invoked, the Court possesses the necessary power to fashion appropriate remedies.” *Id.* at 1338. Section 1-608(A) of the Act promotes the goal of state and federal uniformity, and the Oklahoma Supreme Court has acknowledged that the judicial interpretation of the federal securities acts, upon which Oklahoma’s securities laws are modeled, is properly considered in the interpretation of similar state securities provisions. *Id.* at 1339-40.

One principle that has been consistently recognized in state and federal securities cases is that districts courts have “broad powers and wide discretion to determine the appropriate relief in an equity receivership,” *SEC v. Elliott*, 953 F.2d 1560, 1566 (11<sup>th</sup> Cir. 1992), and to craft remedies for securities violations. *Wang* 944 F2d. at 85, *Worldcom* 467 F.3d at 84. According to the United States Supreme Court, in shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow. *Lemon v. Kurtzman*, 411 U.S. 192, 200, 93 S.Ct. 1463, 36 L.Ed.2d 151 (1973). Within that broad authority is the power to approve a plan of distribution proposed by a receiver. *See SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 82–83 (2d Cir. 2002) (affirming approval of distribution plan as “within the equitable discretion of the District Court”). This Court has the authority to allocate assets in an equity receivership and to approve any distribution plan provided it is fair and reasonable. *Wang* 944 F2d. at 85, *Worldcom* 467 F.3d at 84.

Doyle claims that the Receiver is recommending that other Claimants be given preferential treatment even though Doyle is “from an identical class of creditors.” This Court has not characterized any other Claimant’s funds as capital contributions. It is clear from a review of the other claims under consideration in this claims process, that no other investor

Claimant had anything but an investment with Defendants, no matter how the investment was designated on documents drafted by Defendants.

The Doyle Objection also asserts that all investors be treated the same regardless of whether their cash advances are deemed loans or capital contributions. In *SEC v. Credit Bancorp, Ltd.*, 290 F.3d at 88-89, the court, in supporting a pro rata distribution of funds in an SEC receivership, stated:

Courts have favored pro rata distribution of assets where, as here, the funds of the defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders. *Id.*

The court in *SEC v. Byers*, 637 F. Supp. 2d 166, 180 (S.D.N.Y. 2009), in making a determination whether parties are similarly situated, stated, “their circumstances need not be identical, but there should be a reasonably close resemblance of facts and circumstances.” (citing *Lizardo v. Denny’s Inc.*, 270 F.3d 94, 101 (2d Cir. 2001)). The court in *McGuinness v. Lincoln Hall*, 263 F.3d 49, 53 (2d Cir. 2001), held that “similarly situated” does not mean “identical”, but rather similar “in all material respects.” It is simple in this set of facts to distinguish Doyle from other Claimants. Doyle was a 35% owner of Bricktown Capital and the Bricktown Hotel and had a collateral interest in an additional 45% ownership interest in Bricktown Capital and the Bricktown Hotel. Findings of Fact, ¶ 13, *Exhibit A*. Since February, 2011, he was a member of Bricktown Capital. Findings of Fact, ¶ 8, *Exhibit A*. From February, 2011 through December 2014, Doyle, on behalf of Bricktown Capital, guaranteed a mortgage with Quail Creek Bank of almost \$2 million. Findings of Fact, ¶ 18, *Exhibit A*. Doyle was involved from 2009 through 2014 with Defendants in the funding of the assets of Defendants. Findings of Fact, ¶¶ 2, 4, 10, 14, 17, *Exhibit A*. Doyle made payments to Defendants and Quail Creek Bank, and also for payroll, air conditioning units, a

credit card, cleaning, furniture, taxes, and the release of two liens. Findings of Fact, ¶¶ 4, 10, 14, 17, *Exhibit A*.

Doyle is not similarly situated with any other Claimant and certainly does not belong in the Claimant class of Seabrooke investors. Individual Claimants were solicited to invest money with the Defendants with no further involvement or financial protection. The Receiver's Recommendation and Report should be adopted and Doyle's claim denied.

#### IV.

##### **Equity Supports the Exclusion of Doyle's Claim Seeking Additional Funds**

Doyle and Remington, his wholly owned company, provided \$2,355,200 to Tom Seabrooke and his various entities between May 2009 and December 2014. See Findings of Fact, ¶ 1, *Exhibit A*. From May 2009 to March 2014, Doyle received \$681,577.43 from Tom Seabrooke and his various entities<sup>3</sup>. See Findings of Fact, ¶ 20, *Exhibit A*. Here, where the Receiver will have inadequate funds to pay Claimants, the Court must make an equitable determination. Considering that Doyle has already received \$681,577.43 from the Defendants, the grant of a further distribution would be at the expense of Claimants who have recovered little or nothing. It would be inequitable for him to receive additional monies. *Worldcom* 467 F.3d at 84, *Byers* 637 F. Supp. 2d at 183. As the *Worldcom* Court observed, "when funds are limited, hard choices must be made." 467 F.3d at 84. The most grievously injured Claimants should receive the greatest share of the available funds. *Worldcom* at 84, citing *SEC v. Certain Unknown Purchasers of the Common Stock of & Call Options for the Common Stock of Santa Fe International Corp.*, 817 F.2d 1018, 1020-1021 (2d Cir.1987).

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<sup>3</sup> \$228,894.66 of the money received was a "bonus payment from Bricktown Capital, LLC, for Doyle's 'risk compensation.'"

Equity will not support any additional payment to Doyle that would unjustly diminish the recovery of the innocent investors.

### CONCLUSION

In light of the facts presented and authorities cited herein, and the absence of credible authority to support the Doyle Objection, the Department respectfully requests that the Doyle Objection be dismissed.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES  
Irving L. Fought, Administrator

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16th day of February, 2016, a true and correct copy of the above and foregoing was emailed to the following:

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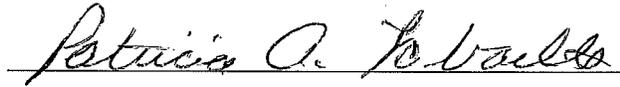
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OKLAHOMA DEPARTMENT OF SECURITIES, )  
ex rel. IRVING L. FAUGHT, ADMINISTRATOR, )  
Plaintiff, )

TIM RHODES  
COURT CLERK  
29

Case No. CJ-14-4515

vs. )

SEABROOKE INVESTMENTS, LLC, et al., )  
Defendants )

FINDINGS OF FACT

1. Between 5/28/2009 and 12/20/2014, Wayne Doyle ("Doyle") and his wholly owned company, Remington Express ("Remington"), provided \$2,355,200.00 to Tom Seabrooke and various entities owned and managed by Tom Seabrooke. (See, Doyle's Exhibit No. 13.)

2. The following funds were provided by Doyle without any written documentation, including without limitation any Promissory Notes or other documentation, evidencing that they were loans, to wit:

|            |           |                            |
|------------|-----------|----------------------------|
| 5/28/2009  | \$200,000 | Oakbrooke Homes, LLC       |
| 7/14/2009  | \$100,000 | Seabrooke Investments, LLC |
| 10/6/2009  | \$ 50,000 | Tom Seabrooke              |
| 10/27/2009 | \$150,000 | Seabrooke Investments, LLC |
| 11/23/2009 | \$100,000 | Seabrooke Investments, LLC |
| 1/27/2010  | \$100,000 | Tom Seabrooke              |
| 8/23/2010  | \$400,000 | Tom Seabrooke              |

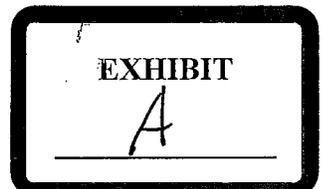
(See, Doyle's Exhibit No. 13.)

3. Doyle admits he does not know if any of the funds paid in paragraph No. 2 were used for the benefit of Bricktown Capital, LLC. (See, Testimony of Wayne Doyle.)

4. Doyle admits the following funds were either capital contributions or were repaid and are not owed, to wit:

|           |           |                    |
|-----------|-----------|--------------------|
| 2/3/2011  | \$299,500 | Quail Creek Bank   |
| 1/10/2014 | \$ 10,800 | Furniture purchase |
| 1/27/2014 | \$ 27,400 | Furniture purchase |
| 2/19/2014 | \$ 41,000 | Ad Valorem Taxes   |

(See, Doyle's Exhibit No. 13 and Testimony of Wayne Doyle.)



5. According to Doyle, Tom Seabrooke with Bricktown Capital, LLC, entered the following Promissory Notes:

A. On 12/23/2010, Tom Seabrooke with Bricktown Capital, LLC and Doyle entered a Promissory Note for "the principal sum not to exceed TWO HUNDRED NINETY FIVE THOUSAND AND 00/000 DOLLARS (\$295,000.00) together with interest thereon, ... and an additional 4% equity position in Bricktown Capital LLC." (See, Doyle Exhibit No. 7.)

B. On 12/23/2010, Tom Seabrooke with Bricktown Capital, LLC, and Doyle entered a Promissory Note for "the principal sum not to exceed FIVE HUNDRED NINETY FIVE THOUSAND AND 00/000 DOLLARS (\$500,000.00) together with interest thereon, ... and an additional 1% equity position in Bricktown Capital LLC." The Note was secured, in part, by a 20% ownership interest to Doyle in Bricktown Capital, LLC. (See, Doyle Exhibit No. "8".)

C. On 12/23/2010, Tom Seabrooke with Bricktown Capital, LLC, and Doyle entered a Promissory Note for "the principal sum not to exceed EIGHT HUNDRED THOUSAND AND 00/000 DOLLARS (\$800,000.00) together with interest thereon. The Note was secured, in part, by a 45% ownership interest to Doyle in Bricktown Capital, LLC. (See, Doyle Exhibit No. 9.)

6. None of the Promissory Notes discussed above in paragraph No. 5 and introduced into evidence were signed. (See, Doyle Exhibit Nos. 7-9.)

7. On February 3, 2011, Doyle executed an Agreement with Bricktown Capital, LLC, Tom Seabrooke, Ronald R. Hope and Quail Creek Bank, NA, whereby he obtained a 35% ownership interest in Bricktown Capital, LLC. Doyle knew that the Bricktown Hotel had not made a profit since 2007. After Doyle purchased his interest, he knew the Bricktown Hotel was operating at a loss and not doing well financially. (See, Testimony of Wayne Doyle.)

8. Additionally, on February, 3, 2011, Doyle signed an Operating Agreement with Bricktown Capital, LLC. The Agreement does not reflect the amount, if any, of the initial capital contribution made by Doyle. Doyle was at all times a member but not a manager of Bricktown Capital, LLC. (See, Doyle Exhibit No. 1 and Testimony of Wayne Doyle.)

9. On December 21, 2011, Bricktown Capital, LLC, Tom Seabrooke and Doyle entered an agreement with Quail Creek Bank because the bank was concerned about payment of the loan because they were in default. The Agreement mentions that the bank had filed a foreclosure action. At this time, Bricktown Capital was trying to locate an additional lender to refinance the loan but was ultimately unable to find additional financing. (See, Receiver's Exhibit No. 9 and Testimony of Wayne Doyle.)

10. The following funds were provided by Doyle or Remington Express without any written documentation, including without limitation any Promissory Notes or other documentation, evidencing that they were loans, to wit:

|           |           |   |
|-----------|-----------|---|
| 4/20/2011 | \$100,000 | Tom Seabrooke                               |
| 5/13/2011 | \$ 50,000 | Remington Express to Tom Seabrooke          |
| 9/25/2012 | \$100,000 | Remington Express to Bricktown Capital, LLC |
| 3/20/2014 | \$225,000 | Blackman Mooring                            |

(See, Doyle's Exhibit No. 13.)

11. Doyle testified he paid the Blackman Mooring invoice because the Bricktown Hotel could not afford to pay it and he wanted to avoid a legal situation. (See, Testimony of Wayne Doyle.)

12. On April 9, 2014, Doyle and Bricktown Capital, LLC, entered a Promissory Note ("2014 Promissory Note") for the amount of \$2,759,120.25. The Promissory Note and mortgage were prepared by Doyle's attorney to "preserve" his interest. Doyle did not know if an attorney for Bricktown Capital, LLC, ever reviewed the documents. (See, Doyle's Exhibit No. "10" and Testimony of Wayne Doyle.)

13. At the time of the execution of the 2014 Promissory Note, Doyle owned 35% of Bricktown Capital, LLC and had a collateral interest in an additional 45% ownership interest. (See, Testimony of Wayne Doyle.)

14. Doyle testified he made the following advances against the 2014 Promissory Note, to wit:

|           |          |                        |
|-----------|----------|------------------------|
| 4/25/2014 | \$23,500 | Air conditioning units |
| 5/14/2014 | \$50,000 | Payroll                |

(See, Doyle's Exhibit No. 13 and Testimony of Wayne Doyle.)

15. On August 11, 2014, the Receiver was appointed in the captioned matter. (See, Receiver's Exhibit No. 4.)

16. On 9/9/2014, the Bricktown Hotel was released from the receivership, and Bricktown Capital, LLC resumed operating the hotel.

17. After the Hotel was released from the receivership, the following funds were provided by Doyle or Remington, to wit:

|            |           |   |
|------------|-----------|---|
| 9/10/2014  | \$100,000 | Remington Express to Bricktown Capital, LLC   |
| 10/6/2014  | \$ 50,000 | Bricktown Capital, LLC (payroll)              |
| 12/8/2014  | \$ 30,000 | Ascentium (credit card)                       |
| 12/22/2014 | \$ 50,000 | Release of UCC for sale of Bricktown Hotel    |
| 12/30/2014 | \$ 48,000 | Pawnee Leasing Corp. (Release equipment Lien) |

(See, Doyle's Exhibit No. 13.)

18. Doyle paid those funds in paragraph No. 17 because he wanted to protect his investment by keeping the hotel open. Doyle guaranteed the Quail Creek Bank loan and needed to keep the hotel open to get a better sales price for the hotel. (See, Testimony of Wayne Doyle.)

19. Tom Seabrooke had authority to invest all the funds paid by Doyle and Remington Express however he chose. (See, Testimony of Wayne Doyle.)

20. From 5/28/2009 through 3/27/2014, Doyle received \$681,577.43 from Tom Seabrooke, Bricktown Capital, LLC, and various other entities. Of this amount, Doyle testified \$228,894.66 was a bonus payment from Bricktown Capital, LLC, for Doyle's "risk compensation." Doyle allocated all these funds however he chose. (See, Plaintiff's Exhibit No. 1 and Testimony of Wayne Doyle.)

21. At the time of Doyle's first investment in Bricktown Capital, LLC, he knew the hotel was not doing well but saw an appraisal and thought it had promise. (See, Testimony of Wayne Doyle.)

22. Doyle testified all the funds he provided were loans. However, the books of Bricktown Capital, LLC never reflected any loans to Doyle. (See, Testimony of Wayne Doyle and Austin Fuguitt.)

23. Doyle was aware the other investors in Bricktown Capital, LLC, were Tom Seabrooke, as well as an additional 1% investor. Doyle never investigated to see who the other investor was, whether there were additional investors, or who the creditors of Bricktown Capital, LLC were. (See, Testimony of Wayne Doyle.)

24. Doyle received only sporadic interest payments from Tom Seabrooke, Bricktown Capital, LLC, and other entities, and the 2014 Promissory Note was not repaid. (Testimony, Wayne Doyle and Plaintiff's Exhibit No. 1.)

## CONCLUSIONS OF LAW

1. When a member's contract with a company is challenged, the burden is on the member not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein. *Pepper v. Litton*, 308 U.S. 306 and *Beard v. Love*, 173 P.3d 796.

2. A member's loan to an entity is not *per se* invalid but is subject to strict scrutiny. *Tanzi v. Fiberglass Swimming Pools*, 414 A.2d 484 (RI 1980).

3. Remington Express is an entity separate and apart from Wayne Doyle, and any funds provided by Remington Express are not subject to the 2014 Promissory Note and mortgage.

4. Any funds paid to Tom Seabrooke, Oakbrooke Homes, LLC or Seabrooke Investments, LLC are not subject to the 2014 Promissory Note and mortgage.

5. The following factors should be considered when determining whether to reclassify a loan as a capital contribution:

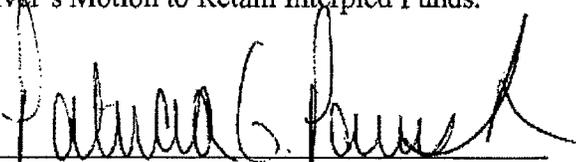
- a. Names given the documents evidencing the indebtedness.
- a. Reasonable expectation of repayment.
- b. Right to enforce repayment.
- c. Participation in management.
- d. Status of contribution in relation to other creditors.
- e. Intent of parties based on objective evidence.
- f. Thin capitalization at time of contribution.
- g. Identity of interest between creditor and member.
- h. Source and payment of interest payments.
- i. Ability to obtain other loans.
- j. Whether funds were used to acquire capital assets.
- k. Failure to repay on due date or postponement of due date.

*In re: Hedged-Investments Associates*, 380 F.3d 1292 (10<sup>th</sup> Cir. 2004) and *In Re: Lexington Oil and Gas LTD*, 423 BR 353 (Bankr. Ct. ED OK 2010).

6. Only one factor, participation in management, does NOT support reclassification.<sup>1</sup> Therefore, all funds, regardless of whether Wayne Doyle or Remington Express contributed them and regardless of who the payee was, should be reclassified as capital contributions.

7. Since the Court finds that all funds paid by Doyle or Remington Express are to be reclassified, it does not address the issue of whether the doctrine of "equitable subordination" should be applied.

WHEREFORE, PREMISES CONSIDERED, the Court denies Wayne Doyle's Motion to Disburse Interpled Funds and grants the Receiver's Motion to Retain Interpled Funds.

  
THE HONORABLE PATRICIA G. PARRISH  
DISTRICT COURT JUDGE 8/21/15

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21 day of August, 2015, a copy of this Order was mailed to the following:

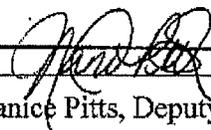
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Mr. Mark Robertson  
9658 N. May Ave., Suite 200  
Oklahoma City, OK 73120

**TIM RHODES, Court Clerk**

By  Deputy  
Janice Pitts, Deputy Court Clerk

<sup>1</sup>Doyle had the authority to enforce repayment under the terms of the 2014 Promissory Note, but never did so. Therefore, this factor does not weigh in Doyle's favor.