

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF)
SECURITIES EX REL. IRVING)
FAUGHT, ADMINISTRATOR,)
)
Plaintiff,)

v.)

STORYBOOK PROPERTIES, LLC,)
a California limited liability company;)
STORYBOOK INVESTMENTS WA,)
LLC, a Washington limited liability)
company; MATTHEW G. STORY)
an individual; JOE DON JOHNSON,)
an individual; and JAMES FARNHAM,)
an individual,)
)
Defendants.)

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PATRICIA [unclear]
by _____

Case No. CJ-2009-7957
Judge: Davis, Lisa T.

Set for hearing:
June 2, 2011 at 9:00 a.m.

**RECEIVER'S RESPONSE TO OBJECTION OF MR. AND MRS. ALBERT HAWKES
TO RECEIVER'S MOTION TO APPROVE PROPOSED DISTRIBUTION TO
INVESTORS AND BRIEF IN SUPPORT OF PROPOSED DISTRIBUTION**

COMES NOW Stephen J. Moriarty, the Court appointed Receiver for Storybook Properties, LLC, Storybook Investments WA, LLC, EZ-To-Buy Homes, LP and Matthew G. Story (collectively the "Storybook Companies"), and for his response to the objection of Mr. and Mrs. Albert Hawkes to Receiver's Motion for Proposed Distribution to Investors of the Storybook Companies states as follows:

1. On April 10, 2009, Oklahoma Department of Securities ("ODS") filed its First Amendment to Petition for Permanent Injunction (the "Petition") against the Storybook Defendants. ODS alleged that the Storybook Defendants were operating a "Ponzi scheme".

Affidavit of Stephen J. Moriarty (the "Moriarty Affidavit"), par. 4.

2. On October 7, 2009, this Court entered its order appointing the Receiver (the "Order"). Pursuant to the Order, Receiver was given "immediate and exclusive custody, control and possession of all assets . . . of Defendants, of whatever kind and description and wherever situated." Further, Receiver was given the authority "to take the steps necessary to protect the interests of Investors, including the liquidation or sale of assets of the Defendants . . ." and the authority "to make such payments and disbursements as may be necessary and advisable for the preservation of the assets of defendants and as may be necessary and advisable in discharging his duties as Receiver." *Moriarty Affidavit, par. 3.*

3. On January 7, 2010, this Court entered judgment against the Storybook Defendants on the Petition. *Moriarty Affidavit, par. 5.*

4. Approximately 70 investors invested approximately \$6,800,000.00 with the Storybook Defendants (the "Storybook Investors"). *Moriarty Affidavit, par. 6.*

5. Albert Hawkes invested \$90,000.00 with the Storybook Defendants (the "Hawkes Investment"). The Hawkes Investment was deposited on November 6, 2008 in an account maintained by the Storybook Defendants at Tulsa National Bank, account # XXXX83 (the "TNB Account"). *Moriarty Affidavit, par. 7.*

6. After November 6, 2008, funds received by the Storybook Defendants from at least 9 investors were deposited in the TNB Account. These deposits totaled \$550,027.99. *Moriarty Affidavit, par. 8.*

7. The TNB Account was overdrawn in February, 2009 and March, 2009. *Moriarty Affidavit, par. 9.*

8. At the time Receiver was appointed the balance remaining in the TNB Account was \$309.99. *Moriarty Affidavit, par. 10.*

9. Receiver has liquidated substantially all of the assets of the Storybook Companies and has in his possession cash and cash equivalents totaling \$389,185.36, as of April 30, 2011. This sum represents the amount remaining from sales previously reported to the Court, less Court approved expenses of administration. *Moriarty Affidavit, par. 11.*

10. On November 22, 2010, Receiver filed a Motion to Approve Proposed Distribution to Investors (the "Distribution Motion"). *Moriarty Affidavit, par. 12.*

11. On January 24, 2011, the Court entered an Order granting the Distribution Motion subject to the right of any investor to challenge the proposed distribution by filing an objection within ten (10) days of entry of the Order (the "Distribution Order"). *Moriarty Affidavit, par. 13.*

12. On January 28, 2010, Mr. and Mrs. Albert Hawkes timely filed an objection pursuant to the Distribution Order (the "Hawkes Objection"¹). The Hawkes Objection states that as "one of the last 'investors' or the last, we feel our money was outright stolen and should be reimbursed in full". *Moriarty Affidavit, par. 14.*

13. Pursuant to the terms of the Distribution Order, Receiver did not make a distribution to the investors. *Moriarty Affidavit, par. 15.*

14. Since the filing of the Distribution Motion, Receiver has identified previously unknown investors and has received information from other known investors which required changes to their claim amounts. Therefore, it was necessary for Receiver to amend the investor

¹ Though the Hawkes Objection was filed in response to the Distribution Motion (which has now been superseded by the Amended Distribution Motion), Receiver is willing to treat the Hawkes Objection as an objection to the Amended Distribution Motion.

claim schedule and the proposed distributions and file an Amended Distribution Motion on May 12, 2011 (the “Amended Distribution Motion”). *Moriarty Affidavit, par. 16.*

15. The aggregate value of all of the known assets of the Storybook Defendants is insufficient to satisfy the claims of the Storybook Investors. Pursuant to the Amended Distribution Motion, the Storybook Investors will receive approximately 6% of the amount of their investment, less any monies previously paid or returned. *Moriarty Affidavit, par. 17.*

ARGUMENTS AND AUTHORITIES

In the case of a Ponzi scheme, remaining assets must be distributed to investors on a pro-rata basis. *Cunningham v. Brown*, 265 U.S. 1, 44 S.Ct. 424, 68 L.Ed. 873 (1924). Once the “schemer” has comingled the funds of various investors in a single account, those assets lose their character as the peculiar assets of their investor. *Id.* An exception to this rule exists if the defrauded investor can specifically trace their funds and establish that they are separately identifiable from other comingled investor funds. *Id.*; *See Adams v. Moriarty*, 2005 OK CIV APP 105, 127 P. 3d 621 (2005).

As stated by the Court in *In re M&L Business Mach. Co., Inc.*, 59 F. 3d 1078 (10th Cir. 1995):

The requirement that a defrauded party trace its lost assets does not undermine the purpose of the general rule that property fraudulently obtained is not property of the estate. This rule is based upon the desire to prevent certain creditors from benefiting from the debtor’s fraud at the expense of those defrauded. Thus, where fraudulently obtained assets are held by the debtor but readily distinguishable from assets to which general creditors have a claim, it is proper to return the property to the defrauded party rather than distribute it through the estate, which of course seeks to distribute assets equitably among all creditors or as many as possible. In a Ponzi scheme, or other scenario where creditors are almost exclusively defrauded parties, there is no distinguishing characteristic which promoted the interests of one over the other. Consequently, absent direct identification of the defrauded funds, it is to the detriment of all other similarly situated creditors to favor one defrauded party over another.

59 F. 3d at 1081-1082 (citations omitted).

Here, the Hawkes cannot trace their investment and distinguish it from other investor funds. The Hawkes Investment was deposited in the TNB Account on November 6, 2008. *See Par. 5.* After November 6, 2008, funds from an additional 9 investors were deposited in the TNB Account. *See Par. 6.* Those deposits totaled \$550,027.99. *Id.* The TNB Account was overdrawn in February and March, 2009. *See Par. 7.* When Receiver was appointed, the remaining balance in the TNB Account was \$309.99. *See Par. 8.* The Hawkes investment was deposited in the TNB Account and comingled with other investor funds. It cannot be traced and specifically identified. It was “gone” as early as February, 2009 when the TNB Account became overdrawn.

CONCLUSION

Receiver recognizes that the actions of the Storybook Defendants have caused much pain and hardship to the Hawkes and to the other Storybook Investors. However, Receiver has not identified any facts or circumstances that would support or justify preferring any one investor over another. The proposed distribution treats all investor claims pro rata and is, in the opinion of Receiver, fair and equitable.

WHEREFORE, Receiver respectfully requests that this Court deny the Hawkes Objection and approve the distributions to creditors set forth in the Amended Distribution Motion.



Stephen J. Moriarty, OBA # 6410
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS, P.C.
100 North Broadway, Suite 1700
Oklahoma City, OK 73102
Telephone: (405) 232-0621
Fax: (405) 232-9659
E-mail: smoriarty@fellerssnider.com

RECEIVER FOR THE STORYBOOK
COMPANIES

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the Motion for Proposed Distribution of Receiver, Stephen J. Moriarty was mailed on this 17th day of May, 2011, by placing the same in the United States mails, postage prepaid, to:

Patricia A. Labarthe, Esq.
Jennifer Shaw, Esq.
Oklahoma Department of Securities
First National Center, Suite 860
120 N. Robinson
Oklahoma City, OK 73102

Matthew G. Story
27943 Seco Canyon Rd., Suite 201
Santa Clarita, CA 91350

James Farnham
6308 N. Harvard Ave.
Oklahoma City, OK 73122

Mr. and Mrs. Albert Hawkes
9728 Smoking Oak
Edmond, OK 73025



Stephen J. Moriarty