

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT OF
OKLAHOMA COUNTY
DIVISION OF CLERK
FEB 23 2012
ALL DOCUMENTS
FOR FILING
SHOULD BE DEPOSITED
HERE

Oklahoma Department of Securities,)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
)
v.)
)
2001 Trinity Fund, L.L.C. and)
Robert Arrowood,)
)
Defendants.)

Case No. CJ-2012-6164

**DEFENDANT ROBERT ARROWOOD'S RESPONSE IN OBJECTION TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant Robert Arrowood hereby submits his Response to Plaintiff's Motion for Partial Summary Judgment on the issue of whether Defendant Arrowood was offering and selling unregistered securities as claimed by Plaintiff Oklahoma Department of Securities, *ex rel.* Irving L. Faught, Administrator ("ODS"). Defendant Arrowood again asserts that the undisputed facts of this case, particularly the unequivocal testimony of the lenders/note holders, establish that the promissory notes evidencing the loans are not securities, and thus not subject to the jurisdiction of Plaintiff ODS. In support of this Response, Defendant Arrowood shows the Court as follows:

Introduction

This case involves loans made by closely associated individuals to Defendant Robert Arrowood and his entity, 2001 Trinity Fund, L.L.C., from approximately 2007-2009. During this time period, Arrowood was frequently approached by people who wanted to get into the oil and gas business. Arrowood did not want partners or business associates, but he accepted the

offer of loans from the lenders/note holders in order to avoid selling any of his or Trinity Fund's oil and gas assets. As Arrowood testified during his deposition:

People were contacting me to do [the loans]. And, I mean, again, if I knew I had something coming in, I had no issue with doing it. And the majority of these people were friends or, you know, friends of friends or something like that...[T]he only motivation I may have had was where I wouldn't have to fire-sale something. I mean, you know, my motivation to do any of this was to, you know, have producing assets.

[Deposition of Robert Arrowood, attached hereto as Exhibit 1, 60:6-16]. The loans were all very short-term, generally less than 60 days, and carried favorable interest rates. This combination made the loans very attractive to the lenders/note holders. William Byrd testified that the short-term aspect of the loan was the most important consideration for him.

Q. The rate of return that's referenced in those promissory note exhibits, was that one of--was that one of the factors that motivated you to enter into these transaction? Was that rate of return important to you?

A. Not really. The turn was what's important to me. In other words, how fast we flipped them. How fast the turns came, not so much the amount.

[Deposition of William Byrd, attached hereto as Exhibit 2, 52: 2-9]. The system was generally successful for both Arrowood and the lenders/note holders, as most of the loans were promptly repaid as contemplated by the promissory notes. In fact, at least seven of the lenders/note holders referenced by ODS loaned money to Arrowood on more than one occasion.

Arrowood was not able to timely repay the loans at issue in this case due to the Chapter 11 bankruptcy filing of the Trinity Fund. While Plaintiff ODS asserts that the bankruptcy was caused by Arrowood's risky business practices, this is simply not the case. As both Arrowood and his attorney have testified, the decision to put the Trinity Fund into bankruptcy was a consequence of the lawsuit with Carrizo Oil & Gas.

Q. Did you make the decision to place the 2001 Trinity Fund in bankruptcy in October of 2009?

A. Chapter 11?

Q. Yes.

A. Yes.

Q. Was anyone other than you involved in that decision?

A. My attorney, Jeff King.

Q. And without telling me--you don't have to tell me the substance of that. But from your perspective as President of the Fund, why was that decision made?

A. Decision was made because we were in a lawsuit with Carrizo Oil & Gas. And in that lawsuit in Harris County, Texas, we got a judgment of approximately--this is approximate--10 to 12 million dollars against 2001 Trinity Fund. The only way to file an appeal without having to post a cash bond of that amount was to file Chapter 11. So that's why 2001 Trinity Fund filed Chapter 11.

[Exhibit 1, 34:17-35:13]. The decision in favor of Carrizo Oil & Gas was recently reversed on appeal, and Arrowood expects to be able to repay all of the loans in full.

In October 2012, Plaintiff ODS filed its Petition against Arrowood, claiming that the loans and corresponding promissory notes were securities under Oklahoma and federal law, and thus that Arrowood was in violation of Oklahoma securities laws for failure to register. In addition, ODS caused a local television station to run a story about Defendant Arrowood under the inflammatory headline "Ponzi Scheme." The station reported that ODS had accused Arrowood and the Trinity Fund of stealing millions of dollars through the sale of oil and gas leases, and compared him to the reviled Bernie Madoff. This case has been, to put it mildly, devastating for Arrowood, both personally and professionally. Despite ODS's accusations, the lenders/note holders have been largely supportive of Defendant Arrowood. Larry Sessions, one of the lenders, even affirmatively requested that ODS dismiss this case and allow the lenders' claims to be resolved in the bankruptcy proceeding. ODS has refused to do so, and continues to pursue Arrowood in spite of the lenders' position.

ODS has now filed the instant Motion asserting that this Court should find the loans to be securities as a matter of law. However, the undisputed facts indicate to the contrary. The loans

made to Arrowood and the Trinity Fund were just exactly that--loans, not investments that fall under the jurisdiction of ODS. Plaintiff's Motion should thus be denied in its entirety.

Response to Plaintiff's Undisputed Facts

1. Arrowood admits he is a resident of Norman, Oklahoma as stated in paragraph 1.
2. Arrowood admits 2001 Trinity Fund, L.L.C. ("Trinity Fund") is an Oklahoma limited liability company as stated in paragraph 2.
3. Arrowood admits both he and the Trinity Fund maintain their principal place of business in Norman, Oklahoma as stated in paragraph 3.
4. Arrowood admits he was the manager and president of the Trinity Fund until the bankruptcy as stated in paragraph 4.
5. Arrowood denies the loans were investments as asserted by ODS, and objects to the use of that term. Arrowood admits that he entered into the loans in his capacity as manager and president of the Trinity Fund.
6. Arrowood admits he and the Trinity Fund were in the oil and gas business at the time the loans were made as stated in paragraph 6.
7. Arrowood denies the loans were investments as asserted by ODS, and objects to the use of that term. Arrowood admits he borrowed money in his capacity as manager and president of Trinity Fund from the parties set forth in paragraph 8.
8. Arrowood denies the loans were investments as asserted by ODS, and objects to the use of that term. Arrowood admits that the loans were evidenced by promissory notes.
9. The promissory notes evidencing the loans speak for themselves and no response is required to the allegations of paragraph 9.

10. The promissory notes evidencing the loans speak for themselves and no response is required to the allegations of paragraph 10. However, Arrowood agrees the loans were made only on a short-term basis and thus the interest rates were calculated only for the term of the notes.

11. Arrowood denies the allegations of paragraph 11. As stated above, the promissory notes evidencing the loans were very short-term, the interest rate was calculated on that basis and there was no annual rate of return.

12. No response is required to the allegations of paragraph 12.

13. Arrowood denies the allegations of paragraph 13. Arrowood stated that he had applied for a bank loan on at least one occasion. [Exhibit 1, 35:14-36:6].

14. Arrowood denies the loans were investments as asserted by ODS, and objects to the use of that term. Arrowood also denies the loan proceeds were used exclusively for business operations as stated in paragraph 14.

15. Arrowood denies the loans were investments as asserted by ODS, and objects to the use of that term. Arrowood admits the short-term aspect of the loans and the favorable interest rate were attractive to the lenders/note holders.

16. Arrowood admits the allegations of paragraph 16 as stated, but asserts that such is irrelevant to the issues presented in this case. Moreover, the lenders/note holders fall into two general groups - the friends and associates of Richard Machina and the friends and family members of Jeremy Okler. The allegations are denied to the extent ODS is implying that Arrowood solicited the lenders/note holders.

17. Arrowood admits the allegations of paragraph 17 as stated, but asserts that such is irrelevant to the issues presented in this case. As stated above, the lenders/note holders fall into

two closely affiliated groups and any implication that Arrowood solicited the lenders/note holders is denied.

18. Arrowood admits the allegations of paragraph 18 as stated, but asserts he had no duty to inquire as to the lenders'/note holders' net worth or financial position.

19. Arrowood denies the allegations of paragraph 19.

20. Arrowood admits the allegations of paragraph 20 as stated, but asserts that such is irrelevant to the issues presented in this case.

21. Arrowood admits the allegations of paragraph 20 as stated, but asserts that such is irrelevant to the issues presented in this case.

22. Arrowood admits the allegations of paragraph 22.

23. Arrowood denies the loans were investments as asserted by ODS, and objects to the use of that term. Arrowood denies the allegations of paragraph 23. The lenders/note holders were unclear about the use of the loan proceeds. For example, William Byrd testified that:

There was an opportunity to have a decent return on our money. I remember that statement. And so I said okay, and I asked Richard [Machina]--he was going to do it. Well, if he did it, I thought I would do it. So I handed up the money, they gave me a note, and from what I understand, it was probably something to do with leases, and when it was completed, we'd get a--get our check.

[Exhibit 2, 20:18-25]. Philip Martin's deposition testimony was as follows:

Q. There wasn't anything advertised to you? You didn't receive some packet to review or anything like that?

A. No. No.

Q. And you didn't know what Rob was going to do with the money?

A. The details of what he was going to do with the business was his choice. All we knew, we were loaning money to receive a greater amount, and that's it.

[Deposition of Philip Martin, attached hereto as Exhibit 3, 42:18-43:1]. Some of the investors testified specifically that they knew the loan proceeds were being used for personal rather than business expenses. David Rapp stated that:

Q. And why did he--what was the reasoning for--well, let me back up. Why was [Arrowood] seeking more money?

A. My understanding was to--he needed money to pay lawyers for his--the Houston lawsuit, for tuition, for other living expenses to basically stay afloat while he was fighting Carrizo.

Q. At the time of this additional money, did you understand it would be used for living expenses?

A. Yes.

Q. And how--where did you get that understanding?

A. I imagine it was from Rob [Arrowood] as well as Bill [Byrd] and possibly Richard [Machina].

[Deposition of David D. Rapp, attached hereto as Exhibit 4, 20:16-21:4]. Gary Hennersdorf also testified that:

Q. So at some point, you understand that Mr. Arrowood is requesting additional money?

A. [Yes].

Q. And explain for me, please, what was the purpose of that? What was the intended purpose of that additional money?

A. I told you. I was under the impression it was for personal use, maybe to pay attorney fees.

[Deposition of Gary A. Hennersdorf, attached hereto as Exhibit 5, 30:13-17].

24. Arrowood denies the loans were investments as asserted by ODS, and objects to the use of that term. Arrowood admits that he did not want competition from the lenders/note holders with regard to the leases.

25. Arrowood admits the loans were sometimes referred to as investments by the lenders/note holders, but asserts that such is irrelevant to the issues presented in this case. As explained by William Byrd:

You know, I'm an entrepreneur. If I give you anything, to me, I'm investing in you. I think the word "investment" is a very broad term. So I gave Rob some money, he gave me a note, and I was going to receive a return. That's what I remember. I happened to call it an investment here, but it's arbitrary.

[Exhibit 2, 51:21-52:1]. Philip Martin testified similarly, stating that "I don't profess to know the difference between a loan and an investment....I would use the word investment, opportunity

and loan all as interchangeable.” [Exhibit 3, 38: 22-23; 47:19-20]. Significantly, even lender/note holder David Rapp, an attorney, used the terms interchangeably.

A. I believe I loaned a friend somewhere around \$180,000, I think, and he completed two houses and then sold them, and I made a profit off that loan--

Q. Okay.

A. --investment.

[Exhibit 4, 16:14-18].

26. See response to paragraph 25. Moreover, the two lenders/note holders who wrote the word “investment” on their checks have submitted additional affidavits in support of Defendant Arrowood, clarifying that they considered the loans to be just that – loans, not investments as claimed by ODS. [Affidavits of William Byrd and David Rapp, attached hereto as Exhibits 6 and 7 respectively].

27. See responses to paragraphs 25 and 26.

28. Arrowood denies that the loans were investments as asserted by ODS, and objects to the use of that term. Arrowood otherwise admits the allegations of paragraph 28 as stated.

29. Arrowood admits the allegations of paragraph 29.

30. Arrowood admits the allegations of paragraph 30.

Defendant Arrowood’s Counter-Statement of Undisputed Material Facts

1. The loans made to Arrowood and Trinity Fund, evidenced by promissory notes, were short-term and bore fixed rates of interest.

2. The short-term aspect of the loans was particularly important to the lenders/note holders. [Exhibits 6 and 7; Exhibit 2, 54:17-21]. *See also* Affidavits attached as Exhibits 3-10 to Defendant Robert Arrowood’s Renewed Motion for Summary Judgment.

3. The lenders/note holders expected the loans to be repaid regardless of the success of Arrowood's business. [Exhibits 6 and 7]. *See also* Affidavits attached as Exhibits 3-10 to Defendant Robert Arrowood's Renewed Motion for Summary Judgment.

4. The lenders/note holders used the terms "loan" and "investment" interchangeably, and not as terms of art. [Exhibits 6 and 7].

5. The lenders/note holders did not consider the loans to be investments in Arrowood's businesses. [Exhibits 6 and 7]. *See also* Affidavits attached as Exhibits 3-10 to Defendant Robert Arrowood's Renewed Motion for Summary Judgment.

6. The lenders/note holders considered were only concerned with earning interest on their money at a favorable rate. [Exhibits 6 and 7].

7. The lenders/note holders considered their business transactions with Arrowood to be valid loans, not investments. [Exhibits 6 and 7]. *See also* Affidavits attached as Exhibits 3-10 to Defendant Robert Arrowood's Renewed Motion for Summary Judgment.

8. The Trinity Fund's Chapter 11 bankruptcy was necessitated by the lawsuit with Carrizo Oil and Gas. Absent the bankruptcy, Trinity Fund would have been required to post a cash appeal bond of approximately 12 million dollars in order to perfect the appeal, which could not be done. [Exhibit 1, 35:1-13; Affidavit of Jeff King, attached hereto as Exhibit 8].

Argument and Authorities

I.

The Case Should Be Decided by a Jury

Plaintiff ODS asserts as an unequivocally established fact that "the determination of whether a particular investment is a security is a question of law for the Court to decide." [Motion at p. 2]. However, this is not the hard and fast rule Plaintiff proclaims it to be. The

primary case cited by ODS on this issue, *Lambrecht v. Bartlett*, 1982 OK 158, 656 P.2d 269, was in fact an appeal from a *jury verdict* awarding damages to the plaintiffs on their claims for violation of the securities laws. Plaintiffs appealed on the grounds that the damages awarded were insufficient, and contended the trial court erred in denying their motion for directed verdict on the issue of whether the instruments in question were securities. The Oklahoma Supreme Court agreed with plaintiffs.

There was no evidence introduced at trial to indicate that the sale of the interests by Bartlett to the appellants fell within the specified exceptions. Therefore, the interests sold, which are the subject of the suit, were securities, as defined by law.

Id. at ¶ 10. The Court thus determined only that the trial court should have decided the securities issue as a matter of law in the face of insufficient facts indicating otherwise. This unremarkable proposition simply does not support the position of ODS on this issue.

In addition, even if the issue of whether the loans are securities must be decided by the court, it does not follow that the issue should be determined as a matter of law on summary judgment, as this Court has previously so found. In *Securities and Exchange Commission v. Thompson*, 732 F.3d 1151 (10th Cir. 2013), the other case relied on by ODS, the appellate court stated:

[N]one of this is to say that summary judgment will be appropriate where the parties have identified genuine disputes of material fact that could tip a reviewing court's balance of the family resemblance factors articulated in *Reves*. Indeed, as we observed recently in the context of a criminal case, the individual factors of the family resemblance test, which inquire into motivation, distribution, expectation and risk, lead us to conclude that the question of whether a note is a security has both factual and legal components.

Id. at 1161 (internal quotations omitted). In so holding, the court also acknowledged that determination by a jury may be appropriate in some cases. "Even if the ultimate security determination were one for the jury, as our subsequent analysis makes clear, the record in this

case is sufficient to justify summary judgment for the SEC on the issue of whether the Instruments were securities.” *Id.* at f. 8.

The record in this case mandates the opposite result. Defendant Arrowood has not only disputed and refuted Plaintiff ODS’s facts, but has submitted his contrary statement of facts with the support of the lenders/note holders themselves. Arrowood asserts that the issue of whether the loans fall within the jurisdiction of ODS should be decided by the jury, or at the very least, by this Court after a full evidentiary hearing. Judgment as a matter of law in favor of Plaintiff ODS is not appropriate on the evidence presented, and Plaintiff’s motion should be denied.

II.

The Loans Are Not Securities

In *Reves v. Ernst & Young*, 494 U.S. 56, 110 S.Ct. 945, 108 L.Ed.2d 47 (1990), the Court adopted the “family resemblance” test in order to determine whether a note should be considered a security. That analysis involves consideration of the following factors:

(1) the motivations that would prompt a reasonable seller and buyer to enter into the transaction; (2) the plan of distribution of the instrument, with an eye on whether it is an instrument in which there is common trading for speculation or investment; (3) the reasonable expectations of the investing public; and (4) whether some factor such as the existence of another regulatory scheme renders application of the Securities Acts unnecessary.

Id. at 66-67 (internal quotations omitted). Courts have subsequently emphasized that “[f]ailure to satisfy one of the factors is not dispositive; they are considered as a whole.” *Thompson*, 732 F.3d at 1160. When these factors are applied to the promissory notes issued in connection with the loans to Defendant Arrowood, the conclusion must be that neither the loans nor the notes evidencing those loans are securities under the family resemblance test.

Motivation. With regard to the first *Reves* factor, Plaintiff ODS asserts that Arrowood’s goal in entering into the loans was to raise cash for his general business operations. However, as

set forth above, Arrowood has stated just the opposite. Arrowood clearly testified that the loan proceeds were used to provide temporary financing as a stop-gap measure to avoid liquidating any oil and gas properties.

Q. You just said it was the easiest way for you to get money and -- for a closing....

A. --not for a closing. Before a closing.

Q. Before a closing?

A. Right. Because all the closings didn't always happen in a timely manner. And I already knew what I was going to be making, so it was kind of a--you know, I--I knew what I was going to be making off of, you know, whatever next deal I was doing before, you know, I accepted a loan. So, I mean, the money was, you know, basically used for whatever, you know, whatever closing I had coming up next.

A. But, I mean, I never knew exactly when a closing was going to happen, but I knew that if I needed one to happen that I could--you know, if I had to, I could just sell off some of my properties. So there wasn't really a specific deal that, you know, anything was used for, so I--and you're using the word "operations," which I loosely used. I mean, when I say that, the money could be used for anything. Simply because I knew I had more money coming in.

A. But I also had assets that, again, if I had to sell to cover the notes, you know, that's what I would do.

Q. So did you--so did you need the money, I guess us what I'm saying?

A. As far as need-need? No.

Q. But--but--

A. There was never a time that I didn't have--if I needed--let's just use \$100,000. There was not a time that I didn't have a property that would equate to that, that I could sell. But I wanted to keep the properties, okay? I mean, that's why I still have all the properties--or, you know, the estate still has all the properties that they have. And if everything--I'll just put it this way, if there would not have been a Carrizo Oil and Gas deal, we would not be sitting here today, period.

[Exhibit 1; 52:10-24; 54:14-23; 62:24-63:16].

The *Reves* court specifically found, and the Tenth Circuit reaffirmed in *Thompson*, that “[i]f the note is exchanged to facilitate the purchase and sale of a minor asset or consumer good, *to correct for the seller’s cash-flow difficulties*, or to advance some other commercial or consumer purpose, ...the note is less sensibly described as a ‘security.’” *Thompson*, 732 F.3d at 1162 (emphasis added). That is precisely what was happening in this case. Defendant Arrowood accepted the loans to avoid liquidating valuable oil and gas properties, not to finance general operations. This is in direct contrast to the *Thompson* case, in which the instruments stated on their fact that the proceeds were used for “further investments.” *Id.* Arrowood also used some of the loan proceeds for personal expenses pending the resolution of the Carrizo issues, which the lenders/note holders approved. [Exhibit 4, 20:16-21:4; Exhibit 5, 30:13-17].

In addition, the fact that the lenders/note holders wanted a return on their money does not transform a basic loan into a security. It goes without saying that all commercial lenders expect a return on their money, and would not make loans without that component. As a result, the fact that the lenders/note holders received a favorable return on their money, without more, is not sufficient to convert an ordinary business loan into a security, particularly given the testimony of the lenders/note holders themselves as to the nature of the transactions. Plaintiff’s arguments to the contrary should be rejected by this Court.

Plan of Distribution. The second *Reves* factor involves the plan of distribution of the instrument in question. This prong of the test was characterized by the Supreme Court as an analysis “to determine whether it is an instrument in which there is common trading for speculation or investment.” *Reves*, 494 U.S. at 66. This factor is particularly important in this case, as there was no plan of distribution or common trading *whatsoever* for the promissory notes. Rather than advertising or otherwise communicating with the loan participants, Arrowood

was approached by the holders of the notes in the first instance. Communication between Arrowood and the loan holders was always on a personal and individual basis, and there was never any type of general or mass email or other solicitation. See *Hunssinger v. Rockford Business Credits, Inc.*, 745 F.2d 484, 492 (7th Cir. 1984) (holding that the solicitation of members of the general public and the sale to them of units of a larger offering are the hallmarks of an investment transaction). Moreover, there were only a select few note holders at any one time, which negates the argument that the promissory notes were securities. Arrowood never marketed or advertised the loans in any manner whatsoever, and the absence of such marketing weighs strongly against ODS's argument on this issue.

The Louisiana case of *LeBrun v. Kuswa*, 24 F.Supp.2d 641 (E.D. La. 1998) is factually analogous to this case and particularly instructive on this issue. In *LeBrun*, the defendant sold six promissory notes to friends and family of the plaintiff to finance the capital operations of his business. The notes were memorialized by loan agreements providing for repayment within 12 months, and interest based on certain sales, but to be no less than 100% of the loan amount. When the defendant defaulted on the notes, the plaintiffs sued in federal court, asserting jurisdiction under the securities laws. The defendant moved to dismiss, arguing that the court lacked jurisdiction because the promissory notes did not constitute securities.

The district court agreed and dismissed the case. While the court found that the first *Reves* factor was met because the seller's purpose was to raise money for his general business enterprise, the court did not find that the second *Reves* factor was satisfied. In determining that there was no broad trading as required, the court stated:

In the case at hand, the facts indicate that there was no common trading for speculation or investment in the notes, including no offering or sale to a "broad segment of the public." While this factor is not dispositive of the issue, it does weigh against finding the transactions in this matter to be securities.

The cases cited by Plaintiff ODS are distinguishable on this basis and do not change this logical result. For example, in *Securities and Exchange Commission v. Global Telecom Services, L.L.C.*, 325 F.Supp.2d 94 (D. Conn. 2004), the business owners engaged in active solicitation of investors to raise capital for business operations. The owners created brochures describing the business for distribution, attended investor meetings and sent monthly newsletters to current and prospective investors. This is a far different factual scenario than that presented in this case, in which Defendant Arrowood was approached by the lender/noteholders individually, and accepted the short-term loans to alleviate cash shortfalls. The solicitation or marketing that courts have found to be a hallmark of a security is thus completely absent from this case.

In addition, in *Stoiber v. Securities and Exchange Commission*, 161 F.3d 745 (D.C. Cir. 1998), the plaintiff approached thirteen people with whom he had prior relationships and asked them to contribute to his business. Despite the solicitation, which is wholly absent in this case, the court determined to give this prong of the analysis little weight.

This factor points in no clear direction in this case. While the terms of the notes do not preclude trading in a secondary market, none have been resold and there is no indication that anyone has considered a resale. Nor do we think thirteen customers with whom Stoiber had a personal relationship constitute a broad segment of the public.

Id. at 750-751. Eighteen lenders do not constitute a broad segment of the public either, and none of the notes at issue have been or will be resold. While Plaintiff ODS makes much of the fact that some of the lenders/note holders were unacquainted with Arrowood before making the loans, it is undisputed that the lenders/note holders were all connected through individuals that *did* have close relationships with Arrowood. Moreover, these individuals were not babes in the

woods that were taken advantage of by Arrowood, but savvy and successful businessmen.¹ This factor thus favors the conclusion that the notes in this case are not securities, or at the very least, does not weigh in favor of Plaintiff ODS.

Public Expectations. The third *Reves* factor, the reasonable expectations of the investing public, is particularly significant in this case, and was also considered to be so by the Supreme Court in *Reves*. “The Court will consider instruments to be ‘securities’ on the basis of such public expectations, even where an economic analysis of the circumstances of the particular transaction might suggest that the instruments are not ‘securities’ as used in that transaction.” *Reves*, 494 U.S. at 66. First of all, as stated above, there is no “investing public” in this case in any sense of the term. There was no solicitation or advertisement on the part of Arrowood in connection with any of the loans, and all of the lenders/note holders are connected to two close associates of Arrowood. As a result, Plaintiff’s repeated use of the term “investing public” to describe the lenders/note holders should be disregarded.

Plaintiff again argues that the so-called “investing public” would consider the notes to be investments and thus regulated as securities because the notes were sometimes referred to as investments by the lenders/note holders and, on occasion, Arrowood himself. However, as previously discussed, the lenders/note holders did not use “investment” as a term of art, but rather interchangeably with the term “note” to describe the instruments. Even lender David Rapp, an attorney, used the words interchangeably to describe the transactions with Arrowood. In order to refute Plaintiff’s allegations and give their support to Arrowood, Rapp and William Byrd have submitted additional affidavits in this case to make it abundantly clear that they

¹ The case of *Fox v. Dream Trust*, 743 F.Supp.2d 389 (D.N.J. 2010) is distinguishable on this basis, among others. The note at issue in *Fox* was not marketed to anyone by plaintiff’s family, who apparently were not sophisticated businessmen.

considered the transactions to be loans in both form and substance. [Exhibits 6 and 7]. There is thus no significance to the term “investment” in the analysis and determination of this issue. As members of Arrowood’s alleged “investing public,” their position, and that of the other lenders as expressed in affidavits previously submitted in this case, should be given particular weight. *See Stoiber*, 161 F.3d at 751 (acknowledging that “affidavits submitted by the customers stated that the notes were not considered to be investments. The limited evidence thus suggests that Stoiber’s investing public did not reasonably view the notes as securities”). The same is true in this case. Arrowood’s lenders/note holders did not view the notes as anything other than loans, and that view should be accepted and adopted by this Court.

In addition, the *LeBrun* case is once again instructive. The *LeBrun* court found that application of the third part of the *Reves* test weighed against finding the notes to be securities because of the expectations of the lenders.

But assuming that the plaintiffs could be characterized as “investing public,” ***their reasonable expectations were nothing more than the payment of the notes, plus the specified high interest.*** The Loan Agreements were unusual transactions not designed to be publicly traded. Moreover, there was no advertising or marketing of these notes to the general public, but only a specific inquiry into a select group of individuals.

Id. (emphasis added). The court thus determined that the combination of factors two and three mandated the finding that the instruments in question were not securities. The same result should be reached in this case.

Finally, any suggestion by Plaintiff ODS that Trinity Fund’s bankruptcy was caused by risky business operations is a blatant and prejudicial misstatement of the facts. As both Arrowood and his attorney have testified, the bankruptcy was entirely precipitated by the Carrizo lawsuit. In order to appeal the judgment against Trinity Fund and avoid posting a multi-million dollar bond, the decision was made to place Trinity Fund in bankruptcy. [Exhibit 8]. The

judgment against Trinity Fund has now been reversed, and Arrowood expects all of the lenders/note holders to receive payment through the bankruptcy proceedings.

Another Regulatory Structure.

The final *Reves* factor involves an examination of whether there is some other risk reducing factor that lessens or eliminates the need for regulation of the instrument as a security. This factor is simply inapplicable in this case. Defendant Arrowood urges the Court to adopt the approach of the Eastern District of Louisiana in *LeBrun* and exclude this factor from the equation. As the *LeBrun* court explained, “[b]ecause there is no risk reducing federal scheme, the Court must balance the first three factors” in order to determine whether the loan at issue is a security. Just as the *LeBrun* court did, this Court should answer that question in the negative and deny Plaintiff ODS’s request for judgment as a matter of law.

III.

The Loans Are Not Investment Contracts

Plaintiff ODS alternatively argues that the loans are investment contracts under Oklahoma securities law. 71 Okla. Stat. § 1-102(32)(d). The definition of an investment contract in the Oklahoma act is derived from federal law. *See Securities and Exchange Commission v. Howey*, 328 U.S. 293, 289-299, 66 S.Ct. 1100, 90 L.Ed. 1244 (stating that investment contract means a “contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party....”).

The *Reves* court discussed investments contracts as defined in *Howey*, and distinguished the promissory notes at issue in *Reves* from such contracts. The promissory notes in *Reves* were demand notes issued by the Farmers Cooperative of Arkansas and Oklahoma (the “Co-op”). The

notes paid a variable interest rate that was adjusted on a monthly basis to keep the rate higher than what was then being paid by local financial institutions. At the time of the issuance of the notes, the Co-op had approximately 23,000 members, but the Co-op offered the notes to both members and non-members. The notes were specifically marketed by the Co-op as an “Investment Program.” Despite the nomenclature given to the notes, the Court refused to analyze whether the notes were securities using the *Howey* test. “We reject the approaches of those courts that have applied the *Howey* test to notes; *Howey* provides a mechanism for determining whether an instrument is an investment contract.” *Id.* at 64 (internal quotations omitted).

The *Reves* Court’s clear distinction between investment contracts and loans has been reiterated in other decisions. The Tenth Circuit’s decision in *Resolution Trust Corp. v. Stone*, 998 F.2d 1534 (10th Cir. 1993) is dispositive of ODS’s argument on this issue.

To determine whether a financial product is an investment contract, and therefore a security, the Supreme Court applies a test different from that which it applies to notes: an investment contract...means a...scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party....

The critical inquiry here is whether the plaintiff expected to receive “profits” from its investment in the EARs.

The Supreme Court refined the “profits” element of the *Howey* test in *United Housing Fund v. Forman*, 421 U.S. 837, 95 S.Ct. 2051, 44 L.Ed.2d 621 (1975). There, the Court defined “profits” as “either capital appreciation resulting from the development of the initial investment,...or a participation in earnings resulting from the use of the investors’ funds....” We have interpreted *Forman* to mean that ***the receipt of specified interest payments is not the apportionment of profits under Forman....Because the Plaintiff received specified interest payments from its investment in the EARs, rather than dividends tied to the profitability of PAC or any other entity, the EARs do not meet the profits prong of the Howey test.***

Id. at 1540 (some internal citations omitted) (emphasis added). See also *State v. Gertsch*, 49 P.3d 392, 397 (Idaho 2002) (holding that the appropriate analysis “focuses on the question of

whether the investors expected ‘profits’ or something different...more akin to interest on a loan). It is without question that the investors in this case had no expectation of profit from Arrowood or his enterprises. The only payment due to the lenders/note holders was interest on the loans, which refutes any argument that the loans were investment contracts as urged by ODS. ODS’s argument on this issue should be rejected by the Court.

Conclusion

The United States Supreme Court has held that in determining the issue of whether an instrument is a security, the courts “are not bound by legal formalisms, but instead take account of the economics of the transaction under investigation.” *Reves*, 494 U.S. at 949. In this case, the undisputed facts, including the testimony of the lenders/note holders themselves, establishes that the transactions at issue in this case were valid loans, not securities under the jurisdiction of Plaintiff ODS.

Accordingly, in light of the foregoing, Defendant Robert Arrowood respectfully requests that Plaintiff’s Motion for Partial Summary Judgment be summarily denied by this Court.

Respectfully Submitted,

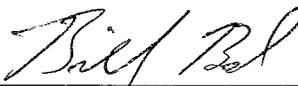


William H. Bock, OBA# 13888
Michelle L. Greene, OBA# 17507
WILLIAM H. BOCK, INC.
6492 N. Santa Fe Ave., Suite A
Oklahoma City, OK 73116
Telephone: (405) 848-5400
Facsimile: (405) 848-5479

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 23, 2015, a true and correct copy of the foregoing Defendant Robert Arrowood's Response in Objection to Plaintiff's Motion for Partial Summary Judgment was mailed by first-class mail, postage prepaid, to:

Shaun Mullins
Gerri Kavanaugh
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102



William H. Bock

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities,)
ex rel. Irving L. Faught,)
Administrator,)

Plaintiff,)

-vs-

) CASE NO.
) CJ-2012-6164

2001 Trinity Fund, L.L.C. and)
Robert Arrowood,)

Defendants.)

DEPOSITION OF ROBERT ARROWOOD
TAKEN ON BEHALF OF THE PLAINTIFF
IN OKLAHOMA CITY, OKLAHOMA
ON NOVEMBER 5, 2014

* * * * *

COPY

WORD FOR WORD REPORTING, LLC.
111 HARRISON, SUITE 101
OKLAHOMA CITY, OKLAHOMA 73104

Reported By: Chrystal H. Vance, CSR

EXHIBIT
/

1 A. Well, we -- as far as a -- you're --
2 definition of employee, everyone was contract
3 labor with, you know, the -- I mean, I was
4 contract labor, so we really didn't have, quote,
5 employees.

6 Q. Okay. So who made the decision to retain
7 or -- to -- to retain these contract employees?

8 A. I did.

9 Q. Okay. And did you also make the decision
10 to terminate those contract employees or terminate
11 their contract --

12 A. Yes.

13 Q. -- for -- okay -- work?

14 Did you also make the decisions on which
15 leases to purchase or retain?

16 A. Yes.

17 Q. Did you make the decision to place the
18 2001 Trinity Fund in bankruptcy in October of
19 2009?

20 A. Chapter 11?

21 Q. Yes.

22 A. Yes.

23 Q. Was anyone other than you involved in
24 that decision?

25 A. My attorney, Jeff King.

1 Q. And without telling me -- you don't have
2 to tell me the substance of that. But from your
3 perspective as the President of that Fund, why was
4 that decision made?

5 A. Decision was made because we were in a
6 lawsuit with Carrizo Oil and Gas. And in that
7 lawsuit in state court in Harris County, Texas, we
8 got a judgment of approximately -- this is
9 approximate -- 10 to 12 million dollars against
10 2001 Trinity Fund. The only way to file an appeal
11 without having to post a cash bond of that amount
12 was to file Chapter 11. So that's why 2001
13 Trinity Fund filed Chapter 11.

14 Q. Has the 2001 Trinity Fund ever applied --
15 I'm asking about applied -- applied for a loan at
16 a commercial bank?

17 A. Not to my knowledge.

18 Well, maybe once before, so I -- I can't
19 answer that with a yes or no.

20 Q. What makes you -- what gave you that
21 hesitation when you said maybe?

22 A. Well, I know at one time we -- and I
23 don't remember what entity it was -- one -- an
24 entity applied. And the timeframe for any kind of
25 response or anything on what we were applying for

1 a loan for, was way out of the realm. I mean, by
2 the time we may or may not have been approved, I
3 wouldn't have needed the money, so we just never
4 went that route again. And, again, I don't
5 remember if it was 2001 Trinity Fund or not,
6 but --

7 Q. Do you recall the name of the bank?

8 A. No, I don't. And I'm not saying we
9 definitely did. I just -- I -- I remember at one
10 point in time looking into that, but it was a long
11 time ago.

12 Q. -- say it wasn't it since 2006?

13 A. It was probably before that.

14 Q. Was it the purpose of to purchase a
15 lease?

16 A. It was for several different -- I was
17 just trying to get some, you know, operating-type
18 funds, so I -- it didn't really have a specific
19 purpose, but I'm sure that may have been part of
20 it also.

21 Q. Have you personally ever applied for a
22 loan at a commercial bank -- well, since 2000,
23 have you ever -- have you, personally, applied for
24 a loan at a commercial bank?

25 A. Okay. When you say commercial bank, you

1 constantly, you know, doing deals. And I knew I
2 had money coming in. And if -- the easiest way
3 for me to include someone without actually, you
4 know, trying to -- it was basically a way for me
5 to get money before closings or something like
6 that.

7 Q. Okay. Let's stop right there.

8 A. Okay.

9 Q. Just kind of work through this.

10 You just said it was the easiest way for
11 you to get money and -- for a closing. And --

12 A. No, no, no --

13 Q. No?

14 A. -- not for a closing. Before a closing.

15 Q. Before a closing?

16 A. Right. Because all the closings didn't
17 always happen in a timely manner. And I already
18 knew what I was going to be making, so it was kind
19 of a -- you know, I -- I knew what I was going to
20 make off of, you know, whatever next deal I was
21 doing before, you know, I accepted a loan. So, I
22 mean, the money was, you know, basically used for
23 just whatever before, you know, whatever closing I
24 had coming up next.

25 Q. I don't think you -- you -- I think given

1 Q. -- understand.

2 A. Okay. If I had -- like, for instance,
3 let's just go to the Carrizo deal, okay? Carrizo
4 and I were doing a lot of deals together. I mean,
5 just ongoing. I was constantly, you know, buying
6 things. And they originally started paying me
7 quick and then it started taking, you know, longer
8 and longer. But, you know, as we discussed
9 before, a big public company, so I didn't have a
10 lot of concern in getting paid. And, you know,
11 and -- always had, you know, lots of properties
12 that I could cash out on or whatever if I needed
13 to.

14 But, I mean, I never knew exactly when a
15 closing was going to happen, but I knew that if I
16 needed one to happen that I could -- you know, if
17 I had to, I could just sell off some of my
18 properties. So there wasn't really a specific
19 deal that, you know, anything was used for, so
20 I -- and you're using the word "operations," which
21 I loosely used. I mean, when I say that, the
22 money could be used for anything. Simply because
23 I knew I had more money coming in.

24 Q. Okay. And then the third part of that
25 that -- well, wait a minute. Before we get too

1 short-term loans.

2 Q. So at various points in time, what was --
3 what were your decision-making factors as to
4 whether or not to enter into one of these
5 promissory note transactions?

6 A. People were contacting me to do them.
7 And, I mean, again, if I knew I had something
8 coming in, I had no issue with doing it. And the
9 majority of these people were friends or, you
10 know, friends of friends or something like that.
11 And that's -- that's -- there was no really -- the
12 only motivation I may have had was where I
13 wouldn't have to fire-sale something. I mean, you
14 know, again, my -- my motivation to do any of this
15 stuff was to, you know, have, you know, producing
16 assets.

17 Q. Okay. You said if I had something -- "if
18 I knew I had something coming in." What do you
19 mean by that?

20 A. Well, let's just use the Carrizo deal for
21 an example, okay? I went out and purchased some
22 existing producing wells and several hundred acres
23 of leases and entered into an agreement for
24 Carrizo to purchase that. And they gave me some
25 money up-front. And, you know, had a balance of

1 testifying that you felt comfortable that you
2 would have money coming back in to cover that, is
3 that correct?

4 A. Correct.

5 Q. Okay. So if given the fact that you're
6 saying that these leases were the Trinity Fund was
7 making good profits on the resale of leases at the
8 time, is that correct?

9 A. Correct.

10 Q. Okay. And you felt comfortable that you
11 had them -- had -- you know, at times had these
12 leases resold for a profit. What -- what -- what
13 difference did it make whether or not you received
14 money in through the form of a promissory note?

15 A. Because I didn't want to share -- if I
16 would have put them in a deal, I would have had to
17 share whatever percentage they put in with my
18 profit. I was making more than, you know, say, 10
19 percent on my -- my -- you know, my deals.

20 Q. Okay.

21 A. So I had no problem paying 10 percent if
22 I was, you know, sometimes doubling my money.

23 Q. Okay.

24 A. But I also had assets that, again, if I
25 had to sell to cover the notes, you know, that's

1 what I would do.

2 Q. So did you -- so did you need the money,
3 I guess is what I'm saying?

4 A. As far as need-need? No.

5 Q. But -- but --

6 A. There was never a time that I didn't
7 have -- if I needed -- let's just use \$100,000.
8 There was not a time that I didn't have a property
9 that would equate to that, that I could sell. But
10 I wanted to keep the properties, okay? I mean,
11 that's why I still have all the properties -- or,
12 you know, the estate still has all the properties
13 that they have. And if everything -- I'll just
14 put it this way, if there would not have been a
15 Carrizo oil and gas deal, we wouldn't be sitting
16 here today. Period.

17 MR. MULLINS: Can we take a break?

18 MR. BOCK: Yeah.

19 (A brief recess was taken, after
20 which the following proceedings were
21 had:)

22 Q. (By Mr. Mullins) Were there -- typically
23 these promissory notes were 30 to 45 days, is that
24 correct?

25 A. Yes.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

VS.)

2001 TRINITY FUND, LLC and)
ROBERT ARROWOOD,)
)
Defendants.)

Case No. CJ-2012-6164
Judge Roger Stuart

* * * * *

DEPOSITION OF WILLIAM F. BYRD
TAKEN ON BEHALF OF THE PLAINTIFF
AT FORT WORTH, TEXAS

OCTOBER 28, 2014

* * * * *

REPORTED BY: LARISSA L. MCPHEARSON, CSR

EXHIBIT

tabbles

2

1 with him was he'd been in the business and he's been
2 successful at it.

3 Q. And by he, you mean Robert Arrowood?

4 A. Robert.

5 Q. Okay.

6 A. That's what was told to me by Richard Machina.
7 So from that, you know, I trusted Richard. That's how
8 it started.

9 Q. Okay. So following that, what happened next
10 with respect to the 2001 Trinity Fund?

11 A. Let's see, within that --

12 Q. At some point, you followed up, I guess, on
13 this conversation?

14 A. Yes, we did. And never met Rob. I don't even
15 know if he -- I talked -- yeah, I believe we talked on
16 the phone, and he said he was -- you know, I don't even
17 remember, unfortunately, exactly what the whole
18 conversation was. There was an opportunity to have a
19 decent return on our money. I remember that statement.
20 And so I said, okay, and I asked Richard -- he was going
21 to do it. Well, if he did it, I thought I would do it.
22 So I handed up the money, they gave me a note, and from
23 what I understand, it was probably something to do with
24 leases, and when it was completed, we'd get a -- get our
25 check.

1 the 2001 Trinity Fund?

2 A. Yes.

3 Q. Okay.

4 A. Exactly.

5 Q. And tell me about what you recall about the
6 transaction surrounding that notation in your check
7 register.

8 A. I don't recall anything about it except it
9 shows me that on the 17th of July I deposited
10 \$103,000 -- there's that 3,000, that's what I told
11 you -- \$103,000 from the original hundred.

12 Q. Okay. And do you believe that relates to your
13 providing the money to the Trinity Fund?

14 A. I do.

15 Q. Okay. And what was your notation there --

16 A. It says oil investment.

17 Q. Okay. And is that your handwriting?

18 A. That's my handwriting.

19 Q. Okay. Do you believe that to be a fair
20 characterization of what you thought at the time?

21 A. You know, I'm an entrepreneur. If I give you
22 anything, to me, I'm investing in you. I think the word
23 "investment" is a very broad term. So I gave Rob some
24 money, he gave me a note, and I was going to receive a
25 return. That's what I remember. I happened to call it

1 an investment here, but it's arbitrary.

2 Q. Okay. The rate of return that's referenced in
3 those promissory note exhibits, was that one of -- was
4 that one of the factors that motivated you to enter into
5 these transactions? Was that rate of return important
6 to you?

7 A. Not really. The turn was what's important to
8 me. In other words, how fast we flipped them, how fast
9 the turns came, not so much the amount.

10 Q. Okay. You had said previously that you had
11 promised yourself that you would not borrow money in
12 connection with your businesses.

13 A. Uh-huh.

14 Q. Why?

15 A. Well, when I first jumped into the world of
16 business in the late '70s, everything was taught us
17 through the '80s when the interest rates were
18 20 percent, 22 percent.

19 Q. Annual -- you're referring to an annualized
20 rate?

21 A. Yes, yes, yes.

22 Q. Okay.

23 A. That OPM, you know, other people's money,
24 that's what you do. Whether it's banks or whatever,
25 that's what we would use. That's how I grew my

1 ever looked at the annualized rate of return in those
2 notes?

3 A. No, never did.

4 Q. Okay. Well, let's take that opportunity today.
5 What do you see there as an annualized rate of return in
6 Exhibit 1?

7 A. Well, to me, it says 20 percent.

8 Q. Over what period of time?

9 A. July 16th from June the 13th.

10 Q. Right.

11 A. That's good.

12 Q. Would you consider that to be a high rate of
13 interest --

14 A. Yes.

15 Q. -- that's paid on that note?

16 A. Sure. That's good.

17 Q. Okay. But you also -- to be fair, you also
18 said that one of your motivating factors was not so much
19 that rate of return you said but the short duration of
20 it?

21 A. Uh-huh. Uh-huh.

22 Q. So if -- well, what I'm asking you is is did
23 you consider that rate of return in addition to the
24 term? Was that one of the factors that you considered?

25 A. I can't tell you. I don't remember. I really

OKLAHOMA STATE DEPARTMENT OF SECURITIES
COUNTY OF OKLAHOMA

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

VS.) Case No. CJ-2012-6164

2001 TRINITY FUND, LLC and)
ROBERT ARROWOOD,)
)
Defendants.)

* * * * *

DEPOSITION OF PHILIP W. MARTIN
TAKEN ON BEHALF OF THE PLAINTIFF
AT FORT WORTH, TEXAS

JUNE 19, 2014

* * * * *

REPORTED BY: LARISSA L. MCPHEARSON, CSR

EXHIBIT

3

1 A. Uh-huh.

2 Q. The affidavit says, to the contrary -- in that
3 same number 4, item 4, to the contrary, the loans were
4 contemplated to be, and treated as, routine commercial
5 loans. Do you see that?

6 A. Uh-huh.

7 Q. Now, the invest -- the original investment back
8 in March was through C&P Properties, right? That check
9 was drawn on C&P Properties' account?

10 A. Yes, sir.

11 Q. How many -- was C&P -- that's why I asked you
12 is it -- how many times has C&P loaned money to other
13 people or entities? How many times had that occurred?

14 A. And see, I -- Chip and I have been partners
15 since 1973, and we have invested in cattle, in a gold
16 mine, Mattress Firms, and a multiple of bad investments.
17 We're real good at drywall. We're not good at loaning
18 money. And I'm sorry that I don't recall back
19 throughout the history of our loans together. I've
20 attempted to make money outside the source of our
21 drywall business.

22 And so I don't profess to know the
23 difference in a loan and an investment, much less when I
24 called it as a leak in a memo on a check, that hadn't
25 come in question. Apparently, I had a lot of things on

1 MR. MULLINS: And I want to say again,
2 thank you for taking the time to come up here.

3 THE WITNESS: Thank you, both.

4 MR. BOCK: I have questions.

5 MR. MULLINS: Yes, they may.

6 EXAMINATION

7 BY MR. BOCK:

8 Q. You first learned about Rob Arrowood -- was it
9 through a mutual friend?

10 A. (Moving head up and down.)

11 Q. Somebody that was a friend of yours and
12 invested with Rob before?

13 A. Through Gary Hennesdorf.

14 Q. Okay. And he's a friend of yours?

15 A. Yes.

16 Q. And he had invested with Rob?

17 A. You know, I think he did. I'm not certain.

18 Q. There wasn't anything advertised to you? You
19 didn't receive some packet to review or anything like
20 that?

21 A. No. No.

22 Q. And you didn't know what Rob was going to do
23 with the money, correct?

24 A. The details of what he was going to do with his
25 business was his choice. All we knew, we were loaning

1 money to receive a greater amount, and that's it.

2 Q. And so long as he repaid you that money, it
3 didn't --

4 A. That's all I was interested in.

5 Q. -- it didn't matter what he did with that
6 money?

7 A. (Moving head up and down.)

8 MR. RAPP: You have to answer the question
9 out loud.

10 THE WITNESS: Oh, I'm sorry, we're still --

11 A. Yes.

12 Q. And your expectation was, the interest rate,
13 plus if he was late, there was a penalty provision in
14 the promissory note, correct?

15 A. Yes, sir.

16 Q. And you talked a little bit about Rob staying
17 in contact. At some point, you found out he filed
18 bankruptcy, correct?

19 A. Yes, sir.

20 Q. Or at least the company did?

21 A. We were served, yes, sir.

22 Q. Okay. And you -- somewhere along the line of
23 communication, Rob didn't duck you with reference to
24 telling you what he was doing with his business and
25 assuring you that one of these days he wants to make

1 A. Yes, sir.

2 Q. Specifically, though, with that second amount
3 of money that was loaned to him, do you recall that it
4 was for more personal use than even the first amount
5 that was -- and -- that was given? And if you recall,
6 fine, if you don't, fine. I'm just asking if you
7 recall.

8 A. No. What I'm thinking is that he needed to pay
9 some attorney's fees and continue to try to survive.

10 Q. Because you knew he had a big -- he had a big
11 lawsuit with Carrizo Oil & Gas. Is that one of the
12 things that came up?

13 A. Yes, sir.

14 Q. And I made a note here that you used the
15 word -- I'm asking you if you used the word "investment"
16 and "opportunity". Would you say that in reference to
17 these deals with Rob, that investment and opportunity
18 would be interchangeable?

19 A. I would use the word "investment, opportunity,
20 and loan" all as interchangeable.

21 Q. Okay. That's more fair. Now, there were
22 several questions that Mr. Mullins asked you about -- I
23 think it was Exhibit 1, about the promissory note. That
24 would be Plaintiff's Exhibit 1.

25 A. Yes, sir.

OKLAHOMA STATE DEPARTMENT OF SECURITIES
COUNTY OF OKLAHOMA

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

VS.)

Case No. CJ-2012-6164

2001 TRINITY FUND, LLC and)
ROBERT ARROWOOD,)
)
Defendants.)
)

* * * * *

DEPOSITION OF DAVID D. RAPP
TAKEN ON BEHALF OF THE PLAINTIFF
AT FORT WORTH, TEXAS

JUNE 19, 2014

* * * * *

REPORTED BY: LARISSA L. MCPHEARSON, CSR

EXHIBIT

4

1 A. Well, let me back up. The hospice was actually
2 a debt instrument initially, and then over time, it got
3 converted to equity. It started off as debt.

4 Q. Okay. Were the loan documents more than a
5 paragraph?

6 A. I don't think there were any loan instruments
7 initially. I think they were -- came five years later.

8 Q. Okay. If -- I guess I wasn't really clear on
9 how this two spec house thing worked. How -- what do
10 you mean? How did you --

11 A. I don't know that --

12 Q. -- invest in that business?

13 A. Sorry. I don't know that there was anything in
14 writing. I believe I loaned a friend somewhere around
15 180,000, I think, and he completed two houses and then
16 sold them, and I made a profit off of that loan --

17 Q. Okay.

18 A. -- investment.

19 Q. Did you -- the principals of this hospital --
20 hospice business, were they -- did you know them
21 previously?

22 A. Yes.

23 Q. Okay. Were they friends of yours?

24 A. Yes.

25 Q. Okay. How long have you known Mr. Byrd?

1 husband. The reason it is in her name is because her
2 husband initially put in \$60,000 and then he passed
3 away, and so I asked that a new check be issued payable
4 to her so that it would be easier for her to cash.

5 (Exhibit No. 3 marked.)

6 Q. This is Exhibit 3.

7 A. Okay.

8 Q. Tell me what you know about Exhibit 3.

9 A. It appears to be what I sent you.

10 Q. Which is an Agreed Final Judgment. Tell me why
11 you -- why was this Agreed Final Judgment entered?

12 A. It seemed to me a smart thing to do to have a
13 judgment against the company and Rob individually, if I
14 could get him to agree to do that before we loaned him
15 more money.

16 Q. And why did he -- what was the reasoning for --
17 well, let me back up. Why was he seeking more money?

18 A. My understanding was to -- he needed money to
19 pay lawyers for his -- the Houston lawsuit, for tuition,
20 for other living expenses to basically stay afloat while
21 he was fighting Carrizo.

22 Q. At the time of this additional money, did you
23 understand it would be used for personal expenses as
24 well?

25 A. Yes.

1 Q. And how -- where did you get that
2 understanding?

3 A. I imagine it was from Rob as well as Bill and
4 possibly Richard.

5 Q. Richard who?

6 A. Machina. I don't think I talked to Richard
7 much then. I think I talked to Richard once or twice
8 for the first round, but I don't think I talked to
9 Richard much with respect to this.

10 Q. Okay. The first notes, they were not
11 collateralized, were they, by anything?

12 A. I'm not sure.

13 Q. That you participated in, the ones that, for
14 instance, were split with Todd or your father.

15 A. I guess I'm just not sure the full meaning of
16 the word "collateralized" is my hesitation. In other
17 words, they were collateralized -- I don't know what
18 exactly that means.

19 Q. Okay. Were there any other documents other
20 than those promissory notes that you might have
21 received? Did you have anything that looks close to the
22 deed of trust, mortgage, assignment, security agreement,
23 fixture filing, and financing statement that's included
24 in Exhibit 3?

25 A. No.

OKLAHOMA STATE DEPARTMENT OF SECURITIES
COUNTY OF OKLAHOMA

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

Plaintiff,)

VS.)

Case No. CJ-2012-6164

2001 TRINITY FUND, LLC and)
ROBERT ARROWOOD,)

Defendants.)

* * * * *

DEPOSITION OF GARY A. HENNERSDORF

TAKEN ON BEHALF OF THE PLAINTIFF

AT FORT WORTH, TEXAS

JUNE 19, 2014

* * * * *

REPORTED BY: LARISSA L. MCPHEARSON, CSR

EXHIBIT

5

1 A. You know, I don't recall if it was personally
2 or if it was through another person in the group. I
3 don't remember.

4 Q. Okay. Who are you talking about as the group?

5 A. Bill.

6 Q. Bill?

7 A. Uh-huh.

8 Q. Byrd?

9 A. Uh-huh.

10 Q. Okay. So at some point, you understand that
11 Mr. Arrowood is requesting additional money?

12 A. (Moving head up and down.)

13 Q. And explain for me, please, what was the
14 purpose of that? What was the intended purpose of that
15 additional money?

16 A. I told you. I was under the impression it was
17 for personal use, maybe to pay attorney fees. I -- you
18 know --

19 Q. Okay. All right. And did you loan
20 Mr. Arrowood additional money?

21 A. Uh-huh, yes, I did.

22 Q. How much?

23 A. 20.

24 Q. Okay. And why? Why did you agree to do that?

25 A. There again, it was a nice return on the money.

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

Oklahoma Department of Securities,
ex rel. Irving L. Faught, Administrator ,

Plaintiff,

v.

2001 Trinity Fund, L.L.C. and
Robert Arrowood,

Defendants.

Case No. CJ-2012-6164

AFFIDAVIT OF BILL BYRD

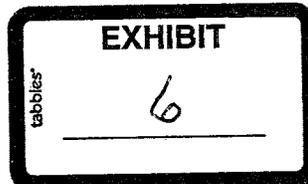
I, Bill Byrd, being of age and duly sworn, alleges and states as follows:

1. I am a resident of Fort Worth, Texas, and am personally acquainted with Defendant Robert Arrowood.

2. It has come to my attention that the Oklahoma Department of Securities has incorrectly characterized to the court my transaction with 2001 Trinity Fund, LLC and Robert Arrowood as its President.

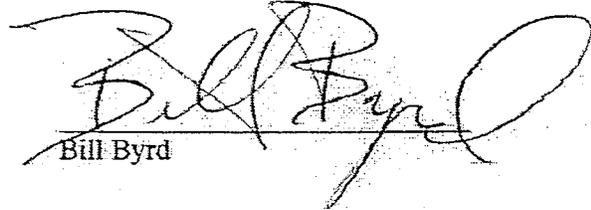
3. The transaction that I made with 2001 Trinity Fund, LLC and Robert Arrowood as its President was a LOAN to be paid back in accordance with the terms of the Promissory Note.

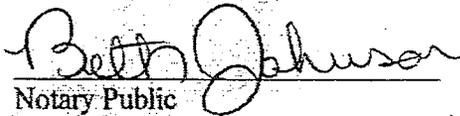
4. These LOANS were not considered by me to be investments as defined by and represented by the Oklahoma Securities Commission.



5. Repayment of the loans by Mr. Arrowood and/or 2001 Trinity Fund, L.L.C. was never conditioned on the success of 2001 Trinity, L.L.C.'s oil and gas exploration, or any other aspect of 2001 Trinity, L.L.C.'s business.

FURTHER AFFIANT SAYETH NOT.


Bill Byrd


Notary Public

My Commission Expires: 9-7-16



OFFICIAL SEAL
BETH JOHNSON
Commission #12008505
Expires Sept. 7, 2016

OFFICIAL SEAL
BETH JOHNSON
Commission #12008505
Expires Sept. 7, 2016

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

Oklahoma Department of Securities,
ex rel. Irving L. Faught, Administrator ,

Plaintiff,

v.

2001 Trinity Fund, L.L.C. and
Robert Arrowood,

Defendants.

Case No. CJ-2012-6164

AFFIDAVIT OF DAVID RAPP

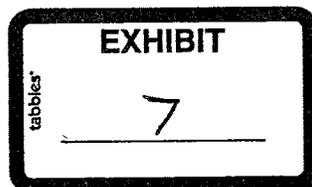
I, David Rapp, being of age and duly sworn, alleges and states as follows:

1. I am a resident of and an attorney licensed to practice law in the State of Texas and am personally acquainted with Defendant Robert Arrowood.

2. It is my understanding that the Oklahoma Department of Securities continues to mischaracterize to the Court my transaction with 2001 Trinity Fund, LLC and Robert Arrowood, as its President ("Trinity").

3. The transactions I made with Trinity were Loans to be paid back in accordance with the terms of the promissory notes ("My Loans").

4. Though I wrote the word "Investment" on my checks, as I explained in my deposition, I view each use of my money that has an expectation of an increased return as an "Investment," whether that be in a security, a hand of black jack, or in a ministry with an expectation of an eternal return on my investment.



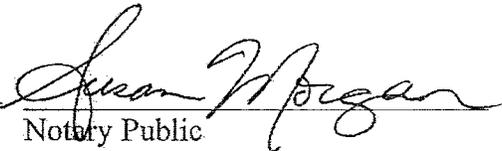
5. My Loans, however, were never considered by me to be investments as defined by and represented by the Oklahoma Securities Commission.

6. Trinity's obligation to me under the promissory notes, to repay My Loans in full, was not contingent on the success of Trinity or the success of any other venture.

FURTHER AFFIANT SAITH NAUGHT.

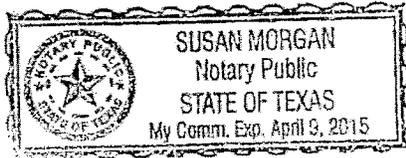


David Rapp



Notary Public

My Commission Expires: 4/9/2015



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities,
ex rel. Irving L. Faught, Administrator,

Plaintiff,

v.

2001 Trinity Fund, L.L.C. and
Robert Arrowood,

Defendants.

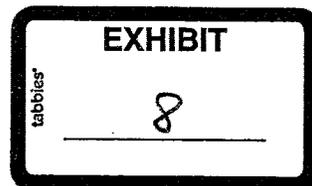
Case No. CJ-2012-6164

AFFIDAVIT OF JEFFREY KING

I, Jeffrey King, being of age and duly sworn, alleges and states as follows:

1. "I am a resident of Tarrant County, Texas. I have been a licensed attorney in the State of Texas since 1987 and am in good standing with the Texas Bar Association. I am over the age of 18 years, have never been convicted of a felony and am competent to make this Affidavit. The facts set forth in this Affidavit are based on my personal knowledge and are true and correct. I gained my personal knowledge by virtue of my representation of 2001 Trinity Fund L.L.C. ("2001 Trinity Fund") in the lawsuit filed against it by Carrizo Oil & Gas ("Carrizo") in Harris County, Texas (the "Lawsuit").

2. The Lawsuit went to trial before a jury in Harris County, Texas in September of 2009. A jury verdict was reached in October of 2009 on several issues. Though the verdict was favorable to 2001 Trinity Fund on certain issues, the jury reached a verdict adverse to 2001 Trinity Fund concerning a certain participation agreement and awarded Carrizo damages in excess of \$10,000,000 (Ten Million Dollars). There was little doubt in my mind that this portion



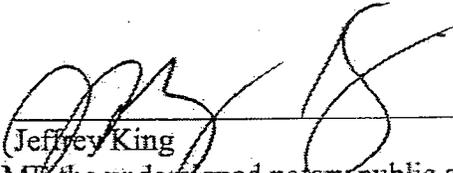
of the verdict would be overturned on appeal. In the meantime, however, Carrizo was aggressively seeking to have a judgment entered on the jury verdict and was going to aggressively seek to enforce any judgment it obtained. During the time of this litigation Carrizo refused to pay 2001 Trinity Fund for any of the leases assigned to Carrizo or any of the royalties due to 2001 Trinity Fund. 2001 Trinity Fund, as a result, lacked sufficient cash flow and assets to pay any such judgment or to obtain a bond that would prevent the enforcement of the judgment while the appeal was pending.

3. I, acting as legal counsel for 2001 Trinity Fund advised its President, Robert Arrowood, to file for Chapter 11 Bankruptcy in order to protect the assets of 2001 Trinity Fund from the collection actions of Carrizo so 2001 Trinity Fund could have the opportunity to prosecute the appeal of the verdict and eventual judgment. A judgment was entered by the district court in Harris County in March or April of 2010 and an appeal of that judgment followed. The judgment and jury verdict in favor of Carrizo on the award in excess of \$10,000,000 was reversed and rendered in favor of 2001 Trinity Fund by the Texas Court of Appeals in 2012.

4. If 2001 Trinity Fund had not filed for Chapter 11 Bankruptcy, its assets would have been seized during the pendency of the appeal and would have effectively denied 2001 Trinity Fund the ability to obtain a reversal of a verdict and judgment that was improperly granted.

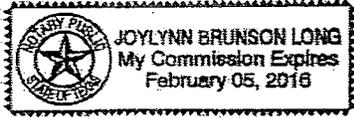
5. The only basis for the filing of the 2001 Trinity Fund Chapter 11 bankruptcy was to stay the execution of the judgment obtained by Carrizo so the appeal could be prosecuted. There were no other factors, to my knowledge, that played a role in the decision of 2001 Trinity Fund to exercise its rights to seek the protection of the United States Bankruptcy Code.”

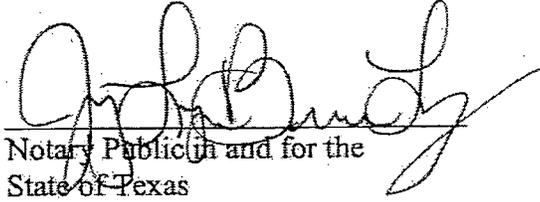
AFFIANT FURTHER SAYETH NOT.



Jeffrey King

SWORN AND SUBSCRIBE TO BEFORE ME the undersigned notary public on this ____
day of February, 2015.





Notary Public and for the
State of Texas

My Commission Expires: 02-05-16