

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FEB - 9 2016

TIM RHODES
COURT CLERK

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
Judge Roger Stuart

34
Set Friday 4th
March 9:00 a.m.

OKLAHOMA DEPARTMENT OF SECURITIES'
MOTIONS IN LIMINE NUMBERS 1-3

Plaintiff, Oklahoma Department of Securities (Department), respectfully submits the following motions *in limine*. Taken together, the Department's motions *in limine* will streamline the trial, avoid unfair prejudice, and focus the jury on the only issues they will be deciding: 1) whether the securities sold by the Defendants were registered under the Oklahoma securities laws; 2) whether Defendant Robert Arrowood was registered as an agent under the Oklahoma securities laws; and 3) whether the Defendants engaged in acts, practices, or a course of business that operated as a fraud upon the investors who purchased securities from Defendants.

Department's Motion *in Limine* No. 1: Department's Motion *in Limine* to Exclude Statements or Evidence Contradicting that the Investments and Notes are Securities

The Department respectfully moves *in limine* to bar any statements to the jury contradicting this Court's summary adjudication that the notes at issue in this case are securities. Any such statements are irrelevant to the issues at trial before the jury, and would only confuse, distract, and inflame the jury. See OK Evid Code §§ 2401, 2402, & 2403.

Defendants have repeatedly argued that the investments and promissory notes at issue in this case are simply loans between friends rather than securities. On July 13, 2015, this Court granted partial summary judgment to the Department determining that the notes at issue in this case are indeed securities and subject to the Oklahoma securities laws. Facts specified as uncontroverted at the summary judgment stage shall be deemed established. 12 O.S. § 2056(D). “Once a district judge issues a partial summary judgment order removing certain claims from a case, the parties have a right to rely on the ruling by forbearing from introducing any evidence or cross-examining witnesses in regard to those claims.” *Leddy v. Standard Drywall, Inc.*, 875 F.2d 383, 386 (2nd Cir. 1989). Evidence or testimony contradicting claims or issues already decided by summary judgment is irrelevant. *Follis v. Memorial Medical Center*, 2010 WL 431920 *2 (C.D. Cal, January 29, 2010) (“evidence presented solely in support of claims already decided at summary judgment is irrelevant” under federal equivalent of OK Evid. Code §§ 2401 and 2402.)

Defendants should not be permitted to introduce evidence, testimony, or statements contradicting that the notes are securities.

Department’s Motion *in Limine* No. 2: Department’s Motion *in Limine* to Exclude Statements about the Department’s Investigation and Charging Decisions and the Pre-trial Publicity Regarding this Case

The Department respectfully moves *in limine* to bar any statements to the jury about the length or handling of the Department’s investigation or this lawsuit, about the Department’s decision to bring this lawsuit, and about the pre-trial publicity in this case. Such statements are completely irrelevant to the issues at trial, and would only confuse, distract, and inflame the jury. *See* OK Evid. Code §§ 2401, 2402, & 2403.

This motion *in limine* addresses a simple point: this case is about whether the Defendants violated the Oklahoma securities laws. It is not about how the Department has handled unrelated cases or responsibilities, or about the Department's enforcement priorities, or about the Department's investigation. The Department is not on trial, and the Defendants should not encourage the jury to think otherwise.

Throughout this case, the Defendants have complained at various times about the Department's investigation, including its length, and the Department's decision to pursue charges against them. The Defendants have also suggested that the Administrator of the Department and Department personnel harmed them by making comments to the press about the case. The Defendants should not be allowed to make any such complaints to the jury.

The amount of time and effort the Department devoted to this case does not make it more probable, or less probable, that the Defendants violated the Oklahoma securities laws. Similarly, statements about how the Department conducted its investigation – including the number of testimonies, or the inconvenience of deposing out-of-state witnesses – do not shed light on whether the Defendants violated the law.

Nor should the Defendants be allowed to invite the jury to second-guess the Department's decision to bring a lawsuit against them. The Department's decision to sue Defendants and not others is neither relevant to nor probative of the Defendants' liability. The Department has significant discretion in deciding who to charge with securities law violations and what violations to allege. 71 O.S. § 1-603; *SEC v. Tiffany Indus., Inc.*, 535 F. Supp. 1167, 1168 (E.D. Mo. 1982) (“[A]gencies engaged in prosecutorial or enforcement activities are provided a wide discretion on when to file charges and against whom the

charges should be instituted.”). The Department’s use of that discretion is not on trial. Defendants should be precluded from attempting to win this case by tarnishing the Department’s reputation, appealing solely to the jury’s sympathy, and distracting the jury from the merits of the case. See *True N. Fin. Corp.*, 2013 WL 4781037 *3 (granting SEC’s motion *in limine* to preclude argument and evidence about its decision to charge that was “presumptively inadmissible” under federal equivalent of OK Evid Code § 2403). The jury’s only role is to decide whether the Department proved its case, not whether the Department should have pursued the case in the first place.

Finally, any reference to the pre-trial publicity in this case should be excluded as irrelevant and unfairly prejudicial. The filing of this case generated some coverage in the state press, which continues from time to time. Those articles occurred after the Department filed its lawsuit, were not instigated by the Department, and have nothing to do with the merits of the Department’s claims. Those articles and statements have no probative value, and they do not reflect the author’s or speaker’s personal knowledge of Defendants’ securities transactions or any other fact at issue in this case. Those articles and statements instead reflect opinions that are based on the public filings in this case. Whatever these commentators may think about the Department’s allegations is not a “fact of consequence” to the jury, nor does it tend to make any determinative fact “more or less probable.” OK Evid Code § 2401.

Further, any reference to the pre-trial publicity in this case would be unfairly prejudicial. See OK Evid Code § 2403. Defendants might cite public commentary about this case to argue or suggest that the Department acted unfairly in naming them in this lawsuit. Such an argument is meritless. As shown above, the Department has discretion in

deciding who to charge and what violations to allege. This case is about the conduct of the Defendants, not about how the Department has performed as a state agency.

The jury should evaluate evidence of the fraud and registration violations presented at trial. The evidence should stand or fall on its own weight. The jury should be presented that evidence without hearing obfuscating statements about the government's investigation, handling of the investigation and lawsuit, and press coverage of the lawsuit.

Department's Motion *in Limine* No. 3: Department's Motion *in Limine* to Exclude Statements about any Putative Adverse Impact on Defendants

The Department respectfully moves *in limine* to bar any statements to the jury about any putative adverse impact that the Department's investigation or lawsuit may have had on the personal lives, reputation, or business of the Defendants. Any evidence of or reference to adverse consequences that Defendants may claim to have suffered as a result of the Department's investigation or this lawsuit, is irrelevant and unfairly prejudicial. *See* OK Evid. Code §§ 2401 & 2403.

Evidence about the consequences of the Department's investigation and lawsuit have no bearing on the merits of the case. Any impact from this case on the Defendants does not make it more probable, or less probable, that the Defendants violated the Oklahoma securities laws. *See* OK Evid. Code § 2401. Statements about any putative adverse impact could distract the jury and cloud their decision-making, encouraging them to decide this case based on sympathy rather than the merits. *See* OK Evid. Code § 2403. Also, it would undermine the enforcement of the state securities laws if fraudsters could argue to the jury that it is burdensome to be accused of fraud.

For those simple reasons, courts bar evidence about any adverse impact of an investigation or lawsuit on defendants. *SEC v. Berrettini*, 2015 WL 4247776 *2 (N.D.

Illinois) (granting SEC a motion *in limine* to exclude references to adverse impact under federal equivalent of OK Evid Code §§ 2401 & 2403); *SEC v. Moran*, 1995 WL 785953, at *1 (S.D.N.Y. 1995) (granting the SEC's motion *in limine*, and finding that "there is no relevant basis under which such proof could be offered" under federal equivalent of OK Evid Code §§ 2401 & 2402).

This trial is supposed to be about whether the Defendants violated the securities laws. The jury should decide that question based on the evidence, without being tainted by statements that this case may have been difficult on or embarrassing to the Defendants.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests this Court enter an order as follows:

- 1) Granting the Department's Motion in Limine No. 1 barring the Defendants, their attorneys, or their witnesses from offering evidence, or making any references, arguments, or insinuations at trial, including in opening and closing statements, during *voir dire*, and examination of witnesses, contradicting this Court's summary adjudication that the investments and notes at issue are securities.
- 2) Granting the Department's Motion *in Limine* No. 2 barring the Defendants, their attorneys, or their witnesses from offering evidence, or making any references, arguments, or insinuations at trial, including in opening and closing statements, during *voir dire*, and examination of witnesses, to the length or handling of the Department's investigation and this lawsuit, about the Department's decision to pursue this lawsuit, and about the pre-trial publicity in this case.

3) Granting the Department's Motion *in Limine* No. 3 barring the Defendants, their attorneys, or their witnesses from offering evidence, or making any references, arguments, or insinuations at trial, including in opening and closing statements, during *voir dire*, and examination of witnesses, to any impact this enforcement action and accompanying Department investigation may have had upon the personal lives, reputation, or business of defendants.

Respectfully Submitted,
OKLAHOMA DEPARTMENT OF SECURITIES



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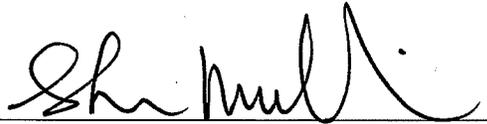
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2016, the foregoing document was sent by first-class mail and by email to the following:

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