

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

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

JAN 21 2016

TIM RHODES
COURT CLERK

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Case No. CJ-2014-4515

**OBJECTION TO RECEIVER’S REPORT ON CLAIMS AND
RECOMMENDATION FOR CLASSIFICATION OF CLAIM OF WAYNE DOYLE**

COMES NOW Intervenor and Claimant, Wayne Doyle (“Claimant” or “Doyle”), and hereby objects to the Receiver’s proposed treatment and classification of the claim of Wayne Doyle wherein the Receiver recommends Wayne Doyle receive no distribution from the Receivership, despite Mr. Doyle being the largest, legitimate creditor in the Receivership¹.

PROCEDURAL HISTORY

This Court held a multi-day evidentiary hearing on August 5 and August 10, 2015, relating to the disbursement of certain proceeds from the sale of the Bricktown Hotel from Bricktown Capital, LLC. Following such hearing, this Court entered its *Findings of Fact and Conclusions of Law* on August 21, 2015. *See Findings of Fact and Conclusions of Law, Exhibit “A” hereto.* These Findings of Fact and Conclusions of Law were not timely appealed by any party.

The Findings of Fact and Conclusions of Law set forth, among other things, the following:

¹ Ronald Hope filed a larger claim than Mr. Doyle (Claim #10), however, it is the Receiver’s position that Mr. Hope was “bought out” of his investment with the various Seabrooke entities in 2011 for sufficient bargained for consideration and therefore, is not a creditor of the Receivership estate.

1. Between 5/28/2009 and 12/20/2014, Wayne Doyle and his wholly owned company, Remington Express, provided \$2,355,200.00 to Tom Seabrooke and various entities owned and managed by Tom Seabrooke.
2. The following funds were provided by Doyle without any written documentation, including without limitation any Promissory Notes or other documentation, evidencing that they were loans, to wit:

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

6. Only one factor, participation in management, does NOT support reclassification. **Therefore, all funds, regardless of whether Wayne Doyle or Remington Express contributed them and regardless of who the payee was, should be reclassified as capital contributions.**
7. Since the Court finds that all funds paid by Doyle or Remington Express are to be reclassified, it does not address the issue of whether the doctrine of “equitable subordination” should be applied.

UNDISPUTED FACTS

1. The Receiver filed its Receiver’s Report on Claims and Recommendation for Classification of Same on December 22, 2015.
2. The Receiver’s Report alleges that Wayne Doyle became an “insider” of Bricktown Capital, LLC on February 3, 2011, the date of Mr. Doyle’s first investment in Bricktown Capital, LLC. *See Receiver’s Report, pg. 11.*
3. However, this Court’s Findings of Fact establish that \$1,100,000.00 was invested by Doyle prior to this February 3, 2011, and such investments were made to other Seabrooke entities.

See Findings of Fact and Conclusions of Law, Fact #2.

4. The Receiver has proposed to treat all other investors who made capital contributions as general creditors of the estate and asks they be given a proportionate distribution from the receivership estate.²

Through the proposed disparate treatment of Doyle's claim, the Receiver requests this Court re-visit the issue of equitable subordination of Doyle's claim. Doyle believes equitable subordination is unwarranted in this matter. However, even if warranted, there could be no basis to equitably subordinate Mr. Doyle's first \$1,100,000 investment in the Seabrooke entities as the Receiver admits Mr. Doyle was not an "insider" at the time the earlier investments were made with the Seabrooke entities.

ARGUMENTS AND AUTHORITIES

I. DOYLE'S INITIAL \$1,100,000 INVESTMENT IS NOT SUBJECT TO EQUITABLE SUBORDINATION FOR INVESTMENTS MADE PRIOR TO DOYLE'S ALLEGED "INSIDER" STATUS IN BRICKTOWN CAPITAL, LLC

A. Receiver's Reliance on Alleged "Insider" Status

The Receiver now seeks equitable subordination of Doyle's entire investment, based upon the doctrine of equitable subordination. When reviewing the case law and argument submitted by the Receiver, the Receiver relies heavily on claims that Wayne Doyle was an "insider" of the Bricktown Capital, LLC to establish a basis for equitable subordination³. The Receiver goes so far as to set forth when Doyle became an insider of Bricktown Capital, LLC. The Receiver alleges that date to be

² See Receiver's Report on Claims wherein the Receiver alleges the following claims were capital contributions: Claim 3 – Faith Bristow; Claim 4 – Kelly Burfitt; Claim 8 – Malene Eckhardt; and Claim 12 – Peggy Johnston and HPJ Limited Partnership.

³ Although case law differentiates equitable subordination based upon insider versus non-insider status, the Receiver relies exclusively on the theory that Doyle is an insider and that he engaged in conduct that is somehow unfair to other creditors.

February 3, 2011, the date Mr. Doyle first purchased an interest in Bricktown Capital. The Receiver takes pains to allege that Doyle was an insider following this date, by stating: “the facts unquestionably demonstrate that Doyle possessed knowledge sufficient to classify him as an insider of the company, and in that capacity he engaged in conduct that was unfair to Bricktown Capital...”

See Receiver’s Report on Claims, pg. 13.

B. Doyle Not an Insider When Initial Investments Made in Other Seabrooke Entities.

It cannot legitimately be disputed that Doyle was not an “insider” at the time of his initial \$1,100,000 investment. Beyond the fact that the Receiver tacitly admits to the same in the Report on Claims, the Findings of Fact and Conclusions of Law establish that Mr. Doyle’s initial investment of \$1,100,000 occurred earlier in time than February 3, 2011. Additionally, the Findings of Fact and Conclusions of Law establish that these investments were made to Tom Seabrooke, Oakbrooke Homes, LLC and Seabrooke Investments, LLC. Therefore, when these initial investments were made, Mr. Doyle could not have been an insider because they occurred prior to the time at which the Receiver alleges that Doyle became an insider of Bricktown Capital, LLC; February 3, 2011.

Under the doctrine of issue preclusion, once a court has decided an issue of fact or law necessary to its judgment, the same parties or their privies may not relitigate the issue. Ouellette v. State Farm Automobile Ins. Co., 918 P.2d 1363, 1365 (Okla. 1994); and Nealis v. Baird, 996 P.2d 438, 458 (Okla. 1999). Issue preclusion prevents relitigation of facts and issues actually litigated and necessarily determined in an earlier proceeding between the same parties and their privies. *See Nealis*, at 458; and Carris v. John R. Thomas and Associates, P.C., 896 P.2d 522, 528 (Okla. 1995).

Even if this Court were to adopt all of the Receiver’s contentions as true and in reliance

equitably subordinated a portion of Doyle's claim, such subordination could not be ordered against the initial \$1,100,000 investment because that investment was made to entities in which Doyle was never an insider. Moreover, those earlier investments occurred long prior to the time at which he is alleged to have become an "insider" of Bricktown Capital, LLC.

II. WITHOUT PROOF OF INJURY TO OTHER CREDITORS, DOYLE'S INVESTMENT CANNOT BE EQUITABLE SUBORDINATED

The bankruptcy case of In re Hedged-Investments Associates, Inc., 380 F.3d 1992 (10th Cir. 2004) discusses the differences between re-characterization of a loan, which this Court has previously ordered, and equitable subordination. In comparison, the 10th Circuit wrote:

We begin our analysis by reiterating the important distinction between the two remedies of recharacterization and equitable subordination.

When a putative loan to a corporation is recharacterized, the courts effectively ignore the label attached to the transaction at issue and instead recognize its true substance. The funds advanced are no longer considered a loan which must be repaid in bankruptcy proceedings as corporate debt, but are instead treated as a capital contribution...

Not only do recharacterization and equitable subordination serve different functions, but the extent to which a claim is subordinated under each process may be different.... Recharacterization cases turn on whether a debt actually exists, not on whether the claim should be equitably subordinated. In a recharacterization analysis, if the court determines that the advance of money is equity and not debt, the claim is recharacterized and the effect is subordination of the claim as a proprietary interest because the corporation repays capital contributions only after satisfying all other obligations of the corporation. In an equitable subordination analysis, the court is reviewing whether a legitimate creditor engaged in inequitable conduct, **in which case the remedy is subordination of the creditor's claim to that of another creditor only to the extent necessary to offset injury or damage suffered by the creditor in whose favor the equitable doctrine may be effective.**

[emphasis added] Id. at 1297; *citing* Beyer Corp. v. MascoTech, Inc. (In re AutoStyle Plastics, Inc.), 269 F.3d 726, 748-49 (6th Cir. 2001).

When applying the above principles of equitable subordination to this matter, the result is the same as recharacterization previously ordered by this Court. Here, the alleged loan from Doyle was reclassified as a capital contribution. Any advantage obtained by Doyle was remedied through the Court's previous reclassification. Doyle was denied his claim to the excess proceeds from the sale of the Bricktown Hotel.

This Court previously determined that all of Doyle's investments be treated as capital contributions. To find equitable subordination of any portion thereof, the Receiver must show that inequitable conduct by Doyle caused "injury or damage" to another creditor of Bricktown Capital, LLC. Then, and only then, would Doyle's claim be subordinated and then only to the extent necessary to offset another creditor's injury. *See In re Hedged-Investments Associates, Inc.* at 1297.

Since all of Doyle's investments were reclassified as capital contributions by this Court, there simply can be no injury to any of the creditors of Bricktown Capital, LLC. The priority mortgage claim of Doyle was rejected by this Court, leaving Doyle with only a capital contribution claim. Any advantage Doyle would have obtained (i.e., receipt of the excess proceeds from the sale of the Bricktown Hotel) was denied. Accordingly, there can be no equitable subordination due to the lack of injury to the creditors of Bricktown Capital, LLC.

What makes equitable subordination impossible to apply in this matter is that the Receiver has proposed to treat both capital contributions investors and lenders to the Seabrooke entities exactly the same, with each classified as general creditors entitled to a proportionate distribution from the remaining assets of the receivership estate. That being the case, and since this Court has previously determined that Doyle's investments are capital contributions, there simply is no "injury" to any creditors as Doyle now has no, nor has he ever had an, advantage which could cause injury to

other creditors of the Receivership estate. Without injury, Doyle's investments in the Seabrooke entities cannot be equitably subordinated pursuant to law.

Upon a review of the Receiver's classification of claims, the investments from the following creditors were acknowledged as capital contributions by the Receiver. Each is proposed to be treated as a general creditor of the receivership estate and entitled to a proportionate distribution of the estate: Claim 3 – Faith Bristow; Claim 4 – Kelly Burfict; Claim 8 – Malene Eckhardt; Claim 12 – Peggy Johnston and HPJ Limited Partnership; and Claim 18 – Kendall McGowen (mixed loan and capital contribution).

Also, investments from the following creditors were acknowledged as loans by the Receiver. Each is proposed to be identically treated as a general creditor of the receivership and entitled to a proportionate distribution of the estate: Claim 1 – Patricia Aldridge; Claim 2 – Roland Boeni; Claim 6 – David Dennings; Claim 9 – Alicia T. Holtslander-Petrone; Claim 11 – Jack Horcher; Claim 14 – Craig Matthies; Claim 16 – Booby McCants; Claim 17 – Charlotte McGee; Claim 18 – Kendall McGowen (mixed loan and capital contribution); Claim 19 – Carolyn Page; Claim 21 – Richard Shonts; Claim 22 – Susan Soesbe.

The Receiver requests that the foregoing investors, *whether a loan or capital contribution, be treated exactly the same*, and proposes that each receive a proportionate share of the general assets of the receivership estate.⁴

This Court previously determined that Doyle's investments be treated as capital contributions pursuant to the Findings of Fact and Conclusions of Law. Accordingly, Doyle should be treated as

⁴ The remaining claimant's claims are proposed to be rejected by the Receiver for various reasons, none of which appear relevant to the issue of equitable subordination.

all other capital contribution investors and receive a proportionate share of the general assets of the receivership estate.

Although this Court needs no reminder, a Receivership is intended to protect the rights of all persons or entities who participated in a business relationship with Defendants, whether by corporation, business venture or association. Dept. of Securities ex rel. Faught v. Blair, 2010 OK 16, ¶ 38. It is not intended nor permissible for the Receiver to pick and choose which creditors, from an identical class of creditors, receive preferential treatment to the detriment of other creditors in the same class of creditors.

WHEREFORE, premises considered, the Intervenor and Claimant, Wayne Doyle, requests this Court deny Receiver's claim of equitable subordination and order that Wayne Doyle's capital contributions, as established in the Findings of Fact and Conclusions of Law entered by this Court on August 21, 2015, be included as a general creditor of the Receivership Estate and order a proportionate share of the Receivership Estate's assets be paid over to him, and for such other and further relief as this Court deems just and proper.



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Attorney for Intervenor/Claimant

CERTIFICATE OF MAILING

The undersigned certifies to the Court and to all parties that a true and correct copy of the above and foregoing pleading was deposited into the United States Mails, first-class postage pre-paid thereon this 2 day of January, 2016 and addressed to the following persons:

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STATE OF OKLAHOMA

AUG 21 2015

OKLAHOMA DEPARTMENT OF SECURITIES,)
ex rel. IRVING L. FAUGHT, ADMINISTRATOR,)
Plaintiff,)
)
)
vs.)
)
SEABROOKE INVESTMENTS, LLC, et al.,)
Defendants)

TIM RHODES
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Case No. CJ-14-4515

FINDINGS OF FACT

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

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

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

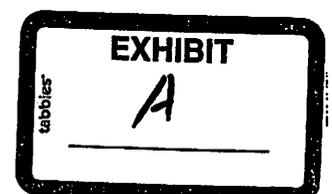
(See, Doyle's Exhibit No. 13.)

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

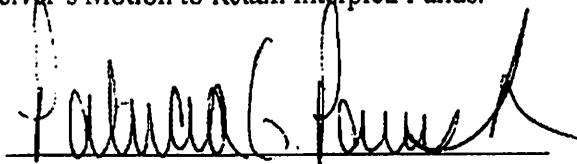
- a. Names given the documents evidencing the indebtedness.
- a. Reasonable expectation of repayment.
- b. Right to enforce repayment.
- c. Participation in management.
- d. Status of contribution in relation to other creditors.
- e. Intent of parties based on objective evidence.
- f. Thin capitalization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

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

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

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

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



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

CERTIFICATE OF SERVICE

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

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TIM RHODES, Court Clerk

By  Deputy

Janice Pitts, Deputy Court Clerk

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