

IN THE DISTRICT COURT OF LOGAN COUNTY,  
STATE OF OKLAHOMA

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

vs. )

Case No. CJ-2004-256

MARSHA SCHUBERT, an individual, and d/b/a )  
SCHUBERT AND ASSOCIATES; )  
RICHARD L. SCHUBERT, an individual and d/b/a )  
SCHUBERT AND ASSOCIATES; )  
and )  
SCHUBERT AND ASSOCIATES, an unincorporated )  
association, )  
Defendants. )

RECEIVER'S MOTION TO STRIKE, AND ALTERNATIVELY,  
OBJECTION TO LEBOEUF'S INTERVENTION OF PARTY AND  
MOTION TO TRANSFER AND CONSOLIDATE THIS MATTER

COMES NOW Douglas L. Jackson, the Court-appointed Receiver for Marsha Schubert, individually and d/b/a Schubert and Associates, and for the investors and creditors of Schubert and Associates ("Receiver"), and for his Motion to Strike the *Intervention of Party and Motion to Transfer and Consolidate this Matter* filed on behalf of Richard LeBoeuf, or alternatively, his Objection to that pleading, would show the Court as follows:

1. Contrary to the Certificate of Service on the *Intervention of Party and Motion to Transfer and Consolidate this Matter*, Mr. LeBoeuf did not mail a copy of that pleading to the Receiver until July 14, 2005. See postmarked envelope attached as Exhibit A. The Receiver did not receive Mr. LeBoeuf's Intervention pleading until July 15, 2005. See Exhibit A. Therefore, the Receiver's objection and/or responsive motion should be due on August 1, 2005.

2. Mr. LeBoeuf did not seek, much less obtain, leave of the Court to intervene in this case as required by the Oklahoma Pleading Code. As such, Mr. LeBoeuf's intervention pleading should be stricken along with the hearing Mr. LeBoeuf has set for August 12, 2005 at 1:30 p.m.

3. In the event the Court permits Mr. LeBoeuf to intervene without following the proper procedure of seeking and obtaining leave of Court, Mr. LeBoeuf's incorporated Motion to Transfer and Consolidate is nonetheless without merit. As set forth in further detail below, Mr. LeBoeuf cites no legal authority to support transfer of the instant case to Oklahoma County. Also, there are no issues of law or fact common to the Logan County and Oklahoma County cases.

4. Finally, Mr. LeBoeuf cites no factual or legal basis whatsoever to support his request that the Court set aside the Order Appointing Receiver filed on October 14, 2004.

WHEREFORE, the Receiver, Douglas L. Jackson, respectfully requests that this Court strike the intervention pleading filed on behalf of Mr. LeBoeuf along with the August 12, 2005 hearing. In the alternative, should the Court allow Mr. LeBoeuf to proceed with his intervention without seeking or obtaining leave of the Court, the Receiver respectfully requests that this Court deny Mr. LeBoeuf's incorporated *Motion to Transfer and Consolidate this Matter*.

#### BRIEF IN SUPPORT

##### **I. Mr. LeBoeuf should not be permitted to intervene without leave of Court.**

On July 15, 2005, the court-appointed Receiver received a copy of Richard LeBoeuf's ("LeBoeuf") Intervention of Party and Motion to Consolidate filed with this Court on July 8, 2005. However, LeBoeuf did not follow the mandatory procedure provided in 12 O.S. §2024(C) regarding intervention. Specifically, 12 O.S. §2024(C) provides as follows:

C. PROCEDURE. A person desiring to intervene **shall** serve a motion to intervene upon the parties as provided in section 2005 of this title. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. **If the motion to intervene is granted**, the plaintiff or defendant, or both, may respond to the pleading of the intervenor within twenty days after the date that the motion was granted unless the court prescribes a shorter time. See 12 O.S. §2024(C)(emphasis added).

Here, LeBoeuf failed to follow any of the mandatory provisions of the above-quoted statute. First, LeBoeuf failed to file a Motion to Intervene. As such, LeBoeuf has not yet sought, much less obtained, leave of this Court to intervene in this case. Because LeBoeuf has not obtained leave of Court to intervene in this case, the pleading he filed should be stricken along with the August 12, 2005 hearing set relative to the improper pleading.

Second, LeBoeuf has failed to attach a pleading setting forth the claim(s) or defense(s) for which intervention is sought as required by 12 O.S. §2024(C). Again, due to LeBoeuf's failure to comply with procedure specifically outlined by this section of the Oklahoma Pleading Code, the intervention/motion document filed on July 8, 2005 should be stricken along with the hearing set relative to that pleading.

Third, the above-quoted statute provides that "if the motion to intervene is granted . . ." the parties already in the suit will have twenty (20) days to respond to the intervenor's pleading unless the Court provides for a shorter time. As noted above, LeBoeuf has not filed a Motion to Intervene, nor has this Court granted LeBoeuf leave to intervene. Therefore, the third procedural aspect of 12 O.S. §2024(C) has not been met.

Fourth, the intervention/motion improperly filed by LeBoeuf does not even indicate whether LeBoeuf is seeking to intervene in this case as a matter of right or permissively. Likewise, the pleading filed on behalf of LeBoeuf does not indicate whether he is seeking to intervene as a plaintiff or defendant in the Logan County case.

Based upon the facts and legal authorities cited above, the intervention/motion document filed on behalf of LeBoeuf on July 8, 2005 is void and should be stricken without a hearing pursuant to Rule 4(h) of the Rules for the District Courts of Oklahoma. Furthermore, neither the Receiver nor the Plaintiff Oklahoma Department of Securities should be required to incur the time and expense of appearing for a hearing on this improper pleading on August 12, 2005.

Therefore, the Receiver respectfully requests that this Court strike the *Intervention of Party and Motion to Transfer and Consolidate this Matter* filed by LeBoeuf without a hearing pursuant to Rule 4(h) of the Rules for the District Courts of Oklahoma, and strike the related August 12<sup>th</sup> hearing date set relative to this intervention.

**II. Alternatively, LeBoeuf has failed to state grounds for the transfer and consolidation of this case or set aside the Order Appointing Receiver.**

A. The Motion to Transfer and Consolidate is without merit.

LeBoeuf's *Intervention of Party and Motion to Transfer and Consolidate this Matter* fails to cite any legal authority in support of its request to this Court. The assignment and transfer of cases is actually governed by 20 O.S. §95.6, which provides as follows:

The judges in a judicial district may adopt local court rules regarding the assignment and transfer of cases between judges which will facilitate final dispositions, and nothing herein shall prevent a judge from transferring a case **to another judge in the district who has consented such transfer.** (emphasis added).

Here, LeBoeuf is not requesting the Court to transfer this case to another judge within the 9<sup>th</sup> Judicial District as contemplated by 20 O.S. §95.6. LeBoeuf is not requesting a change of venue under allegations that he cannot obtain a fair and impartial trial in the county where this lawsuit is currently pending pursuant to 12 O.S. §140. Rather, LeBoeuf is asking this Court to transfer this Logan County case, pending in the 9<sup>th</sup> Judicial District, to a court in the 7<sup>th</sup> Judicial District.

Based on the foregoing facts and legal authority, LeBoeuf has failed to establish either the legal grounds or a factual basis to warrant transferring the Oklahoma Department of Securities' action against Marsha Schubert, individually, and d/b/a Schubert and Associates, to the District Court of Oklahoma County, or the 7<sup>th</sup> Judicial District. Therefore, the Receiver respectfully requests that this Court deny LeBoeuf's *Motion to Transfer and Consolidate this Matter*.

Similarly, LeBoeuf has not stated sufficient facts or legal authority for his request that this Court consolidate the Logan County action with cases pending in Oklahoma County before Judge Parrish. First, the Receiver is unaware of any legal authority that would allow consolidation of cases involving different parties pending in different judicial districts.

Second, consolidation of cases is governed by 12 O.S. §2018(C), which provides in part that, “when actions involving a common question of law or fact pending before the court, it may order a joint hearing or trial of any or all of the matters in issue in the action . . .” Here, there is only one action pending before the District Court of Logan County. As such, there is nothing for this Court to consolidate under §2018(C).

Third, LeBoeuf inaccurately asserts that there are questions of fact and/or law common between the Logan County case and the Oklahoma County cases. The Logan County case was initiated by the Oklahoma Department of Securities seeking a permanent injunction against Marsha Schubert, individually and d/b/a Schubert and Associates, and Richard Schubert, individually and d/b/a Schubert and Associates for violations of Oklahoma’s securities laws. On November 11, 2004, a Stipulation and Consent to Order of Permanent Injunction executed by the Oklahoma Department of Securities, Marsha Schubert, and Marsha Schubert’s attorney was filed in the Logan County case. On that same date, the District Court of Logan County entered an Order of Permanent Injunction relative to Marsha Schubert, individually, and d/b/a Schubert and Associates. On April 4, 2005, the Oklahoma Department of Securities dismissed Richard Schubert from the case pending in the District Court of Logan County. As such, the only current reason that the Logan County case remains open is for the oversight and administration of the Receivership.

To the contrary, the case that the Oklahoma Department of Securities and Receiver filed in Oklahoma County against the relief defendants is based on causes of action for unjust

enrichment and receipt of assets through fraudulent transfers. LeBoeuf and his co-defendants are certainly parties to the Oklahoma County case. LeBoeuf and his co-defendants are not parties to the case pending in the District Court of Logan County. Likewise, the Receiver is a named Plaintiff in the Oklahoma County case. While the Receiver was appointed by the District Court of Logan County and is designated as an interested party, the Receiver is neither a plaintiff nor a defendant in the case pending in the District Court of Logan County. Based on the foregoing facts and legal authority, LeBoeuf has failed to establish any legal or factual basis for the District Court of Logan County to consolidate the case pending before it with the cases pending in the District Court of Oklahoma County. Therefore, this Court should deny LeBoeuf's request to consolidate this matter with cases pending in the 7<sup>th</sup> Judicial District.

B. The Court's October 14, 2004 Order Appointing Receiver is proper and should not be set aside.

Finally, LeBoeuf requests in his *Intervention and Motion to Transfer and Consolidate this Matter* that the Court set aside the Order Appointing Receiver. Again, LeBoeuf has failed to cite any legal or factual basis for the Court to set aside its October 14, 2004 Order, which among other things, appointed Douglas L. Jackson as Receiver. LeBoeuf does not assert in his July 8<sup>th</sup> pleading any alleged misconduct on the part of the Receiver, or any other factual basis that would provide this Court any reason to overturn its prior Order.

The Receiver has been granted specific powers, authorities and duties defined by the Court. The Receiver has utilized those powers and authorities in conjunction with the statutory provisions relative to receivers found at 12 O.S. §1551, *et seq.* The Receiver made application to this Court and obtained approval to hire an accounting firm. Likewise, the Receiver made application to this Court and obtained its approval to hire legal counsel. Furthermore, the Receiver has made application to this Court and obtained its approval prior to making any large expenditure of Receivership assets. Every month the Receiver has prepared and filed an

accounting with this Court detailing the deposits into and payments made out of the Receiver's checking and money market accounts.

Based on the foregoing facts and legal authority, LeBoeuf has shown this Court no legal or factual basis whatsoever that would warrant setting aside the Order Appointing Receiver entered on October 14, 2004. To the contrary, the Receiver has shown the Court that it has complied with this Court's instructions and orders while utilizing the powers and authorities that this Court and the Oklahoma statutes allow. Therefore, the Receiver respectfully requests that this Court deny LeBoeuf's request to set aside the Order Appointing Receiver.

Respectfully submitted,



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Douglas L. Jackson

CERTIFICATE OF SERVICE

I hereby certify that on the 28<sup>th</sup> day of July 2005, I mailed a true and correct copy of the above and foregoing instrument, postage pre-paid to:

Oklahoma Department of Securities  
Attn: Gerri Stuckey, Amanda Cornmesser  
First National Center, Suite 860  
120 N. Robinson  
Oklahoma City, OK 73102

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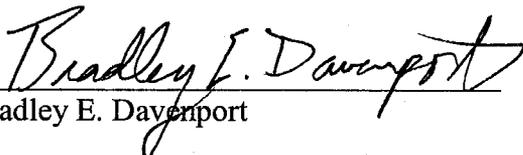
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