

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES)
Ex rel. IRVING L. FAUGHT, Administrator,)
and DOUGLAS L. JACKSON, in his capacity as)
the court appointed receiver for the investors and)
creditors of Schubert & Assoc. and for the assets)
of Marsha Schubert, individually, and doing)
business as Schubert & Associates, and for)
Schubert & Associates,)

Plaintiffs/Appellees,)

vs.)

ROBERT W. MATHEWS, MARVIN L. WILCOX,)
PAMELA J. WILCOX, DETRIA J. OWENS,)
KATHLEEN GIBSON, SHERYL MERCER,)
FRANK WARD, ALICE SUE WARD, BEN J.)
ALLEN, SHARON A. ALLEN, MICHAEL)
ROGERS, BOB E. HUDSON,)
JANICE FAGG, EDWARD G. STATON,)
KENNETH LARUE, ELLA CARR, MARTIN W.)
MATHEWS, BETH ARMER, individually, and as)
trustee for the BETH ARMER REVOCABLE)
TRUST, SHANNA KINSLOW, ROY E.)
LANDWEHR, VICKI L. LANDWEHR, SCOTT A)
WILCOX, RYAN E. LANDWEHR, LINDSEY)
LANDWEHR, JOHN PUMPHREY, CAROLYN)
PUMPHREY, JUSTIN R. TARRANT, JEFFREY)
L. WILCOX, JACQUELYN BOUNDS, STEVEN)
R. ESPOLT, PHILLIP YENZER, GLENDA)
YENZER, LOYD R. JONES, RICHARD)
BRANDON SCHUBERT, HILLARY MICHELLE)
SCHUBERT, GARRETT LEE SCHUBERT, JACK)
D. SIMPSON, SUE J. SIMPSON, ROBERT J.)
OWENS, CHAD JOHNSON, SONNY HARMON)
RODNEY J. MARTIN, WANDA MARTIN,)
K.R. LARUE, DANA LARUE,)
KENNETH YOUNG, LESLIE A. YOUNG,)
ALEXANDER YOUNG, DEAN CUE,)
CLAUDETTE CUE, THERESA PITTMAN,)
DANILE JACKSON, CRYSTAL JACKSON,)
JERALD WAYNE DRAKE, REGINA KRAUS,)
LARRY E. BERRY, ROBERT E. PROCTOR, if)
living, individually and as trustee for the PROCTOR)

FILED
SUPREME COURT
STATE OF OKLAHOMA
JAN 30 2007
MICHAEL S. RICHIE
CLERK

Case No. CJ-2005-3796
Consolidated with
Case No. CJ-2005-3299

Supreme Court #104262

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

JAN 30 2007

PATRICIA PREDLEY, COURT CLERK
by _____
Deputy

PETITION IN ERROR

FAMILY REVOCABLE TRUST, and if deceased,)
 his unknown successors, BOBBY PROCTOR,)
 individually and as trustee for the PROCTOR)
 FAMILY REVOCABLE TRUST, SANDRA K.)
 PHILLIPS, ELNORA VIEFHAUS, CHESTER J.)
 WEEMS, BECKY DRAKE, CURTIS R.)
 SANDERS, PAUL LEE, DANNY GREGORY,)
 MARTHA GREGORY, LINDA K. JINDRA,)
 JOSEPHINE WARD, KERRY LONG, RAYMOND)
 C. LAUBACH, GARY L. SCOTT, JAMES W.)
 POWELL, BILLIE A. VINCENT, TED A. PAYNE,)
 JOYCE E. PAYNE, SEAN WINN, TREY A.)
 ROEHRIG, ANGELA D.)
 EWERS, BRENDA L. ENOS, OLIN R. RISING,)
 J.M. MILLER, WILLIS LUBER, CAROL A.)
 LINDLEY, MAUDIE L. COOK, BILL HARRIS,)
 REBECCA HONEYMAN, TODD A. WARD,)
 WILLIAM ETHERIDGE, CHRISTOPHER)
 LARUE, VIOLA M. ESTES, BRIAN)
 REINHARDT, TONYA REINHARDT, JAMES)
 WYATT, THELMA WYATT, ARTHUR PLATT,)
 BETTE MCCLURE, PHILLIP MATTHEWS,)
 BRAD POLLARD, ALLEN GRIFFITH, LINDA)
 ELLIOTT, LINDA STEWART, CHELSEA)
 VENABLE, GAYLE VENABLE, JAMIE)
 WALKER GLOVER, RICHARD LEOEUF, E.E.)
 TACKETT, TIMOTHY W. RAINS, KRISTA)
 RAINS, MICHAEL L. MALLOY, RENYSSA)
 WINES, MIKE BOSTICK, DON POINDEXTER,)
 ANITA TARRALBO, KIRSTEN ALLARD,)
 MICKE RICHEY, SHAWNA ALLEN, TIMOTHY)
 JACKSON, JULIA JACKSON, BETTY LAMB,)
 BILL MCCUTCHEN, BRANDI POLLARD,)
 CRAIG SIMMONS, BILL D. HORN, JACK)
 MCNALLY, LAURA PAYNE, MANUEL)
 SEGURA, KENNETH R. WILLIAMS, BERTHA)
 L. COPPER, WES PRICE, TRICIA PRICE,)
 TAWNAYA MERCHANT, MARGARET)
 HOOLEY, JANET L. LAWHON,)
 MAY FRATES, BOB PRESTRIDGE JR.,)
 GERALD D. KNIGHT, JIM COPELAND, MONTE)
 PHILLIPS, VINCENT H. SCOTT, TRACY)

TARRANT, ELLEN CLAY BENNER, BRIAN)
 OWENS, LLOYD AVERY, DENISE MELOY,)
 GARY L. BOUNDS, DONALD D. HALL, KEVIN)
 L. CARNES, CECIL WILLIAMS, JEFFREY)
 PALMER, MARK RICHARDS, MELINDA)
 HOBBS, JODI SHARP, and BEVERLY KEGIN,)
)
 Defendants,)
)
 KENNETH LARUE,)
)
 Defendant/Appellant.)

PETITION IN ERROR

 X PETITION IN ERROR
 AMENDED OR SUPPLEMENTAL PETITION
 CROSS PETITION
 COUNTER-PETITION
 DATE FIRST PETITION IN ERROR FILED: _____

I. TRIAL COURT HISTORY

COURT/TRIBUNAL: District Court
 COUNTY: Oklahoma
 CASE NO.: CJ-2005-3796 consolidated with CJ-2005-3299
 JUDGE: Patricia G. Parrish
 NATURE OF CASE: Securities action
 (e.g. Divorce, Personal Injury)

NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR:
Kenneth LaRue

THE APPEAL IS BROUGHT FROM: (Check one)
 X Judgment, Decree or Final order of District Court.
 X Appeal from order granting summary judgment or motion to dismiss
 where motion filed after October 1, 1993 (Accelerated procedure under
 Rule 1.36).
 Appeal from Revocation of Driver's License (Rule 1.21(b)).
 Final Order of Other Tribunal.

(Specify Corporation Commission, Insurance Department, Tax Commission, Court of Tax Review, Banking Board or Banking Commissioner, etc. _____)

____ Interlocutory Order Appealable by Right.

____ Other _____

II. TIMELINESS OF APPEAL

1. Date of judgment, decree or order appealed was filed: January 17, 2007
2. *If decision was taken under advisement*, date judgment, decree or order was mailed to parties: January 17, 2007
3. Does the judgment or order on appeal dispose of all claims by and against all parties? ___ Yes ___ No.
If not, did district court direct entry of judgment in accordance with 12 O.S. Supp.1995 994? ___ Yes ___ No.
When was this done? December 17, 2006
4. If the judgment or order is not a final disposition, is it appealable because it is an Interlocutory Order Appealable by Right? ___ Yes ___ No.
5. If none of the above applies, what is the *specific* statutory basis for determining the judgment or order is appealable? _____
6. Were any post-trial motions filed?

<u>Type</u>	<u>Date Filed</u>	<u>Date Disposed</u>
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7. This Petition is filed by: ___ ___ Delivery to Clerk, or
_____ Mailing to Clerk by U.S. Certified Mail,
Return Receipt Requested, on _____

III RELATED OR PRIOR APPEALS

List all prior appeals involving same parties or same trial court proceeding:

Original Jurisdiction matter was filed on October 28, 2005. It was styled: Robert L. Mathews, et al v. The Honorable Patricia A. Parrish, District Court Judge for Oklahoma County, Case No.102,717, original jurisdiction not assumed; Oklahoma Department of Securities et al v. Marsha Schubert et al, Case No. 102,716, dismissed

List all related appeals involving same issues: Original Jurisdiction matter was filed on

October 28, 2005. It was styled: Robert L. Mathews, et al v. The Honorable Patricia A. Parrish, District Court Judge for Oklahoma County, Case No. 102,717, original jurisdiction not assumed; Oklahoma Department of Securities et al v. Marsha Schubert et al, Case No. 102,716, dismissed.

(Identify by Style, Appeal Number, Status, and Citation, if any. If none, so state.)

IV. SETTLEMENT CONFERENCE

Is appellatant willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250? ___ Yes ___ X No

V. RECORD ON APPEAL

_____ A Transcript will be ordered.
_____ No Transcript will be ordered because no record was made and/or no transcript will be necessary for this appeal
_____ A Narrative Statement will be filed
 X Record is concurrently filed as required by Rule 1.34 (Driver's License Appeals, etc.) or Rule 1.36 (Summary judgments and motions to dismiss granted).

VI JUDGMENT, DECREE OR ORDER APPEALED – EXHIBIT “A”

(Attach as Exhibit “A” to the Petition in Error a certified copy of the judgment, decree or order from which the appeal is taken. If a post-trial motion extending appeal time under Rule 1.22 was filed, a certified copy of the order disposing of the motion must be attached also.)

VII SUMMARY OF CASE – EXHIBIT “B”

Attach as Exhibit “B” a brief summary of the case *not to exceed one 8 ½” x 11” double spaced page.*

VIII ISSUES TO BE RAISED ON APPEAL – EXHIBIT “C”

Attach as Exhibit “C” the issues proposed to be raised. Include each point of law alleged as error. Avoid general statements such as “Judgment not supported by law.”

IX NAME OF COUNSEL OR PARTY, IF PRO SE

ATTORNEYS FOR APPELLANTS

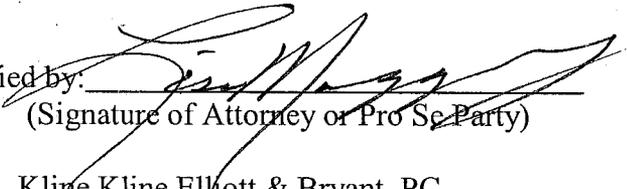
Name: G. David Bryant,
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DATE: January 30, 2007

Verified by: 
(Signature of Attorney or Pro Se Party)

Firm: Kline Kline Elliott & Bryant, PC
Address: 720 N.E. 63rd Street
Oklahoma City, Oklahoma 73105
Telephone: (405) 848-4448
Telecopier: (405) 842-4539

CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

I hereby certify that a true and correct copy of the Petition in Error was mailed this 30th day of January, 2007 to:

Amanda Cornmesser
Gerri Stuckey
Melanie Hall
First National Center, Suite 860
120 North Robinson
Oklahoma City, Oklahoma 73102

Bradley E. Davenport
323 W. Broadway Avenue
Enid, Oklahoma 73701-1549

Attorney for the Receiver,
Douglas L. Jackson

Attorneys for Oklahoma
Department of Securities

By depositing it in the U.S. Mails, postage prepaid.

I further certify that copy of the Petition in Error was filed in the Office of the Oklahoma County District Court Clerk on the 30th day of January, 2007.

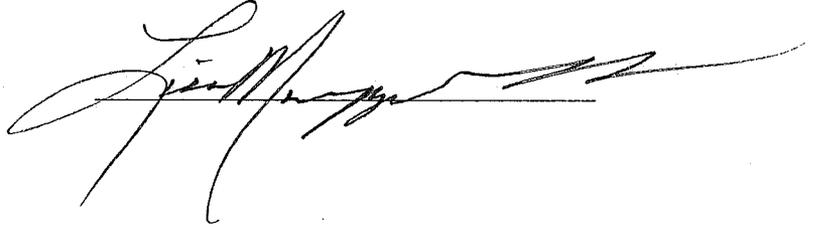


EXHIBIT "B" -- APPELLANTS' STATEMENT OF THE CASE

This case arises out of a dispute as to monies received by Appellant as the result of a ponzi scheme conducted by Marsha Schubert, an individual d/b/a Schubert & Associates ("Schubert"). Appellant was an innocent victim of the scheme and had no knowledge of the scheme until Schubert was criminally charged. Appellee, Oklahoma Department of Securities brought this action pursuant to the Oklahoma Uniform Securities Act. A receivership action was initiated against Schubert in the District Court of Logan County. As a result of this action, the Receiver was appointed. Appellee, Receiver, brought this action pursuant to the Logan County Order of Receivership. Appellees alleged causes of action against Appellants for unjust enrichment and for fraudulent transfer under the Oklahoma Uniform Fraudulent Transfers Act. Subsequently, Appellees withdrew the fraudulent transfer claim.

Appellees admitted in their pleadings that Appellant was not a violator of the Securities Act and that Appellant believed he was making investments. At no time prior to October 2004 was the Appellant aware of the wrongful acts being committed by Schubert. Appellant deposited his investment money in his investment accounts through Schubert as the registered agent of various brokerage firms. Therefore, consideration was provided by Appellant as to his individual investments. Appellant had a good faith belief that all monies received, which are now the subject of this lawsuit, were funds that rightfully belonged to him. On October 10, 2006 Appellees filed a Motion for Summary Judgment against Defendant Kenneth LaRue. The trial court granted Appellees' Motion for Summary Judgment and Appellants appeal therefrom.

EXHIBIT "C"

ISSUES TO BE RAISED ON APPEAL

1. Whether the trial court erred in granting the Motion for Summary Judgment.
2. Whether an action can be maintained under the Oklahoma Uniform Securities Act against innocent victims of a ponzi scheme.
3. Whether the Oklahoma Department of Securities, and the Receiver of Marsha Schubert, a sole proprietorship, have a legal or equitable right to third party investor assets.