

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)

Case No. CJ-2005-3796

Consolidated with

Case No. CJ-2005-3299

Supreme Court No. 104262

**SUPPLEMENTAL  
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. )

**SUPPLEMENTAL PETITION IN ERROR**

\_\_\_\_\_ PETITION IN ERROR  
 X  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>
-------------	-------------------	----------------------
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 appellant 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,  
OBA No.: 01264  
Name: Lisa Mueggenborg,  
OBA No.: 18595  
Firm: Kline Kline Elliott & Bryant, PC  
Address.: 720 N.E. 63<sup>rd</sup> Street  
Oklahoma City, Oklahoma 73105  
Telephone: (405) 848-4448  
Telecopier: (405) 842-4539

ATTORNEY FOR APPELLEES

Name: Gerri Stuckey  
OBA No.: 16732  
Name: Amanda Commesser  
OBA No.: 20044  
Firm: Oklahoma Department of Securities  
Address: 120 North Robinson, Suite 860  
Oklahoma City, Oklahoma 73102  
Telephone: (405) 280-7700  
Telecopier: (405)-280-7742

Name: Bradley E. Davenport  
OBA No.: 18687  
Firm: Gungoll, Jackson, Collins, Box & Devoll  
Address: Post Office Box 1549  
Enid, Oklahoma 73702-1549  
Telephone: 580-234-0436  
Telecopier: 580-233-1284

DATE: February 2, 2007

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

Firm: Kline Kline Elliott & Bryant, PC  
Address: 720 N.E. 63<sup>rd</sup> 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 2<sup>nd</sup> day of February, 2007 to:

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

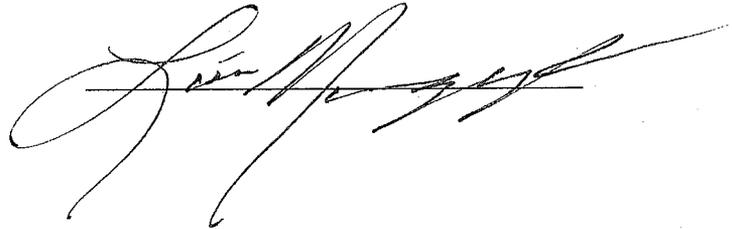
Bradley E. Davenport  
323 W. Broadway Avenue  
Enid, Oklahoma 73701-1549

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 2<sup>nd</sup> day of February, 2007.



IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

JAN 17 2007

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

OKLAHOMA DEPARTMENT OF SECURITIES )  
*ex rel.* IRVING L. FAUGHT, Administrator, et al., )  
 )  
Plaintiffs, )  
v. )  
 )  
ROBERT W. MATHEWS, et al., )  
 )  
Defendants. )

Case No. CJ-2005-3796

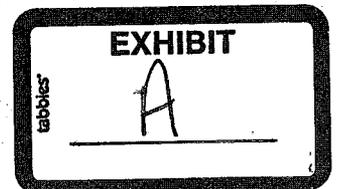
**ORDER OF JUDGMENT**

Now on the 11<sup>th</sup> day of January, 2007, the Motion for Summary Judgment relative to Kenneth LaRue, filed by the Plaintiff, Oklahoma Department of Securities ("Department"), was decided by the Court without hearing pursuant to Rule 4(h) of the Rules of the District Courts of Oklahoma.

Based on the motions and the briefs filed, this Court finds as follows:

1. The Plaintiff/Receiver joined in the Department's Motion for Summary Judgment relative to Defendant Kenneth LaRue;
2. There is no genuine issue of material fact pertaining to Plaintiffs' unjust enrichment cause of action against Defendant Kenneth LaRue; and,
3. Plaintiffs' Motion for Summary Judgment against Defendant Kenneth LaRue, should be and is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that summary judgment is entered against Defendant Kenneth LaRue on Plaintiffs' unjust enrichment cause of action, and Kenneth LaRue is ordered to disgorge and/or repay to Plaintiffs the amount of



\$99,361.93, plus interest accruing thereon at the statutory rate from the date this summary judgment is entered until paid in full, and costs of the action in the amount of \$55.00.

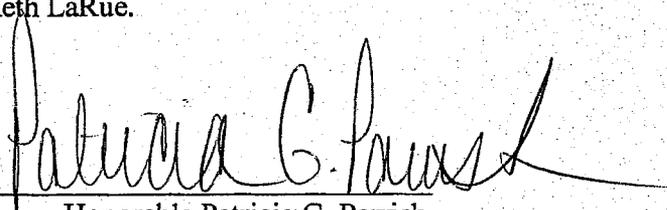
IT IS FURTHER ORDERED that Defendant Kenneth LaRue shall disgorge and/or repay the sums of money set forth above, including interest, to Plaintiff/Receiver, Douglas L. Jackson.

IT IS FURTHER ORDERED that there is no just reason for delay and the Court expressly directs the filing of a final judgment as to Kenneth LaRue.

IT IS SO ORDERED.

Date:

Jan. 11, 2007



Honorable Patricia G. Parrish  
Judge of the District Court

Approved as to Form:

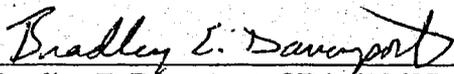
See Attached

Amanda Cornmesser, OBA #20044  
Gerri Stuckey, OBA #16732  
Melanie Hall, OBA #1209  
Oklahoma Department of Securities  
120 N. Robinson, Suite 860  
Oklahoma City, OK 73120  
(405) 280-7700 phone/(405) 280-7742

Attorneys for Plaintiff, Oklahoma Dept. of Securities

I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument here with set out as appears on record in the District Court Clerk's Office of Oklahoma County, Okla. this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

By



Bradley E. Davenport, OBA #18687  
GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.  
Post Office Box 1549  
Enid, Oklahoma 73702-1549  
580) 234-0436 phone/(580) 233-1284 fax

Attorneys for Plaintiff/Receiver, Douglas L. Jackson

IT IS FURTHER ORDERED that Defendant Kenneth LaRue shall disgorge and/or repay the sums of money set forth above, including interest, to Plaintiff/Receiver, Douglas L. Jackson.

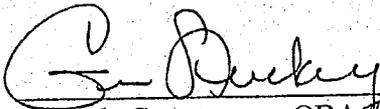
IT IS FURTHER ORDERED that there is no just reason for delay and the Court expressly directs the filing of a final judgment as to Kenneth LaRue.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
Honorable Patricia G. Parrish  
Judge of the District Court

Approved as to Form:



\_\_\_\_\_  
Amanda Cornmesser, OBA #20044

Gerri Stuckey, OBA #16732

Melanie Hall, OBA #1209

Oklahoma Department of Securities

120 N. Robinson, Suite 860

Oklahoma City, OK 73120

(405) 280-7700 phone/(405) 280-7742

Attorneys for Plaintiff, Oklahoma Dept. of Securities

\_\_\_\_\_  
Bradley E. Davenport, OBA #18687

GUNGOLL, JACKSON, COLLINS, BOX & DEVOLL, P.C.

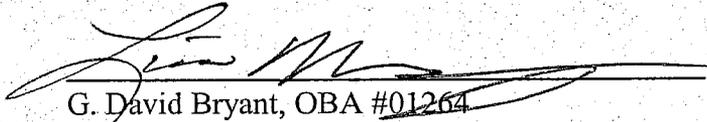
Post Office Box 1549

Enid, Oklahoma 73702-1549

580) 234-0436 phone/(580) 233-1284 fax

Attorneys for Plaintiff/Receiver, Douglas L. Jackson

Approved as to form:

A handwritten signature in black ink, appearing to read "Lisa Mueggenborg", is written over a horizontal line.

G. David Bryant, OBA #01264

Lisa Mueggenborg, OBA #18595

Kline Kline Elliott & Bryant, PC

720 N.E. 63<sup>rd</sup> St.

Oklahoma City, OK 73105

Attorneys for Defendant Kenneth LaRue

**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.