

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUL - 2 2009

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

OKLAHOMA DEPARTMENT OF)
SECURITIES, *ex. rel.* Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
vs.)
)
GLOBAL WEST FUNDING, LTD., CO.,)
an Oklahoma limited liability company, et al.,)
)
Defendants.)

Case No. CJ-2009-2773

PLAINTIFF'S RESPONSE TO THE STORYBOOK DEFENDANTS'
MOTION TO QUASH THE SUBPOENA TO PRODUCE DOCUMENTS
ISSUED TO THIRD PARTY BANK OF AMERICA

Plaintiff, the Oklahoma Department of Securities, issued a District Court Civil Subpoena to Produce Documents (Subpoena) to Bank of America on May 15, 2009, requiring the production of financial records relating to the bank accounts of Defendants Storybook Properties, LLC, Storybook Investments WA, LLC, and Matthew G. Story (the "Storybook Defendants"), and the bank accounts of Storybook Apartments, EZ-To-Buy Homes, LP and EZ-To-Buy Homes #2, LP (the "Storybook Affiliates"). The Subpoena was issued pursuant to 12 O.S. § 2004.1 and § 3226 and the compliance date was June 5, 2009.

Plaintiff complied with the Oklahoma Financial Privacy Act, Okla. Stat. tit. 6, §§ 2201 *et seq.* (2001 & Supp. 2003) (Financial Privacy Act), in the issuance of the Subpoena.

On May 29, 2009, the Storybook Defendants mailed to counsel for Plaintiff, *The Storybook Defendants' Objection to the Subpoena to Produce Documents Issued to Third Party Bank of America* (Objection). The Objection applies to the production of records relating to a personal bank account held by Defendant Matthew G. Story (Story).

On June 17, 2009, the Storybook Defendants filed *The Storybook Defendants' Motion to Quash the Subpoena to Produce Documents Issued to Third Party Bank of America* (Motion to Quash). The Motion to Quash applies to the production of records relating to a personal bank account held by Story.

The Motion to Quash should be denied for the following reasons:

1. The Storybook Defendants did not file the Motion to Quash in the time required by the Financial Privacy Act. The Financial Privacy Act provides that a customer shall have fourteen (14) days after the subpoena was served or mailed in which to file a Motion to Quash and that the Motion to Quash shall be filed in the district court that issued the subpoena. The deadline to file the Motion to Quash in the Oklahoma County District Court was May 29, 2009 but the Motion to Quash was not filed until June 17, 2009.

2. Pursuant to Section 1-602 of the Oklahoma Uniform Securities Act of 2004 (Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), the Administrator of the Oklahoma Department of Securities (Administrator) may make such public or private investigations within this state as he deems necessary or appropriate to determine whether any person has violated or is about to violate any provision of the Act or any rule or order thereunder.

3. Pursuant to Section 1-602 of the Act, the Administrator may require the production of any records the Administrator considers relevant or material to an investigation.

4. Plaintiff has been conducting an investigation of the Storybook Defendants and has an interest in reviewing the Bank of America records of Story. In fact, Plaintiff has alleged in its *First Amendment to Petition for Permanent Injunction and Other Equitable Relief* that the Storybook Defendants have engaged in the issuance, offer and/or sale of unregistered securities in and/or from the state of Oklahoma to investors in the nature of promissory notes. Plaintiff

also alleged that the Storybook Defendants violated the anti-fraud provisions of the Act in connection with the sales of the promissory notes.

5. Story is president, sole unit holder, and manager of Storybook Properties, LLC; managing member of Storybook Investments WA LLC; general partner of EZ-To-Buy Homes, LP; and general partner for EZ-To-Buy Homes #2, LP. In addition Story is the owner of certain real property in Tulsa, Oklahoma in which Storybook Defendants' investors are purported to have interests.

6. It is critical that Plaintiff be allowed access to the personal bank records of Story to independently determine whether Story engaged in further violations of the Act and to determine the location of any funds or other assets. Any statement made by Story must be verified as he is alleged to have already engaged in serious violations of the Act.

7. The financial records requested by the Subpoena are relevant and material to the purpose of Plaintiff's investigation into and allegations of unlawful sales of securities by Story. The Subpoena is relevant to a legitimate inquiry by Plaintiff in its role of investigating securities law violations.

8. In *Enterra Energy, LLC v. United States Securities and Exchange Commission*, 2008 WL 802999 (N.D. Okla.), the Court discussed bank records subpoenaed by a securities regulatory agency and found the question of relevancy is a broad one. The Court stated:

“So long as the material requested ‘touches a matter under investigation’ it will survive a relevancy challenge. *Id.* The government need only have a ‘reasonable belief’ that the records sought are relevant to a legitimate inquiry.” citing, *Equal Employment Opportunity Commission v. Elrod*, 674 F.2d 601, 613 (7th Cir. 1982).

The records requested by the Subpoena concern Story, a Defendant under investigation, and are therefore relevant.

9. As the principal of the Storybook Defendants and the Storybook Affiliates, any records of Story are relevant to Plaintiff's investigation. In *McGarry v. Securities and Exchange Commission*, 147 F. 2d 389 (10th Cir. 1945), the Court discussed whether subpoenaed documents were relevant and pertinent to a securities regulatory inquiry. It found that the "authority of the Commission to require the production of books and papers embraces not only relevant books and papers of the party or corporation under investigation, but also those of third parties or corporations." Clearly, here, Story is a party to this case and is the person controlling the financial transactions of the Storybook Defendants and Storybook Affiliates.

WHEREFORE, Plaintiff requests that the Storybook Defendants' Motion to Quash be denied.

Respectfully submitted,



Patricia A. Labarthe, OBA #10391
Jennifer Shaw, OBA #20839
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
(405) 280-7700

CERTIFICATE OF MAILING

The undersigned certifies that on the 2nd day of July, 2009, a true and correct copy of the foregoing was mailed by first class mail, with postage prepaid thereon, addressed to:

Brian McKye
PO Box 957
Jay, OK 74346
Pro Se

Global West Funding, Ltd.
Global West Financial, LLC
Sure Lock Financial, LLC
Sure Lock Loans, LLC
The Wave Gold-Made, Ltd.
PO Box 60725
Oklahoma City, OK 73146

R. Scott Adams
Adams & Associates, PC
204 N. Robinson, 25th Fl.
Oklahoma City, OK 73102
Attorney for Defendants Joe Don Johnson and Heritage Estate Service LLC

Robert G. McCampbell
Kristin L. Huffaker
Crowe & Dunlevy
20 N. Broadway, Suite 1800
Oklahoma City, OK 73102-8273
Attorneys for Defendants Storybook Properties, LLC, Storybook Investments WA, LLC, and Matthew G. Story

James Farnham
6308 N. Harvard Avenue
Oklahoma City, OK 73122

Stephen J. Moriarty
Fellers, Snider, Blankenship, Bailey and Tippens, PC
100 N. Broadway, Ste. 1700
Oklahoma City, OK 73102


Patricia A. Labarthe