

In re: FIRST NLC FINANCIAL SERVICES, LLC, et al. Debtors

DEBORAH C. MENOTTE, Trustee

Plaintiff,

v.

NLC HOLDING CORP., FNLC FINANCIAL  
SERVICES, INC., BLUE BOY LIMITED  
PARTNERSHIP, NSH VENTURES II,  
L.P., and FRIEDMAN BILLINGS RAMSEY  
GROUP, INC.

Defendants

**Case No. 08-10632-BKC-PGH**  
**ADV. NO.:08-01327-PGH**

The complaint sought recharacterization of the Debtor's alleged debt to the Defendants as equity. The parties filed cross-motions for summary judgment. The Defendants argued that non-shareholder loans may not be recharacterized as equity as a matter of law. The Court ruled that recharacterization is not limited to shareholder loans and that under appropriate circumstances the Court may recharacterize loans that are in substance equity. The Court noted that *Estes v. N & D Prop., Inc.*, (In re *N & D Prop., Inc.*), 799 F.2d 726 (11th Cir. 1986) does not limit recharacterization to shareholder loans. The Court also recognized that the *N&D Properties* test as well as various multi-factor tests are used by courts to determine claims for recharacterization. Thus, the Court denied the Defendants' motion because the law allows recharacterization of non-shareholder loans where appropriate. The Court denied the Trustee's motion due to the existence of disputed issues of material fact such as the intent of the parties or if there was a reasonable expectation of payment.