

STATE OF MICHIGAN  
SIXTEENTH JUDICIAL CIRCUIT COURT

SARMAD BRIKHO,

Plaintiff,

vs.

Case No. 2014-3977-CB

SHANT SHIRINIAN, SHIRINIAN INVESTMENTS,  
LLC, VAN 8 COLLISION, INC., GARY  
CUNNINGHAM, and GARY H. CUNNINGHAM,  
P.C.

Defendants,

and

CHOICE AUTOMOTIVE GROUP, LLC, d/b/a  
Chase Automotive Leasing,

Nominal Defendant.

FILED  
2016 DEC 13 P 2:26  
DARHELLA SABAUGH  
MACOMB COUNTY CLERK  
MT. CLEMENS, MICHIGAN

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OPINION AND ORDER

This matter is before the Court in connection with the Receiver's ninth report.

I. Factual and Procedural History

In November 2014, Plaintiffs filed their original complaint in this matter. The original complaint contains the following claims: Count I- Violation of Michigan's Uniform Partnership Act, MCL 449.20 through 449.21; Count II- Conversion; Count III- Equitable Accounting; Count IV- Fraudulent Concealment and Misrepresentation; Count V- Tortious Interference with Business and Contractual Relations; Count VI- Promissory Estoppel; and Count VII- Civil Conspiracy.

On December 4, 2014, the Court entered an Order granting Defendants' motion to dissolve Choice Automotive Group, LLC ("CAG") and to appoint a receiver to liquidate its assets ("Order"). In the Order, the Court appointed Anthony J. Caputo as the receiver ("Receiver"). The Receiver has been performing various duties in connection with his role in this matter.

On November 3, 2016, the Receiver filed his 9<sup>th</sup> report ("Report"). On November 10, 2016, the Court entered an Order providing that pages 2-9 and the first paragraph of page 10 were rejected on the basis that they exceeded the scope of the Court's prior order as to what was to be included within the Report. Further, the November 10, 2016 Order provided that the parties had 14 days to submit any objections as to the remainder of the Report, and that their failure to file objections would be deemed a waiver. On November 18, 2016, Plaintiff filed his objections to Report. The Court will now address the portions of the Report not previously addressed by the November 10, 2016 Order.

## II. Arguments and Analysis

The first of the remaining unaddressed portions of the Report is the Receiver's confirmation that he deposited \$910,194.45 in escrow with the Macomb County Circuit Court as previously ordered by the Court. Neither party has objected nor otherwise challenged that the Receiver has complied with this Court's order regarding placing the funds in escrow. Based on the evidence presented by the Receiver establishing that the deposit was made (See Exhibit A to the Report), and the fact that neither party has objected to that section of the

Report, the portion of the Report entitled “Judicial Deposit of Choice Funds” will be accepted.

The next portion of the Report lists several reasons why, in the Receiver’s opinion, the receivership estate must be continued. The first reason is that Plaintiff’s liability to CAG must be determined. While Plaintiff disputes that his is liable to CAG, no one disputes that Plaintiff’s liability, if any, to CAG must be resolved prior to closing the receivership estate. As a result, the Court is satisfied that the Receiver’s first reason why the receivership estate should not be closed is valid.

The second reason why the Receiver maintains that the receivership estate should remain open is to determine whether CAG has any claims against Mr. Cunningham, and if so, whether those claims should be pursued. Similarly to the first issue, while Mr. Cunningham disputes that he has any liability to CAG, there is no dispute that the issue must be determined prior to closing the receivership estate.

The third, seventh and eighth reasons all deal with the storage/maintenance of CAG’s records. Neither side has objected to any of those reasons. Specifically, the parties agree that a third party is needed to oversee and maintain CAG’s records (reason 3), and that arrangements need to be made to store the documents for six years (reasons 7 and 8). As a result, the Court is satisfied that reasons 3, 7 and 8 are valid reasons to continue the receivership estate at this time.

The fourth reason is merely that the Receiver will need to testify at trial. Both sides agree that the Receiver's testimony will be needed at trial. As a result, the fourth reason is hereby deemed valid.

The fifth reason is a statement that CAG may become a necessary party. However, neither side, nor the Receiver, has moved to join CAG as a necessary party. As a result, the Court hereby finds the fifth reason to be speculative rather than a clear reason for continuing the estate.

The sixth reason is the Receiver's belief that amended tax returns may need to be filed depending on what happens at trial. Neither side has objected and both sides agree that the issue of whether amended tax returns will be needed is an open issue that needs to be resolved.

The ninth reason is the Receiver's statement that CAG's funds that are being held in escrow must be distributed. Indeed, the issue of how the funds will be distributed will be addressed at trial, and after a determination is made as to how the funds should be distributed, the Receiver will need to effectuate that ruling.

The final reason is that a final report will need to be prepared after the matters addressed above are resolved. This is clearly something that will need to be completed before the estate is closed, and as a result the Court finds reasons ten for continuing the estate to be valid.

Having addressed the reasons why the receivership estate should be continued, the next matter addressed in the Report is CAG's accounting records from March 1, 2016 through October 31, 2016. While neither side challenges

whether the financial statement are attached, the issue of CAG's accounting remains open and will be addressed at trial.

Finally, Plaintiff has challenged the Receiver's fees. Accordingly, the Court is satisfied that this issue must be set for a hearing.

### III. Conclusion

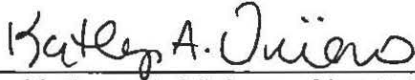
As to the portions of Receiver's ninth report not previously addressed in the November 10, 2016 Order, the Court hereby holds:

- 1) That the Receiver has properly deposited \$910,194.45 in escrow with the Macomb County Circuit Court as previously ordered by this Court;
- 2) That the Receivership estate must remain open for reasons 1-4 and 6-10 as set forth on pg. 10-11 of the Report;
- 3) That the Receiver has attached CAG's financial documents for March 1, 2016 through October 31, 2016. However, the Receiver's conclusions with respect to CAG's accounting remain subject to challenge at trial; and
- 4) That the issue of the Receiver's fees must be set for a hearing on **January 27, 2017 at 1:30 pm.**

In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: **DEC 13 2016**

  
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Hon. Kathryn A. Viviano, Circuit Court Judge