

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

HUNTINGTON NATIONAL BANK,

Plaintiff,

Case No. 15-11468-CKB

vs.

HON. CHRISTOPHER P. YATES

2907 KNAPP, LLC; MICHIGAN
ORTHOPEDICS & SPORTS
MEDICINE, P.C.; and KYLE R.
RANDALL,

Defendants.

OPINION AND ORDER GRANTING MOTION FOR APPOINTMENT OF RECEIVER

This collection case is unfolding in an uncommon, although permissible, fashion. Plaintiff Huntington National Bank (“Huntington”) initiated this action by filing a complaint seeking a money judgment, judicial foreclosure, and appointment of a receiver. On August 11, 2017, at the behest of the parties, the Court entered a “Money Judgment and Order of Foreclosure” obligating all three of the defendants to pay two money judgments in an aggregate amount exceeding \$1.3 million. Also, the judgment authorized Huntington to foreclose its mortgage on the real property commonly known as 2907 Knapp Street in Grand Rapids, and further provided that the “bid at the foreclosure sale shall be credited to the Money Judgment[,]” thereby reducing the judgment obligation by the selling price of the property. But the judgment did not specify how the property should be managed until the sale takes place. Therefore, Huntington has moved for the appointment of a receiver to manage the real property until it is sold. Because the Court concludes that the appointment of a receiver is necessary to improve the condition of the property for an existing tenant, the Court shall grant the motion.

The real property located at 2907 Knapp houses two commercial tenants. First, Defendant Michigan Orthopedics & Sports Medicine, P.C. (“MOSM”), which is owned by Defendant Kyle R. Randall, occupies space in the building. Pursuant to a stipulated order entered on November 1, 2016, Randall and Defendant 2907 Knapp, LLC, had the right to market the property through February 25, 2017, see Stipulation and Order for Interim Settlement and Ongoing Collection of Rents, § I(iii), but they were unable to find a purchaser by that deadline. Second, Achieve Physical Therapy & Sports Rehab, LLC (“Achieve”), which is merely a tenant and not a party to this lawsuit, rents space under the terms of a lease due to expire on October 31, 2018. See Hearing Exhibit 1 (Achieve Lease, § 2). By all accounts, Achieve is a long-term tenant that has regularly met its financial obligations under the lease.

At an evidentiary hearing on August 10, 2017,¹ representatives of Achieve testified that the building they occupy as a tenant has “a multitude of issues,” including problems with lighting, the entrance to the building (which, they explained, is befouled by bird feces and feathers), and elevator maintenance. In addition, the Achieve representatives characterized Defendant Randall’s response to their complaints as inadequate because, in their view, Randall is no longer interested in addressing the issues. Moreover, Jerome Broderick – a 50-percent owner of Achieve – described the property-management services in the building as “very poor.” Understandably, these complaints have caused Plaintiff Huntington substantial concern that Achieve may vacate the premises when its lease expires in 2018, so Huntington has moved for the appointment of a receiver to manage the property.

¹ Although the evidentiary hearing took place more than two months ago, the parties asked the Court to allow them some time to try to work out their disagreements. Recently, however, the attorney for Plaintiff Huntington explained on a conference call that the time has come for an opinion on the motion for appointment of a receiver. Taking its cue from counsel, the Court must now issue a decision on Huntington’s request for a receiver.

“A circuit court has broad jurisdiction to appoint a receiver in an appropriate case.” Reed v Reed, 265 Mich App 131, 161 (2005). Thus, circuit court judges, “in the exercise of their equitable powers, may appoint receivers in all cases pending where appointment is allowed by law.” See MCL 600.2926. This statutory authority “has been interpreted as authorizing a circuit court to appoint a receiver when specifically allowed by statute and also when no specific statute applies but ‘the facts and circumstances render the appointment of a receiver an appropriate exercise of the circuit court’s equitable jurisdiction.’” Reed, 265 Mich App at 161. Plaintiff Huntington contends that the poor condition of the building, and the concomitant concerns of Achieve as a tenant in the building, give the Court ample justification to appoint a receiver.

“‘The purpose of appointing a receiver is to preserve property and to dispose of it under the order of the court.’” Shouneyia v Shouneyia, 291 Mich App 318, 326 (2011). “A court-appointed receiver is a ministerial officer of the court, charged with the task of preserving property and assets during ongoing litigation.” Ypsilanti Fire Marshal v Kircher, 273 Mich App 496, 528 (2007). “‘In general, a receiver should only be appointed in extreme cases.’” Shouneyia, 291 Mich App at 326. “‘But a party’s past unimpressive performance may justify the trial court in appointing a receiver.’” Id., quoting Reed, 265 Mich App at 162. Accordingly, the Court must consider whether the property has been mismanaged to the extent that a receiver should be appointed.

The evidence adduced at the hearing on August 10, 2017, leaves no doubt about whether the Court should appoint a receiver. Representatives of an important tenant, *i.e.*, Achieve, identified the numerous problems with the upkeep of the building, including the failure to address concerns about lighting, elevator operations, and the accumulation of bird feces and feathers. The description of the property-management services as “very poor” in the estimation of Achieve raises genuine concerns

about Achieve's willingness to renew its lease in 2018 if the numerous problems are not addressed. A receiver is precisely what the building needs to improve its condition, and thereby retain Achieve as a tenant. Manifestly, the defendants no longer have much interest in property management, so that responsibility must be assigned to someone else who will do the job.

Given the Court's determination that a receiver should be appointed, the Court must next turn to the selection of the receiver. The Court notes that Plaintiff Huntington has nominated M. Shapiro Development Company to serve as the receiver in this case,² and MCR 2.622(B) obligates the Court to afford deference to that nomination. See Casa Bella Landscaping, LLC v Lee, 315 Mich App 506, 510-511 (2016) (discussing MCR 2.622(B)(5)). The Court is satisfied that M. Shapiro Development Company has sufficient competence, qualifications, and experience to assume the role of the receiver in this case. See MCR 2.622(B). Thus, the Court shall appoint M. Shapiro Development Company to serve as the receiver responsible for managing the property at 2907 Knapp. Also, the Court must enter an order formally appointing the receiver and giving directions to the receiver. Huntington has submitted a proposed order to that effect, so the Court shall give the defendants seven days to present written objections to that proposed order. If no objections are timely submitted, the Court shall sign and enter the proposed order drafted by Huntington.

IT IS SO ORDERED.

Dated: October 18, 2017



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

² That nomination figures prominently in the 14-page proposed order attached as Exhibit D to Plaintiff Huntington's brief supporting its motion for appointment of a receiver over 2907 Knapp.