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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL

SKW-B ACQUISITIONS SELLER C, LLC,	:	May Term 2021	<b>DOCKETED</b>
	:		
Plaintiff/Counterclaim Defendant	:		AUG 30 2023
	:		
v.	:	No. 1951	R. POSTELL COMMERCE PROGRAM
	:		
STOBBA RESIDENTIAL ASSOCIATES, L.P.	:		
And STOBBA ASSOCIATES, L.P.	:	Commerce Program	
	:		
Defendants/Counterclaim Plaintiffs.	:		
	:	Control Number 23064336	

**ORDER**

**AND NOW**, this 30<sup>th</sup> day of August 2023, upon consideration of Plaintiff's Petition to Appoint a Receiver of Property, Defendant's Response in Opposition, after a Hearing/Argument, and in accord with the attached Opinion, it is hereby **ORDERED and DECREED** that the Petition to Appoint Receiver is **GRANTED**.

It is further **ORDERED** as follows:

1. **APPOINTMENT OF RECEIVER**. Stephen B. Resinski of Colliers International is appointed as the Receiver for the following:

(a) Residential Condominium Units 1, 6, 12, 507, 607, 728, 734, 804, 815, and 820 in the Headhouse Flats Condominium located at 200-210 Lombard Street, Philadelphia, Pennsylvania (the "Residential Units") owned by Defendant Stobba Residential Associates, L.P. ("Residential Borrower"), and

(b) Commercial Condominium Unit B in the Headhouse Square Flats Condominium located at 200-210 Lombard Street, Philadelphia, Pennsylvania (the "Commercial Unit") owned by Defendant Stobba Associates, L.P. ("Commercial Borrower"). (The Residential Units and the Commercial Units will be referred to collectively as the "Property").

2. **COMMENCEMENT OF APPOINTMENT**. The Receiver's appointment shall commence on the date this Order is docketed ("the Effective Date") and shall continue thereafter until either further Order of this Court.

210501951-Fs Rialto 2019-FI1 Holder, Llc, C/O Rialto Capital



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3. **NO REPLACEMENT WITHOUT COURT ORDER.** No individual or entity may succeed or replace the Receiver without Order of the Court.

4. **POSSESSION BY RECEIVER.** The Receiver shall take and have exclusive possession of the Property unless removed by Order of the Court.

5. **DUTIES OF THE RECEIVER.** The Receiver shall have all the powers, duties, and authority as are provided by law and under this ORDER, and shall operate, manage, control, conduct, care for, preserve, and maintain the Property.

6. **POWERS OF THE RECEIVER.** Subject to any restrictions set forth herein, the Receiver is authorized and empowered to act as the Receiver of the Property and to do any and all things necessary for the proper management, operation, preservation, maintenance, protection, administration and marketing of the Property, and shall have and possess all powers and rights to the extent necessary to facilitate the management and preservation of the Property, including, but not limited to, the following:

(a) **Management.** Take immediate possession of the Property to the extent necessary to manage, control, operate, preserve, and protect the Property, and to take any other actions as the Receiver deems proper to protect and maintain the Property, including, without limitation, hiring, and compensating a management company to manage the Property on a day to day basis during the pendency of this action or until such time as this Order terminates pursuant to its terms or until further order of this Court;

(b) **Accounts.** Create, as needed, accounts with financial institutions at such locations as are required for management of the Property.

(c) **Collection Actions.** Instruct those who owe an obligation (e.g. rents, income, accounts receivable (from any time period and any other amounts due and unpaid) with respect to the Property, including, without limitation, any tenant or prospective tenant of any portion of the Property, that such obligations shall be paid directly to the Receiver or his designated agents, in such manner and at such address as the Receiver deems appropriate and, if unpaid, institute and prosecute all proper actions for the collection of all cash and accounts and employ counsel or other professionals to represent Receiver in the prosecution of said actions. Receiver may engage Plaintiff's counsel in all respects other than the representation of Receiver in connection with dealings between the Receiver and the Property, and Plaintiff or Defendants, however such dealings shall require Court approval.

(d) **Payment of Expenses.** Pay and discharge all such reasonable, out-of-pocket costs and expenses as shall be incurred by the Receiver in the ordinary course of business in connection with the operation, maintenance, management, protections and preservation of the Property.

(e) **Payments to Plaintiff.** The Receiver is authorized and directed to pay any excess receipts (i.e. gross income after the payment of operational expenses and establishment of an operating reserve in the amount of three months of operating expenses and annual escrow for: taxes, insurance, fire-building code/life safety violations and deferred maintenance) to Plaintiff, which shall be applied to the Debt (as defined in the Complaint);

(f) **Contracts.** Assume and fulfill obligations under all existing contracts with Defendants or its agents relating to the Property (to the extent the Receiver does not reasonably terminate such contracts as not necessary for the continued benefit and maintenance of the Property, with any termination, rejection or default fees/penalties resulting from such termination to be paid strictly out of the operation of the Property to the extent such funds are available) and enter into contracts affecting any part or all of the Property as required in the ordinary course of operating the business related to the Property. If there is sufficient income from the Property, Receiver shall pay out of such income collected to any and all outstanding obligations to suppliers or other creditors who have previously supplied services, materials, business supplies and/or labor (collectively "Suppliers") to or for the benefit of the Property other than pre-receivership expenses which the Receiver shall evaluate, if payments are necessary in his sole judgment and to the extent that that the Receiver determines that any pre-receivership expenses should not be paid, those pre-receivership expenses shall remain an operational expense to be paid strictly out of the operation of the Property as available. The Receiver shall not unreasonably withhold such payments and will act at all times in good faith in determining what pre-receivership expenses, if any should not be paid.

(g) **Agents.** Employ general and special counsel, accountants, property management, leasing agents, maintenance, technical experts, consultants, agents, servants, employees, investigators, engineers, construction vendors, security guards, insurance agents, tax appeals consultants and any other persons reasonably deemed by the Receiver to be necessary or advisable to assist in performing Receiver's duties hereunder and pay therefore the ordinary and usual rates and prices.

(h) **Licenses and Permits.** Timely apply for and obtain any necessary licenses, permits or approvals of all applicable regulatory bodies, and pay any reasonable fees for any lawful license, permit, or other governmental approval relating to the Property; confirm the existence of and, to the extent permitted by law, exercise the privileges of any existing license, permit and other governmental approval.

(i) **Listing and Marketing.** Lease the Property. As for sale, Receiver shall not enter into any listing or marketing agreements for the Sale of the Property, terminate any existing listing or marketing agreements for the sale of the Property, enter into any sales contracts, or terminate any sales contracts without an order of the Court. Receiver shall provide such reasonable information as requested by Defendants with respect to any sale process.

8. **TURNOVER OF PROPERTY TO RECEIVER.** Defendants and their officers, directors, stockholders, general partners, limited partners, members, managers, affiliates agents and employees, and all other persons with actual or constructive knowledge of this Order, shall fully cooperate with Receiver and turn over to him, to the extent in the actual possession or control of Defendants and not subject to privilege any and all documents requested by Receiver in order to perform his duties as set forth in this Order.

9. **NON-INTERFERENCE WITH RECEIVER.** Until such time as the receivership created hereby is terminated by Order of the Court or in accordance with the terms of this Order, or except as required by the Order of a court of competent jurisdiction or in response to a validity issued subpoena, Defendants and their officers, directors, stockholders, general partners, limited partners, members, managers, affiliates, vendors, agents, and employees, and any other person with actual or constructive knowledge of this Order shall not:

(a) **Interfere.** Directly or indirectly interfere in any manner with the discharge of the Receiver's duties hereunder or the Receiver's possession of and operation or management of the Property.

(b) **Contract or Encumber.** Enter into any contract binding upon or incur any liability or obligation of or encumber any of the Property.

(c) **Dispose of Receivership Estate.** Expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in, encumber, conceal or in any manner whatsoever deal in or dispose of the whole or any part of the Property, except both (i) in the ordinary course of the operation of Property, and (ii) upon the express written delegation by the Receiver.

(d) **Commit or Suffer Waste.** Do any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Property.

10. **FURTHER INSTRUCTIONS.** The Receiver or any of the parties hereto may at any time apply to this Court for further or other instructions and for further powers necessary to enable the Receiver to perform his duties properly.

11. **TAXES.** Neither the Receiver nor his agents shall have any responsibility for filing tax returns of any kind on behalf of the Defendants for any and all years prior to and during the Receivership. The Receiver or his agents shall provide financial information in a reasonable time frame when requested in writing by the Defendants or their accountants for purposes of filing income tax returns of any kind.

12. **COMPENSATION OF RECEIVER.** Colliers International shall be compensated for the Receiver's services in accordance with the Fee Schedule attached as Exhibit "O" to Plaintiff's renewed Petition for Appointment of Receiver. The Court may reduce Colliers International's fees as it deems appropriate based on the payments to any manager or management company, or other reasonable basis. Colliers International also shall be

reimbursed for reasonable and necessary out of pocket costs advanced by the Receiver to the extent such costs directly relate to the Receiver's duties hereunder; provided, however, that the Receiver must obtain written approval from Plaintiff prior to incurring any single cost or expense in excess of \$5,000, unless such cost or expense is deemed by the Receiver to be an emergency, in which case the Receiver shall promptly provide Plaintiff notice and full explanation of such emergency cost or expense. Such fees and expenses shall be payable monthly without the requirement of a further Order of the Court.

**13. LIMITATION OF LIABILITY AND INDEMNIFICATION.** The Receiver shall not be liable for actions or omissions hereunder in good faith, except for his own gross negligence or willful misconduct and, except with respect to claims based upon such gross negligence, international or willful misconduct, or material bad faith that are successfully asserted against Receiver, the Plaintiff and the Defendants shall jointly indemnify and hold harmless Receiver and his agents from and against any and all losses, liabilities, claims, actions, damages, and expenses, including reasonable attorneys' fees and disbursements, arising out of or in connection with the Order and the Receiver's actions thereunder. The Defendants, and any party claiming through the Defendants, hereby release Receiver from any act done or omitted to be done by Receiver in good faith in the performance of his duties under this Order, unless such act or omission constituted gross negligence or willful misconduct by Receiver. No party shall file a complaint against the Receiver or his agents without prior approval of the Court.

**14. INSURANCE.** Defendants shall add Receiver and his agents as additional insureds on any insurance policies covering the Property. If Defendants do not provide evidence to Receiver that Receiver has been added to its existing insurance as required in this Paragraph within three (3) days of the date of this Order, or if Defendants at any time allows their existing insurance coverage to lapse in effectiveness or amount of coverage, Receiver may, without further act of or notice to this Court, immediately obtain insurance for the Property in connection with the Receiver's duties hereunder in such amount, with such companies and to insure against such risks as the Receiver deems necessary, provided, however, any party in interest, including the parties hereto, may petition the Court to review and order Receiver to modify such insurance coverage. Such insurance coverage may be allowed for the premiums to be financed.

The Receiver shall obtain receivership and/or errors and omissions liability insurance covering the acts and omissions and any related claims against the Receiver arising from the receivership and the cost shall be deemed a normal, ordinary, and necessary operating expense of the Property. The cost of insurance maintained by Defendants covering the Property and any deductible in connection with any claim made during the receivership under applicable insurance shall be an operation expense of the Property and shall be timely and promptly paid (or reimbursed to Defendants) by Receiver. The Receiver shall only have an obligation to insure the Defendants and none of Defendants' affiliates.

**15. REPORTING AND ACCESS.** The Receiver is directed to prepare and file with the Court for the Court's approval, within forty-five (45) business days after the last day of the calendar month in which it assumed duties, and no less frequently than fifteen (15) business

dates after every sixty (60) days thereafter or the completion of two full calendar months, so long as any part of the Property remains in his possession, and on or within seventy-five (75) days after termination of the receivership, a full and complete report, under oath setting forth all receipts and disbursements and reporting all acts and transactions regarding the execution of the trust of his office as such Receiver, including a current inventory of the funds, assets and property remaining in his possession, all interest in and claims against the same, a current rent roll and current and anticipated income therefrom, and all debts and obligations contracted and expenditures made by it and the reasons therefore, and stating and explaining all changes in the assets and the charges that have occurred during the period covered by the account. The Receiver if further directed to serve copies thereof on the Defendants or their attorneys of record, as well as on Plaintiff, providing such information is provided to Receiver.

16. **JURISDICTION.** The Court shall retain exclusive jurisdiction to the extent necessary to interpret, construe and enforce this Order and any further decrees (including amendment or modifications) and to resolve any disputes concerning this Order brought to the Court's attention by the Receiver.

17. **NO BOND.** The Receiver is not required to post any bond.

**BY THE COURT:**



PAULA A. PATRICK, J.

Vertical text on the right margin, possibly a date or reference number.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL**

SKW-B ACQUISITIONS SELLER C, LLC,	:	May Term 2021
	:	
Plaintiff/Counterclaim Defendant	:	
	:	
v.	:	No. 1951
	:	
STOBBA RESIDENTIAL ASSOCIATES, L.P.	:	
And STOBBA ASSOCIATES, L.P.	:	Commerce Program
	:	
Defendants/Counterclaim Plaintiffs.	:	
	:	Control Number 23064336

**OPINION**

The parties in this matter are not strangers to this Court. This is the one of four actions involving the same parties, same property and same Loan Documents seeking different forms of relief. <sup>1</sup> Presently before the Court is Plaintiff SKW-B Acquisitions Seller C, LLC’s (“Lender”) renewed Petition to Appoint a Receiver. <sup>2</sup> The first Petition to Appoint a Receiver filed on June 4, 2021, was denied by the Court<sup>3</sup> on December 13, 2021. Lender filed this renewed Petition for the Appointment of a Receiver after remand by the Superior Court and new evidence. After considering the Petition, the Response, Counsels’ Arguments and the Record, the renewed Petition to Appoint a Receiver is Granted.

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<sup>1</sup> The other actions are: (1) *FS Rialto 2019-FL1 Holder LLC v. Blumenfeld*, 2107-642 (Confession of Judgment- Stayed by Order of Court), (2) *SKW-B Acquisitions Seller C, LLC v. Stobba Residential Associates et. al.*, 2111-331 (“Lender Foreclosure Action”- summary judgment granted in favor of Lender which is currently on appeal to the Superior Court), and (3) *Stobba Residential Associates, L.P. v. F.S. Rialto 2019-FL1 Holder, LLC et. al.*, 2106-2543 (“Borrower Action”- Order granting Lender’s Motion for Summary Judgment currently on appeal to the Superior Court).

<sup>2</sup> Lender filed this renewed Petition as an emergency allegedly based on “recent and crucial development” which according to Lender have made the situation at the property dire, specifically, the loss of two additional tenants at the property and the visible condition of the property.

<sup>3</sup> The Honorable Leon W. Tucker denied the initial request for Receiver. Defendants Stobba Residential Associates, L.P. and Stobba Associates, L.P. appealed the Order and Lender cross appealed.

## BACKGROUND

On August 2, 2019, FS CREIT Originator, predecessor in interest to Lender<sup>4</sup>, made a loan to Stobba Residential Associates, L.P. and Stobba Associates, L.P. (“Borrowers”) in the amount of \$24,250,000.<sup>5</sup> The Loan is secured by an Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing.<sup>6</sup> Eric Blumenfeld as the sole owner of Borrowers signed the Loan Documents.<sup>7</sup> The Loan requires that “Monthly Debt Service Payment Amount shall be paid by Borrower to Lender on each Payment Date.”<sup>8</sup> “Payment Date is defined in the Loan Agreement as the “ninth (9<sup>th</sup>) day of each calendar month prior to the Maturity Date.”<sup>9</sup> The Loan Agreement provides that an “Event of Default” occurs if any portion of the Debt is not paid on or before the date the same is due and payable.<sup>10</sup>

As security for the Loan, Borrowers granted Lender a security interest in the Property which is described as specified units in Headhouse Flats and Abbots Square developments in

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<sup>4</sup> Lender was assigned the Loan and Loan Documents after a series of written assignments that began with the Originator and ended with Lender. See, Opinions of the Court granting summary judgment to Lender in *SKW-B Acquisitions Seller C, LLC v. Stobba Residential Associates et. al.*, 2111-331 (Mortgage Foreclosure action dated July 6, 2023), and *Stobba Residential Associates, L.P. v. F.S. Rialto 2019-FL1 Holder, LLC et. al.*, 2106-2543 (Borrower Action dated February 6, 2023).

<sup>5</sup> See, Opinions of the Court granting summary judgment to Lender in *SKW-B Acquisitions Seller C, LLC v. Stobba Residential Associates et. al.*, 2111-331 (Mortgage Foreclosure Action dated July 6, 2023), and *Stobba Residential Associates, L.P. v. F.S. Rialto 2019-FL1 Holder, LLC et. al.*, 2106-2543 (Borrower Action dated February 6, 2023).

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.



Philadelphia and all Leases and Rents in connection with the Property.<sup>11</sup> Pursuant to the Assignment of Leases and Rents, Borrower absolutely and unconditionally assigned to Lender property rights, interest and estates now owned or hereinafter acquired by Borrowers including but not limited to rents and additional rents.<sup>12</sup>

The Loan Documents, specifically the Loan Agreement, the DACA Agreement and the Cash Management Agreement required Borrowers to have Commercial Tenants deposit Rents into a designated account at Wells Fargo Bank. The DACA Account was to be in the name of Stobba Associates, L.P. for the benefit of Lender. The Cash Management Agreement provides that on every business day, the funds in the DACA account are to be transferred to the Cash Management Account. The Cash Management Account is in the name of Borrowers for the benefit of Lender.<sup>13</sup> Section 6.1.2 of the Loan Agreement requires Borrower to deliver each commercial tenant a notice instructing it to pay rent into the appropriate account. Section 4.1.4 of the Loan Agreement requires that Borrower provide monthly reports of rents collected from tenants and monthly operating statements of, *inter alia*, gross income, operating expenses, and capital expenses to Lender. If an event of default occurs, as that term is defined by the Loan Documents, Lender has the authority to apply any funds in the Cash Management Account to any obligations in such order of priority as the Lender may decide.<sup>14</sup>

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<sup>11</sup> See, Opinions of the Court granting summary judgment to Lender in *SKW-B Acquisitions Seller C, LLC v. Stobba Residential Associates et. al.*, 2111-331 (Mortgage Foreclosure action dated July 6, 2023), and *Stobba Residential Associates, L.P. v. F.S. Rialto 2019-FL1 Holder, LLC et. al.*, 2106-2543 (Borrower Action dated February 6, 2023).

<sup>12</sup> *Id.*

<sup>13</sup> See, Exhibit “A” to Plaintiff’s renewed Petition to Appoint a Receiver -Loan Agreement § 6.1.1), Exhibit “H” DACA Agreement (§ 1(a)-(b) and §§ 2-5 and Exhibit “I” Cash Management Agreement, § C and §§ 1(a) and 7-8.

<sup>14</sup> See, Exhibit “A” and Exhibit “I” § 9 to Plaintiff’s renewed Petition to Appoint a Receiver.

Borrowers are in default of the loan obligations. Borrowers have not made monthly debt service payments since December 2020 through the present day.<sup>15</sup> Additionally, the Loan matured on August 9, 2022, and Borrowers have not paid off the Loan.<sup>16</sup>

On December 28, 2020, Borrowers instructed the Tenants at the Property to immediately direct their rent payments to Stobba Associates, L. P.'s operating account instead of the account set up at Wells Fargo in accord with the Loan Documents.<sup>17</sup> Tenants at the Property included Giant Food Stores, Wawa, Rita's Water Ice, South Philadelphia Pediatrics, LLC, Supercuts, TD Bank, and Target Park U.S. Inc. Stobba Associates, L.P. is an entity controlled by Eric Blumenfeld. Beginning December 28, 2020 to the present, Tenants of the Property, except for one<sup>18</sup>, began directing their rent payments to Stobba Associates, L.P. operating account contrary to the Loan Documents.<sup>19</sup>

On May 21, 2021, Lender filed this action for breach of contract against Borrowers alleging Borrowers defaulted on the loan by (1) failing to make monthly payments required under the loan

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<sup>15</sup> Borrowers argued that no payments were due because they were excused and/or discharged as a matter of law based on Lender's first occurring breaches. This argument has already been considered and dismissed by the Court. See, Opinions of the Court granting summary judgment to Lender in *SKW-B Acquisitions Seller C, LLC v. Stobba Residential Associates et. al.*, 2111-331 (Mortgage Foreclosure action dated July 6, 2023), and *Stobba Residential Associates, L.P. v. F.S. Rialto 2019-FL1 Holder, LLC et. al.*, 2106-2543 (Borrower Action dated February 6, 2023).

<sup>16</sup> See, Opinions of the Court granting summary judgment to Lender in *SKW-B Acquisitions Seller C, LLC v. Stobba Residential Associates et. al.*, 2111-331 (Mortgage Foreclosure action dated July 6, 2023), and *Stobba Residential Associates, L.P. v. F.S. Rialto 2019-FL1 Holder, LLC et. al.*, 2106-2543 (Borrower Action dated February 6, 2023).

<sup>17</sup> Exhibit "G" to Plaintiff's renewed Petition to Appoint a Receiver

<sup>18</sup> Target Park U.S. Inc. is not directing its rent payment to the Stobba Associates Operating account as directed by the December 28, 2020 letter. The rent is being deposited in the designated account per the Loan Documents.

<sup>19</sup> See Exhibits "N" DEF 580-608 and Exhibit "T" DEF 118-147, Exhibit "U" DEF 364-374, and Exhibit "W" to Plaintiff's renewed Petition to Appoint a Receiver.

documents and (2) diverting its tenants' rents into its own account at TD Bank instead of depositing rents into the DACA account specified in the loan documents. On June 4, 2021, Lender filed a motion seeking appointment of a receiver. Borrowers filed an answer along with counterclaims asserting that Lender committed the first material breach of contract by causing one of Borrowers' tenants, Giant Food Stores, to stop paying rent to Borrowers.

Borrowers filed a Motion for Summary Judgment arguing that Lender's Second Amended Complaint improperly seeks monetary judgment for the "Debt" of the Loan in violation of the Exculpation Clause contained in § 8.6 of the Loan Agreement. On January 24, 2023, the Court denied Borrowers' Motion for Summary Judgment. Lender also filed a Motion for Summary Judgment seeking to dismiss Borrowers' Counterclaims for Breach of Contract, Tortious Interference with Contract, Promissory Estoppel/Detrimental Reliance, and Declaratory Judgment. On January 24, 2023, the Court granted Lender's Motion for Summary Judgment dismissing Borrowers' Counterclaims without prejudice.<sup>20</sup>

In the action captioned *Stobba Residential Associates, LP et. al., v. F.S. Rialto 2019-FL1 Holder LLC et. al.*, 2106-2543 (Borrower Action), the Court granted Summary Judgment in favor of Lender and against Borrowers where in Borrowers asserted the dismissed counterclaims as direct claims against Lender.<sup>21</sup> Borrowers have appealed this Court's decision. Additionally, Summary Judgment was also granted in favor of Lender and against Borrower in the Mortgage

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<sup>20</sup> Court's Orders dated January 24, 2023 in this action.

<sup>21</sup> See, *Stobba Residential Associates, L.P. v. F.S. Rialto 2019-FL1 Holder, LLC et. al.*, 2106-2543 (Borrower Action dated February 6, 2023).

Foreclosure action captioned *SKW-B Acquisitions Seller C, LLC v. Stobba Residential Associates et. al.*, 2111-331.<sup>22</sup> This matter is also currently on appeal.

On March 1, 2023, the Superior Court vacated the Court's Order denying the Petition to Appoint a Receiver dated December 13, 2021, and remanded for further proceedings in accordance with the Superior Court's Opinion. Jurisdiction was relinquished by the Superior Court on June 14, 2023, after a request for re-argument was denied. On June 21, 2023, Lender filed a renewed Emergency Petition to Appoint a Receiver<sup>23</sup> based on the remand from the Superior Court and based on new evidence. The Court heard oral argument on July 25, 2023, and received evidence from the parties with respect their positions. The renewed Petition is now ripe for decision.

#### DISCUSSION<sup>24</sup>

The decision to appoint a receiver is within the sound discretion of the trial court<sup>25</sup>, and will not be reversed absent a clear abuse of discretion."<sup>26</sup> A receiver should "not be appointed

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<sup>22</sup> See *SKW-B Acquisitions Seller C, LLC v. Stobba Residential Associates et. al.*, 2111-331 (Mortgage Foreclosure action dated July 6, 2023).

<sup>23</sup> Under § 8.1(g) of the Mortgage, Borrower agreed that upon an Event of Default, Lender **may** take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender ... apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Guarantor or of any person, firm or other entity liable for the payment of the Debt. (Emphasis Added). The Superior Court found that this provision did not mandate the appointment of a Receiver.

<sup>24</sup>As a preliminary matter, Borrowers argued that the Court lacked jurisdiction to decide the pending Emergency Motion to Appoint a Receiver as Borrower appealed this Court's order denying a motion to stay proceedings. This argument is moot as the Superior Court quashed the appeal. See, Superior Court for appeal No. 1876 EDA 2023.

<sup>25</sup> *Abrams v. Uchitel*, 806 A.2d 1, 8 (Pa. Super. 2002).

<sup>26</sup> *Metropolitan Life Insurance Company v. Liberty Center Venture*, 437 Pa. Super. 544, 548, 650 A.2d 887, 889 (1994).

unless it appears the appointment is necessary to save the property from injury or threatened loss or dissipation.”<sup>27</sup> Where a party seeks the appointment of a receiver to control and manage a business organization, “receivers can be appointed to assure that assets will not be dissipated.”<sup>28</sup>

To warrant the appointment of a receiver for a business enterprise under Pennsylvania common law, “a court must be absolutely certain that it is necessary to protect the interests of creditors.”<sup>29</sup> A receiver should not be appointed “where the appointment will cause more damage than it prevents,” or if “there is another safe, expedient, adequate and less drastic remedy at law.”<sup>30</sup> A Receivership of a solvent corporation is a “drastic remedy,” and should only be granted when “(1) the right to a receivership is free from doubt, and (2) a receivership is clearly required by the facts and circumstances and equities of the case.”<sup>31</sup> The existence of waste or dissipation of assets, or fraud or mismanagement of assets, are some examples of circumstances that may warrant appointing receiver.<sup>32</sup>

Here, the record warrants the appointment of Receiver as Borrowers are misappropriating the rents and mismanaging the Property. The evidence shows that from December 2020 to the present the tenants of the Property have been depositing their rents into Stobba’s operating account at TD Bank per Borrowers instruction, an account which Blumenfeld controls, rather than the

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<sup>27</sup> *Credit Alliance Corp. v. Philadelphia Minit-Man Car Wash Corp.*, 450 Pa. 367, 372, 301 A.2d 816, 818-819 (1973).

<sup>28</sup> *Hankin v. Hankin*, 507 Pa. 602, 493 A.2d 675 (Pa. 1985).

<sup>29</sup> *Northampton National Bank of Easton v. Piscanio*, 475 Pa. 57, 63, 379 A.2d 870, 873 (1977).

<sup>30</sup> *Credit Alliance Corp.*, 450 Pa. at 372, 301 A.2d at 819.

<sup>31</sup> *Tate v. Phila. Transp. Co.*, 190 A.2d 316, 317 (Pa. 1963).

<sup>32</sup> See, *Hankin v. Hankin*, supra. at 493 A.2d 675, 677.

DACA account at Wells Fargo as required by §§ 6.1.1 and 6.1.2 of the Loan Agreement, the DACA and the Cash Management Agreement.<sup>33</sup> Rather than paying their loan obligations, Borrowers are using the Stobba account and the rent deposits therein to pay Blumenfeld's solely owned management company, Eric Blumenfeld Realty Management ("EBRM"). From January 2021 to September 2021, \$114,686.13 was paid to EBRM from the Stobba account.<sup>34</sup> While Mr. Blumenfeld testified the transfers to EBRM are to pay for the monthly management fee of \$7,000, the evidence, the bank statements, do not support this testimony. The bank statements show that monthly transfers greater than the alleged monthly fee (\$7,000) were made to EBRM and in some instances the bank statements show two payments in one month to EBRM greater than \$7,000.<sup>35</sup> Also, in addition to the above payments, Borrowers transferred to EBRM \$45,915 on September 8, 2022 and \$115,057.42 on October 6, 2022 from the Stobba account.<sup>36</sup> In essence, Blumenfeld is paying himself rather than making payments toward the loan obligations and is transferring funds which are collateral for a loan that was fully funded and now mature.<sup>37</sup> No justifications exist for diverting the rent from the DACA account to the Stobba account as Borrowers' defenses have been dismissed at summary judgment in the mortgage foreclosure action and in the Borrower action.

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<sup>33</sup> Lender's Exhibits to Renewed Petition for the Appointment of Receiver Exhibits "N" DEF 580-608, T DEF 118-147, and "U" DEF 364-374.

<sup>34</sup> Exhibit "N" DEF 582 - \$7,400 and \$2,000, DEF 585 -\$8,000, DEF 588 -\$10,000, DEF 591 \$10,500, DEF 594 -\$8,000, \$2,000 and \$9,576.68, DEF 597- \$8,000, DEF 600- \$9,000 and \$1,500, DEF 603 -\$10,000 and \$10,500, DEF 606-608- \$6,209.45 and \$12,000.

<sup>35</sup> Id.

<sup>36</sup> See Exhibit "U" DEF 369 and DEF 372 and Exhibit "T" DEF 124.

<sup>37</sup> Tr. 11/12/21, at 36-37 ("Q: You're paying the alleged arrearages to your management company, but not your lender, correct? A: (No answer.) Q: Is that correct? A: That is correct").

The Stobba bank statements also show large withdraws being made from the Stobba account totaling approximately \$395, 357.51.<sup>38</sup> While Mr. Blumenfeld testified that these funds were used for expenses related to Stobba Residential or repairs to the garage and cooling tower, there is no evidence to support this testimony with respect to the Stobba Residential expenses nor is there any evidence that Lender authorized the expenses for the garage and cooling tower. In addition to the payments to EBRM and the large withdraws, Borrowers have also made payments to their attorneys from the Stobba account from October 1, 2022 to September 22, 2022 totaling \$235,522.237 for their defense in this action.<sup>39</sup>

There is also evidence that Borrowers are mismanaging the Property. The Property has vacancies.<sup>40</sup> As of September 30, 2021, the Property had at least three vacancies at the commercial property and some tenants did not pay rent as required by their lease agreements.<sup>41</sup> Giant owed Borrower over \$1,000,000 in back rent<sup>42</sup> and other Tenants were not paying the full amount of rent due. (Target Park, Supercuts, Ritas and South Philadelphia Pediatrics).

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<sup>38</sup> Exhibit “N” check # 9699-DEF 582 \$14, 819, check # 9723-DEF 588 \$31,566.76, check # 9731-DEF \$13,129.05, check # 9734 DEF 591 \$ 25,772.70, and check #9779 -DEF 606 \$20,570.00, Exhibit “T” check #9886 -DEF 142 \$100,000, check #9885-DEF 142 \$50,000, and check # 9896- DEF 145 \$65,000, check # 9791-DEF 121 \$50,000, and check # 9874 -DEF 139 \$24,500 to Plaintiff’s renewed Petition for the Appointment of Receiver.

<sup>39</sup> Exhibit “V”, DEF 245-350 and Exhibit “T” to Plaintiff’s renewed Petition to Appoint Receiver.

<sup>40</sup> Exhibits “Q” and “R” to Plaintiff’s renewed Petition to Appoint Receiver.

<sup>41</sup> Exhibit “K” and “L” to Plaintiff’s renewed Petition to Appoint Receiver.

<sup>42</sup> Id. In August 2020, Giant declared a default under its lease, claiming the electrical service to its space was not as required in the Lease. Giant stopped paying rent. Although it was represented by Blumenfeld that a resolution to the electrical issue was identified and in the process of being implemented, Giant announced that it was no longer interested in the space.

As of October 31, 2022, Tenants at the Property for the commercial space included two entities owned and controlled by Blumenfeld who are not paying rent.<sup>43</sup> Recently, Giant, a tenant that Borrowers considered to be critical to Property with an annual rent \$657,031.80, who has not paid rent since November 2020, notified Borrower that it is terminating its lease.<sup>44</sup> Also, WaWa, another significant tenant at the Property recently announced that it is closing its store due to aggressive pan handling, crime and drug use at the store and outside the sidewalk. While WaWa is allegedly paying rent<sup>45</sup>, the first-floor space occupied by WaWa will be closed and boarded up contributing to the physical distress of the property as much of the commercial space on the first floor of the Property is vacant and boarded up inviting the posting of flyers and/or graffiti.<sup>46</sup> Borrower does appear to be working to find a replacement tenant for the Giant space, however any plans are only in the beginning stages of due diligence and are not confirmed with any leases.<sup>47</sup> Additionally, Borrowers were unable to pay their real estate taxes in full this year necessitating the agreement with the City of Philadelphia to satisfy its tax obligation with installment payments. While Borrowers to date have been making their scheduled payments, the lack of income from the Property may affect Borrowers' ability to continue making payments.

Given the circumstances discussed above, particularly the misappropriation of rents, a Receiver is necessary to ensure that the assets will not be dissipated any further.

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<sup>43</sup> Exhibit "R" to Plaintiff's renewed Petition to Appoint Receiver.

<sup>44</sup> Defendants have placed Giant on notice of their intent to sue. Defendants Exhibit "3".

<sup>45</sup> Exhibit "R" to Plaintiff's renewed Petition to Appoint Receiver shows that the end date for the WaWa lease is December 31, 2022. Borrowers argue that WaWa has a continuing obligation to pay rent.

<sup>46</sup> Exhibit "S" to Plaintiff's renewed Petition to Appoint Receiver.

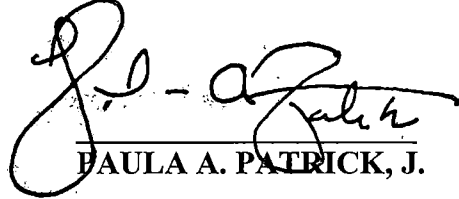
<sup>47</sup> Defendants' Exhibit "1" presented to the Court during oral argument.



**CONCLUSION**

Based on the foregoing, Lender's renewed Emergency Petition to Appoint a Receiver is  
Granted.

**BY THE COURT:**



PAULA A. PATRICK, J.