

IN THE SUPERIOR COURT OF FLOYD COUNTY
STATE OF GEORGIA

FILED IN OFFICE

APR 14 2015

Jackie Crowe

STATE OF GEORGIA *ex rel.*
LEIGH E. PATTERSON,
District Attorney for the Rome
Judicial Circuit,

Plaintiff,

vs.

DERRY SCOTT RICHARDSON,

Defendant *in personam*,

and

THE REAL AND PERSONAL
PROPERTY LOCATED AT
241 RIVERBLUFF DRIVE,
SUMMERVILLE, GEORGIA,

Defendants *in rem*.

CIVIL ACTION

CLERK

FILE NO. 15CV00764-JFL004

ORDER APPOINTING TEMPORARY RECEIVER
AND GRANTING TEMPORARY RESTRAINING ORDER

The Plaintiff State of Georgia *ex rel.* Leigh Patterson, District Attorney for the Rome Judicial Circuit, has applied to the Court for the appointment of a temporary receiver and entry of a temporary restraining order in the above-styled case. After considering the allegations of the verified Complaint, the evidence presented at an *ex parte* hearing on the Plaintiff's application, and the Plaintiff's Motion for Appointment of a Temporary Receiver and for a Temporary

Restraining Order (in which the Plaintiff's attorney certifies to this Court in writing the reasons supporting the Plaintiff's claim that notice of its Motion for Appointment of a Temporary Receiver and for a Temporary Restraining Order to the Defendants should not be required), the Court makes the following findings of fact: (1) that immediate and irreparable injury, loss, and damage will result to the Plaintiff before the Defendants can be heard in opposition to the Plaintiff's Motion; (2) that there are sufficient reasons supporting Plaintiff's claim that notice of its Motion to the Defendant should not be required; and (3) that there is good and sufficient cause to appoint a temporary receiver, to grant a temporary restraining order, and to grant other relief as prayed. Accordingly, it is hereby

ORDERED as follows:

I. GENERAL POWERS

Brian R. Bojo, Esq., an attorney-at law and a member of the State Bar of Georgia, is appointed to act as temporary receiver ("Receiver"), with full powers of an equity receiver under the laws of Georgia, for Defendants *in rem*, as listed above, and Defendant *in personam*. With respect to all assets and property which the Plaintiff in its Complaint seeks relief as set forth therein, the Receiver is hereby empowered and directed to:

A. take and retain immediate possession, custody, and control, of all such assets and property (including, without limitation, any real, personal, tangible, or

intangible property);

B. take and retain immediate possession, custody, and control of the books and records of the Defendants, demand inspection and turnover of the books and records of any entity in which any of the Defendants has a direct or indirect interest, and take all steps the Receiver deems necessary to secure and protect the assets and property of the Defendants including but not limited to the premises, files, and information systems of the Defendants;

C. engage and employ persons, in his discretion, to assist him, in carrying out his duties and responsibilities hereunder, including accountants, attorneys, examiners, investigators, and other experts and professionals;

D. acquire and retain all rights, powers, and privileges that the Defendants have to manage, control, operate, and maintain their businesses (including but not limited to the power to direct, hire, suspend, and terminate personnel), and to possess, receive, or use income, earnings, rents, and profits to commence, maintain, defend, or participate in legal proceedings to sue for, collect, receive and take into possession of, all goods, chattels, rights, general intangibles, choses in action, credits, monies, effects, lands, books and records of account, and other papers, including exclusive authority to make expenditures on behalf of the Defendants with a view to preventing loss, damage, and injury, and preserving assets and the records of the Defendants;

E. bring any claim or cause of action on behalf of any of the Defendants or by and through any interest that any of the Defendants may have. The Receiver may also institute, prosecute and defend, compromise, adjust, intervene in, or become a party to such actions or proceedings in state or federal court as may in the Receiver's opinion, be necessary or appropriate for the collection, marshaling, protection, maintenance, and preservation of the assets of any of the Defendants or the recovery of assets transferred by any of the Defendants. The Receiver may also take the foregoing actions in order to carry out of the terms of this Order (including, without limitation, any action asserting claims under applicable fraudulent transfer or partnership laws). Likewise, the Receiver has the power to defend, compromise or adjust or otherwise dispose of any or all suits, actions or proceedings instituted against the Receiver or against any of the Defendants. The Receiver may also appear in, and conduct the defense of, any suit or to adjust or compromise any actions or proceedings now pending in any court by or against Defendants where such prosecution, defense, or other disposition of any such action or proceedings will, in the judgment of the Receiver, be advisable or proper for the protection of the, assets, properties or interests of any of the Defendants, and seek any and all legal or equitable remedies afforded an equity receiver under applicable state or federal law;

F. pay from any of the assets of the estate the costs he incurs (including without limitation the deductible of any professional liability insurance policy and all attorneys' fees) for any action which he institutes or defends;

G. take such further action as the Court shall deem equitable, just and appropriate under the circumstances upon application.

IT IS FURTHER ORDERED that the Receiver serves herein as an officer of this Court solely in a representative capacity and is not personally liable for any actions taken in good faith and in conformity with the duties and responsibilities set forth herein or pursuant to any statute, rule, regulation, or other legal authority.

II. REPORTING

IT IS FURTHER ORDERED that Receiver shall file monthly reports to the Court and the parties no later than the 30th day of each month, subject to extensions as may be granted by the Court, listing all assets, money, funds, securities, and real or personal property he holds, directly or indirectly, for the benefit of the Defendants and each of their controlled, related, or affiliated entities, including but not limited to bank accounts, brokerage accounts, investments, business interests, and real and personal property, wherever situated, identifying and describing each asset and liability, its current location and amount.

III. BONDING

IT IS FURTHER ORDERED that the Receiver shall not be required to post any bond or security.

IV. FEES AND COSTS INCURRED

IT IS FURTHER ORDERED that the reasonable costs, fees, and expenses of the Receiver incurred in connection with the performance of his duties described herein, including but not limited to the reasonable costs, fees, and expenses of all persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations, shall be paid from the assets of the receivership estate unless otherwise ordered by the Court. All requests for costs, fees, and expenses of the Receiver shall be made by application to the Court, setting forth in reasonable detail the nature of such costs, fees, and expenses. Upon approval of any such application by the Court, the Receiver may pay himself from the assets of the Defendants under his control. Notwithstanding anything to the contrary in this paragraph, the Receiver is authorized to pay from the receivership estate to himself a reasonable retainer to secure payment of the costs, fees, and expenses of the Receiver such retainer to be held pending approval of such costs, fees, and expenses by the Court.

V. INDEMNIFICATION

IT IS FURTHER ORDERED that the Receiver and all persons whom he

may engage or employ to assist him in carrying out his duties and obligations hereunder shall not be liable for any act or omission of the Receiver or such person, or any of their partners, employees, or agents unless it shall be proven that the Receiver or such other person acted recklessly and in bad faith. This provision shall apply to claims based on conduct during the term of any agreement that may be entered into between the Receiver and any other person who may be engaged or employed by the Receiver hereunder, even if such claims are filed after the termination of any such agreement.

The Receiver shall not be subject to suit in any court for any acts, practices, and transactions in which he engages in his capacity as Receiver without the prior approval of this Court. The Receiver shall not be liable for any claim, obligation, liability, action, cause of action, cost or expense of the Defendants arising out of or relating to events or circumstances occurring prior to this Order, including without limitation, any contingent or unliquidated obligations and any liability from the delivery of good or the performance of services rendered by, to, or on behalf of Defendants, and any liability to which Defendants are currently or may ultimately be exposed under any applicable laws pertaining to the ownership, use or operation of the Property and operation of Defendants' business (collectively all of the foregoing is referred to as "Pre-Receivership Liabilities"). The Receiver shall not pay any Pre-Receivership Liabilities except insofar as in his sole discretion he

deems it necessary or appropriate to do so in order to maintain, operate or protect the assets of the receivership estate.

VI. COOPERATION

IT IS FURTHER ORDERED that with respect to all property sought by the Plaintiff in its Complaint to be forfeited to the State, the Defendants and any entities that they control, in addition to their officers, directors, agents, servants, employees, and attorneys-in-fact and attorneys-at-law, shall:

- A. disclose and transfer forthwith to the Receiver all such property;
- B. provide to the Receiver all information requested relating to the past and present operations, activities and condition (financial, legal, or otherwise) of the Defendants and shall take no action, directly or indirectly, to hinder, obstruct, delay, or otherwise interfere in any manner with the actions of the Receiver or any other person engaged or employed by the Receiver to assist him in carrying out his duties and obligations herein;
- C. provide to the Receiver forthwith access to, and the location of, any and all documents, books and records of accounts, financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client and customer lists, title documents and other papers of the Defendants; and computer files and databases in their possession, custody, or control relating to

such assets or to the allegations of the Complaint by the Plaintiff, including but not limited to, documents relating to the business operations of the Defendants;

D. provide the Receiver with all keys, combinations to locks, passwords, identification numbers, and entry codes required to open or gain access to any property, computer files, safety deposit boxes, and all money or other assets deposited in or held by any financial institution to the credit of any of the Defendants wherever situated; and

E. provide the Receiver with all passwords or codes required to access any hardware, software, or electronic files on any media relating to any of the Defendants.

VII. TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that:

A. The Defendants, their creditors, officers, agents, servants, employees, attorneys-in-fact, and those persons acting in concert or participation with them who receive actual notice of this Order by personal service, facsimile service, regular mail, or otherwise (“Noticed Entities and Individuals”), are restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring to any entity other than the Receiver or his attorneys or agents, or otherwise disposing of in any manner, directly or indirectly, any documents relating to (1) the allegations in the Complaint brought by the Plaintiff, (2) the business affairs of any

of the Defendants, or (3) the assets of any of the Defendants (including, without limitation, any assets transferred by any of the Defendants). These documents include but are not limited to: books and records; audio or video tape recordings; computer tapes, discs or other computerized records (including e-mail in any form); accounting data; personal and business checks (fronts and backs); correspondence; forms; advertisements; brochures; manuals; banking records; customer lists; customer files; invoices; telephone records; ledgers; payroll records; scripts; postal receipts; appointment books; state or federal income tax returns; or other documents of any kind in their possession, custody, or control;

B. Noticed Entities and Individuals, unless directed otherwise by the Receiver, shall notify counsel for the Receiver of the receipt of any funds at all related to any of the Defendants subsequent to the date of entry of this Order, and shall identify each such receipt by the name, address, telephone number of the payer and the amount of funds received; and

C. Absent leave of the Court upon notice to the Plaintiff and the Receiver, all persons are stayed from:

1. using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, garnishment, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon, setting off against, any property or assets

owned by, or in the possession of, any of the Defendants or the Receiver, wherever situated;

2. attempting to modify, cancel, terminate, call, extinguish, revoke, or accelerate the due date, of any lease, loan, mortgage, indebtedness, security agreement or other agreement with any of the Defendants;

3. doing any act or thing whatsoever to interfere with the Receiver taking control or possession of, or managing the property and assets owned, controlled or in the possession of any of the Defendants, or in any way interfering with or harassing the Receiver, or interfering in any manner with the exclusive jurisdiction of this Court over the receivership estate.

VIII. ASSET FREEZE

IT IS FURTHER ORDERED that the Defendants and their officers, agents, servants, employees, and attorneys, and all other persons or entities directly or indirectly under their control or under common control with them, and all other persons or other entities acting in concert or participation with them, who receive actual notice of this Order by personal service or otherwise, unless agreed to by the Receiver or until further order of this Court, are hereby restrained and enjoined, from:

A. transferring, encumbering, selling, concealing, pledging, hypothecating, assigning, spending, withdrawing, disbursing, conveying, gifting,

dissipating, or otherwise disposing of any funds, property, accounts, contracts, lists of customer names, shares of stock, or other assets, wherever located, that the Plaintiff seeks to be forfeited by the State.

IX. RETENTION OF ASSETS AND RECORDS BY THIRD PARTIES

IT IS FURTHER ORDERED that this section shall not prohibit transfers in accordance with any provision of this Order, any further Order of the Court or at the direction of the Receiver. The Receiver may serve this Order on any bank, savings and loan institution, credit union, financial institution, brokerage house, escrow agent, title company, commodity trading company, common carrier, storage company, trustee, or any person or other entity. The Receiver may maintain Defendant's accounts or transfer the assets of the account to a financial institution in an account authorized by the Receiver.

IT IS FURTHER ORDERED that, other than by agreement of the Receiver, any financial or brokerage institution, escrow agent, title company, commodity trading company, common carrier, storage company, trustee, or any person or other entity who received any funds from any of the Defendants who are served with a copy of this Order, by personal service, telecopier or regular mail, pending written instructions by the Receiver, shall:

A. Deny access, other than to the Receiver, to any accounts or safe deposit boxes that are either:

1. titled in the name, individually or jointly, of any Defendant(s) or other party subject to this Order; or
 2. subject to access by any Defendant(s) or other party subject to this Order; and
- B. Provide to the Receiver, within three (3) business days after service of this Order, a statement setting forth:
1. the identification of each account or asset titled in the name, individually or jointly, or held on behalf of, or for the benefit of, any Defendant(s) or other party subject to this Order, whether in whole or in part;
 2. the balance of each such account asset, or a description of the nature and value of such account or asset;
 3. the identification of any safe deposit box that is either titled in the name of, individually or jointly, or is otherwise subject to access or control by, any Defendant(s) or other party subject to this Order, whether in whole or in part; and

IT IS FURTHER ORDERED that this section shall not prohibit transfers in accordance with any provision of this Order, or any further order of the Court. The Receiver may serve this Order on any bank, savings and loan institution, credit union, financial institution, brokerage house, escrow agent, title company,

commodity trading company, common carrier, storage company, trustee or any person or entity.

X. IMMEDIATE ACCESS TO DEFENDANTS' BUSINESS PREMISES

IT IS FURTHER ORDERED that the Defendants, each of them, and any other person served with a copy of this Order, shall permit the Receiver immediate access to the business premises of any of the Defendants, wherever they may be situated, as well as all branch offices, storage facilities, and any premises (or portions thereof) used for, or in connection with, the business of any of the Defendants, or the marketing of any of their products or services, provided that said offices, facilities, and premises are owned, leased and occupied, or controlled by any of the Defendants.

XI. ASSISTANCE TO RECEIVER

IT IS FURTHER ORDERED that the Receiver is authorized to seek and utilize the assistance, services, instrumentalities, and facilities of any and all law enforcement agencies, officials and personnel in implementing the provisions of this Order and in executing the duties and responsibilities imposed upon him hereunder.

XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED this 14th day of April, 2015 at 12:20 o'clock P.m.



JUDGE, SUPERIOR COURT OF FLOYD COUNTY
ROME JUDICIAL CIRCUIT

Order prepared and presented by:



MICHAEL G. LAMBROS
Georgia Bar No. 432113
Special Assistant District Attorney