IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY
IOWA BUSINESS SPECIALTY COURT

RSS COMM2015-CCRE27-DE WMC, LLC, a Delaware limited liability company, **Plaintiff,** **v.** **WC MRP DES MOINES CENTER, LLC; WC MRP WATERLOO PLAZA, LLC; DEER CREEK ENTERPRISES; FOR SURE ROOFING, LLC; NON-RECORD CLAIMANTS;** and **PARTIES IN POSSESSION,** **Defendants.**	**Case No. EQCE087096** **RULING ON DEFENDANTS' MOTION TO DISCHARGE RECEIVER**

Defendants WC MRP Des Moines Center, LLC, and WC MRP Waterloo Plaza, LLC's, (together "the WC MRP Defendants") motion to discharge the receiver appointed to oversee the properties subject to this action came before the Court. Though the Court suggested that it may be wise to take additional testimony concerning this motion, the parties agreed at the status conference held February 23, 2022, that this matter could be resolved on the motion papers without further hearing or evidence.

Plaintiff filed this suit to foreclose on two mortgages they hold over commercial rental properties owned by the mortgagors, the WC MRP Defendants. One of these properties is located in Des Moines, Iowa, (the "Des Moines property") and the other is located in Waterloo, Iowa, (the "Waterloo property"). At the time the petition was filed, Plaintiff was already receiving the rents from these properties directly from the tenants. Along with their petition for foreclosure, Plaintiff filed an emergency application for the appointment of a receiver over the two properties, claiming that one the properties were in need of a receiver to avoid imminent,

catastrophic harm. Specifically, Plaintiff argued that the Des Moines Fire Department issued an order instructing the WC MRP Defendants to immediately repair certain conditions—in particular a broken fire suppression system—which constituted a fire hazard or cease all business operations within 30 days of the notice. Plaintiff also asserted that a lack of adequate lighting resulted in increased vandalism on the Des Moines property and that conditions had grown so poor on the Des Moines property, one of the tenants at that property has sued the WC MRP Defendants over those conditions. Plaintiff did not make any allegations regarding the Waterloo property. Nor did Plaintiff alert the Court to the fact that their issues only concerned the Des Moines property.

The same day the application for appointment of a receiver was filed, the Court granted the application. No Defendant had received notice of the application at that time, nor had any Defendant been served with original notice of the underlying petition. Frontline Real Estate Partners was appointed as receiver. The order of appointment waived any receiver's bond and reserved for Plaintiff the unilateral power to remove the receiver and have a replacement appointed. The order also established that the receiver was to be compensated for their services at the rate of $4000 or 4% of the gross collected revenue each month, whichever was higher, along with a startup fee of $2000 per property, a finder's fee of 2% or 4% of the gross total rent of the lease period for entering new leases of the property, a service fee of 1% or 2% of the gross total rent for the extension period for negotiating lease extensions with existing tenants, and a service fee of 1.5% or 3% of the purchase price in the event the receiver is called to sell the properties or any part of them. The variable-rate fees turn on whether a cooperating broker participated in those services.

On November 18, 2021, the WC MRP Defendants filed the present motion to discharge the receiver. In this motion, the WC MRP Defendants argue (1) they were working diligently to repair the fire suppression system at the time the receiver was appointed, (2) the receiver adds an unnecessary extra layer of bureaucracy which delays and adds extra expense to their efforts to repair the identified issues, (3) repair of the fire suppression issue is complex and the receiver has made no greater progress than the WC MRP Defendants had before the receiver was appointed, and (4) the receivership over the Waterloo property is particularly inappropriate because all of Plaintiff's complaints regarding the management of the properties related to the Des Moines property. In support of their motion, the WC MRP Defendants filed an affidavit attesting that they had been actively working to fix the issues with the fire suppression system—even before Plaintiff filed their petition—and were consistently communicating with the Fire Department to that end. The WC MRP Defendants also point to the receiver's first report to show the lack of progress on repairing the fire suppression system and establish the fact that the Fire Department has been flexible in offering extensions of the deadline.

Plaintiff resists this motion, pointing to a history of issues with the Des Moines property causing significant tenant complaints—roof leaks, a broken sump pump, poor lighting in the parking areas, debris filling the parking areas, drainage issues in the parking areas, potholes in the parking areas, snow not being adequately removed from the parking areas, overgrown landscaping, decrepit sidewalks, a massive water leak in a vacant suite, and reports of forced entry into and vandalism of that suite. Plaintiff also asserts that the WC MRP Defendants were generally negligent in their management of the Des Moines property—consistently ignoring the tenants' complaints and even failing to pay for waste removal services. To support these claims,

Plaintiff filed affidavits and letters from several tenants at the Des Moines property, along with several documents docketed in a lawsuit filed by one of these tenants based on these problems.

In reply, the WC MRP Defendants state that all of these non-fire-suppression-related issues have now been resolved by the receiver or by the complaining tenants themselves, mooting any further need for the receiver to address them. To prove these factual assertions, the WC MRP Defendants direct the Court again to the receiver's report—showing that the receiver had addressed several of these concerns—and statements in the tenant complaints filed by Plaintiff which suggest that the tenants were upset in part due to the fact that they had to take steps to remedy these issues on their own.

Iowa Courts have the authority to appoint a receiver over property pursuant to Iowa Code § 680.1 (2022).

> On the petition of either party to a civil action or proceeding, wherein the party shows that the party has a probable right to, or interest in, any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court shall prescribe, the court, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a receiver to take charge of and control such property under its direction during the pendency of the action, and may order and coerce the delivery of it to the receiver.

Id. "The power to terminate a receivership is a necessary incident to the power to appoint." 16 Fletcher Cyc. Corp. § 7770 (Sept. 2021). "If it should subsequently appear that an appointment was improvidently made, the court or judge has the power to vacate it." 75 C.J.S. *Receivers* § 72 (Mar. 2022); *see also* 65 Am. Jur. 2d *Receivers* § 48 (Feb. 2022). Additionally, "whenever the reason or necessity for a receiver ceases to exist, the receiver should be discharged." *Van Alstine v. Hartnett*, 222 N.W. 363, 364 (Iowa 1928). "The decision whether to appoint a receiver is a discretionary one to be made by trial court … ." *South Ottumwa Savings Bank v. Sedore*, 394

N.W.2d 349, 352 (Iowa 1986). "A receiver is an extraordinary equitable remedy that is only justified in extreme situations." *Morgan Stanley Smith Barney LLC v. Johnson*, 952 F.3d 978, 980 (8th Cir. 2020). "The power to appoint a receiver should be exercised sparingly, prudently, and with caution." 75 C.J.S. *Receivers* § 32 (Mar. 2022). "As against a defendant in possession and enjoyment of property which is the subject-matter of the litigation equity always proceeds with extreme caution in appointing a receiver." *Thomas v. Timonds*, 159 N.W. 881, 882 (Iowa 1916) (quoting High on Receivers, § 19). "The high prerogative act of taking property out of an owner's hands and putting it in pound, under the order of a judge, ought not to be taken except to prevent a manifest wrong imminently impending." *Id.* at 883 (quoting *Crawford v. Ross*, 39 Ga. 44 (1869)). "Thus, a receiver should be appointed only in a clear case … ." 75 C.J.S. *Receivers* § 32. The Court considers whether to terminate the receivership as it pertains to each property subject to this action in turn.

From the outset, the Court finds that appointment of the receiver to oversee the Waterloo property was improper and remains so. Pursuant to the statute, a receiver is properly appointed to protect the creditor's interest in the property from loss. Iowa Code § 680.1. So, to secure appointment of the receiver, the creditor must show that the property or its fruits "are in danger of being lost or materially injured or impaired." *Id.* Here, there has been no showing of the sort as it pertains to the Waterloo property. Plaintiff has made no allegations whatsoever of damage or any other issue related to that property—all of their allegations concern the Des Moines property. Plaintiff has utterly failed to show that a receiver is necessary to protect the Waterloo property and so the receiver's role in overseeing that property must be discharged.

As for the Des Moines property, the longstanding rule has been that a receivership must be dissolved whenever the reason for its existence ceases to exist. *Van Alstine*, 222 N.W. at 364.

The WC MRP Defendants contend that this is the case here—that all of the rationales Plaintiff asserts for the establishment of the receivership no longer support it because either they have been resolved by the receiver or the receiver has shown they are no better positioned to resolve the issue than the WC MRP Defendants.[1] On the limited record before the Court, the Court agrees. The crux of Plaintiff's argument that the receivership is necessary concerns the issues surrounding the fire suppression system at the Des Moines property. However, Plaintiff also raises several additional complaints with how the WC MRP Defendants managed the property. These tangential matters will no longer support the receivership because the record reflects, through the documents Plaintiff filed highlighting the issues and the receiver's first report, that all of these issues were either repaired by the tenants or already addressed by the receiver. Since these matters are no longer ongoing, the need to remedy them has passed and the receivership can no longer be premised on them.

This leaves only the heart of the issue—whether the problems with the fire suppression system warrant the receivership continuing. The Court finds that they do not. At the time of the initial motion for appointment of a receiver, the state of the fire suppression system appeared to be dire. A malfunctioning fire suppression system can be extremely harmful to a property on its own, but there was even further risk. The Fire Department gave the WC MRP Defendants a mere one month to repair the issues. This put the ability of the property to continue generating revenue at immediate risk of loss—if the system was not repaired, all of the tenants' business would need to cease. But, despite the receiver having been in control of the property for months now, the problems remain. Meanwhile, the Fire Department has offered extensions to the receiver to

[1] The WC MRP Defendants also challenge the propriety of the initial appointment here. Because this matter can be resolved by considering solely whether the receivership remains necessary, the Court declines to issue an opinion on that subject.

continue working on the issue. Clearly, the dire straits which the City's imposed deadline seemed to suggest are not quite so dire that they justify continuing to hold the WC MRP Defendants' property in the control of the Court. Similarly, the lack of progress in resolving this issue speaks to the complexity of the problem. Among the limited evidence presented, there is little to suggest that the receiver is better-equipped to resolve this problem than the property owners themselves. *See also Thomas*, 159 N.W. at 882 ("If upon the entire record this is a matter of much doubt the application will be denied."); *Farber v. Ritchie*, 238 N.W. 436, 439 (Iowa 1931).

The inequity of maintaining the receivership under these conditions is exacerbated by the cost of doing so. As already noted, the receiver is paid a premium for their work—a minimum of $48,000 per year for managing these two properties alone. This is without all of the service fees for creating and extending leases. If the receiver successfully negotiates an extension of a lease of a current tenant for a ten-year term at $2000 per month in rent without a cooperating broker, the receiver is automatically entitled to a $4800 additional service fee.[2] This could be repeated for every existing tenant. So, the potential cost of maintaining the receiver is, actually, significantly higher than even that minimum figure suggests. With the cost of the receiver so high, and the demonstrated benefit of continuing the receivership being as already displayed, the equities fall in favor of terminating the receivership.

So, in light of the lack of evidence showing a continuing need for the receivership, and in consideration of the fact that this Court sits in equity and the costs of the receiver significantly outweigh the demonstrated benefit of their continued appointment, the Court finds that the

[2] $2000 per month in rent comes out to $24,000 annually, or $240,000 in gross rents over the lifetime of the lease extension. 2% of that total is $4800. These numbers are entirely hypothetical. The Court is without substantial evidence as to the actual terms of the leases negotiated for these properties, and so lacks a basis for a more concrete calculation. This example serves only to demonstrate the possibility that the actual costs of maintaining the receivership could be noticeably higher than the concrete minimum annual charge noted above.

receivership is no longer appropriate and must be dissolved as to the Des Moines property, as well. The WC MRP Defendants' motion should be and hereby is granted.

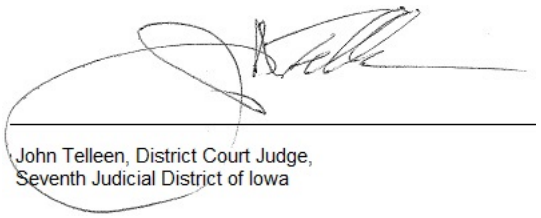
RULING

For all of the above-stated reasons, it is the ruling of the Court that the WC MRP Defendants' Motion to Discharge the Receiver is GRANTED.

State of Iowa Courts

Case Number	**Case Title**
EQCE087096	RSS COMM2015 CCRE27 DE WMC VS WC MRP DES MOINES CENTER ET AL
Type:	OTHER ORDER

So Ordered



John Telleen, District Court Judge,
Seventh Judicial District of Iowa

Electronically signed on 2022-03-10 16:30:30