

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF)
SECURITIES, *ex rel.* Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
vs.)
)
Storybook Properties, LLC,)
a California limited liability company;)
Storybook Investments WA, LLC,)
a Washington limited liability company;)
Matthew G. Story, an individual;)
Joe Don Johnson, an individual; and)
James Farnham, an individual,)
)
Defendants.)

Case No. CJ-2009-7957

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

OCT 07 2009

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

EMERGENCY APPLICATION FOR
APPOINTMENT OF RECEIVER

Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, Administrator, (“Department”), respectfully submits this application for the appointment of a receiver pursuant to the authority granted by Section 1-603 of the Oklahoma Uniform Securities Act of 2004 (“Act”), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003). The application is necessary to protect the rights of the Department in its obligation to safeguard the public interest; to prevent irreparable loss, damage or injury to investors who were sold investment notes by Storybook Properties, LLC (Storybook Properties), Storybook Investments WA, LLC (Storybook WA), and/or Matthew G. Story (Story) (collectively, “Storybook Defendants”) or any of their affiliates; to avoid the misapplication of funds and other assets; and to remedy the violations of the Act alleged in Plaintiff’s *First Amendment to Petition for Permanent Injunction and Other Equitable Relief* (Amended Petition). In support of this application, the Department states:

BACKGROUND

1. On April 20, 2009, this Court issued a *Temporary Restraining Order and Order for Accounting Regarding Storybook Defendants* thereby restraining the Storybook Defendants from offering or selling any security in and/or from this state including, but not limited to, the investment notes. The Court also ordered the Storybook Defendants to provide Plaintiff with an accounting, under oath, detailing all of their assets and detailing all funds received from investors, clients, and/or other Defendants, and the disposition and/or use of those funds received pursuant to the scheme described in the Plaintiff's Amended Petition.

2. The Storybook Defendants represented to investors that their investments would be "over-collateralized" and therefore, fully secure.

3. In addition, the Storybook Defendants represented to investors that there is an investor protection fund created through an insurance policy written by Genworth Life and Annuity Insurance Company in the amount of \$4,000,000. In fact, the policy, with a face value of \$2,000,000, is on the life of Matthew Story and his wife is the named beneficiary.

4. The Storybook Defendants provided Plaintiff with an accounting as of April 1, 2009, that lists multiple properties purportedly owned by the Storybook Defendants in Tulsa, Oklahoma. In addition, the accounting lists the property or properties purportedly securing each investment. The Storybook Defendants listed \$6,237,363.38 of liabilities relating to Oklahoma investors, \$17,766,346.20 in total assets, and a net worth of \$11,504,216.73.

5. Upon further investigation, to include a search of the records of the Tulsa County Clerk's office, Plaintiff has learned the following:

- a. that the investments of many investors are under-collateralized, if collateralized at all;

- b. that certain of the properties that the Storybook Defendants represent to be security or collateral for investments are not owned by the Storybook Defendants;
- c. that the investments of multiple investors are secured by the same property the value of which is dramatically less than the cumulative amount of the investors' investments purportedly secured by such property; and
- d. that the Storybook Defendants did not record certain deeds or mortgages until after the date the Amended Petition was filed, if at all.

6. The Storybook Defendants have represented to multiple investors that their investments are secured by a particular property in Stillwater, Oklahoma; however, this property is not owned by the Storybook Defendants. In addition, the Storybook Defendants' accounting submitted to Plaintiff reflects that the Storybook Defendants own the Stillwater property and values the property at \$1,051,762.50. In an attempt to acquire this property, the Storybook Defendants have recently offered to trade certain Tulsa County properties purportedly securing investments, for the Stillwater, Oklahoma property.

7. Since the filing of the Amended Petition, the Storybook Defendants have convinced numerous investors to accept a property in the state of Washington as security for their investments. The Washington property is not owned by Storybook Defendants.

8. Story has also provided a letter to at least one Oklahoma investor who requested redemption of her investment that states the following:

I'm writing to address your request for redemption on your investment with us. I apologize for the delay in fulfilling your request, but we're forced to liquidate Oklahoma property in a very difficult economic time, in order to fulfill your request for cash.

We have a large part of our portfolio of properties for sale in Oklahoma, and we're listing the properties at significant discounts to their underlying value in an effort to raise cash quickly to fulfill your request redemption; and in the process, we're sacrificing much of the companies [sic] hard earned value.

9. Two monthly interest checks written to an Oklahoma investor, on one of the Storybook Defendants' Tulsa National Bank accounts, have been returned by the bank for insufficient funds.

10. Story mailed a letter to investors dated October 1, 2009, that states the following:

Unfortunately, Storybook Investments and Storybook Properties, LLC is unable to continue serving its debt to you, other investors and its creditors. Although cash is not available to make payments, the collateral property has real value that underlies your investment. Because you hold a mortgage interest in real property, to recapture your investment may require a foreclosure process on the collateral real estate. Storybook will, over the next two weeks, send to you reconveyance documents that will give you an unfettered right to foreclose your interest on the property or properties. Storybook may also be able to facilitate investor possession of title to properties by Deed in Lieu of Foreclosure or other methods, in order to ease and expedite your process. This process may occur under the supervision of a Federal Bankruptcy Trustee and is currently being evaluated.

ARGUMENT AND AUTHORITIES

The violations of the Act, as described in Plaintiff's Amended Petition, give the Department the right to seek one or more of the remedies available by statute and in equity. *Oklahoma Securities Commission v. CFR International, Inc.*, 622 P.2d 293,295 (Okla. Ct. App. 1980). One such remedy is that of the appointment of a receiver.

The appointment of a receiver was not believed by Plaintiff to be necessary at the time the Amended Petition was filed. However, numerous events occurring since the entry of the Order now make the appointment of a receiver necessary. As described in detail above, the Storybook investments are under-collateralized, if collateralized at all; the investors have been

misled about the value of the properties purportedly securing their investments; and the Storybook Defendants are now financially unable to service their debt.

In *SEC v. American Bd. Of Trade, Inc.*, 830 F.2d 431 (2d Cir. 1987), the court, quoting *SEC v. Manor Nursing Centers, Inc.* 458 F.2d 1082, 1105 (2d. Cir, 1972), stated that the primary purpose of the appointment of a receiver is to help “preserve the status quo while the various transactions [are] unraveled.” *Id.* at 436. In circumstances of egregious fraud where the interests of public investors are in substantial jeopardy, it has been recognized that the appointment of a receiver is necessary to prevent “diversion or waste of assets to the detriment of those for whose benefit, in some measure, the injunction action is brought.” *Securities and Exchange Commission v. Capital Counselors, Inc.*, 332 F. Supp. 291, 304 (S.D. N.Y. 1971).

The form and quantum of evidence required is a matter of judicial discretion. *U.S. v. O’Connor*, 291 F.2d 520 (2d Cir. 1961); *Haase v. Chapman*, 308 F.Supp. 399 (W.D.Mo. 1969). There is no definitive list of facts by which the Court must abide; however, the Sixth Circuit in *Tennessee Pub. Co. v. Carpenter*, 100 F.2d 728 (6th Cir. 1938), identified factors which can be considered, most of which are applicable here and justify the appointment of a receiver over the Storybook Defendants’ assets:

Factors typically influencing the district court’s exercise of discretion include the existence of a valid claim by the moving party; the probability that fraudulent conduct has occurred or will occur to frustrate the claim; imminent danger that property will be lost, concealed, or diminished in value; inadequacy of legal remedies; lack of a less drastic equitable remedy; and the likelihood that appointment of a receiver will do more harm than good.

Id. at 732.

CONCLUSION

Plaintiff believes that a receiver is needed in this matter to take possession of all real and personal property, to collect debts, to compromise debts, to make transfers, and to perform any other act with respect to the assets in receivership as the Court may authorize. Therefore, Plaintiff requests the appointment of a receiver over all assets located in the state of Oklahoma belonging to the Storybook Defendants and/or their affiliates including, but not limited to, EZ-TO-BUY Homes, LP, an Oklahoma limited partnership, to include monies, securities and properties, real and personal, tangible and intangible, of whatever kind and description; and all other assets belonging to the Storybook Defendants and/or their affiliates, wherever located if paid for, in whole or in part, with Oklahoma investor funds, to include monies, securities and properties, real and personal, tangible and intangible, of whatever kind and description (collectively, "Storybook Defendants' Assets"), with direction and authority as follows:

a. to take immediate custody, possession and control of any and all Storybook Defendants' Assets, as well as any records or documents relating to the Storybook Defendants' Assets including, but not limited to, bank statements, checkbooks, and invoices previously paid or currently owed;

b. to conserve, hold, and manage all Storybook Defendants' Assets, pending further action by this Court in order to prevent any irreparable loss, damage, or injury; to conserve and prevent the withdrawal or misapplication of funds entrusted to the Storybook Defendants and/or their agents; and to take the necessary steps to protect the Storybook Defendants' Assets;

c. to receive and collect any and all sums of money due or owing to the Storybook Defendants whether the same are due or shall hereinafter become due and payable, and to make such payments and disbursements as may be necessary and advisable for the preservation of the

Storybook Defendants' Assets and as may be necessary and advisable in discharging his duties as receiver;

d. to institute, prosecute and defend, compromise, adjust, intervene in or become party to such actions or proceedings in any state court, federal court, or United States bankruptcy court as may in the receiver's opinion be necessary or proper for the protection, maintenance, and preservation of the Storybook Defendants' Assets, or the carrying out of the terms of this Order, and likewise to defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings now pending in any court by or against the Storybook Defendants where such prosecution, defense, or other disposition of such actions or proceedings is, in the judgment of the receiver, advisable or proper for the protection of the Storybook Defendants' Assets; and

e. to exercise those powers necessary to implement the orders and directives of this Court.

Plaintiff requests that the Court direct the Storybook Defendants and their affiliates to promptly deliver and surrender to the appointed receiver all Storybook Defendants' Assets in their possession or under their control, and to fully cooperate with and assist the receiver appointed in this action and to take no action, directly or indirectly, to hinder or obstruct the receiver in the conduct of his duties or to interfere in any manner, directly or indirectly, with the custody, possession or control exercised by said receiver.

Therefore, for the reasons stated above, the Department respectfully requests that this Court appoint a receiver over the Storybook Defendants' Assets.

Respectfully submitted,



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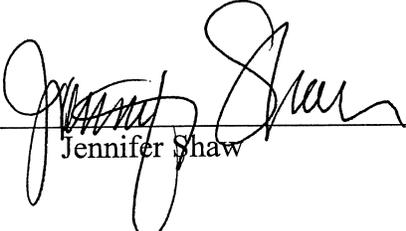
CERTIFICATE OF MAILING

The undersigned certifies that on the 1st day of October, 2009, a true and correct copy of the foregoing was mailed by first class mail, with postage prepaid thereon, addressed to:

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Jennifer Shaw