

**DISTRICT COURT FOR OKLAHOMACOUNTY
STATE OF OKLAHOMA**

**FILED IN DISTRICT COURT
OKLAHOMA COUNTY**

DEC 12 2014

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TIM RHODES
COURT CLERK**

Oklahoma Department of Securities)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
v.)
)
Seabrooke Investments, LLC, an Oklahoma)
limited liability company;)
Seabrooke Realty LLC, an Oklahoma)
limited liability company;)
Oakbrooke Homes LLC, an Oklahoma)
limited liability company;)
Bricktown Capital LLC, an Oklahoma)
limited liability company;)
KAT Properties, LLC, an Oklahoma)
limited liability company;)
Cherry Hill LLC, an Oklahoma limited liability)
Company doing business as Cherry Hill Apartments;)
Tom W. Seabrooke, individually and as trustee of)
Tom Seabrooke 2007 Revocable Trust; and)
Judith Karyn Seabrooke, individually and as trustee)
of Tom Seabrooke 2007 Revocable Trust and)
J. Karyn Seabrooke Revocable Trust,)
)
Defendants.)

Case No. CJ-2014-4515

**RECEIVER'S MOTION TO ENFORCE COURT'S INJUNCTION, FOR
CONTEMPT CITATION AGAINST FIRST COMMERCIAL BANK, AND FOR
DECLARATORY ORDER REGARDING ESCROWED FUNDS**

Receiver Ryan Leonard seeks to enforce the Court's injunction in its September 5, 2013 Order, for contempt sanctions based on First Commercial Bank (FCB)'s violation of said Order, and for declaratory relief as to escrowed funds from the sale of a receivership asset.

Factual Background

1. On August 11, 2014 the Court entered a temporary restraining order and appointed Ryan Leonard as Receiver for Defendants. On September 5, 2014 the Court granted a Temporary

Injunction and Ancillary Relief and ordered that Ryan Leonard should remain as Receiver. As to Defendants, the Receiver was given authority *inter alia*: (1) to take immediate custody, possession and control of any and all Assets; (2) to manage the business of Defendants; (3) to collect money owing to Defendants and to make disbursements as may be necessary; (4) to open bank accounts in the name of the Receiver; to change the name of any Asset and/or the signing authority for any Asset, in order to reflect that the Asset is held in the name of the Receiver and/or to reflect that the Receiver is the only person authorized to deal with such Asset, including if necessary, instructing banks that the Receiver is the only person authorized to make withdrawals or transfers from any of Defendants' bank accounts; and (5) to market the Assets of Defendants for sale. A copy of said Temporary Injunction and Ancillary Relief is attached hereto as Exhibit "A."

2. First Commercial Bank (FCB) has asserted a mortgage/security interest in certain receivership assets, including the Cherry Hill Apartments owned by Defendant Cherry Hill LLC. The Cherry Hill Apartment's operating bank account is Account No. 41194437 at FCB, which account was historically used to collect rents and pay expenses associated with the Apartments.

3. FCB's, through its attorney (Stephen Haynes), appeared at hearings in this Receivership and FCB received a copy of the Court's September 5, 2014 Order. Under the Order, all assets of Cherry Hill LLC, including its bank account at FCB, were frozen. FCB, through its attorney, sought to enter an appearance and argue in this case with regard to matters involving Cherry Hill LLC's bank account funds and was allowed to do so by the Court as to one hearing.

4. After September 5, 2014, the Receiver attempted to take possession of Defendant Cherry Hill LLC's bank account at FCB. Per the Court's Order, the Receiver was the only person authorized to deal with said account. Furthermore, the Order specially directed that banks such as

FCB “promptly deliver and surrender to the Receiver” such assets and fully cooperate with and assist the Receiver by “taking no action, directly or indirectly, with the custody, possession or control exercised by the Receiver.” Finally, the Court ordered that all creditors of Cherry Hill LLC, including FCB, were “restrained from doing any act or thing whatsoever to interfere with the Receiver or to the possession or management by the Receiver” of the assets of Cherry Hill LLC.

5. Because the Cherry Hill Apartments is an ongoing business consisting of 104 multi-family units which have not been well-maintained, it presented unique, immediate and time-consuming issues for the Receiver, including cash management issues that required making decisions about what expenses and obligations should have priority. The Receiver was required to make payroll for employees charged with operating and bookkeeping for the Apartments. The Receiver was also required to negotiate with the City to avoid having the water supply turned-off, continue to employ a full-time maintenance person, address property tax and insurance issues, evaluate offers to purchase the Apartments, and negotiate sales contracts.

6. From the beginning of the Receivership until now, FCB refused to comply with the Court’s Order regarding the Cherry Hill LLC bank account at FCB and refused to cooperate with the Receiver’s requests to do so, resulting in the Receivership incurring unnecessary legal and other expenses which should be borne solely by FCB. Instead of turning over the Bank Account to the Receiver as the only person authorized to make deposits and withdrawals, FCB insisted that it maintain control over the account and approve all withdrawals, including payment of bills for maintenance, employee payroll, and all other expenses associated with management of the Apartments. FCB refused to transfer all funds in to the Receivership bank account as requested, forcing the Receiver to provide a list of bills the Receiver desired to pay, thus providing FCB with

veto authority over the process of disbursements. Only after FCB approved requested payments did it fund the Receivership account with monies to make disbursements. The Receiver repeatedly reminded FCB that such conduct was in violation of the Court's Order, but to no avail. In the interest of not wasting precious Receivership resources on filing a contempt action, the Receiver reserved his right to seek enforcement of the Court's Order while attempting to coordinate his bank deposits and withdrawals through FCB and attempting to resolve the dispute with FCB.

7. On September 19, 2014, FCB sought to intervene in this action in order to object to the Receiver's Application for fees and expenses. FCB did **not** contend that the Receiver's fees and expenses were unreasonable, but instead argued against the amount the Receiver proposed to pay from the Cherry Hill LLC bank account (\$15,000). FCB argued *inter alia* that FCB had incurred expenses to protect its secured interest in the Cherry Hill Apartments and that *its* expenses should have priority over all other expenses, including the Receivers. That particular argument by FCB was unsupported by any legal authority and directly contrary to the rule in Oklahoma and other jurisdictions that the Receiver's fees and expenses are a first charge and have priority over expenses incurred by creditors such as FCB based on their security interest. *Brown v. Bivings*, 316 P.2d 855 (Okla. 1957); *Hyland v. Anchor Fin. Co., Inc.*, 146 N.J. Super. 102 (App. Div. 1977); *SEC v. Elliott*, 953 F.2d 1560, 1576-78 (11th Cir. 1992). The Receiver was required to expend attorney's fees in responding to FCB's objections and appearing at a hearing to set the record straight on the applicable legal authority and on the Receiver's rationale for drawing upon the Cherry Hill Account (i.e., the Receiver informed the Court at the hearing that FCB's unwillingness to allow the Receiver to take possession and control of the Cherry Hill bank account resulted in a substantial amount of unnecessary work). The Court ultimately allowed the amount requested

(\$15,000) to be paid by the Receiver from the Cherry Hill account, reserving the right to re-allocate at a later time.

8. Through the efforts of the Seabrookes and the Receiver, a buyer was secured for the Cherry Hill Apartments based on a contract price of \$1,015,000 and the resulting contract was approved by the Court. Because of the poor condition of the property and other issues, the Receivership was required to contribute approximately \$10,000 to close the sale. Conversely, FCB received full repayment of the principal and interest owed on its loan (\$879,275). Notwithstanding that it had received full repayment of principal and interest, FCB claimed that it was entitled to receive \$22,538 from the sale proceeds to reimburse its own legal expenses. FCB conditioned any closing of the sale on said amount being escrowed until further decision by the Court. Neither FCB nor its attorney conferred any significant benefit on the Receivership in regard to the sale of the Cherry Hill Apartments that was not already being conferred by the Receiver, the Receiver's attorney and/or Karyn Seabrooke as the broker for the sale. Accordingly, FCB is not entitled to recover its attorneys' fees. Aside from its share of the commission earned from the sale, the Receivership lost money on the sale of the Cherry Hill Apartments due to costs associated with the poor condition of the property, delinquent taxes, insurance and other costs.

9. After sale of the Cherry Hill Apartments was accomplished, the Receiver renewed in writing its demand that FCB transfer all Cherry Hill bank account funds to the Receivership bank account as required by this Court's September 4, 2014 Order. The Receiver pointed out that FCB had received full payment of principal and interest on its loan and that the \$22,538 FCB claimed in attorney's fees was escrowed pending further order from the Court. Without

explanation or justification, FCB once again defied this Court's order, forcing the Receiver to file this motion to enforce the Court's Order through injunction and contempt.

I. THE COURT SHOULD ENFORCE ITS PRIOR ORDER BY ISSUING A MANDATORY INJUNCTION AND CONTEMPT SANCTION AGAINST FCB

The court directed that FCB and other third party financial institutions “promptly deliver and surrender to the custody of the Receiver all assets in [their] control or possession” and “fully cooperate with and assist the Receiver” and “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 the Receiver.” This Order was expressly authorized by statute. 71 O.S. § 1-603(B). Thus, **only** the Receiver, **not FCB**, was charged with taking control of the Cherry Hill Apartments, managing the ongoing business of Cherry Hill Apartments, including collecting rents, paying expenses, and otherwise protecting and preserving both of these properties. **Only the Receiver, not FCB**, was authorized to take control of the bank account of Cherry Hill LLC and to make withdrawals and transfers from said account. The Receiver was expressly authorized to open a Receivership bank account for Cherry Hill LLC and have all funds transferred into that account.

The Court has authority to enforce its injunction and require that FCB immediately turn over the bank account funds to the Receiver. *FTC v. NHS Sys.*, 708 F. Supp.2d 456 (E.D. Pa., 2009); *FTC v. Productive Mktg. Inc.*, 136 F. Supp. 2d 1096 (C.D. Calif. 2001). Furthermore, FCB's conduct constitutes an intentional and contemptuous violation of this Court's September 4, 2014 Order. 21 O.S. § 565 (“indirect contempts of court shall consist of willful disobedience of any process or order lawfully issued or made by the Court; resistance willfully offered by any person to the execution of a lawful Order or process of a court”). Such a contempt order is

supported by undisputed evidence that: (1) the September 5, 2014 Order was in effect, (2) the Order required FCB to deliver the Cherry Hill bank account funds to the Receiver, cooperate with the Receiver and not interfere with the Receiver's management of the Cherry Hill Apartments, and (3) FCB failed to comply with these requirements. *SEC v. AmeriFirst Funding, Inc.*, 2008 U.S. Dist. LEXIS 7510 (Feb. 1, 2008, N. Dist. Texas). The question is not one of intent, but rather whether FCB complied with the Court's order; good faith is not a defense to civil contempt. *Id.*; *See SEC v. Homa*, 2004 U.S. Dist. LEXIS 8636 (N.D. Ill. 2004).

II. THE COURT SHOULD ENTER A DECLARATORY ORDER THAT FUNDS HELD IN ESCROW FROM THE SALE OF THE CHERRY HILL APARTMENTS BELONG TO THE RECEIVER

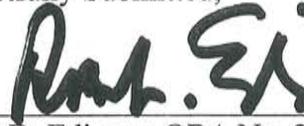
FCB received full repayment of the principal and interest owed on its loan (\$879,275). Notwithstanding this, FCB claims that it is entitled to receive \$22,538 from the sale proceeds to reimburse its own legal expenses in regard to enforcing its security interest in the Cherry Hill Apartments. Neither FCB nor its attorney conferred any benefit on the Receivership in regard to the sale of the Cherry Hill Apartments that was not already being conferred by the Receiver, the Receiver's attorney and/or Karyn Seabrooke as the broker for the sale. Further, given the obstructive behaviour of FCB in violation of the Court's September 5, 2014, Order and its unsuccessful legal challenge to the Receiver's fees and expenses, FCB's legal fees conferred no benefit on the Receivership. Thus, FCB is not entitled to recover its attorneys' fees. *Nesbitt v. Rose-Hurst Farms*, 1940 Conn. Super LEXIS 152 (Oct. 13, 1940, Conn. Superior Ct.). The \$22,538 escrowed funds from the sale of the Apartments should be released to the Receiver.

CONCLUSION

The Receiver requests that the Court enforce its prior injunction, enter a declaratory order that funds held in escrow from the sale of the Cherry Hill Apartment belong to the Receiver, and

require First Commercial Bank to appear before the Court and show cause why it should not be punished for contempt of court with appropriate sanctions entered against it.

Respectfully Submitted,



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ATTORNEY FOR THE RECEIVER,
RYAN LEONARD

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this ^{12th} day of December, 2014, a true and correct copy of this pleading was served via First Class Mail, postage prepaid, or by Email to:

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A handwritten signature in black ink, appearing to read "Robert Edinger", written over a horizontal line.

Robert Edinger

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Plaintiff,)

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)
Defendants.)

TEMPORARY INJUNCTION AND ANCILLARY RELIEF

This matter came on for hearing on August 19, 2014, before the undersigned Judge of the District Court in and for Oklahoma County, State of Oklahoma, upon the Plaintiff's application for a temporary injunction and Defendants' motion to vacate the temporary restraining order issued by this Court on August 11, 2014.

It appears to this Court from the evidence presented at hearing that there is a justifiable basis to grant the temporary injunction and continue the appointment of the receiver.



IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants, their agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, email or otherwise, are, until further notice of this Court, enjoined from transacting business in or from this state as an issuer, issuer agent, broker-dealer, or broker-dealer agent or otherwise offering or selling any security in or from this state.

IT IS FURTHER ORDERED that Defendants, their agents, servants, employees, and those persons in active concert or participation with them, are prohibited from tampering with, mutilating, altering, erasing, concealing, removing, destroying or otherwise disposing of any and all books, records, documents, files, correspondence, computer disks, tapes or other data recordings of any type, pertaining to or referring to Defendants and/or the Investment Notes and Investment Agreements that are the subject of this matter, or any other financial transactions by Defendants or to which Defendants were parties.

IT IS FURTHER ORDERED that the assets of Defendants, at the time of the filing of the *Petition for Permanent Injunction and Other Relief* (Petition), will remain frozen, except that the Bank of the West account in the name of Amelia F. Robles, with the account number ending 1006, is hereby released from the asset freeze. The assets of Defendants subject to the freeze include funds, securities and properties, real and personal, tangible and intangible, of whatever kind and description, and wherever situated, including those at all banking or financial institutions, held by or under the direct or indirect control of Defendants, whether held in the name of Defendants or for the direct or indirect beneficial interest of any Defendant, in whatever form such assets existed ("Assets"). Defendants, their agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by

personal service, facsimile, email, or otherwise, are, until further notice of this Court, enjoined from withdrawing, transferring, assigning, pledging, selling or otherwise disposing of Assets. All banks, brokerage firms or other financial institutions, and other persons or entities holding Assets, which receive actual notice of this Order by personal service, facsimile, email, or otherwise, shall hold and retain such Assets within their control and prohibit the withdrawal, transfer, assignment, pledge, sale or other disposal of any such Assets until further order by this Court.

IT IS FURTHER ORDERED that Ryan Leonard ("Receiver") shall remain the appointed Receiver for Defendants. The Receiver is given direction and authority to accomplish the following with regard to Defendants and the Assets as may be necessary and advisable for the preservation of the Assets and in discharging his duties as Receiver;

1. to take immediate custody, possession and control of any and all Assets, as well as any records or documents relating in any way to the Assets;

2. to retain or employ attorneys, accountants, consultants, management firms, and other persons as may be advisable or necessary to exercise the duties of the Receiver and to compensate such persons, all subject to approval by the Court. The Court previously approved the retention of Robert D. Edinger as legal counsel to the Receiver and the employment of an accountant;

3. to manage the business activities of Defendants, their affiliates, subsidiaries, and any related entities existing at the time of the filing of the Petition, and to conserve, hold, and protect the Assets, pending further action by this Court.

4. to market the Assets of the Defendants for sale, including the retention of listing agents, realtors and brokers, and to evaluate all offers to purchase received. All sales of the Assets shall be subject to approval by the Court;

5. to release bank and financial accounts from the freeze as may, in the Receiver's opinion, be necessary or proper for the protection, maintenance, or preservation of the Assets, or the carrying out of the terms of this Order;

6. to retain any employee of the Defendants, as may be advisable or necessary, including any individual Defendant, in control of, management of, participation in the affairs of, or on the premises of, the Defendants; and/or to dismiss any employee of the Defendants as may be advisable or necessary, including any individual Defendant, from control of, management of, or participation in the affairs of, or from the premises of the Defendants;

7. to receive and collect any and all sums of money owing to the Defendants at the time of the filing of the Petition; to collect the revenue and income generated by the maintenance and operation of the Assets 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 Assets and as may be necessary and advisable in discharging his duties as Receiver;

8. to open bank and financial accounts in the name of the Receiver; to change the name of any Asset and/or the signing authority for any Asset, in order to reflect that the Asset is held in the name of the Receiver pursuant to this Order and/or to reflect that the Receiver is the only person authorized to deal with such Asset, including if necessary, instructing banks and financial institutions that the Receiver is the only person authorized to make withdrawals or transfers from any of Defendants' bank and financial accounts existing at the time of the filing of

the Petition. Any bank or financial institution shall be entitled to rely on this Order to open and make changes to such accounts as requested by Receiver;

9. to open and inspect any and all mail or deliveries addressed to Defendants to determine if same relate to the existence, location, identity or collection, preservation, maintenance or operation of the Assets, to notify the United States Postal Service to effect the forward delivery of any mail addressed to Defendants to a mail depository under the control of the Receiver; and to return personal mail to Defendants Tom W. Seabrooke and J. Karyn Seabrooke;

10. 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, or preservation of the Assets, or the carrying out of the terms of this Order, and likewise to defend, compromise, adjust, or otherwise dispose of any and all actions or proceedings now pending in any court by or against 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 Assets; and

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

IT IS FURTHER ORDERED that the Receiver is hereby authorized, without breaching the peace, to enter and secure any premises, wherever located or situated, in order to take possession, custody or control of, or to identify the location or existence of, any Assets. The Oklahoma County Sheriff shall assist the Receiver, as is necessary, to enter and secure such premises.

IT IS FURTHER ORDERED that the Receiver may apply to the Court for payment of fees, from time to time, in a reasonable sum to be determined by the Court and from such sources as approved by the Court and for reimbursement of reasonable expenses incurred in connection with his duties as Receiver. The Receiver's hourly fee shall be billed at the rate of \$265.00 per hour, which rate shall not be increased without order of the Court. Payment of the fees and expenses of the Receiver shall have priority over any other claims made against the Defendants or the receivership estate. The Receiver shall not be required to post a bond. The Oklahoma Department of Securities and the Defendants shall have the authority to seek removal of the Receiver for cause and upon approval of this Court.

IT IS FURTHER ORDERED that all persons and entities, their subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, and further including any banks or financial institutions, who receive actual notice of this Order, by personal service, facsimile transmission or otherwise, shall promptly deliver and surrender to the Receiver:

1. all Assets in the possession of or under the control of any one or more of them;
2. all books and records of any kind pertaining to the Assets of Defendants, the allegations of the Petition, or any securities transactions of or by Defendants; and
3. all items and information necessary to access the Assets and books and records including, but not limited to, keys, passwords, and security codes.

IT IS FURTHER ORDERED that all persons and entities, their subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, and further

including any banks or financial institutions, wherever chartered or located, who receive actual notice of this Order, by personal service, facsimile transmission or otherwise, fully cooperate with and assist the Receiver and that they 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.

IT IS FURTHER ORDERED that, except by leave of Court during the pendency of this Order, all creditors and other persons seeking money, damages, or other relief from Defendants, and all others acting on behalf of any such creditor or other persons, including sheriffs, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees, are hereby stayed and restrained from doing any act or thing whatsoever to interfere with the Receiver or to the possession of or management by the Receiver of the Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over the Defendants. This Order shall not stay or restrain any pending or future action whatsoever by any government agency or any representative on behalf of any government.

IT IS FURTHER ORDERED that Defendants and Receiver allow representatives of the Oklahoma Department of Securities access to any and all documents relating to the sales of interests in the Investment Notes and Investment Agreements that are the subject of this matter and the business of Defendants, their subsidiaries, officers, directors, agents, servants, employees, assigns, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, including, but not limited to, books, records, tapes, discs, accounting data, checks, correspondence, forms, advertisements, brochures, manuals, electronically stored data, bank records, customer and investor lists, customer and

investor files, telephone records, ledgers, and payroll records, to include such information stored in computer maintained form.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over this matter and Defendants for all purposes.

THIS ORDER IS ENTERED this 5 day of September, 2014.

PATRICIA G. PARRISH

DISTRICT COURT JUDGE

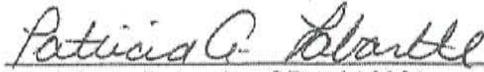
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IN DISTRICT COURT

SEP - 5 2014

TIM RHODES Court Clerk
Oklahoma County

Tim Rhodes

APPROVED



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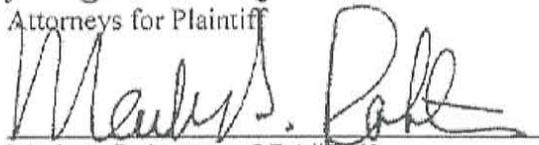
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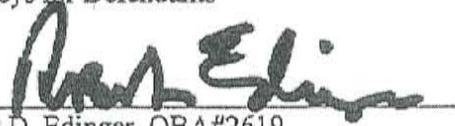
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