

**DISTRICT COURT FOR OKLAHOMACOUNTY
STATE OF OKLAHOMA**

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

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

SEP 25 2014

TIM RHODES
COURT CLERK

36 _____

**RECEIVER'S REPLY IN RESPONSE TO FIRST COMMERCIAL BANK'S
OBJECTION TO RECEIVER'S APPLICATION FOR COMPENSATION**

On September 19, 2014 First Commercial Bank ("FCB") sought to intervene in this action and to object to the Receiver's Application for Compensation.¹ In Reply to that Objection, the Receiver, Ryan Leonard, submits the following Reply to that Objection:

1. The Receiver did not receive the Objection until the afternoon of September 22, making it impossible to file a Reply last week. Accordingly, if necessary, the Receiver requests leave of court to file this Reply.

1. While FCB asserts a mortgage/security interest in certain receivership assets, namely the Cherry Hill Apartments and the Timber Creek development, it is not a party to this action. Absent permission to intervene, it has no standing to object to the Receiver's Application.

2. FCB does not object to an order granting the Receiver's fees and expenses or the reasonableness of the amount sought by the Receiver (including fees of the Receiver's attorney and accountant). Instead, FCB argues that: (a) compensation to the Receiver from assets in which FCB claims a security interest (Cherry Hill Apartments and Timber Creek properties) should be apportioned based on the work performed by the Receiver relative to those assets; (b) compensation for evaluating or soliciting a sales contract on the Cherry Hill Apartments should be paid from sales commission at the closing of the sale; and (3) because FCB incurred expenses to protect its secured interest in the properties during the pendency of the receivership, its expenses should have priority over all other expenses.

3. FCB's assertions are contrary to this court's orders, contrary to the law, and would be inequitable under the facts and circumstances of this receivership. The general rule in Oklahoma is that the costs and expenses of the receivership, including compensation of the receiver, the counsel fees, and the obligations incurred by the receiver discharging his duties constitute a first charge against the property or funds in the receivership. *Brown v. Bivings*, 316 P.2d 855 (Okla. 1957). The Receiver's right to payment comes ahead of the any rights of FCB for expenses it may have incurred or for security it may have in accounts receivable or rents associated with the Cherry Hill Apartments. *See Hyland v. Anchor Fin. Co., Inc.*, 146 N.J. Super. 102 (App. Div. 1977). It is proper for the receiver to be paid from the proceeds of secured property where the receiver has *benefited* the property such as here where the receiver is responsible for paying

employees, collecting rents, disbursing payments for repairs, maintenance, utilities, taxes, and insurance, and reporting to the court on the ownership, finances, value and claims asserted as to receivership assets. See *SEC v. Elliott*, 953 F.2d 1560, 1576-78 ((11th Cir. 1992). “Even though a receiver may not have increased, or prevented a decrease in, the value of the collateral, if a receiver reasonably and diligently discharges his duties, he is entitled to compensation.” *Id.* at 1777.

4. This court’s orders flatly contradict any claim by FCB that its expenses have priority over the Receiver’s compensation. 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.” Thus, only the Receiver, not FCB, is charged with taking control of the Cherry Hill Apartments and Timber Creek properties, 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, is authorized to make withdrawals and transfers from bank accounts of the Cherry Hill Apartments. For discharging these duties – which benefits defendants, investors and creditors (such as FCB) – the Receiver is entitled to receive compensation. Finally, the court expressly ordered that “[p]ayment of the fees and expenses of the Receiver shall have priority over any other claims made against the Defendants or the receivership estate.” Thus, the Receiver’s compensation has priority over claims of FCB.

5. Under the facts and circumstances of this receivership, it is not practicable or equitable to allocate the Receiver’s fees and expenses based on the work performed exclusively for

assets such as the Cherry Hill Apartments or the Timber Creek properties, or for a specific project related to a specific asset (i.e., negotiating the sale of Cherry Hill Apartments). First, while billing statements attached to the Receiver's Application are not dominated by frequent *express* reference to Cherry Hill Apartments or the Timber Creek properties,² the services performed by the Receiver, as well as the accountant and attorney retained by him, involved taking control, maintaining and preserving *all* of the receivership assets, *including these assets*. The first obligation of the Receiver included appearing before the court, securing information needed to identify *all of the assets of the receivership*, conferring with the Seabrookes and their staff, determining the identity of the owners and claimants to the receivership assets, securing bank records and accounting files from the Defendants relating to those assets, identifying the nature of any ongoing businesses and their immediate needs in regard to employee payroll, insurance, tax payments, delinquent debts, payment of utilities, repairs and maintenance, ...etc. The task of determining the identity of owners, investors, and creditors (including both secured and unsecured creditors), was particularly difficult and time consuming due to the number of investors and creditors, the number of Defendants and types of ongoing businesses being conducted by the Defendants. Second, because the Defendants' records revealed a long history of Defendants having *commingled funds and assets* among and between all Defendant entities and individuals, it was impossible for the Receiver to isolate and perform many duties only with regard to specific

2. The billing statements attached to the Application do expressly reference a number of tasks related to the FCB properties, including: multiple discussions with FCB regarding Cherry Hill and Weatherford properties in general; multiple conferences with Karyn Seabrooke involving management payment issues at Cherry Hill; consideration of multiple offers to purchase Cherry Hill and multiple conferences with FCB regarding these offers; multiple discussions with FCB regarding maintenance issues at Cherry Hill; conferences with FCB about its refusal to simply transfer signing authority to Receiver on Cherry Hill bank accounts; correspondence with tax attorney regarding Cherry Hill tax returns; conferences between Receiver and his attorney regarding FCB compliance with court receivership orders; reviewing Cherry Hill mortgage and other information supplied by FCB; discussion with individual investor claiming interest in FCB secured property; review and approval of mailbox repairs at Cherry Hill; review of Cherry Hill outstanding bills; review of Cherry Hill income and expense spreadsheet.

Defendants or specific assets. Third, the Receiver, his attorney, and his accountant were required to perform many tasks that inherently involved *all of the assets of the receivership*, including preparing testimony/reports on the current state of finances of the entire receivership estate, appearing in court to respond to the Defendants' motion to vacate the temporary restraining order, etc. Fourth, because some potential buyers seek to purchase all or several different assets of the receivership, even the task of evaluating such offers cannot always be isolated to specific assets.

6. Because the Cherry Hill Apartments, is an ongoing business enterprise 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 obligation should have priority. The ongoing nature of the apartment business required the Receiver to make payroll for employees charged with operating and bookkeeping for the Apartments. The Receiver was required to negotiate with the City water department to avoid having the water supply turned-off, the necessity of keeping full-time maintenance employees, addressing various property tax and property insurance issues, as well as evaluating and negotiating offers to purchase the property.

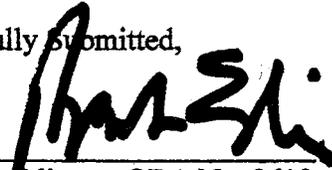
7. Most troubling is the unnecessary time the Receiver was required to spend in negotiations with FCB over control of the bank accounts for Cherry Hill Apartments. In violation of the court's order, FCB refused to turn over custody and control of these bank accounts to the Receiver. The Receiver was forced to coordinate payment of all bills necessary for maintenance and preservation of this asset with FCB, an expense that should be borne exclusively by the FCB as the party who improperly caused it in violation of the Court's orders.

8. The Receiver's Application requests payment of a total of \$72,298.75 in fees and expenses for the period through August 31, 2014. The Receiver submits that such fees and expenses can reasonably and equitably be allocated and paid from the following available cash assets of the receivership: \$44,076 from Bricktown Capital Account at Bank of the West; \$15,000 from Cherry Hill Apartment Account at Bank of the West; and \$13,222.75 from J. Karyn Seabrooke Trust Account at Bank of the West.

CONCLUSION

Based on the foregoing, the Receiver respectfully requests that the objection of FCB to the Receiver's Application be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of September, 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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