



**FILED IN DISTRICT COURT
OKLAHOMA COUNTY
DISTRICT COURT FOR OKLAHOMACOUNTY
STATE OF OKLAHOMA APR - 1 2015**

Oklahoma Department of Securities
ex rel. Irving L. Faught, Administrator,

Plaintiff,

v.

Seabrooke Investments, LLC, an Oklahoma
limited liability company, *et. al.*

Defendants.

TIM RHODES
COURT CLERK

Case No. CJ-2014-4515

**RECEIVER'S OBJECTION TO FIRST COMMERCIAL BANK'S APPLICATION
FOR ORDER TO DISBURSE CHERRY HILL ESCROWED FEES
TO FIRST COMMERCIAL BANK**

The Receiver, Ryan Leonard, submits this Objection to the Application of First Commercial Bank (FCB) for Order to Disburse Cherry Hill Escrowed Fees to FCB.

Introduction

This dispute involves entitlement to \$22,538 in proceeds escrowed from the sale of the Cherry Hill apartments. FCB claims it should be awarded this amount as attorney's fees based on its mortgage and security agreement in addition to having already received full repayment of the principal and interest (\$856,737) it was owed. [1] The Receiver asserts the escrowed funds are an asset of the Receivership to be used to repay investors and/or to pay first priority expenses of the receivership estate. The 104 unit Cherry Hill apartment complex has been one of the most difficult assets for the Receiver to manage, due in large part to significant operational problems resulting from its poor condition coupled with FCB's persistent violations of this Court's orders. In order to

¹ The Receiver's Affidavit, at ¶12, mistakenly identified the full repayment of principal and interest as \$879,275, but this amount included the \$22,538 escrowed based on FCB's claim for attorneys' fees.

ultimately close the sale of these apartments, the Receivership was forced to pay approximately \$10,000 in expenses.

An award of attorneys' fees to FCB would set a dangerous precedent for future receiverships given the history of FCB's violations of this Court's orders and FCB's failure to confer any notable benefit on the receivership estate. FCB's Application comprises 21 pages, including 5 ½ pages of facts, none of which are supported by affidavit or verified. Much of FCB's "facts" misrepresent what actually occurred both in pleadings and in open court. One glaring example is FCB's assertion, without foundation, that the Receiver failed to substantiate FCB's obstructive conduct through supporting facts or verification. As this Court is well-aware, the Receiver's Motion was supported by a four-page sworn Affidavit of Ryan Leonard which describes in great detail how the Receivership was significantly and unnecessarily burdened by FCB's violation of the Court's orders and how FCB conferred no significant benefit on the Receivership. In addition, the Receiver's filed fee statements reflect an extraordinary number of time entries attributable to the apartment complex, including the tangled web of approvals improperly imposed on the Receiver by FCB. Finally, the filed fee statements of the Receiver's counsel reflect significant legal expense to enforce this court's orders against FCB.

From a purely legal standpoint, FCB's Application is a remarkable misreading of the law of receiverships and a direct challenge to the authority of this Court. If followed, FCB's arguments would strip the court of the most basic enforcement tools guaranteed by Oklahoma receivership law. Three notable examples of FCB's strained arguments are: First, a contrived estoppel theory – whereby FCB claims the Receiver is estopped to enforce the Court's orders – which ignores the role of the Receiver as an arm of the court, and also ignores basic elements of estoppel. Second,

that Defendant Cherry Hill LLC's bank account at FCB, contrary to this Court's Order, is not an "asset" subject to control of the receivership. Third, that this Court's orders freezing Defendants' assets, placing the assets under the Receiver's control, and giving the Receiver a "first priority" for fees and expenses are *ineffective* to trump FCB's mortgage and security agreement. Finally, as argued by the Securities Department, FCB's Application for Disbursement of the Escrow Fees should not be granted because it undermines the claims process and is unsupported by any evidence of FCB's claimed attorneys' fees. For the reasons set forth below, the Court should deny FCB's Application and order that the escrowed funds be held as an asset of the receivership.

I. THE RECEIVER IS NOT ESTOPPED TO ENFORCE THIS COURT'S ORDERS

According to FCB, it reached agreement with the Receiver to leave the "status quo in effect" whereby FCB failed to transfer control to the Receiver of the bank account of Defendant Cherry Hill LLC. Almost as a footnote, FCB acknowledges that as part of the so-called "agreement," the Receiver expressly stated his position that the status quo was "not... consistent with the authority of the Receiver under the Court's order, which [the Receiver] in no way intends to waive." In his sworn Affidavit, the Receiver explained: "*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.*" Affidavit of R. Leonard, parag. 6, filed herein on 01/30/15.

According to FCB's unverified version of events, the status quo procedures worked successfully, the Receiver never complained that the procedures caused problems, and never

provided an explanation of any problems. Thus, FCB concludes the Receiver is legally *estopped* from complaining about the status quo procedures used. However, the true facts are borne out, not only by the Receiver's sworn Affidavit, but also by the pleadings and statements offered by the parties in open court. Those facts show the Receiver never represented to FCB that it would not enforce the Court's orders. Thus, the key requirements of estoppel (i.e., misrepresentation and reasonable reliance thereon) could never be met under these circumstances. *Ind. Nat'l Bank v. State Dep't of Human Servs.*, 1993 OK 101, ¶ 24 (elements of equitable estoppel are (1) a false representation or concealment of facts, (2) made with actual or constructive knowledge of the fact, (3) to a person without knowledge of, or the means of knowing, those facts, (4) with the intent it be acted upon, and (5) the person to whom it was made acted in reliance upon it to its detriment). Indeed, the Receiver, as an arm of the *court* in a special proceeding is not subject to the defense of estoppel. "The general rule is the application of *estoppel* is not allowed *against* the state, political subdivisions or agencies, unless it would further a principle of public policy or interest." *Id.* at ¶ 23. It is hard to imagine how FCB's violation of this Court's orders could further any public policy or interest.

At every stage of these proceedings the Receiver expressed, both to FCB and to the Court, his position that FCB's conduct was burdensome, in violation of the Court's Orders, and that the Receiver reserved the right to enforce those orders. The Receiver hoped this would encourage FCB to abandon its obstructive conduct. It did not. As early as Sept. 9, 2014, the Receiver's counsel made clear to both FCB and this Court that FCB was acting in violation of the Court's Order and the Receiver reserved the right to enforce the Court's Order against FCB. Exh. A, Transcript of 09/09/24, pp. 51-52, ("This is the problem, why I said that the receiver is reserving the right to exercise the authority that it has under your order today, ... which is to take control of those

assets. And the bank is required to cooperate with the receivership. And I don't want to get argumentative because these parties have kind of been working on this loose arrangement in part because the receiver was distracted with some other matters. But from a pure legal standpoint, our position is that those bank assets belong to, and are in the custody and control of the receiver. I know that the bank has a different view, and we have argued vehemently about that, but the receiver is not giving up its right to exercise its [possession], custody and control over those accounts. And I just don't want there to be any confusion." Id.

The Receiver's Affidavit explains the burdensome problem imposed by FCB: "*From the beginning of the Receivership until now, FCB refused to comply with the Court's Order regarding the Cherry Hill LLC bank account, 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 the management of the Apartments. FCB refused to transfer all funds to the Receivership bank account as requested, requiring 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 the requested payments did it fund the Receivership account with monies to make the disbursements.*" Affidavit of R. Leonard, parag. 10. The delay and associated problems with this entangled web of approvals was compounded by the nature of the Cherry Hill Apartments and its poor condition. Once again, the Receiver fully explained the predicament in his Affidavit: "*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 the cash management issues that required making decisions about what expenses and obligation should have priority.” Id., parag. 9.

By September 25-26, 2014, the Receiver’s counsel was advising the Court and FCB in writing that FCB’s refusal to obey the Court’s order was interfering with the receiver’s control over receivership assets and that FCB should have to bear the expense of preserving the Cherry Hill asset. *“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 FCB as the party who improperly caused it in violation of the Court’s Order.”* Receiver’s Reply in Response to FCB Objection to Receiver’s Application for Compensation, ¶7, filed herein on 09/25/14. The Receiver sought to have \$15,000 of the Receiver’s fees and expenses paid from the funds in the Cherry Hill bank account. *Id.* Although FCB objected and argued that its security interest in the bank account was a priority over the Receiver, the Receiver pointed out that FCB’s position was contrary to the court’s orders, and contrary to established law in Oklahoma that a receiver’s compensation constituted a first charge against funds held in the receivership. *Id.* At the Sept. 26 hearing, the Receiver’s counsel emphasized the severity of the issue to the Court: *“So what we end up doing, since the beginning of the receivership, is having to coordinate every single payment that is made with the bank so that they authorize it. That is not the way it was supposed to happen...”* *“It has been an obstruction that has caused an inordinate amount of time to be spent on this particular bank account.”* Exh. B, Transcript of 09/26/14, pp 12-13. The Court granted the Receiver’s Application to pay \$15,000 of his fees from the Cherry

Hill bank account. *Id.* at p. 22. However, the necessity of filing a response and appearing at a hearing cost the Receivership legal fees even while FCB had no legitimate legal position.

When the Cherry Hill Apartments were sold in November, 2014, FCB received full repayment of all principal and interest on its mortgage. Even with this full repayment, FCB was not satisfied. It demanded that \$22,538 from the sale proceeds be escrowed based on FCB's claim that it was entitled to be paid its attorney fees in that amount. The Receiver agreed to the escrow arrangement subject to a ruling by this Court. Exh. C, Escrow Agreement, dated 11/05/14.

But even escrowing of \$22,538 was not enough for FCB. With full repayment of its loan principal and interest and \$22,538 in escrow based on its claim for attorney's fees, FCB still refused to release all remaining funds in the Cherry Hill bank account to the Receiver. As a consequence, the Receiver's counsel made the following written demand on FCB: "*[FCB's] persistent refusal to comply with the Receiver's control over [the Cherry Hill bank account] from and after September 5, 2014 is a continuing violation of the Court's order. Such interference has resulted in substantial and completely unnecessary commitment of resources, time and money of the Receiver and his attorney to these accounts. Accordingly, please be advised that if FCB does not transfer the funds remaining in [the bank account] by 5 p.m. tomorrow (November 12, 2014), the Receiver will apply to Judge Parrish for appropriate sanctions against FCB, including costs and attorneys' fees.*" Exh. D, Letter, dated 11/11/14, from R. Edinger.

On December 5, 2014 after the sale of the Cherry Hill Apartments, the Receiver informed the court that FCB had received full repayment of all principal and interest on its mortgage loan (\$856,737.37) even though the Bank caused the Receiver to incur unnecessary expense. The Receiver commented at the hearing that "*the beneficiary of this sale was [FCB]. That is not how*

we envisioned it when we went through it...The bank caused the receivership to do a tremendous amount of, in my opinion, unnecessary work.” Exh. E, Transcript of 12/05/14, pp. 30-31.

When FCB refused to even provide the courtesy of a response to the Receiver’s November 11, 2014 written demand, the Receiver was once again forced to incur legal expense to obtain relief from FCB’s obstructive conduct in violation of the Court’s orders. On December 12, 2014 the Receiver filed his Motion to Enforce Court’s Injunction, For Contempt Citation Against First Commercial Bank, and for Declaratory Order Regarding Escrowed Funds.

At a hearing on January 30, 2015, the Court ordered FCB to transfer to the Receiver all remaining funds held in the Cherry Hill bank account by no later than 5 p.m. that day. All other matters contained in the Receiver’s Motion to Enforce Court’s Injunction, for Contempt Citation and for Declaratory Order Regarding Escrowed Funds were continued to be reset for a date certain. Order, dated 01/30/15, filed 02/06/15. Only after being compelled by this Order (and only after the Receiver incurred additional legal fees) did FCB finally issue a check to the Receiver for the remaining funds in the account (\$13,311.85). This occurred almost five (5) months after the Receiver had been granted possession, custody and control over that account by this Court’s temporary restraining order.

**II. DEFENDANT CHERRY HILL LLC’S BANK ACCOUNT AT FCB IS
AN ASSET OF THE RECEIVERSHIP AND IS SUBJECT TO
THIS COURT’S FREEZE AND OTHER ORDERS**

FCB argues that Defendant Cherry Hill LLC’s bank account at FCB is not the property of Defendant, but rather the funds on deposit were owned by FCB. From this dubious legal theory, FCB then argues that the bank account funds are also not *Receivership assets* because the Receiver acquires no greater interest in the property than the entity in receivership. FCB concludes that the

Receiver's rights do not "trump" FCB's rights under its mortgage and security agreement. Such a theory, which is a direct assault on this Court's authority to freeze Defendant's bank accounts, is contrary to Oklahoma statutes governing this receivership. 71 O.S. §1-603(B) (2) which governs this Receivership proceeding, specifically authorizes the Court to impose an asset freeze, appoint a receiver, and authorizes the receiver to "take charge of and control defendant [Cherry Hill LLC's] property, including accounts in depository institutions, rents and profits, to collect debts, and to dispose of such property of defendant [Cherry Hill LLC]. This is precisely what this Court did in its September 5, 2014 Temporary Injunction and Ancillary Relief Order. Under that Order **only the Receiver, not FCB**, was charged with taking control of the bank account of Cherry Hill LLC, making 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. *Id.* FCB was expressly ordered to deliver and surrender custody of the bank account to the Receiver, to fully cooperate and assist the Receiver in the conduct of his duties, and not to interfere in any manner with the custody, control and possession of the Receiver over that bank account. FCB blatantly violated this Court's order from the beginning of this Receivership and that violation cannot go unpunished. To allow FCB to be repaid from Receivership assets for its conduct in violation of this Court's orders would create the wrong precedent for future receiverships.

III. THE RECEIVER ADOPTS THE ARGUMENTS AND AUTHORITY OF THE SECURITIES DEPARTMENT IN ITS RESPONSE TO FCB'S APPLICATION

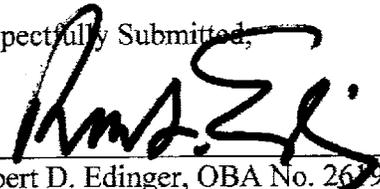
The Receiver adopts and incorporates herein the following arguments and legal authority of the Oklahoma Securities Department in its Response to FCB's Application, namely that the Application should be denied because: (1) it would undermine the procedures for processing

claims in this Receivership; and (2) FCB has failed to substantiate its claimed attorneys' fees by any delineation or description.

Conclusion

For the reasons set forth above, the Receiver respectfully requests that this Court deny FCB's Application for Disbursement and order that the escrowed funds be released to the Receiver as assets of the Receivership estate.

Respectfully Submitted,



Robert D. Edinger, OBA No. 2679
Robert Edinger PLLC
116 East Sheridan, Suite 207
Oklahoma City, OK 73104
Telephone: (405) 702-9900
Facsimile: (405) 605-8381
redinger@edingerpllc.com
ATTORNEY FOR THE RECEIVER,
RYAN LEONARD

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of April, 2015, a true and correct copy of this pleading was served via First Class Mail, postage prepaid, or by Email to:

Patricia A. Labarthe
Jennifer Shaw
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102
plabarthe@securities.ok.gov
jshaw@securities.ok.gov

Mark A. Robertson
Michael Paul Kirschner
Robertson & Williams
9658 N. May Avenue, Suite 200
Oklahoma City, OK 73120

mark@robertsonwilliams.com
mike@robertsonwilliams.com

Jim W. Lee
One Broadway Executive Park
201 N.W. 63rd, Suite 230
Oklahoma City, OK 73116-8237
jimlee@legalassociatesllc.net

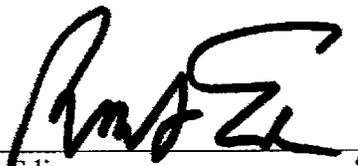
Rollin Nash, Jr.
Nash, Cohenour
4101 Perimeter Center Dr., Suite 200
Oklahoma City, OK 73112
rnash@nashfirm.com

R. Stephen Haynes
R. Stephen Haynes, P.C.
First Commercial Bank Bldg.
3805 W. Memorial Road
Oklahoma City, OK 73134
shaynes@haynespc.com

David L. Nunn
P.O. Box 230
Edmond, OK 73083-0230
dnunn@davidlnunnpc.com

John M. Thompson
Crowe & Dunlevy
Braniff Building
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102
John.thompson@crowedunlevy.com

Edward O. Lee
Billy Lewis
Lee, Goodwin, Lee, Lewis & Dobson
1300 E. 9th Ste. 1
Edmond, OK 73034
blewis@edmondlawoffice.com



Robert Edinger

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of
Securities, ex. rel., Irving L.
Faught, Administrator,
Plaintiff,

vs.

Seabrooke Investments, LLC, an
Oklahoma limited liability
company, et al.,
Defendant.

COPY

Case No. CJ-2014-4515

* * * * *

TRANSCRIPT OF PROCEEDINGS

HAD ON THE 9TH DAY OF SEPTEMBER, 2014

BEFORE THE HONORABLE PATRICIA G. PARRISH,

DISTRICT JUDGE

Reported by: Karen Twyford, RPR

DISTRICT COURT OF OKLAHOMA --- OFFICIAL TRANSCRIPT



1 MR. HAYNES: That's my question.

2 THE COURT: And I don't quite know. So all of the
3 rents are coming directly to you, your bank?

4 MR. HAYNES: Yes. At least they're supposed to.

5 THE COURT: So you get all the bank's through some
6 dropbox account or something. You then tell him, These are
7 the bills that need to be paid out of that account, and the
8 bank pays them?

9 MR. LEONARD: Yes, your Honor. We're managing the
10 property. Karyn Seabrooke -- as recently as three days ago,
11 we're working on getting bids to replace the mailboxes that
12 are in disrepair. On the day-to-day basis, that still falls
13 under the auspices of the property management company.

14 THE COURT: what happens to the excess? Let's say
15 he has \$10,000 a month in rents and \$6,000 goes out in
16 bills. who is keeping that other \$4,000?

17 MR. EDINGER: This is the problem, your Honor, why
18 I said that the receiver is reserving the right to exercise
19 the authority that it has under your order today, both at
20 the temporary restraining order and the temporary
21 injunction, which is to take control of those assets. And
22 the bank is required to cooperate with the receivership.

23 And I don't want to get argumentative because these
24 parties have kind of been working on this loose arrangement
25 in part because the receiver was distracted with some other

1 matters. But from a pure legal standpoint, our position is
2 that those bank assets belong to, and are in the custody and
3 control of, the receiver.

4 I know the bank has a different view, and we have
5 argued vehemently about that, but the receiver is not giving
6 up its right and authority under that order, or your court,
7 to exercise its position, custody, and control over those
8 accounts. And I just don't want there to be any confusion.
9 We're working pretty well together right now, but we are
10 absolutely reserving our right to exercise --

11 THE COURT: So is the bank just leaving those
12 excess funds, to the extent there are any, in the account,
13 or is the bank applying those to their indebtedness?

14 MR. HAYNES: Well, at this point we're just leaving
15 them in the account. But it is our position that those are
16 part of our security on this loan.

17 THE COURT: Even if it was security -- because I'm
18 just thinking, there is an application pending before me for
19 receiver's fees, accountant fees, and Ms. Ley's fees -- and
20 I have forgotten what she did. She was a bookkeeper that
21 went in and did --

22 MR. LEONARD: Ms. Ley is the accountant, your
23 Honor.

24 THE COURT: I have right now a receiver's
25 application, fees of about \$75,000 that is pending in this

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of
Securities, ex. rel., Irving L.
Faight, Administrator,
Plaintiff,
vs.
Seabrooke Investments, LLC, an
Oklahoma limited liability
company, et al.,
Defendant.

COPY

Case No. CJ-2014-4515

* * * * *

TRANSCRIPT OF PROCEEDINGS
HAD ON THE 26TH DAY OF SEPTEMBER, 2014
BEFORE THE HONORABLE PATRICIA G. PARRISH,
DISTRICT JUDGE

Reported by: Karen Twyford, RPR

DISTRICT COURT OF OKLAHOMA --- OFFICIAL TRANSCRIPT



1 All be it behind the first mortgage holder, but that money
2 would be owed to Cherry Hill. So there has been a lot done
3 for Cherry Hill, and that was the purpose of allocating some
4 of these proceeds from the Cherry Hill account.

5 MR. EDINGER: If I may, also, your Honor, just one
6 last point. With regard to Cherry Hill, one of the reasons
7 that the receiver chose to allocate 15,000 of these fees to
8 that account is it really has been an inordinate and,
9 frankly, wasteful period of time in terms of the bank's
10 obstruction of the receiver from being able to take control
11 of the bank account and operate it like all the other bank
12 accounts.

13 So what the receiver has done, with regard to all
14 these other entities and all these other accounts, is take
15 control of the bank account, as you authorized him to do.
16 He authorizes the checks, the disbursements, he maintains
17 the account. And the difference was that in this case the
18 bank, because that account is at the bank, that Cherry Hill
19 Apartment bank account is at First Commercial, the bank has
20 refused to allow the receiver to exercise all of those
21 responsibilities that he has.

22 So what we end up doing, since the beginning of the
23 receivership, is having to coordinate every single payment
24 that is made with the bank so that they authorize it. That
25 is not the way it was supposed to happen. That's not what

1 your order provides. Your order provides that the banks
2 will not interfere with the receiver's control over the
3 assets.

4 And I will provided the court just with an example
5 of an e-mail that was sent to Ryan by Mr. Haynes where he is
6 kind of outlining all the things that the bank expects, you
7 know, this process where the bank requires the receiver to
8 coordinate with them before the receiver can make any
9 disbursements of anything. And I would mark it as an
10 exhibit, one from the receiver.

11 But it is just simply an example of this process
12 that has been totally obstructed and has required the
13 receiver to engage in a number of multiple conversations.
14 I've been with him on many of those conversations.
15 Mr. Haynes and I have argued on the phone back and forth
16 many times, and I pointed out to him what your order says.
17 And the order is very clear that the receiver has control of
18 those assets, including the bank account, and the receiver
19 gets to make the decision in his discretion about what
20 payments are made.

21 He does not have to operate through the bank or
22 with the bank's cooperation. It has been an obstruction
23 that has caused an inordinate amount of time to be spent on
24 this particular bank account.

25 THE COURT: Are you familiar with this?

1 we all agree that the bank's funds went just to Cherry Hill,
2 and then it was the investors all came in after the bank.

3 MS. LABARTHE: Well, I'm not sure. I think the
4 bank's money went to Cherry Hill and Weatherford.

5 THE COURT: Right. Weatherford. I kept saying
6 "Woodward." Weatherford.

7 MR. HAYNES: They are two separate loans. That is
8 only Cherry Hill.

9 MS. LABARTHE: Oh, that is only Cherry Hill. Was
10 Weatherford around the same time?

11 MR. HAYNES: I don't have the weatherford.

12 MR. LEONARD: I believe it was before that.

13 MR. HAYNES: I'm certain it was before this,
14 because this was a secondary loan made afterwards. I know
15 that because it was a take out of another loan.

16 THE COURT: Okay. Well, for purposes of today's
17 hearing, then, I will authorize the receipt of the monies as
18 designated, the 15,000, from the Cherry Hill account.

19 Then off the record for a moment, Counsel.

20 (Conclusion of proceedings.)
21
22
23
24
25

ESCROW AGREEMENT

This Escrow Agreement ("Escrow Agreement") is executed effective November 5, 2014, by and among Cherry Hill, LLC, Ryan Leonard, Receiver for Cherry Hill, LLC, First Commercial Bank and Stewart Abstract & Title of Oklahoma, an Oklahoma corporation ("Escrow Agent").

WHEREAS, Seller and Receiver have entered into a Purchase Agreement dated effective as of September 18, 2014, providing for the acquisition by AMG Realty Group from Seller of the following described real property, to-wit: Block One (1) Leonhardt's Cherry Hill Addition to Oklahoma City, Oklahoma County, Oklahoma, according to the recorded plat thereof (the "Property"); and

WHEREAS, the Commitment for Title Insurance issued by Escrow Agent contains a requirement for a Release of the Mortgage in favor of First Commercial Bank ; and

WHEREAS, Seller, Receiver and First Commercial Bank have agreed that adequate funds shall be held in escrow by Escrow Agent to ensure satisfaction of the requirement; and

WHEREAS, Seller, Receiver, First Commercial Bank and Escrow Agent desire to set forth the terms and conditions upon which the funds shall be deposited, held and applied.

NOW, THEREFORE, in consideration of the premises and of the representations, covenants and agreements hereinafter made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto have agreed and do agree as follows:

1. Appointment of Escrow Agent. Purchaser and Seller hereby designate and appoint Stewart Abstract & Title of Oklahoma as Escrow Agent hereunder, to serve in accordance with the terms and conditions of this Escrow Agreement. Escrow Agent hereby accepts such appointment and agrees to act as escrow agent in accordance with the terms and conditions of this Escrow Agreement.

2. Deposit of Escrow Fund. Seller hereby deposits into escrow with Escrow Agent the sum of Twenty Two Thousand Five Hundred Thirty Eight and No/100 Dollars (\$22,538.00) (the "Escrow Balance"). Said amount shall be held in escrow by Escrow Agent and shall be disposed of pursuant to the provisions of this Escrow Agreement. The rights of all parties shall be governed by this Escrow Agreement.

3. Release of Escrow Balance. The Escrow Balance shall be released in accordance with the following:

A Release of Escrowed Funds executed by Cherry Hill, LLC, Ryan Leonard, Receiver and First Commercial Bank.



4. Responsibilities of Escrow Agent. The acceptance by Escrow Agent of its duties under this Escrow Agreement is subject to the following terms and conditions, which the parties to this Escrow Agreement hereby agree shall govern:

(a) Escrow Agent's sole responsibility hereunder shall be to act as a depository for the Escrow Balance, to hold such Escrow Balance in safekeeping and to disburse the Escrow Balance as provided for herein.

(b) Escrow Agent shall be protected in acting upon any written notice, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be. Escrow Agent shall not be obligated to inquire as to the form, manner of execution or validity of any document provided pursuant to the provisions hereof, nor shall Escrow Agent be obligated to inquire as to the identity, authority or rights of any person executing the same.

(c) Escrow Agent shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or misconduct; but in any event Escrow Agent shall not be liable for any consequential loss (including, without limitation, loss of profits) or for special, incidental or indirect damages such as, but not limited to, exemplary or punitive damages.

(d) Escrow Agent shall have no duties except those which are expressly set forth herein, and it shall not be bound by any notice of claim or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Escrow Agreement, unless in writing received by it, and, if its duties or liabilities as set forth herein are affected, unless it shall have given its prior written consent thereto.

(e) In the event of any disagreement resulting in adverse claims or demands being made in connection to the Escrow Balance, Escrow Agent shall refuse to comply with any claims or demands on the Escrow Balance and shall refuse to take any other action hereunder, so long as such disagreement continues. In any such event, Escrow Agent shall not be or become liable in any way or to any person for its failure to act. Escrow Agent shall be entitled to continue to so refrain from acting until all differences shall be resolved, either by written agreement or by the decree of a court of competent jurisdiction. The rights of Escrow Agent under this paragraph are cumulative of all other rights which it may have by law or otherwise and shall include the right of Escrow Agent to institute an interpleader proceeding.

5. Indemnity. Seller agrees to indemnify and hold Escrow Agent harmless against any and all claims, actions, suits, losses, damages, costs and expenses that may be incurred by it by reason of its compliance in good faith with the terms of this Escrow Agreement.

6. Notices. All notices, demands and requests required or permitted to be given hereunder shall in every case be in writing and shall be deemed duly given: (a) at the time of

delivery, when delivered personally; (b) one (1) business day after being dispatched, if sent by a nationally recognized overnight courier service; or (c) three (3) business days after being deposited in the United States mail, if sent by registered or certified mail, return receipt requested, to the parties at the addresses as set forth below or at such other address as may be furnished in writing:

If to First Commercial Bank:

If to Seller:

If to Receiver:

With a copy to:

And a copy to:

If to Escrow Agent: Stewart Abstract & Title of Oklahoma
Attn: Margaret Miller
701 N. Broadway Ave., Suite 300
Oklahoma City, OK 73102

7. Parties in Interest. This Escrow Agreement shall be binding upon and inure to the benefit of the respective legal representatives and successors of the parties hereto. This Escrow Agreement shall not be assignable by any party hereto.

8. Entire Agreement. This Escrow Agreement evidences the entire agreement among Escrow Agent, Seller and Purchaser in connection with the Escrow Balance deposited hereunder.

9. Amendment and Termination. This Escrow Agreement may not be modified or discharged nor may any of its terms be waived, except by an instrument in writing signed by all parties. This Escrow Agreement shall terminate upon the disbursement of the Escrow Balance by Escrow Agent as provided herein or earlier upon the written agreement of all parties hereto.

10. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma, excluding the conflict of laws provisions thereof that would otherwise require the application of the law of any other jurisdiction.

11. Counterparts. This Escrow Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12. No Construction Against Drafter. Because all parties have participated in drafting, reviewing and editing the language of this Escrow Agreement, there shall be no strict construction in favor of or against any party by reason of a party's drafting or preparing all or any part of this Escrow Agreement.

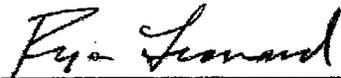
13. Validity. The invalidity or unenforceability of any particular provision of this Escrow Agreement shall not affect any other provisions hereof, and this Escrow Agreement shall be construed in all other respects as if such invalid or unenforceable provision was omitted.

IN WITNESS WHEREOF, the undersigned have executed this Escrow Agreement as of the day and year first above written.

SELLER:

By: 

RECEIVER:

By: 

FIRST COMMERCIAL BANK

By: 

ESCROW AGENT:

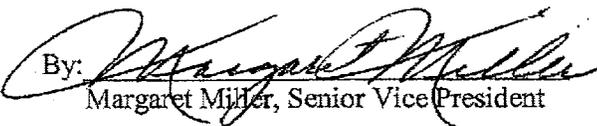
By: 
Margaret Miller, Senior Vice President

EXHIBIT "A"
LEGAL DESCRIPTION

File No.: 01043-20447

Block One (1), Leonhardt's Cherry Hill Addition to Oklahoma City, Oklahoma County, Oklahoma,
according to the recorded plat thereof.

ROBERT EDINGER PLLC
ATTORNEY AND COUNSELOR AT LAW
116 EAST SHERIDAN, SUITE 408
OKLAHOMA CITY, OKLAHOMA 73104
TELEPHONE 405.702.9900
EMAIL redinger@edingerpllc.com

November 11, 2014

R. Stephen Haynes (shaynes@haynespc.com)
R. Stephen Haynes, P.C.
First Commercial Bank Bldg.
3805 W. Memorial Road
Oklahoma City, OK 73134

Re: *Okla. Dept. of Securities v. Seabrooke, LLC,*
et. al, Case No. CJ-2014-4515, District
Court of Oklahoma County, OK

Mr. Haynes:

On November 5, 2014, Ryan Leonard, Receiver in the captioned proceedings, sent you an email instructing that your client, First Commercial Bank (FCB), immediately transfer to the Cherry Hill [Receivership] (Account #41236415) all remaining funds in the Cherry Hill LLC account (Account #41194437). The Receiver noted that FCB has received payment of all principal and interest on the loan obligations of Cherry Hill LLC to FCB. The Receiver instructed that the funds be transferred no later than November 6, 2014. I am advised by the Receiver that this transfer has not occurred.

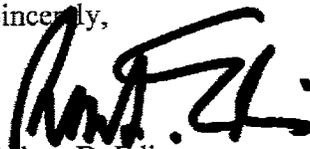
You and your client were previously furnished with the Court's September 5, 2014 Order (Temporary Injunction and Ancillary Relief) which authorizes the Receiver to take immediate custody, possession and control of Account #41194437, including receipt and collection of all sums of money owing to Cherry Hill LLC and making such payments and disbursements as may be necessary in connection with the Receivership's authority to manage the business of Cherry Hill LLC. The Court's Order further provides that the Receiver is the only person authorized to deal with Account #41194437 and that FCB shall promptly deliver and surrender to the Receiver such account. The Order authorizes the Receiver to open Account #41236415 in the name of the Receiver and to transfer funds into that account. Finally, the Order instructs FCB to fully cooperate with and assist the Receiver in the conduct of his duties and to refrain from interfering in any manner, directly or indirectly, with the custody, possession or control exercised by the Receiver.

FCB's persistent refusal to comply with the Receiver's control over Account #41194437 from and after September 5, 2014 is a continuing violation of the Court's Order. Such interference has resulted in a substantial and completely unnecessary commitment of resources, time and money of the Receiver and his attorney to these accounts. Accordingly, please be advised that if FCB does not transfer the funds remaining in Account #41194437 by 5 p.m.



tomorrow (November 12, 2014), the Receiver will apply to Judge Parrish for appropriate sanctions against FCB, including costs and attorneys' fees.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Edinger". The signature is stylized and somewhat cursive.

Robert D. Edinger
Attorney for Receiver

RDE/slf

cc: Ryan Leonard (rleonard@leonard-law.net)

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of
Securities, ex. rel., Irving L.
Faught, Administrator,
Plaintiff,
vs.
Seabrooke Investments, LLC, an
Oklahoma limited liability
company, et al.,
Defendants.

COPY

Case No. CJ-2014-4515

* * * * *

TRANSCRIPT OF PROCEEDINGS
HAD ON THE 5TH DAY OF DECEMBER, 2014
BEFORE THE HONORABLE PATRICIA G. PARRISH,
DISTRICT JUDGE

Reported by: Karen Twyford, RPR

DISTRICT COURT OF OKLAHOMA COUNTY OFFICIAL TRANSCRIPT



1 want to spend to put up. We didn't want to spend \$20,000 or
2 \$25,000 to comply with insurance that was expiring one day
3 before the sale, so we had to work through those issues.

4 THE COURT: You or Ms. Seabrooke had to work
5 through those issues?

6 MR. LEONARD: Mrs. Seabrooke. Everything was done
7 in conjunction. I was kept in the loop on everything. We
8 worked on it together. She was certainly involved and was
9 the primary point of contact with the buyer. I think it is
10 important to point out a couple of things. A, the reason
11 that we spent the time and effort to conclude this sale was
12 the principal amount of the mortgage was 823,000. When we
13 accepted the offer the total amount of principal and
14 interest owed was 837,000.

15 we negotiated, and our final contract was for
16 \$1,015,000. We didn't think we were doing this sale just
17 for the commission. We thought there was going to be
18 additional equity in there. And then when you throw the
19 taxes in, you throw the various things in that -- the
20 property needs a tremendous amount of work. Frankly, we
21 were extremely fortunate. It is a miracle that we sold that
22 property for what we did.

23 Unfortunately, we did not realize more for the
24 receivership than we did. The beneficiary of this sale was
25 the bank. That is not how we envisioned it when we went

1 through it. And I will also say that Mr. Haynes is here,
2 and I enjoyed getting to know Mr. Haynes and working with
3 Mr. Haynes. The bank caused the receivership to do a
4 tremendous amount of, in my opinion, unnecessary work.

5 THE COURT: Let me ask this: How many other
6 properties are left out there that have to be sold?

7 MR. LEONARD: Not including the personal residence,
8 there are 17 properties.

9 THE COURT: How many other large properties?

10 MR. LEONARD: We have sold --

11 THE COURT: How many contracts are pending too?

12 MR. LEONARD: We have nine properties under
13 contract or sold. Four properties have been closed upon.
14 An additional five properties are under contract. We are
15 getting ready to bring another property under contract,
16 possibly today. We have been going back and forth. These
17 properties are moving.

18 Of the 17 properties, we have nine that are under
19 contract or sold, and we will add to that number shortly.
20 Of those total 17, two of those properties -- one is in
21 Lawton, another is a piece of raw land in Oklahoma City.
22 FNB of Weatherford, First National Bank of Weatherford, has
23 the mortgage on both. The receivership will make little,
24 and I believe, no money on either of those properties, so
25 we're in discussions with the bank to return those