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Tarzana Plaza Condominiums Association

FILED
Superior Court Of California
County Of Los Angeles
MAY 17 2018
Sherri R. Carter, Executive Officer/Clerk
By Sabrina Skorich, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10 Northwest District

12 TARZANA PLAZA CONDOMINIUMS
ASSOCIATION, a California nonprofit mutual
13 benefit corporation,

14 Plaintiff,

15 v.

16 EUGENE SAAL, an individual; RUBICELIA
SCHULTZ, an individual; JUDY WEISS, an
17 individual; PASCAL BRENNINKMEIJER, an
individual; ARYEH PATHI, an individual;
18 and DOES 1-25, inclusive,
19 Defendants.

Case No.: LC106595
20 Related Cases: 16K04378
LC106242

~~PROPOSED~~ ORDER APPOINTING
RECEIVER AND ORDER TO SHOW
CAUSE WHY RECEIVER SHOULD
NOT BE CONFIRMED

Assigned for all purpose to the Honorable
Huey P. Cotton, Department A

21 The *ex parte* application (“Application”) of Plaintiff, TARZANA PLAZA
22 CONDOMINIUMS ASSOCIATION (“Association”) for appointment of a receiver, originally
23 filed on March 5, 2018, came on for continued hearing on May 17, 2018 at 8:30 a.m. in Department
24 A of the above-entitled court, the Honorable Huey P. Cotton, Superior Court Judge presiding.
25 Appearance were made as reflected in the Court’s minutes.

26 GOOD CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

27 The Application ^{is stipulated to and} is GRANTED and a receiver is appointed, effective immediately, as set
28

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1 forth herein. Furthermore, pursuant to California Rules of Court, R. 3.1176, the Court ^{HFC} orders-
2 ~~Defendants to appear in this Court and show cause why the appointment of a receiver should not~~
3 ~~be confirmed, which shall be set for hearing on _____, 2018 at _____ in~~
4 ~~Department A of the above-entitled Court.~~ Defendants shall be served with this order by counsel
5 for the Plaintiff. Service may be effectuated via US Mail.

6 **ORDER APPOINTING RECEIVER**

7 1. Stephen J. Donell (the "Receiver") is hereby appointed as the receiver in this action
8 to take possession, custody, control and to manage and operate Tarzana Plaza Condominiums
9 Association (the "Association"), a California nonprofit mutual benefit corporation and any and all
10 real and personal property belonging to the Association, including without limitation the 101-unit
11 condominium development located at 18530 Hatteras Street, Tarzana, County of Los Angeles,
12 California (the "Property"). The Receiver shall execute a receiver's oath and post a bond from an
13 insurer in the sum of \$5,000.00, conditioned upon the faithful performance of his duties as receiver
14 herein. The oath and bond are to be filed in Department A no later than thirty-days following his
15 appointment.

16 2. The Receiver shall have all power and authority of a receiver provided by law,
17 including the following powers and responsibilities:

18 a. The Receiver shall be authorized and empowered to operate, manage,
19 control, conduct, care for, preserve and maintain the Property. In this regard, the Receiver shall be
20 authorized to change the locks on the doors providing access to the common areas, so long as this
21 does not interfere with any homeowners' access to its separate property, and to do all things which
22 he deems necessary to protect the Property.

23 b. The Receiver shall be authorized to take possession of the Property and
24 seize, manage and control the Property, whether in the possession of current property management
25 company J&N Realty, Inc. ("J&N"), its agents, officers, directors, and/or employees or any other
26 person or entity, so long as this does not interfere with any homeowners' access to its separate
27 property.

28 c. The Receiver shall further be authorized to take possession of and collect

1 any accounts, chattel paper and general intangibles of every kind hereafter arising out of the
2 Property and take possession of all the books and records relating to the foregoing, wherever
3 located, as the Receiver deems necessary for the proper administration of the Property.

4 d. The Receiver shall be authorized and empowered to enter, gain access, take
5 possession of, and manage all Association accounts wherever located pending discharge, including
6 the power to demand any and all records from the banks holding present and past accounts.

7 e. The Receiver shall be authorized and empowered to take control of any and
8 all debit, credit and ATM cards issued under any Association bank account.

9 f. The Receiver shall preserve and protect the assets, tax records, books and
10 records where located while he acts to operate the affairs of the Association.

11 g. The Receiver shall be authorized to review all Accounts of the Association
12 for all expenditures and collection since 2006 to present. Also, the Receiver shall be authorized to
13 review the current active account statements, and materials prepared by any property manager,
14 accountant or other professional with respect to current or past property management.

15 h. The Receiver is authorized and empowered to execute and prepare all
16 documents and to perform all acts, either in the name of the Association, as applicable, or in the
17 Receiver's own name, which are necessary or incidental to preserving, protecting, managing
18 and/or controlling the Property of the receivership estate while the Receiver operates the business
19 of the Association. In particular, the Receiver shall have the authority without limitation to
20 immediately cancel, extend, modify or enter into any existing or new contracts or leases necessary
21 to operate the Property.

22 i. The Receiver is authorized and empowered to demand, collect and receive
23 all monies, funds and payments arising from or in connection with any sale and/or lease of the
24 assets of the Association, as well as homeowners' dues, assessments and other fees from
25 Association members, including but not limited to, fees paid directly to J&N.

26 j. The Receiver may take any and all steps necessary to receive, collect and
27 review all mail addressed to the Association, including but not limited to, mail addressed to J&N
28 on behalf of the Association, mail received at any address by any homeowner or board member on

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1 behalf of the Association, or any post office boxes held in the name of the Association, and the
2 Receiver is authorized to instruct the U.S. Postmaster to re-route, hold and/or release said mail to
3 said Receiver.

4 k. The Receiver may take possession of all bank accounts and safe deposit
5 boxes of the Association and accounts as they pertain to the assets, wherever located, and receive
6 possession of any money on deposit in said bank accounts. The Receiver shall also have the
7 authority to close any account(s) that the Receiver deems necessary for operation or management
8 of the Property. Institutions that have provided banking services to the Association are instructed
9 to assist the Receiver by providing records that he requests. These institutions may charge their
10 ordinary rates for providing this service.

11 l. The Receiver is empowered to establish bank accounts at any bank the
12 Receiver deems appropriate for the deposit of monies and funds collected and received in
13 connection with his management of the receivership estate.

14 m. To the extent feasible, the Receiver shall, within thirty (30) days of his
15 qualification hereunder, ^{and serve} file in this action an inventory of all property of which Receiver shall have
16 taken possession pursuant to this Order and ^{and serve} file monthly accountings thereafter.

17 n. The Receiver, or any party to this action, may from time to time, and on due
18 notice to all parties, make application to this Court for further orders instructing the Receiver.

19 o. The Receiver is authorized to institute ancillary proceedings in this state or
20 other states as is necessary to obtain possession and control of all Property of the Association and
21 the Receiver may engage the services of counsel with further court order. The Receiver may pay
22 for such services from the funds of the Association. The Receiver may hire the Association's
23 counsel services with further court order to institute such proceedings in this state or other states
24 as is necessary to obtain possession and control of the Association's Property.

25 p. The Receiver is empowered to serve subpoenas when necessary with court
26 approval.

27 q. The Receiver has the authority to assess all homeowners to pay for any and
28 all health and safety repairs.

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1 r. The Receiver has the authority to take any and all legal actions or remedies
2 to make sure that the homeowners pay their monthly homeowners dues or assessments.

3 s. The Receiver is authorized to secure financing for the Property, subject to
4 final Court approval and confirmation of any loans secured by the Receiver related to the Property.

5 3. The Receiver shall also be entitled to perform the following:

6 a. Hire professionals, including accountants, paralegals, property managers
7 and attorneys to aid and counsel the Receiver in the performance of its duties;

8 b. Hire contractors to evaluate and make repairs to the Property;

9 c. Pay the fees and costs of any professionals retained by the Receiver to aid
10 him in the performance of his duties.

11 d. Pay such other and ordinary expenses deemed appropriate by the Receiver
12 to carry out the Receiver's duties as specified herein;

13 e. Pay the Receiver's fees from the funds of the receivership estate; and

14 f. Use any federal tax payer identification number(s) or apply for a new tax
15 payer number relating to the Association for any lawful purpose and prepare tax returns if required.

16 4. Monthly accounting and payment of the Receiver's income, expenses and fees:

17 a. The Receiver shall each month prepare and serve on the parties, but not file,
18 an accounting of revenues and expenses incurred in the administration of the receivership
19 Accounts, including the Receiver's fees and expenses.

20 b. The Receiver may pay the Receiver's own fees, fees of his agents, and
21 expenses by any of the following procedures:

22 i. By serving on all parties a notice of intent to pay for which no
23 objection is served onto the Receiver within ten (10) days of the date the notice is served;

24 ii. By serving and filing a request for interim payment, which the Court
25 approves;

26 iii. By obtaining and filing an agreement among all the parties
27 approving the payment, which the Court then approves;

28 iv. The Receiver shall not reimburse the Receiver for the Receiver's

1 general office administration expenses or overhead without Court approval. These expenses
2 include, for example, office supplies and taxes.

3 5. Receiver's final report and discharge:

4 a. Motion required. Discharge of the Receiver shall require a Court order upon
5 noticed motion for approval of the Receiver's final report and accounting and exoneration of the
6 Receiver's bond.

7 b. Time. Not later than sixty (60) days after the receivership terminates, the
8 Receiver shall file, serve and obtain a hearing date on a motion for discharge of the Receiver.

9 c. Notice. The Receiver shall give notice to all persons of whom the Receiver
10 is aware who have potential claims against the receivership property.

11 d. Contents of Motion. The motion to approve the final report and account and
12 for discharge of the receiver shall contain the following:

13 i. Declaration or Declarations. (1) stating what was done during the
14 receivership; (2) certifying the accuracy of the final accounting, and the basis for said accounting;
15 (3) stating the termination of the receivership (such as reinstatement); and (4) stating the basis for
16 an order for the distribution of any surplus or payment of any deficit.

17 ii. Accounting Summary. A summary of the receivership accounting,
18 which shall include: (1) the total revenues received; (2) the total expenditures identified and
19 enumerated by major categories; (3) the net amount of any surplus or deficit; and (4) evidence of
20 necessary supporting facts.

21 6. Bankruptcy; Debtor's Duty to Give Notice. If any party files a bankruptcy case
22 during the receivership, the Debtor shall give notice of the bankruptcy to the Court, to all parties,
23 and to the Receiver three (3) days after the day of which Debtor receives notice of the bankruptcy.

24 7. Bankruptcy; Receiver's Duties. If the Receiver receives notice that a bankruptcy
25 has been filed and part of the bankruptcy estate includes property that is the subject of this order,
26 the Receiver shall have the following duties:

27 a. Turn over property if no relief from the stay will be sought. The Receiver
28 shall immediately contact the party who obtained appointment of the Receiver, and determine

1 whether that party intends to move in the bankruptcy court for an order for: (1) relief from the
2 automatic stay; and (2) relief from the Receiver's obligation to turn over the property (11 U.S.C.
3 § 542). If the party has no intention to make such a motion, the Receiver shall immediately turn
4 over the property to the appropriate entity, either the trustee in bankruptcy if one has been
5 appointed, or if not, then to the debtor-in-possession, and otherwise comply with 11 U.S.C. § 543.

6 b. Remain in possession pending resolution. If the party who obtained the
7 receivership intends to seek relief immediately from both the automatic stay and the Receiver's
8 obligation to turn over the property, the Receiver may remain in possession and preserve the
9 Property pending the ruling on those motions (11 U.S.C. § 543(a)). The Receiver's authority to
10 preserve the Property shall continue as follows:

- 11 i. The Receiver may continue to collect homeowner dues; and
- 12 ii. The Receiver may make only those disbursements necessary to
13 preserve and protect any and all accounts of the Association.

14 c. Turn over property if no motion for relief is filed within fifteen (15) days
15 after notice of the bankruptcy. If the party who obtained the receivership fails to file a motion
16 within fifteen (15) court days after his or her receipt of notice of the bankruptcy filing, then the
17 Receiver shall immediately turn over the property to the appropriate entity either to the trustee in
18 bankruptcy if one has been appointed or, if not, to the debtor in possession and otherwise comply
19 with 11 U.S.C. § 543.

20 d. The Receiver may petition the Court to retain legal counsel to assist the
21 Receiver with issues arising out of the bankruptcy proceedings.

22 **ORDER TO COMPLY WITH RECEIVER**

23 IT IS FURTHER ORDERED that during the pendency of this action, J&N and any and all
24 parties, including their respective agents, servants, directors, assignees, successors,
25 representatives, employees and all persons or entities acting under, or in connection with, them or
26 for them, are required to cooperate with the Receiver by providing documents, account records,
27 statements, ledgers, check books, check book registers, and any and all other documents necessary
28 for the Receiver to manage the affairs of the receivership estate.

1 IT IS FURTHER ORDERED that J&N, and all parties, and each of them, and their
2 respective officers, directors, shareholders, general partners, limited partners, members, agents,
3 property managers, employees, assignees, successors, representatives, and all persons acting
4 under, in concert with, or for them, all other persons with actual or constructive knowledge of this
5 order, and each of them, shall do as follows:

6 1. Turnover of Assets. Shall turnover to the Receiver the possession and
7 management of the Property and other items of the Association.

8 2. Turnover of Licenses, Permits, and Taxpayer ID Number. Shall turnover to the
9 Receiver original and copies of all documents which pertain to all licenses, permits, or
10 government approvals relating to the Property and shall immediately advise the Receiver of their
11 Federal Taxpayer Identification Number used in connection with the operation of the Association
12 and Property.

13 3. Notification of Insurance. Shall immediately advise the Receiver as to the nature
14 and extent of insurance coverage for the Property or its operations. J&N and the Board are
15 prohibited from canceling, reducing or modifying any and all insurance coverage currently in
16 existence with respect to the Property and its operations. The Receiver shall determine upon
17 taking possession of the business whether in the Receiver's judgment there is sufficient
18 insurance to coverage. With respect to any insurance coverage, the Receiver shall be in
19 possession of the Property. If sufficient insurance coverage does not exist, the Receiver shall
20 immediately notify the parties to this lawsuit and shall have thirty (30) calendar days to procure
21 sufficient property and casualty, all-risk and liability insurance on the Property (excluding
22 earthquake and flood insurance); provide, however, that if the Receiver does not have sufficient
23 funds to do so the Receiver shall seek instructions from the Court with regards to whether
24 insurance shall be obtained and how it is to be paid for. If consistent with existing law, the
25 Receiver shall not be responsible for claims arising from the lack of procurement of, or inability
26 to obtain, insurance.

27 4. Agreements. Shall turn over to the Receiver copies or originals of all lease,
28 licenses, or other agreements of any kind whatsoever, whether currently in effect or lapsed,

1 which relate or relate to the Association and the Property.

2 5. Monies. Shall turn over to the Receiver all monies or funds of any type in the
3 account or accounts of defendants or its agents relating to the Property or the Association.

4 6. Turnover of Records and Documents from 2006 until Present. Shall turn over to
5 the Receiver all keys, leases, books, records, books of account, ledgers, audit reports, operating
6 statement, budgets, real estate tax bills, and all other business records relating to its business,
7 wherever located, and in whatever mode maintained, including information contained on
8 computers and any and all software related thereto as well as all banking records, statements and
9 cancelled checks.

10 7. Shall assist the Receiver to obtain any bank records that were unable to be
11 producer.

12 **ORDER ENJOINING INTERFERENCE WITH RECEIVER**

13 IT IS FURTHER ORDERED THAT J&N, the Association, any and all homeowners and
14 California association of homeowners, and the parties herein, and each of them and their
15 respective officers, directors, shareholders, general partners, limited partners, members, agents,
16 property managers, employees, assignees, successors, representatives, homeowners and all
17 persons action under, in concert with, or for them, and all other persons with actual or
18 constructive knowledge of this order, and each of them, shall not:

19 1. Commit Waste. Commit or permit any waste of the Property or any part thereof,
20 or suffer or commit or permit any act in violation of law, or remove, transfer, encumber or
21 otherwise dispose of any of the Property or any part thereof, or any fixtures thereon.

22 2. Collect Accounts Receivable. Demand, collect, receive, discount, or in any other
23 way divert or use of any of the accounts receivable (this includes monthly dues and special
24 assessments) or other times included in the Property or the receivership estate.

25 3. Interfere with Receiver. Directly or indirectly interfere in any manner with the
26 discharge of the Receiver's duties under this Order to the Receiver's possession, preservation
27 and maintenance of the Property or related litigation (provided that nothing in this order prohibits
28 or restrains defendants from petitioning the court with respect to any act or omission undertaken

1 or threatened by the Receiver), and shall not:

2 a. Interfere with the Receiver’s collection of accounts receivable (this
3 includes monthly dues and special assessments) of the receivership estate.

4 b. Dissipate, remove or secrete any inventor included with the Property,
5 including, but not limited to: (i) contacting any Homeowners within the Property or the
6 receivership estate for any purposes whatsoever; (ii) demanding payment from any Homeowner
7 of any account receivable included with the Property or the receivership estate; (iii) cashing any
8 check or other instrument used in paying any accounts receivable included within the Property or
9 the receivership estate; (iv) removing any funds from any bank account located at any financial
10 institution which constitutes collection of accounts receivable included within the Property or the
11 receivership estate; and (v) refusing to allow or prohibiting, either direct or indirectly, the
12 Receiver’s access to all books and records.

13 c. Interfere, hinder, or molest in any way whatsoever, the Receiver in the
14 performance of the Receiver’s duties herein described or in relation to the receivership estate or
15 the Receiver’s protection of the Property or the receivership estate, including without limitation,
16 conducting any recall elections without the Receiver’s consent or further order of this Court.

17 4. Transfer or Encumber the Property Transfer or Encumber the Property. Expend,
18 disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in,
19 encumber, hypothecate, conceal or in any manner whatsoever deal in or dispose of books and
20 records, or the whole or any part of the Property or the receivership estate, including, but not
21 limited to, accounts receivable to the extent included therein.

22 5. Impair Preservation of Association’s Interest. Do any act which will, or which
23 will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Property or the
24 receivership estate, including accounts receivable to the extent included therein, or the
25 preservation of the Plaintiffs’ interest in the Property or the receivership estate.

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FURTHER ORDERS

① Receiver will change all locks to the common areas, including without limitation, the party room and the computer rooms. APC

② Receiver shall ^{forthwith} remove all copies of the complaint in this action that are posted at the property, including without limitation, the party room and glass casing above the mail boxes. HLC

This Order shall remain in full force and effect until further order of this Court.

SO ORDERED.

DATED: May MAY 17, 2018



Hon. Huey P. Cotton
Superior Court Judge