

# Receivers in Bankruptcy

The Honorable David R. Jones, U.S.  
Bankruptcy Judge, Houston

Rick Kincheloe, Houston

Famose Garner, Houston

# What is a Receiver?

- Receiver: “A disinterested person appointed by a court . . . For the protection or collection of property that is the subject of diverse claims.”
  - Black’s Law Dictionary (9th Ed.)
- Judgment Receiver: “A receiver who collects or diverts funds from a judgment debtor to the creditor. A judgment receiver is usually appointed when it is difficult to enforce a judgment in any other manner.”
  - Black’s Law Dictionary (9th Ed.)

# When is a Receiver Available?

- FED. R. CIV. P. 64 (FED. R. BANKR. P. 7064)
- TEX. CIV. PRAC. & REM. CODE § 31.002
- TEX. CIV. PRAC. & REM. CODE § 64.001, *et seq.*
- 28 U.S.C. §§ 754 and 959

# Availability of a Receiver in Bankruptcy Court

- *In re Cassidy Land and Cattle Co., Inc.*, 836 F.2d 1130, 1133 (8th Cir. 1988)
  - “The power of the bankruptcy judge precluded by section 105(b) of the Bankruptcy Code is the power to appoint a receiver in lieu of a trustee. . . . Section 105(b) is not addressed to the power of a bankruptcy court to appoint a receiver at the request of the trustee for [another purpose].”

## Availability of a Receiver in Bankruptcy Court (cont.)

- *In re Ehmann*, 319 B.R. 200, 206 n. 10 (Bankr. D. Ariz. 2005)
  - Section 105(b) does not prohibit a Bankruptcy Court from appointing a receiver other than *in lieu* of a bankruptcy trustee
- *In re Teknek, LLC*, 343 B.R. 850, 867 (Bankr. N.D. Ill. 2006)
  - A receivership arising from a “core” proceeding is itself a core proceeding.
- *Stern v. Marshall*, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011)

# What Does a Receiver do?

- Defined by order appointing receiver
- Pre-judgment
  - Can manage business or asset
  - Can be responsible for preserving value of property
  - Limited availability during pendency of fraudulent transfer suit
- Post-judgment
  - Can seize and liquidate assets
  - Can seize funds on deposit
  - Can collect debts owed to judgment debtor
- Compensation
  - Contingent, Hourly, or Blended

# Role of the Bankruptcy Judge During a Receivership

- Enforcing terms of a turnover order
- Contempt proceedings for violating terms of turnover order
- Determine which assets are/are not subject to the receivership
  - *Faulkner v. Kornman*, 2012 WL 864574, Misc. Pro. 10-301 (Bankr. S.D. Tex. Mar. 13, 2012) (discussing *Hogdson v. Hotard*, 436 F.3d 1110 (5th Cir. 1971); *Pierce v. Vision Investments, Inc.*, 779 F.2d 302 (5th Cir. 1986))
  - *Law v. Siegel*, 134 S.Ct. 1188, 188 L.Ed.2d 146 (2014)

# Benefits of a Receiver

- For creditor
  - The ability to “aggressively collect” with the cloak of judicial immunity
  - Ability to collect free from outside interference
- For debtor
  - Protection from other creditors
  - Can operate as a “poor mans Chapter 13”
  - Protection from overzealous creditors

# Authority of a Receiver

- No statutory guidance regarding scope
- The content of the order appointing receiver is the most important thing to a receivership
- A receiver only has judicial immunity if acting within the scope of Court's order(s)

# Tools Available to a Receiver

- ordering the debtor/owner to turn over all books, records, bank account statements, check books,
- keys, codes, contracts, licenses;
- open new bank accounts;
- retain counsel;
- enter into necessary services provision agreements such as utilities, security, and change locks;
- employment agreements;
- collect revenue;
- make necessary repairs and maintenance expenditures; and
- **MOST IMPORTANTLY**, intercept mail.

# Closing a Receivership

- Approve final accounting
- Disposition of assets?
  - Return to judgment debtor?
  - Retention/destruction of documents?
- Approval of disbursements
  - Creditor
  - Professionals' fees
  - Receiver's fee
- Release of receiver?
- Retention of jurisdiction by Bankruptcy Court?
  - To hear any post-receivership claims against the Receiver

Rick Kincheloe

rkincheloe@nathansommers.com

(713) 892-4809

Famose Garner

famosegarner@gmail.com

(832) 722-0881