How Pandemic Is Affecting NY Court Receiver Appointments

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In litigation, especially when the adversary has committed a fraud or has simply not paid a judgment even after a court has awarded it, the question often arises: Can the client get a court-appointed receiver to protect and enforce the client's rights?

The appointment of a receiver is generally deemed to be a drastic remedy because a third person is installed to effectively take over another's private business operations.[1] The application may be granted, however, where the facts warrant it.

The application is governed by different standards, depending on the jurisdiction and the factual circumstances involved. For example, Delaware addresses receivership rather frequently in the context of winding down and liquidating a corporation to ensure the corporation's assets are properly distributed.[2]

The federal courts can also appoint a receiver when assets extend beyond state lines, and will consider such factors as the probability that fraudulent conduct has occurred or will occur; the validity of the claim by the party seeking the appointment; whether there is an imminent danger that property will be concealed, lost or diminished in value; the inadequacy of alternative legal remedies; the lack of a less drastic equitable remedy; and the likelihood that appointing the receiver will do more good than harm.[3]

Further, it is well known that a receiver is often appointed when a bank loan is in default and the lender forecloses on real property, and needs to ensure rents are collected and paid to the lender while the action is pending. Each state and jurisdiction's rules and case law differ and must be consulted.

The discussion below concerns New York state, and in particular, two recent state court opinions dealing with the receivership application in aid of enforcing a money judgment decided during the COVID-19 crisis.

There are a variety of factual settings when a receiver may be appropriate, ranging from carrying out a judicial mandate or judgment, helping a trust beneficiary preserve trust assets, helping secured creditors protect collateral, and overseeing an ailing business. In New York, four statutes generally govern the appointment of a receiver.

Section 5106 of the Civil Practice Law and Rules allows a court to appoint a receiver of property that is the subject of an action to dispose of it according to the court's direction. For instance, in Studio #54 Disco Inc. v. Pee Dee Jay Amusement Corp., an action for specific performance to compel the sale of a restaurant business, a state appellate court in 1981 granted the plaintiff's motion to appoint a receiver to consummate the sale.[4]

A temporary receiver may also be sought under Article 64 of the Civil Practice Law and Rules when there's danger that the property at issue will be removed from the state, lost, materially injured or destroyed. Real Property Law 254(10) also

authorizes appointment of a receiver when a bank forecloses on a mortgage containing a provision authorizing the receiver's appointment.

And a receiver is authorized under Civil Practice Law and Rules Section 5228 after a judgment creditor gets a money judgment awarded and the judgment debtor doesn't pay up. A receiver may be appointed to help the judgment creditor collect the judgment. By statute, the receiver can administer, collect, improve, lease, repair or sell any real or personal property in which the judgment debtor has an interest.

In deciding an application to appoint a receiver under Section 5228, New York state and federal courts consider the (1) alternative remedies available to the creditor; (2) the degree to which receivership will increase the likelihood of satisfaction; and (3) the risk of fraud or insolvency if a receiver is not appointed.[5] A receivership has been held especially appropriate when the property interest involved is intangible, lacks a ready market, and presents nothing that a sheriff can work with at an auction, such as a judgment debtor's interest in a business.[6]

Thus, in a decision in Herman v. Herman affirmed earlier this year, a state court appointed a receiver in aid of enforcement of a multimillion-dollar judgment where it was shown the judgment debtor hid assets, had taken various steps to frustrate the plaintiffs' ability to enforce the judgment, including encumbering his real property, and filed a frivolous bankruptcy action.[7]

The court there granted the petition to appoint a receiver to allow him to execute a deed transferring an interest held by the judgment debtor in valuable real estate to a trust and to collect from the judgment debtor the New York City and New York state transfer taxes owed.

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