

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

U.S. BANK NATIONAL ASSOCIATION, AS)	
TRUSTEE FOR THE BENEFIT OF THE)	
HOLDERS OF COMM 2013-CCRE12)	Civil Action No.: 17cv138
MORTGAGE TRUST COMMERCIAL)	
MORTGAGE PASS-THROUGH)	
CERTIFICATES,)	
)	
Plaintiff,)	
)	
v.)	
)	
MOUNTAIN BLUE HOTEL GROUP, LLC,)	
)	
Defendant.)	

SUPPLEMENTAL MOTION FOR APPOINTMENT
OF A RECEIVER AND REQUEST FOR CONSIDERATION OF RECEIVERSHIP
MOTION AT HEARING ON SEPTEMBER 14, 2017

NOW COMES Plaintiff, by and through its undersigned counsel, and files the within Supplemental Motion requesting that this Court consider its Motion for Appointment of a Receiver (“Receivership Motion”) (Doc. 3), and all documents filed in support thereof,¹ and appoint a receiver for the Property² at the hearing on September 14, 2017.

1. In the last week, developments have come to light that reflect a highly volatile situation at the Property. A receiver is needed immediately to stabilize the Property.

Specifically:

- Defendant did not oppose the Tax Complaint and allowed a default judgment to be entered on August 14, 2017 imposing a lien on the Property. (Schueller Decl., Ex. A).

¹ See, e.g. the Affidavit of Leah Solomon, with exhibits (the “Solomon Affidavit”) (Doc. 3-3), Plaintiff’s Memorandum of Law (Doc. 3-2) and the Declaration of Christopher P. Schueller in Opposition to Defendant’s Motion for a Temporary Restraining Order and/or Preliminary Injunction and in further support of the Receivership Motion, with exhibits (the “Schueller Declaration”) (Doc. 19-1).

² Defined terms used herein shall have the meaning set forth in the Complaint (Doc. 1) and Solomon Affidavit.

- The default judgment resulted in a Sheriff's levy of virtually all property at the hotel on September 8, 2017—the eve of a West Virginia University home football game—when the hotel was likely at full capacity. (*Id.*, ¶ 4, Exs. B-D). Another levy is expected before the busy weekend ahead (another football weekend).
- Insurance for the Property was scheduled to expire on September 11, 2017 and would not be renewed absent the Plaintiff stepping in to guaranty payment of the premiums. (*Id.*, ¶ 10, Ex. H).
- The Hilton franchise flag is again in jeopardy due to new delinquent franchise fees in the amount of \$167,000. (*Id.*, ¶ 9).
- Virtually no receipts were deposited into the Control Account in August and early September, raising concerns that receipts are being diverted away from the Property. (*Id.*, ¶ 8, Exs. F-G).

2. When the parties last convened, the situation at the Property appeared to be stable enough to schedule and hold a trustee's sale under the Deed of Trust. Plaintiff believed that, although there were various defaults under the Loan Documents and circumstances justifying the appointment of a receiver, postponing the hearing on the Receivership Motion until after a Deed of Trust sale might avoid an unnecessary hearing. However, it is clear that the situation at the Property is not stable at all and a receiver is needed until title can be transferred to the Plaintiff or a third party.

3. Federal courts have inherent discretion to appoint receivers *pendente lite* based on whatever evidence they deem appropriate in the circumstances. Evidence in the form of courtroom testimony is not required if the circumstances, on their face, justify the appointment. *Santibanez v. Wier McMahon & Co.*, 105 F.3d 234, 241 (5th Cir. 1997); citing 7 *Moore et al.*, ¶ 66.04[1]; *Haase v. Chapman*, 308 F. Supp. 399, 406 (W.D. Mo. 1969); *United States v. O'Connor*, 291 F.2d 520 (2d Cir.1961); *United States v. Mansion House Ctr. N. Redevelopment Co.*, 419 F. Supp. 85, 87 (E.D. Mo. 1976) (“An evidentiary hearing on a motion to appoint a receiver *pendente lite* is not required where the record discloses sufficient facts to warrant

appointment of a receiver”). Indeed, even affidavits are not absolutely required. “Rule 66 imposes no particular requirement with regard to motions for receivers. It is clear from the cases that affidavits are not of indispensable necessity.” *Haase v. Chapman*, 308 F. Supp. 399, 406 (W.D. Mo. 1969). Here, the circumstances warrant appointment of a receiver on the Plaintiff’s papers, including the Solomon Affidavit and the Schueller Declaration.

4. Plaintiff respectfully requests that this Court consider and grant the Receivership Motion and enter the proposed order at the September 14, 2017 hearing on the Defendant’s TRO Motion.

5. Assuming that the TRO Motion is denied, a trustee’s sale is scheduled on September 21, 2017 and will likely result in the transfer of title as soon as possible thereafter, potentially within a week. During this short interim period, the protection of the Property through a neutral third party receiver is critical. The Defendant cannot be trusted to manage the Property and protect and preserve Plaintiff’s collateral pending a transfer of title.

[Remainder of Page Intentionally Blank]

WHEREAS, Plaintiff respectfully requests that the Court consider the Receivership Motion at the September 14, 2017 hearing and grant the Receivership Motion, together with such other and further relief as is just and proper.

Respectfully submitted,

Dated: September 13, 2017

/s/ Christopher P. Schueller

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4846-5284-5391, v. 1

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2017, I served a true and correct copy of **Plaintiff’s Supplemental Motion for Appointment of a Receiver and Request for Consideration of Receivership Motion at Hearing on September 14, 2017** upon all parties via the Court’s electronic filing system.

Respectfully submitted,

Dated: September 13, 2017

/s/ Christopher P. Schueller
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