

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Loyd C. (Chad) Whitmire,)
)
 Plaintiff,)
)
 v.)
)
 Johnny C. (Carl) Hawkensen and)
 The Commons at Fort Mill, LLC,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

RECEIVED
 NOV 15 2016
 SC Court of Appeals

Case No. 2016-CP-46-2458

ORDER ON MOTION TO APPOINT
 RECEIVER

FILED - RECEIVED
 2016 SEP 30 AM 10:34
 DAVID HAMILTON
 S.C.C.P. & S.S.
 YORK COUNTY, SC

This matter came before the court on September 15, 2016, upon motion of Plaintiff to appoint a receiver to take control of the business and accounts of The Commons at Fort Mill, LLC. Plaintiff was represented at the hearing by W. Keith Martens. Defendants were represented by H. Freeman Belser. Both parties submitted affidavits and arguments in support of their respective positions. Based on the record presented and the arguments of counsel, I make the following findings and conclusions.

This lawsuit arises from, among other things, the parties' dispute over their relative membership interests in The Commons at Fort Mill, LLC (the "Company"). The Company owns and operates a 144-unit apartment complex in Fort Mill, South Carolina, which generates recurring monthly revenue, derived primarily from rents charged to tenants of the complex.

Plaintiff alleges that he has been excluded from the Company's accounts and operations for more than a year, and that he has not received any distributions from the Company during that time. After attempting to negotiate a buyout of Plaintiff's interest in the Company, Plaintiff dissociated from the Company in July, 2016, and then filed this action. One of Plaintiff's causes of action seeks an order valuing his interest in the Company, and requiring the Company to purchase Plaintiff's interest pursuant to the provisions of S.C. Code § 33-44-702 (1976, as amended).

When Plaintiff filed his complaint, he also sought appointment of a receiver to take possession of the Company's apartment complex, and to operate that complex during the

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pendency of this action. In the alternative, Plaintiff sought an injunction prohibiting Defendants from using the revenues, rents and profits of the Company for any purpose other than paying the Company's ordinary and *bona fide* operating expenses.

"Receivership is a drastic course, allowed only under pressing circumstances and granted with reluctance and caution." *Vasiliades v. Vasiliades*, 231 S.C. 366, 376, 98 S.E.2d 810, 815 (1957). Based upon the affidavits and documents submitted by the parties, I find and conclude that Plaintiff has not met the heavy burden necessary to warrant the "drastic course" of a receiver. Consequently, Plaintiff's motion for appointment of a receiver must be denied at this juncture.

Likewise, Plaintiff's motion for a preliminary injunction must be denied. "For a preliminary injunction to be granted, the plaintiff must establish that (1) [he] would suffer irreparable harm if the injunction is not granted; (2) [he] will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf Co. v. Dunes West Residential Golf Prop., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). Based upon the affidavits submitted to the court, I find that Plaintiff has not carried the burden of demonstrating that he is likely to succeed on the merits. In particular, I find the affidavit of the Company's outside accountant persuasive on this issue. The Company's accountant testified, through affidavit, that the Company's expenditures appear to be regular and normal in the maintenance and operation of an apartment complex. At this stage of the litigation, the evidence presents a genuine fact issue concerning whether the Company is operating normally at this time.

While appointment of a receiver or granting injunctive relief at this stage of the litigation is not indicated, I find and conclude that Plaintiff is entitled to regular reports concerning the income and expenses of the Company. I also note that Defendants, through their counsel, affirmatively consented to provide regular reports to Plaintiff during the pendency of this action. Specifically, Defendants agreed to provide Plaintiff and Plaintiff's Counsel with copies of the Company's regular monthly profit and loss statements, as prepared by the Company's accountant in the ordinary course of business. Defendants also agreed to provide monthly to Plaintiff and Plaintiff's counsel copies of the Company's monthly bank account statements.

Therefore, based upon the record before the court at this time, it is ordered as follows:

1. Plaintiff's motion for appointment of a receiver and for injunctive relief is denied. The motions are denied without prejudice, and Plaintiff is granted leave to renew the motions

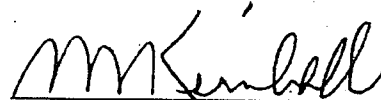
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should further discovery reveal that the Company's property, or its rents and profits, are in danger of being lost or materially injured during the pendency of this case.

2. During the pendency of this action, including any appeal, Defendants shall provide the following reports and information to Plaintiff at the same time as such reports are available to Defendants: (a) monthly, quarterly and year-end Profit and Loss statements prepared by or for the Company in the ordinary course of its business; and, (b) monthly bank statements, showing all debits and credits of the Company's accounts.

AND IT IS SO ORDERED.

September 29, 2016



S. Jackson Kimball
Special Circuit Court Judge
York County

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FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP4602458

Loyd C Chad Whitmire		Johnny C Carl Hawkensen	Commons At Fort Mill LLC The
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (**CHECK REASON**): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (**CHECK REASON**): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

S/S. Jackson Kimball

Master In Equity

3063

Judge Code

09/29/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on **September 30, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **September 30, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Walter Keith Martens 130 E. Main Street Rock Hill, SC
29731

H. Freeman Belser PO Box 96 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
