

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Greenville Dental Office Management)
 Group, LLC, a limited liability company,)
 proceeding pursuant to 33-44-1101 by)
 and through its member, Bhaskar Savani,)
 D.M.D.,)
)
 Plaintiff,)
)
 v.)
)
 Jon Julian, D.D.S., Blake Julian, D.D.S.,)
 Greenville Dental Management Group,)
 P.A.,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

**AMENDED ORDER
 APPOINTING RECEIVER**

C.A. No. 2020-CP-23-03922

RECEIVED
Oct 08 2021
SC Court of Appeals

This matter initially came before me for a hearing upon Plaintiff Greenville Dental Office Management Group, LLC’s Motion for Appointment of Receiver. That motion was heard by the Court on April 8, 2021. Counsel for the parties were present.

On May 12, 2021, I filed an Order Appointing Receiver. On May 24, 2021, Defendants moved to alter and amend this order. On June 3rd and June 30th, I held conference calls regarding this motion. All attorneys of record for Plaintiff and Defendants were present on these conference calls. The Court has now decided that Defendants’ Motion to Alter and Amend Order Appointing Receiver should be denied; however, I am modifying and clarifying the receivership plan as detailed below. Therefore, I am filing this Amended Order Appointing Receiver. This Amended Order replaces and supersedes the Order filed May 12, 2021.

Defendant’s Motion raises three challenges to this Court’s Order:

1. That Plaintiff does not have an apparent right to Defendants’ property;

2. That a portion of the property held by Defendants was not subject to waste or dissipation; and
3. That Defendants had no notice or opportunity to be heard on the record regarding the plan for the receivership.

Based on the following, I find that Defendants' challenges are not supported by the law and the facts presented in this case. However, I also find that clarification of the plan for the receivership is warranted.

I. Plaintiff has an apparent right to collections from Defendants pursuant to the parties' agreement.

The appointment of a receiver rests in the sound discretion of the court to which application is made. *Vasiliades v. Vasiliades*, 231 S.C. 366, 98 S.E.2d 810 (1957). A receiver may be appointed before judgment, on the application of either party, when it establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired. S.C. Code § 16-65-10. A court is within its discretion to appoint a receiver when one party is in possession of the property and the other party has an apparent right to the rents and profits from said property. *Andrick Dev. Corp. v. Maccaro*, 280 S.C. 103, 311 S.E.2d 95 (Ct. App. 1984).

In *Andrick*, the defendants were in possession of rental property, the ownership of which was disputed. *Id.* at 104, 311 S.E.2d at 96. The plaintiff held title to the property, subject to a demand for specific performance of a contract for sale by the defendants. *Id.* The plaintiff moved for and was granted an order appointing a receiver to take possession of the property and collect

all rents and profits while the case was pending. *Id.* at 105, 311 S.E.2d at 97. The Court of Appeals affirmed the appointment of a receiver. *Id.* at 106-107, 311 S.E.2d at 97.

The facts presented in this case are similar. Defendants admit they executed a Memorandum of Understanding (“the MOU”). Pursuant to the MOU, Defendants assigned all collections for clinical dental services rendered by Greenville Dental Management Group, P.A. (“the Clinical Company”) dental professionals and all revenues derived from dental related sales commissions and professional education seminars, lectures, and course materials to Plaintiff, Greenville Dental Office Management Group, LLC (“the Management Company”). Similar to the facts in *Andrick*, the documentary evidence shows that Plaintiff has an apparent right to the collections assigned in the MOU. It is not necessary for Plaintiff to have a definite right to the collections, only an apparent right.

Also similar to *Andrick*, where the defendants demanded specific performance, Defendants contest Plaintiff’s right to the collections by alleging that the MOU is no longer effective. However, this dispute is precisely why a receiver is necessary to take possession of the collections while this case is pending. There would never be a need for a receiver in a case where there is no dispute over the parties’ rights to property.

Therefore, I find that Plaintiff has an apparent right to the property.

II. Defendants admitted that a portion of the property was subject to waste or dissipation.

The MOU states: “No party shall take a draw, compensation or share of profits unless Clinical Company/[Management Company] has sufficient funds in excess of three months’ working capital.” Based on the Affidavit of Bhaskar Savani, it is clear that the Management Company does not have sufficient funds in excess of three months’ working capital. Defendants

do not dispute that they have failed to deliver any collections to the Management Company since May 1, 2020. This has caused the Management Company's failure to pay its lease payments and bills.

If the Management Company does not have sufficient funds in excess of three months' working capital, then Defendants are not entitled to any compensation. However, the Affidavit of Jon Julian admits that Defendants Jon and Blake Julian continue to pay their own salaries from the collections of the Clinical Company. This payment of compensation contrary to the parties' agreement constitutes waste and dissipation of the contested property.

Therefore, I find that, absent appointment of a receiver, the property is at risk of loss, impairment, or material injury.

III. Defendants had an opportunity to be heard on the record regarding the plan for receivership.

Defendants cite *Midlands Util., Inc. v. S.C. Dept. of Health & Env'tl. Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989), for the proposition that a court may properly deny a request for a receivership where the moving party does not provide a plan relating to the appointment. However, this is an incomplete reading of the holding in *Midlands*. The *Midlands* holding firmly states that granting or denying a request to appoint a receiver is within the discretion of the circuit court judge. *Id.* at 228, 391 S.E.2d at 538 (citing *Kirven v. Lawrence*, 244 S.C. 572, 137 S.E.2d 764 (1964)). The ruling only tangentially mentions that the moving party did not submit a plan for the appointment of a receiver, presumably as something a judge may consider while exercising his or her discretion to appoint or deny a receiver.

Further, Plaintiff did provide a plan for the receivership in its motion and during the motion hearing. Plaintiff requested "the appointment of a receiver to collect, account for, and distribute

all collections for dental services rendered and all revenues derived from dental related sales commissions and professional education seminars, lectures and course materials received after June 26, 2017 by or from” several individuals and entities. This language is directly from the MOU and Plaintiff reasserted at the hearing that its request was for a receiver to take control of the collections assigned pursuant to the terms of the MOU. Defendants had the opportunity to and did object to Plaintiff’s plan and their objection was heard on the record.

Therefore, I find that Plaintiff did propose a plan for the receivership and Defendants had an opportunity to be heard regarding this plan. However, I also find that Plaintiff’s proposed plan for the receivership should be modified and clarified as detailed below.

Therefore, upon reviewing the record, the evidence, and the applicable law and hearing statements and representations of counsel, I find that Plaintiff’s Motion for Appointment of Receiver should be granted and a receiver should be appointed with authority as detailed below upon threat of contempt and sanctions by this Court for willful failure to cooperate with the receiver.

PRELIMINARY FINDINGS OF FACT¹

1. On June 26, 2017, Jon Julian, The Dental Retreat at Mountain Park, LLC, Northstar Dental Education for Dental Professionals, LLC, Blake Julian, Signature Smiles, LLC, Bhaskar Savani, and American Dental Management Group, LLC executed a memorandum of understanding (“the MOU”).

¹ These findings are made solely for the purpose of this Order and do not preclude a full trial on the merits of any claims, counterclaims, or defenses in this litigation. The Court acknowledges that Defendants dispute the allegations made by Plaintiffs in the Amended Complaint and the motion documents and, more specifically dispute that the MOU is an enforceable agreement, but because this is a preliminary order, neither the findings of fact or conclusions of law are binding upon the trial judge.

2. Pursuant to the MOU, Jon Julian and Blake Julian formed Greenville Dental Management Group, P.A. (“the Clinical Company”).
3. Pursuant to the MOU, Jon Julian, Blake Julian, and Bhaskar Savani formed Plaintiff (“GDMG”).
4. Paragraph 4 of the MOU states:

ASSIGNMENT OF COLLECTIONS. Clinical Company shall assign to GDMG all collections for clinical dental services rendered by Clinical Company dental professionals and all revenues derived from dental related sales commissions and professional education seminars, lectures and course materials. Clinical Company shall deposit all revenue after payment for Clinical Company payroll and compensation for dental professionals to GDMG. All other related expenses shall be paid by GDMG and net profits, if any, shall be distributed to members of GDMG in accordance with this MOU and the Operating Agreement of GDMG.

5. Since May 1, 2020, the aforementioned individuals and entities have failed to assign or deliver any collections as required by the MOU.
6. Since January 1, 2021, the aforementioned individuals have refused to pay rent and bills required to be paid from the withheld collections.
7. While failing to assign or deliver collections or pay bills from the withheld collections, Defendants Jon Julian and Blake Julian have continued to pay themselves a salary from said collections.

CONCLUSIONS OF LAW

8. The foregoing Findings of Fact are denominated Conclusions of Law to the extent that they constitute the same.
9. A receiver may be appointed before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and which

is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired. S.C. Code Ann. § 15-65-10(1).

10. Pursuant to the MOU, Plaintiff has an apparent right to the collections of the Clinical Company.
11. The collections of the Clinical Company are in the possession of Defendants and they admit they will not deposit said revenue with Plaintiff as required by the MOU.
12. A portion of the collections of Clinical Company are in danger of being lost because Defendants admit paying salaries to themselves from the collections before paying the expenses of Plaintiff as required by the MOU.
13. South Carolina law allows for the appointment of a receiver under the facts of this case.
14. The Court concludes that Plaintiff is entitled to the appointment of a receiver to perform the following:
 - a. Obtain full access to all bank accounts of Greenville Dental Management Group, P.A., Jon Julian, The Dental Retreat at Mountain Park, LLC, Northstar Dental Education for Dental Professionals, LLC, Blake Julian, and Signature Smiles, LLC.
 - b. Require the parties:
 - 1) to account for revenue and collections from May 1, 2020 to present;
 - 2) to provide the receiver, with copies to all members of the Plaintiff entity, detailed documentation for their respective dental practices' monthly expenses and payroll since January 1, 2019;
 - 3) to report to the receiver all amounts of revenue collected;

- 4) to report to the receiver any amount to be paid for expenses and payroll no less than ten (10) business days prior to the date of disbursement provided in the report;
 - 5) to provide the receiver and the party who submitted a report as provided a detailed, written notice of any objection to an expense or payroll amount disclosed in the report no less than five (5) business days before the date of disbursement provided in the report;
 - 6) to disburse only those amounts to which no written objection is made until otherwise authorized by the receiver; and
 - 7) to pay over to the receiver within five (5) business days from the end of each month all revenues in excess of the reported disbursements for the preceding month.
- c. The Receiver may set a reasonable amount of compensation to be paid to the Julians for their labor, after taking into account the outstanding expenses of the entities and consistent with the average wages paid to dentists in South Carolina for their labor, during any month in which the Clinical Company does not have at least three (3) months working capital as defined by the MOU.

NOW, THEREFORE, based upon the foregoing findings of fact and conclusions of law,

IT IS THEREFORE ORDERED that:

1. Defendants' Motion to Alter and Amend Order Appointing Receiver is denied.
2. L. Walter Tollison, III ("Receiver") is hereby appointed as Receiver to perform the duties detailed above. The parties shall cooperate with the Receiver and provide any documentation or information requested by the Receiver to perform his duties.

3. Within ten (10) business days following the filing of this Order, the parties shall meet with the Receiver and provide full online and signatory access to all bank accounts listed above to the Receiver.
4. Receiver will furnish to the Court and the parties quarterly statements showing collections received and expenses paid by Receiver. The parties will be entitled to inspect the books and records of Receiver concerning funds held pursuant to this Order at reasonable times and with reasonable notice.
5. Without further Order of the Court, Receiver shall be entitled to payment of professional fees and expenses incurred by Receiver. Receiver's professional fees shall be charged at \$350 per hour for Receiver's time and at such lesser rates as he ordinarily charges for paralegal time. All photocopies and facsimile charges along with necessary out-of-pocket expenses (including travel and lodging) will be billed at cost. All fees and expenses of Receiver shall be accounted for in the Quarterly Statement of Operations.
6. Receiver will have such additional powers as are provided by law and as this Court may from time to time direct.
7. No person or entity shall file suit against Receiver for actions taken in compliance with this Order.
8. If any party disagrees with a decision made by the Receiver, then that party may petition me to review the decision of the Receiver and I have the authority to overturn or modify said decision.
9. Receiver may, in its discretion, notify this Court and the parties to this action that the Receivership is not practical, and upon such notice all duties of Receiver shall terminate

except with regard to liabilities which arise prior to the date of the notice. The Court, following another hearing, may then appoint a new Receiver to take any and all such other action as it deems appropriate. Receiver shall turn over all of the assets and records secured pursuant hereto to any successor receiver appointed by the Court and shall file a final accounting with the Court.

10. All persons who receive notice of this Order are enjoined from interfering with the powers and duties of the Receiver.
11. Receiver and the parties to this case may at any time apply to this Court for instructions or orders and for further powers necessary to enable Receiver to perform Receiver's duties properly.

IT IS SO ORDERED.

[Electronic signature follows on separate page]



Greenville Common Pleas

Case Caption: Greenville Dental Management Office Group LLC , plaintiff, et al vs.
Jon Julian , defendant, et al
Case Number: 2020CP2303922
Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763