

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

BENINATI CONTRACTING, INC.,

Plaintiff/Counter-Defendant,

vs.

Case No. 2015-1400-CB

PAUL BENINATI,

Defendant/Counter-Plaintiff.

OPINION AND ORDER

Defendant has filed a motion to appoint a receiver. Plaintiff has filed a response and request that the Court deny Defendant's motion.

I. Factual and Procedural History

Defendant is a 50% shareholder in Plaintiff. Defendant's brother, Mark Beninati ("M. Beninati"), holds the remaining 50% interest in Plaintiff. Defendant and M. Beninati's working relationship has allegedly fallen apart, which ultimately has led to this litigation.

On September 28, 2015, Plaintiff filed its first amended verified complaint in this matter ("Complaint"). The Complaint includes the following claims: Count I- Trespass, Count II- Unjust Enrichment, Count III- Statutory Conversion, Count IV- Claim and Delivery, Count V- Breach of Fiduciary Duty, Count VI- Accounting, and Count VII- Dissolution.

On June 28, 2015, Defendant filed its counter-complaint in this case ("Counter-Complaint"). The Counter-Complaint includes a single claim for slander of title.

On September 28, 2015, Defendant filed his instant motion for appointment of a receiver. On October 2, 2015, Plaintiff filed its response. On October 5, 2015, the

Court held a hearing in connection with the motion and took the matter under advisement.

II. Arguments and Analysis

In his motion, Defendant relies on two statutes in support of its request for appointment of a receiver: MCL 600.2926 and MCL 450.1851. MCL 600.2926 states:

Circuit court judges in the exercise of their equitable powers, *may appoint receivers in all cases pending* where appointment is allowed by law. This authority may be exercised in vacation, in chambers, and during sessions of the court. In all cases in which a receiver is appointed *the court shall provide for bond and shall define the receiver's power and duties* where they are not otherwise spelled out by law. Subject to limitations in the law or imposed by the court, the receiver shall be charged with all of the estate, real and personal debts of the debtor as trustee for the benefit of the debtor, creditors and others interested.

The court may terminate any receivership and return the property held by the receiver to the debtor whenever it appears to be to the best interest of the debtor, the creditors and others interested.

This statute does not independently grant the court the authority to appoint receivers but rather confirms that appointment of a receiver is a remedy available to the court in situations where "allowed by law." *Wayne County Jail Inmates v Wayne County Chief Executive Officer*, 178 Mich App 634, 649-650; 444 NW2d 549 (1989). Although there are several statutes which specifically allow appointment of a receiver, the phrase "allowed by law" is not limited to these statutes, since the Supreme Court has recognized that there are cases where the trial court may appoint a receiver in the absence of a statute pursuant to its inherent equitable authority. *Id*; see *Michigan Minerals, Inc v Williams*, 306 Mich 515, 525-527; 11 NW2d 224 (1943); *Grand Rapids Trust Co. v Carpenter*, 229 Mich 491; 201 NW 448 (1924). It thus becomes apparent that, as used in the statute, the phrase "allowed by law" refers to (1) those cases where appointment of a receiver is provided for by statute and (2) those cases where the facts

and circumstances render the appointment of a receiver an appropriate exercise of the circuit court's equitable jurisdiction. *Id.*

MCL 450.1851 sets forth a procedure by which a receiver may be appointed after a company has been dissolved. See MCL 450.1851(1). However, in this case Plaintiff has not been dissolved. Accordingly, MCL 450.1851 does not apply at this stage of this case. For these reasons, MCL 600.2926 and MCL 450.1851 do not specifically provide for the appointment of a receiver in this case.

Furthermore, in order to have a receiver appointment Defendant must establish that the facts and circumstances present in this case necessitate the appointment of a receiver. *Michigan Minerals, Inc*, 306 Mich at 525-527. In its motion, Defendant relies on his own testimony as the primary support for his request. (See Defendant's Exhibit A.) However, the majority of Defendant's testimony is contradicted by M. Beninati's testimony. (See Plaintiff's Exhibit 1.) Based on the conflicting testimony, as well as the preliminary nature of Defendant's request given that the merits of the parties' claims have yet to be determined, the Court is convinced that Defendant's motion must be denied.

III. Conclusion

Based upon the reasons set forth above, Defendant's motion to appoint a receiver is DENIED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: DEC 04 2015

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge