

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

COMERICA BANK,

Plaintiff,

vs.

Case No. 2015-247-CB

JAB PROPERTIES, LLC,

Defendant.

OPINION AND ORDER

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

I. Factual and Procedural History

On August 29, 2011 Defendant executed a promissory note in favor of Plaintiff in the amount of \$586,616.11 ("Note"). The Note is secured by a mortgage ("Mortgage") in Plaintiff's favor dated January 7, 1999 encumbering property commonly known as 4320 12 Mile Rd., Warren, MI ("Subject Property").

On March 3, 2015, Plaintiff filed its amended complaint in this matter asserting a claim for breach of the Note. In addition, Plaintiff also requested the appointment of a receiver to manage, market, operate and ultimately liquidate the Subject Property. On August 3, 2015, Plaintiff filed its instant motion to appoint a receiver. On August 6, 2015, Defendant filed a response and requests that the motion be denied. On August 10, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Arguments and Analysis

In its motion, Plaintiff first contends that a receiver should be appointed because such an appointment is provided for in the Mortgage. Specifically, Paragraph 13 of the mortgage provides in part that: "Immediately upon the occurrence of any Event of Default, [Plaintiff] shall have the option to do any or all of the following:.....(d) Obtain a receiver to manage the [Subject Property] and collect the rents, profits and income from it." (See Plaintiff's Exhibit 2, at ¶13.)

In this case, it appears undisputed that Plaintiff is entitled to seek a receiver in the event that Defendant defaults on the terms of the Mortgage. However, liability in this matter has yet to be determined. Consequently, the Court is convinced that the appointment of a receiver pursuant to the Mortgage is premature at this time.

Plaintiff also seeks a receiver pursuant to MCL 600.6104. However, that statute not only requires liability to have been determined, it requires a judgment to have been entered. See MCL 600.6104 ("After judgment....has been rendered....the judge may.....(4) Appoint a receiver..."). Consequently, Plaintiff's request for a receiver pursuant to MCL 600.6104 must be denied.

Finally, Plaintiff requests that a receiver be appointed pursuant to MCR 2.622. MCR 2.622 provides:

- (A) Appointment of Receiver. Upon the motion of a party or on its own initiative, and for good cause shown, the court may appoint a receiver as provided by law.

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. *Wayne County Jail Inmates v Wayne County Chief Executive Officer*, 178 Mich App 634, 649-650; 444 NW2d 549 (1989). In this matter, Plaintiff has failed to cite to/rely on any statute that applies to the current state of this case. With regards to the need to appoint a receiver in the interests of equity, Plaintiff has not established that Defendant has defaulted under the terms of the Note or Mortgage. Consequently, the Court is convinced that Plaintiff has failed to establish that it is entitled to a remedy of any kind, much less a drastic remedy such as a receiver. Accordingly, the Court is satisfied that Plaintiff's motion must be denied without prejudice

III. Conclusion

Based upon the reasons set forth above, Plaintiff's motion to appoint a receiver is DENIED WITHOUT PREJUDICE. 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: SEP 14 2015

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