

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

PAUL BONVENTURE and MELANI
BONVENTURE, Trustees of the Paul
and Melani Bonventure Living Trust
dated April 8, 2005, as amended,

Plaintiffs,

vs.

Case No. 2015-3722-CB

CARLO R. PALMERI,

Defendant.

OPINION AND ORDER

Plaintiffs has filed a motion to appoint a receiver.

I. Factual and Procedural History

In March 2012, Plaintiffs purchased real property commonly known as 8316 Coolidge, Center Line, MI ("Subject Property"). In October 2013 Defendant was added as an owner of the Subject Property via a quit claim deed dated October 11, 2013, that names Plaintiffs and Defendants as joint tenants of the Subject Property.

The parties have subsequently disagreed as to what to do with the Subject Property. Plaintiffs wish to sell the Subject Property. However, Defendant has allegedly refused to sell the Subject Property, and is allegedly allowing a friend to live at the premises.

On October 20, 2015, Plaintiffs filed their complaint in this matter ("Complaint"). The Complaint contains a claim for breach of contract (Count I) and a claim for partition or sale (Count II). On the same day, Plaintiffs filed their instant motion for the

appointment of a receiver. Defendant has not appeared or filed a response to the motion. On November 2, 2015, the Court held a hearing and took the matter under advisement.

II. Arguments and Analysis

In their motion, Plaintiff requests that the Court appoint a receiver pursuant to MCL 600.2926, which provides:

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.*

In this case, Plaintiffs do not cite to any statute which specifically authorizes the appointment of a receiver. Consequently, Plaintiffs must establish that the facts and circumstances in this case require the Court exercise its equitable jurisdiction to appoint a receiver pursuant to MCL 600.6929. See *Michigan Minerals, Inc*, 306 Mich at 525-527.

In their motion, Plaintiffs rely on the Subject Property's outstanding utility bills, and an anti-blight ten-day notice from the City of Center Line. (See Plaintiffs' Exhibits A and B.) While the bills and notice evidence that the Subject Property is in need of maintenance and that bills need to be paid, Plaintiffs have failed to establish why a receiver is needed to order to either pay the bills or maintain the premises. Plaintiffs are co-owners of the Subject Property and they have not established any reason why they are incapable of paying the outstanding bills of less than \$300.00 or cleaning up the exterior spaces of the Subject Property. Moreover, while they contend that Defendant has leased the Subject Property to a friend, they have failed to present any evidence of such an arrangement, or that the individual has failed to comply with the lease, if one exists. In addition, although Plaintiffs request that a receiver be appointed, they have failed to request a specific receiver. For all of these reasons, the Court is convinced that Plaintiffs have failed to present facts and circumstances which require this Court to appoint a receiver in this matter.

III. Conclusion

Based upon the reasons set forth above, Plaintiffs' 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 10 2015

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