

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

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|--|---|--------------------------------|
| METROPOLITAN CAPITAL BANK & TRUST,) |) | |
| |) | |
| Plaintiff,) |) | 2019 L 003015 |
| |) | (Transferred to Chancery) |
| v.) |) | |
| |) | |
| GREAT LAKES RADIO – CHICAGO, L.L.C.,) |) | <u>Property Addresses:</u> |
| an Ohio limited liability company;) |) | 15701-39 South Rockwell Avenue |
| TIMOTHY F. GALLAGHER; UNKNOWN) |) | Markham, Illinois 60426 |
| OWNERS and NON-RECORD CLAIMANTS,) |) | and |
| |) | 5954 S. Michigan Avenue |
| Defendants.) |) | Chicago, Illinois 60637 |

ORDER APPOINTING RECEIVER

THIS CAUSE was heard on Plaintiff's Motion for Appointment of Receiver Over Personal Property and Real Property, pursuant to 735 ILCS 5/2-1402 and 735 ILCS 5/15-1702, seeking an order appointing receiver over the license. The Court has jurisdiction over the parties and subject matter and is fully advised in the premises, which are located at 15701-39 South Rockwell Avenue, Markham, Illinois (the "Markham Property"), and 5954 S. Michigan Avenue, Chicago, Illinois (the "Chicago Property"). As used herein "defendant" and "judgment debtor" shall also mean "defendants" and "judgment debtors."

THE COURT FINDS:

- A. The Plaintiff filed a First Amended Complaint for Breach of Note, to Foreclose Mortgage and for Other Relief (the "Complaint") seeking recovery for breach of Replacement Note 1 (Count I), to foreclose Mortgage (Count II), to foreclose security interests (Count III), and for replevin and detinue of business assets (Counts IV and V).
- B. On November 5, 2019, this Court entered a final and appealable order of default judgment on Count I for breach of the promissory note in favor of Plaintiff and against Defendants Great Lakes Radio – Chicago, L.L.C. ("Great Lakes Radio") and Timothy F. Gallagher ("Gallagher"), jointly and severally, in the amount of \$1,394,451.47.
- C. On November 12, 2019, Plaintiff issued citations to Great Lakes Radio, Gallagher, and TFG Holdings, Inc. ("TFG") (collectively, the "Citations"), among others, which were duly served upon Gallagher in his individual and corporate representative capacity.
- D. Neither Gallagher, nor anyone else on his behalf or on behalf of Great Lakes Radio and TGF appeared in court on the December 3, 2019 return date of the Citations, and

this Court issued rules to show cause upon Gallagher, individually, and as the corporate representative of Great Lakes Radio and TFG (collectively, the "Rules").

- E. On December 8, 2019, the Rules were personally served upon Gallagher.
- F. Gallagher is the sole shareholder in TFG.
- G. Gallagher and TFG are the sole members of Great Lakes Radio, with Gallagher holding a 99% interest and TFG holding a 1% interest.
- H. Great Lakes Radio is the sole owner of WBGX Station 1570 AM (the "Radio Station") and is the licensee of WBGX under the radio license issued by the Federal Communications Commission ("FCC") under FCC File No. BL-20080909AED (FCC Facility ID No. 40147) and the permittee of W240EI under FCC File No. BNPFT-20181105AAO (FCC Facility ID No. 203056) (together, the "License").
- I. Section 2-1402 of the Illinois Code of Civil Procedure authorizes this Court to order Gallagher, individually, and as the corporate representative of Great Lakes Radio and TFG to deliver all personal property so that a sale of such property may be had on just and equitable terms, with the proceeds of sale, after deducting reasonable and necessary expenses, to be turned over to the judgment creditor to be applied to the balance due on the judgment.
- J. The License is unique personal property belonging to judgment debtor Great Lakes Radio, whose ownership is under the control of the FCC.
- K. The court finds that due notice has been given to Timothy F. Gallagher, Great Lakes Radio – Chicago, L.L.C., and TFG.
- L. The Markham Property and Chicago Property at issue consist of non-residential commercial buildings and is owned by Great Lakes Radio for commercial purposes and is not for use as certain defendants personal residence.
- M. The complaint alleges that an "Event of Default", as defined in the mortgage and note, has occurred due to certain defendant/mortgagor's failure to pay the amounts due under the terms of Replacement Note 1 upon maturity. This Event of Default gives plaintiff the right to accelerate all amounts due under the mortgage and note and to demand the same be immediately payable.
- N. The mortgage provides on page 12 that upon the occurrence of an Event of Default, the mortgagee shall have the right to make application for appointment of a receiver for the Markham Property and Chicago Property .
- O. The Property does not fall within the definition of "Residential Real Estate" under the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1219).
- P. The court finds that [choose one]:

X due notice of the motion has been given pursuant to 735 ILCS 5/15-1706(d)
— good cause exists to waive notice pursuant to 735 ILCS 5/15-1706(d).

Based on the allegations of the complaint, the judgment entered against Timothy F. Gallagher and Great Lakes Radio – Chicago, L.L.C., the citations and rules to show cause duly served upon Timothy F. Gallagher, Great Lakes Radio – Chicago, L.L.C. and TFG Holdings, Inc., this Court finds that Plaintiff is entitled to the appointment of a receiver over the License, the Markham Property, and the Chicago Property.

IT IS HEREBY ORDERED:

1. The receiver, Brian N. Byrnes, based upon the information provided to the court, is deemed to be qualified to act as receiver and to manage the property as would a reasonably prudent person.
2. Plaintiff's motion for an order appointing a receiver for the License, the Markham Property, and the Chicago Property is granted and Brian N. Byrnes is hereby appointed. This order will not become effective until the court has approved the receiver's bond as set forth below.
3. The receiver is empowered to renew the License, if required, and file with the FCC an application to assign the License into the name of the receiver in his capacity as receiver, and he shall be the Licensee pending the ultimate sale of the Radio Station, subject to prior FCC approval, and the real property upon which it is located. The receiver is further empowered with all the duties, responsibilities and powers enumerated in the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*).
4. The receiver is authorized to collect all rents relating to the property, and the tenants of the property are directed to pay rent to receiver from the effective date of this order, until further notice. The receiver shall allocate all receipts from the operation of the real estate and other property subject to the mortgage in accordance with 735 ILCS 5/15-1704(d). Within 21 days, the receiver shall provide notice to any and all occupants of the property as required by 735 ILCS 5/15-1704(f).
5. Within five business days after the receiver's bond is approved, all defendant-mortgagor shall turn over to the receiver, documents in format which relate in any way to the following:
 - (a) Income collected for the property after the effective date of this order;
 - (b) Contracts, documents, and agreements relating to accounts receivable and payable, operation, management, sale, leasing and/or control of the property;
 - (c) All documents such as insurance policies, real estate taxes, notices and/or bills which concern the property in any way;

- (d) Documents relating to the property's condition, operation and maintenance or relating to any persons employed to maintain, secure or repair the property;
 - (e) A list by case name and number of all current litigation or regulatory proceedings which involve the property including, but not limited to: (1) abatement of taxes or reduction of assessments, (2) mechanics lien claims, (3) building code violations or zoning enforcement action; and (4) any other litigation or legal or related proceedings;
 - (f) All keys needed to operate, repair and/or maintain the property; and
 - (g) A list of all tenants and their payment history for the last two years.
6. Timothy F. Gallagher and Great Lakes Radio – Chicago, L.L.C., and TFG Holdings, Inc. shall promptly and fully cooperate with receiver in connection with the receiver's performance of his duties and are prohibited from interfering with the powers or duties of receiver. Timothy F. Gallagher and Great Lakes Radio – Chicago, L.L.C., and TFG Holdings, Inc. are further prohibited from directing anyone to interfere, in any way, with the receiver in the execution of this order.
7. The receiver shall file periodic written reports with the court. Each report shall be prepared with a case caption, personally signed by the receiver, and filed with the clerk of the court. The receiver or Plaintiff's attorney must mail copies of the report to all parties in the case (including those who have not formally appeared) at least five court days before the hearing on the report. The mailing shall include a notice of motion indicating the time, date and courtroom number applicable to the approval of the report, and a proof of service. Reports will be presented on a schedule established by the court for each particular case.
8. Each report shall include, at a minimum: contact information for the receiver, the status of the License and assignment transfer thereof, a report on any failure of Timothy F. Gallagher and Great Lakes Radio – Chicago, L.L.C., or TFG Holdings, Inc. to cooperate with the requirements of the receiver order, a description of the property (number of units, type of use, size and condition), a list of any tenants with the amount of their rent, a summary of any litigation involving the property of which the receiver is aware, verification that the property is adequately insured, a detailed billing statement for the receiver's fees, a draft order approving the report and setting the case for the next receiver's report, a photograph of the outside of the property (first report only), an income/expense statement, current balance on hand, background information on any matter for which the receiver is requesting special court approval, and a check register showing income received and expenses incurred since the previous report.

9. The receiver may not employ attorneys except with explicit court approval.
10. The receiver or a knowledgeable representative thereof must appear in court when his/her report is presented.
11. The receiver's fees shall be charged at the rate of \$5,000 per month.

The court will review all fee requests for reasonableness. The court reserves the right to reduce any fees which it deems to be excessive, including fees charged under the above-listed fee schedule. Receiver's certificates shall constitute a first and prior lien on the Properties.

12. The receiver or a knowledgeable representative thereof must appear in court when his/her report is presented.
13. With the consent of the plaintiff, the receiver may authorize necessary improvements to the property not to exceed the cost of \$ 5,000.00. The receiver has the power to procure or maintain appropriate utility services for the property and to procure or maintain appropriate insurance coverage for the property.
14. This order is not effective until the court has approved the receiver's bond in the amount of \$ 50,000, which must be issued by a court-approved surety company and signed by a court-approved attorney-in-fact for the surety company. Plaintiff or the receiver shall deliver the bond along with this order to chambers for approval.
15. Plaintiff shall immediately forward a copy of this order to Timothy F. Gallagher and Great Lakes Radio – Chicago, L.L.C., and TFG Holdings, Inc. or any attorney who has filed an appearance on their behalf and file proof of service thereof with the court.
16. This case is continued to Feb 24, 2020 at 9:30 a.m. in courtroom 2809 of the Daley Center for status and approval of the first receiver's report. ~~The first report shall be filed on or before _____, 2020 and shall cover the period beginning when the bond is approved and ending on _____, 2020.~~

ENTERED: _____
Judge

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Firm I.D. 48614

JUDGE DARRYL B. SIMKO
FEB 11 2020
CIRCUIT COURT - 1823