

STATE OF NEW YORK
SUPREME COURT

COUNTY OF MONROE

ACM BROWNCROFT TRUST,

Plaintiff,

-vs-

Index No.: 12-13771

ROBERT J. PFUNTNER;
PEMBROOK PINES, LTD.;
KEUKA MAID, INC.;
PEMBROOK PINES ITHACA LTD., N.A., SUCCESSOR
IN INTEREST TO PEMBROOK PINES ITHACA LTD.; AND
PEMBROOK PINES ELMIRA, LIMITED, SUCCESSOR
IN INTEREST TO PEMBROOK PINES OF ELMIRA, LTD.,

Defendants.

STIPULATION REGARDING ORDER APPOINTING RECEIVER

WHEREAS this matter has come before this Court upon the joint motion of the parties in the above-captioned action to (1) amend the caption to include Pembroke Pines, Inc., as a party to this action for the purposes of post-judgment enforcement proceedings and (2) appoint Richard A. Foreman as receiver of Pembroke Pines, Inc. ("PP Inc.") and Pembroke Pines Elmira, Limited ("PP Elmira") (collectively, the "Receivership Defendants") to administer, preserve and sell the radio station assets of PP Elmira and PP Inc. and ultimately distribute proceeds realized in complete or partial satisfaction of judgments against PP Inc. and PP Elmira in favor of ACM Browncroft Trust ("Plaintiff" or "ACM");

WHEREAS ACM has been awarded certain judgments as follow:

- a. \$507k Judgment in action pending under Monroe Co. Index No. 12-13771; Judgment against Robert J. Pfuntner ("Pfuntner"), Pembroke Pines, LTD.; Keuka Maid, Inc.; Pembroke Pines Ithaca LTD., N.A.; and PP Elmira, in the amount of \$507,563.74 plus interest.
- b. \$121.9k Judgment in action pending under Ontario Co. Index No. 108145; Judgment against Pfuntner, Pembroke Pines, LTD.; Keuka Maid, Inc.; Pembroke Pines Ithaca LTD., N.A.; and PP Elmira, in the amount of \$121,937.89 plus interest.

and

- c. \$690k Judgment in action pending under Yates Co. Index No. 2012-0161:
Judgment against Pfuntner, Pembrook Pines, LTD.; Keuka Maid, Inc.; Pembrook Pines Ithaca LTD., N.A.; PP Elmira; and PP Inc., in the amount of \$690,007.73 plus interest.

(together the "Judgments").

WHEREAS PP Inc. stipulates to being made a party to this action and submits to the jurisdiction of the Court;

WHEREAS the Receivership Defendants stipulate and voluntarily consent to the appointment of a receiver of the Receivership Defendants hereunder; to preserve and administer assets, including radio station assets, until such time as the assets can be sold;

WHEREAS the Court has the power to appoint a receiver pursuant to New York CPLR § 5228(a) to satisfy a judgment creditor;

WHEREAS the Court finds that, based on the record in these proceedings and the submissions of the parties, the appointment of a receiver as to the Receivership Defendants in this action is appropriate; and

WHEREAS this Court has personal jurisdiction over the Receiver Defendants.

NOW THEREFORE, IT IS HEREBY

ORDERED, that the caption shall be amended to include Pembrook Pines, Inc. as a named defendant for the purpose of post-judgment enforcement proceedings; and

ORDERED, that Richard A. Foreman of Richard A. Foreman Associates Incorporated (the "Receiver"), is hereby appointed to serve without bond as receiver of the Receivership Defendants and all of their stock and corporate property, wherever located, and is authorized to operate, liquidate and/or sell PP Inc. and PP Elmira, and all of their assets and to use such proceeds realized in partial or complete satisfaction of the Judgments.

I. GENERAL POWERS AND DUTIES OF RECEIVER

A. This Order vests the Receiver with all right, title and authority heretofore vested in the Chief Executive Officer or senior-most executive or control party, as applicable, of each of the Receivership Defendants, to the fullest extent permitted by law. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, managing partners or general partners of the Receivership Defendants under applicable state, federal and foreign law; by the governing charters, bylaws, articles and/or agreements in addition to all powers and authority of a receiver at equity; and all powers conferred upon a receiver or liquidating trustee, as applicable, including by the provisions of New York Civil Practice Law and Rules, Article 64, as applicable.

B. The Receiver shall have power to retain, dismiss or replace any and all trustees, officers, managers, employees, investment advisors, accountants, attorneys and other agents of the Receivership Defendants. The Receiver shall assume control of the operations and assets of the Receivership Defendants and shall pursue and preserve all of their claims and defenses.

C. Persons currently holding a position with any of the Receivership Defendants shall possess authority to act on behalf of any of the Receivership Defendants unless expressly revoked by the Receiver.

D. The Receiver shall have all powers, authorities, rights and privileges accorded to receivers under the laws of the State of New York. Subject to the specific provisions in Sections II through X, below, the Receiver, without limitation, shall also have the following general powers and duties:

1. To use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Defendants, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and *other assets including all radio station licenses*,¹ together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly (the "Receivership Property");

2. To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Defendants, including filing the appropriate application to transfer control of any and all of Receivership Defendants' Federal Communications Commission licenses to the Receiver; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and Receivership Defendants' records relevant thereto;

3. To engage and employ persons in his discretion to assist in carrying out his duties and responsibilities hereunder, including, but not limited to, a managing agent, accountants, attorneys, liquidating agents, real estate agents, forensic experts, brokers, or auctioneers;

4. To take such action as the Receiver determines necessary for the protection or recovery of the assets of PP Inc. and PP Elmira and preservation of Receivership Property until such time as they can be sold and the proceeds realized to be used to satisfy the Judgments;

5. To take such other action as is consistent with this Order, the organizational documents of each of the Receivership Defendants or as may be approved by this Court.

E. The Receiver shall keep the assets of PP Inc. and PP Elmira insured against loss;

¹ See Schedule A.

II.

RECEIVERSHIP DEFENDANTS RESOLUTIONS AND PERSONNEL

A. The Defendants and the Receivership Defendants, by their counsel, agree to provide the Receiver a list of all directors, officers, managers, shareholders, employees, accountants, attorneys and other agents of the Receivership Defendants ("Receivership Agents") as of the date of this Order.

B. In the event that the Receiver deems it necessary that actions be taken to ensure the Receiver fully controls, manages, directs and operates the Receivership Defendants, the Defendants and the Receivership Defendants agree to immediately take all steps the Receiver may reasonably direct to effectuate such purpose.

C. The failure of the Defendants, the Receivership Defendants, or any court or regulatory authority, to take or complete any of the aforementioned steps shall have no impact on the authority or powers of the Receiver under the laws of the State of New York.

D. Pfuntner agrees to provide assistance as reasonably requested by the Receiver without compensation, for the benefit of ACM.

E. Pfuntner will not receive any fees from the Receivership Defendants, including, without limitation, any management, incentive, profit-sharing or deferred fee under any prior agreement, but without prejudice as to the claims of the parties concerning any fees, including, without limitation, any management, incentive, profit-sharing or deferred fee claimed to have been earned or accrued prior to the appointment of the Receiver.

F. Nothing in this Order shall abrogate the Court's powers under the CPLR or its equitable powers. The parties hereto acknowledge and stipulate to the Court's power to modify or supplement this Order, for cause, at any time.

III.

ACCESS TO INFORMATION, BOOKS AND ACCOUNTS

A. The past and/or present Receivership Agents, are hereby ordered and directed to turn over to the Receiver forthwith all Receivership Property including paper and electronic information of, and/or relating to, the Receivership Defendants and/or all Receivership Property, in such manner as the Receiver may specify; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

B. The past and/or present Receivership Agents and the debtors and creditors of Receivership Defendants, and other appropriate persons or entities having possession of the property, business, books, records, accounts or assets of the Receivership Defendants, are hereby directed to deliver the same to the Receiver, his agents and/or employees, in such manner as the Receiver may specify. Nothing in this paragraph shall impinge on a person's rights to assert any applicable privilege.

C. All banks, financial institutions, and other persons or entities which have possession, custody or control of any assets held by, in the name of, or for the benefit of, directly or

indirectly the Receivership Defendants, that receive actual notice of this Order by personal service, facsimile transmission or otherwise shall:

1. Not liquidate, sell, convey or otherwise transfer any of the Receivership Defendants' Receivership Property except upon instructions from the Receiver;
2. Except as permitted in existing agreements, not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court or the Receiver;
3. Within ten business days of receipt of the notice, file with the Court and serve on the Receiver a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,
4. Cooperate expeditiously in the transfer of funds, other assets and accounts to the Receiver or at the direction of the Receiver.

D. Pfuntner, PP Elmira and PP Inc. have a continuing obligation to turn over to the Receiver all documents of the Receivership Defendants and all non-privileged documents (where the right to waive the privilege does not belong to the Receivership Defendants) related to the Receivership Defendants, including, without limitation, all mail, correspondence, and account statements, in a manner as the Receiver specifies.

IV.

ACCESS TO REAL AND PERSONAL PROPERTY

A. The Receiver is authorized to take immediate possession of all personal property of the Receivership Defendants, in such manner as the Receiver may specify, wherever located, including but not limited to bank records and accounts, savings records and accounts, certificates of deposit, stocks, bonds, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

B. The Receiver is authorized to take immediate possession of all real property owned by Pfuntner and used in the operation the Receivership Defendants, wherever located, including but not limited to all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises.

C. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Defendants, and to inspect all mail directed to, or received by or on behalf of, the Receivership Defendants and opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

V.

NOTICE TO THIRD PARTIES

A. The Receiver shall promptly give notice of his appointment to all known Receivership Agents and creditors and debtors of the Receivership Defendants, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

B. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Defendant shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Defendant had received such payment.

C. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he/she deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Defendants. All government offices which maintain public files of security interests in real and personal property shall record this Order upon the request of the Receiver.

D. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related to the business, operations or activities of any of the Receivership Defendants, including all mail addressed to, or for the benefit of, the Receivership Defendants.

E. The Receiver is authorized to assert, prosecute and/or negotiate any claim under any insurance policy held by or issued on behalf of the Receivership Defendants, or Receivership Agents, and to take any and all appropriate steps in connection with such policies.

VI.

INJUNCTION AGAINST INTERFERENCE WITH RECEIVER

A. The Receivership Defendants and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

1. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;

2. Hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information;

3. Dissipate or otherwise diminish the value of any Receivership Property, including but not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or

claims against any Receivership Property or any Receivership Defendant, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate the due date of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Defendant or which otherwise affects any Receivership Property;

4. Interfere with or harass the Receiver, or interfere in any manner with the jurisdiction of this Court over the Receivership Defendants.

B. If at any time any person or entity fails, appears to fail, or indicates an intention to fail to comply in any way with the terms of this Order, the Receiver may seek immediate assistance from and further Order of this Court, on such expedited notice as the Receiver deems appropriate in the circumstances, in aid of enforcement of this Order.

VII.

BANKRUPTCY FILING

A. The Receiver may file voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") for the Receivership Defendants. If a Receivership Defendant is placed in bankruptcy proceedings, the Receiver, as Voluntary Liquidator, shall be empowered to operate each of the Receivership Defendants as a debtor-in-possession unless otherwise ordered by the Bankruptcy Court.

B. The Receiver is authorized to take any action which he deems to be necessary and appropriate in order to file for relief under the Bankruptcy Code, including the execution of all necessary corporate resolutions or directions on behalf of the Receiver Defendants.

VIII.

LIABILITY OF RECEIVER

A. The Receiver shall not be required to post bond or give an undertaking of any type in connection with his appointment in this matter.

B. The Receiver shall have no liability unless the Court determines that the Receiver engaged in gross negligence, willful misconduct or acted in bad faith or committed a material breach of fiduciary duty.

C. The appointment of the Receiver is a temporary appointment, subject, in all respects, to the power of the Court to remove and replace the Receiver for cause.

D. The Receiver may resign. In the event the Receiver resigns, the resignation shall not be effective until the Court appoints a successor. The Receiver and the Receiver's successor shall then follow such instructions as the Court may provide.

E. The Receivership Defendants shall indemnify and hold harmless the Receiver with respect to any or all claims, rights and causes of actions of every type or nature whatsoever based upon acts or omissions committed under authority of this Order, unless this Court finds the Receiver engaged in gross negligence, willful misconduct or bad faith or committed a material breach of fiduciary duty. The Receivership Defendants shall further indemnify the Receiver for, and advance reasonable costs and attorneys' fees in defending against, any claims against the Receiver based upon acts or omissions committed under authority of this Order; provided,

however, to the extent this Court finds that the Receiver engaged in gross negligence, willful misconduct or bad faith or committed a material breach of fiduciary duty, the Receiver shall immediately repay any advanced defense costs or attorneys' fees.

IX.

FEES, EXPENSES AND ACCOUNTINGS

A. The Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses that the Receiver deems advantageous to the orderly administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state or local taxes.

B. Subject to Paragraph C immediately below, the Receiver is authorized to solicit persons and entities ("Retained Personnel"), including, without limitation, such outside legal counsel, accounting and financial professionals as he deems appropriate, to assist him in carrying out the duties and responsibilities described in this Order.

C. Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Defendants. Such compensation shall be in amounts commensurate with the services performed by the Retained Personnel.

D. Receiver's Compensation. The Receiver is entitled to reasonable compensation for its professionals and paraprofessionals, and expense reimbursement. The hourly billing rates for the Receiver in 2013-2014 shall be \$225.00. For the initial three months, the aggregate fees of the Receiver shall be capped at \$15,000.00 per month. Fees for Retained Personnel will be paid in the amounts billed to the Receiver, without any mark-up. The Receiver may, in his discretion, pay invoices for fees and expenses of the Receiver and Retained Personnel monthly. However, any single expense of the Receiver or the Retained Personnel in excess of \$2,499.99 shall require prior approval by the Court, except that expenses for monthly fees for outside legal counsel under \$5,000.00 shall not require approval by the Court. Amounts paid to the Receiver and for other Retained Personnel shall be included in the Receiver's Reports and all invoice payments shall be subject to final review and approval by the Court, no less than every three (3) months.

E. Receiver's Reports. Every thirty (30) days, the Receiver shall send to ACM Browncroft Trust c/o Underberg & Kessler LLP, 300 Bausch & Lomb Place, Rochester, NY 14604, a written report which includes: (i) a summary of the Receiver's activities with respect to the Receivership Property, (ii) an accounting of the Receiver's fees and expenses and Retained Personnel fees and expenses and (iii) a financial report for each of the Receiver Defendants. Every ninety (90) days, unless the Court directs otherwise, the Receiver shall file with the Court a written report containing the information enumerated in subsections (i) - (iii) in the preceding sentence. A copy of the Receiver's Reports filed with the Court shall be provided to counsel for Plaintiff and the Receivership Defendants.

F. The Receiver shall not, without the prior approval of this Court, on notice: (i) make any distributions to the shareholders or limited partners of the Receivership Defendants, including any such distributions to Pfuntner in such capacity, or (ii) make any payments of any sort to or for the account of Pfuntner.

X.

SALE OF RECEIVERSHIP PROPERTY

A. The Receiver shall in good faith make every effort to sell the assets of the Receivership Defendants as soon as practicable, either in a public or private sale transaction or in other transactions on terms the Receiver reasonably believes based on his own experience and input from his advisors to be most beneficial to Plaintiff and the Receivership Defendants.

B. The sale of Receivership Property shall only be consummated with prior court approval on at least four (4) business days' written notice (unless shortened by court order) to Defendants (via e-mail and/or hand delivery to Keyser Maloney & Winner LLP, George Winner, Esq., of counsel). The Receiver may apply for an order under seal or in camera as circumstances require.

C. The duties and responsibilities of the Receiver enumerated herein shall extinguish as soon as practicable upon complete satisfaction of the amounts due Plaintiff as set forth in the Judgments plus the statutory rate of interest as of the date of payment or upon liquidation of all Receivership Property of Receivership Defendants. Upon payment to Plaintiff of the entire amount due and owing, as of the date of said payment, the Receiver shall immediately take all steps necessary to transfer control of the Receivership Defendants and any remaining Receivership Property from Receiver to Defendants.

XI.

EFFECTIVE DATES

The authority and powers of the Receiver shall vest and the Receivership over the Receivership Defendants shall take effect immediately upon the date of the Order by the Court.

December 19, 2013

PEMBROOK PINES INC.

By: 

Robert J. Pfauter, its CEO/President

UNDERBERG & KESSLER LLP

December 17, 2013

By: 

David M. Tang, Esq.

Attorneys for Plaintiff

300 Bausch & Lomb Place

Rochester, New York 14604

Tel. (585) 258-2800

December 19, 2013

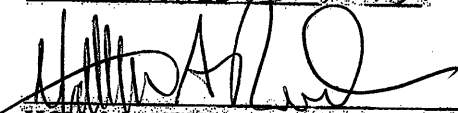
KEYSER MALONEY & WINNER LLP

By: 

George H. Winner, Esq.
Attorneys for Defendants
150 Lake Street
Elmira, New York 14901
Tel. (607) 734-0990

SO ORDERED this th 20 day of

December, 2013.


HON. MATTHEW A. ROSENBAUM
Supreme Court Justice

SCHEDULE A

Radio Station Broadcast Licenses of Pembroke Pines, Inc.

- WGGO (AM)
- WOEN (AM)
- WQRS (FM)
- WMXO (FM)
- WZKZ (FM)

Radio Station Broadcast Licenses of Pembroke Pines Elmira, Limited

- WEHH (AM)
- WELM (AM)
- W229AS (FM)
- W229AR (FM)
- W230BB (FM)
- WLKY (FM)
- WOKN (FM)
- W273AC (FM)
- NEW (106.9 MHz) (FM)

SUPREME COURT
STATE OF NEW YORK COUNTY OF MONROE

ACM BROWNCROFT TRUST,

Plaintiff,

v.

**OATH OF
RECEIVER**

ROBERT J. PFUNTNER, et al.

Index No.: 12-13771

Defendants.

CONNECTICUT
STATE OF _____)
COUNTY OF FAIRFIELD) ss: STAMFORD


I, RICHARD A. FOREMAN, the Court-appointed receiver in the above-captioned action, do solemnly swear that I will faithfully perform the duties of the receiver and observe all instructions and orders of the above-entitled Court in accordance with the laws of the State of New York and to the best of my ability.

Dated: DECEMBER 19, 2013



Richard A. Foreman, Receiver

Subscribed and sworn to before me this 19th day of December, 2013.


Francis J. Browne, Esq.
Commissioner of the Superior Court
of Connecticut
Commission expires: Not Applicable