

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

SAGITTARIUS COMMUNICATIONS, LLC)	CASE NO. 2013-CV-01084
)	
Plaintiff,)	JUDGE ANDREW D. LOGAN
)	
v.)	
)	<u>JUDGMENT ENTRY</u>
CHRIS LASH, <i>et al.</i>)	
)	
Defendants.)	

This matter came to be heard on Plaintiff's Motion to Appoint Attorney Michael Thompson as a receiver and request for a permanent injunction in this matter. A hearing was held on June 6, 2018.

BACKGROUND

This dispute concerns the sale of two (2) radio stations (WHTX and WYCL) located in Warren and Niles, Ohio, respectively.

The parties have a Settlement Agreement and Asset Purchase Agreement ("Contract") in which Defendants agreed to sell the aforementioned radio stations to Plaintiff along with the broadcast licenses for those stations. However, when Defendants applied to transfer the licenses to operate the radio stations to Plaintiff, the FCC deferred approval of the application and refused to transfer the licenses because Defendants had failed to pay certain regulatory fees. To date, Defendants are in breach of their Contract with Plaintiff because they have failed to transfer the licenses to Plaintiff. Instead, on February 14, 2018, Defendants informed Plaintiff that they intended to terminate the licenses and sent letters to the FCC to voluntarily and proactively surrender the broadcast licenses to the FCC for cancellation, in direct violation of the parties' Contract.

On February 20, 2018, the FCC dismissed the application to transfer the licenses and prepared to permanently delete the licenses as a result of Defendants' February 14, 2018 letters.

On February 21, 2018, Plaintiff filed an Emergency Motion to Enforce the Parties' Settlement Agreement and Motion for a Temporary Restraining Order.

On February 22, 2018, this Court granted Plaintiff's Motion to Enforce the Settlement Agreement and issued a Temporary Restraining Order. Additionally, this Court ordered Defendants to:

[I]mmediately rescind, in writing, any instructions or requests to the Federal Communications Commission seeking to terminate, delete, or otherwise adversely affect the licenses for the radio stations that are the subject of the parties' Settlement Agreement and Asset Purchase Agreement, including and specifically Mr. Lash's two (2) letters dated February 14, 2018; (2) to submit written requests to the FCC to reinstate the broadcast licenses and pay all arrearages within five business days from the date of said Order; (3) to take all actions necessary to transfer any and all licenses and permits, issued or required by the Federal Communications Commission for the operation of the radio stations that are the subject of the parties' Settlement Agreement and Asset Purchase Agreement, to Plaintiff within five business days from the date of this Order; and (4) to cooperate in preparing and filing and prosecuting a new FCC application for consent to transfer the broadcast licenses to Plaintiff, if the FCC does not reinstate the application.

On February 28, 2018, Plaintiff filed Petitions for Reconsideration with the FCC to stay permanent deletion of the licenses based on Plaintiff's contractual rights in the licenses from the Asset Purchase Agreement and Settlement Agreement.

On March 7, 2018, Defendant filed its reply to Plaintiff's FCC Petitions for Reconsideration. Therein, rather than comply with the Orders of this Honorable Court that Defendant "rescind, in writing, any instructions or requests to the Federal Communications Commission seeking to terminate, delete, or otherwise adversely affect the licenses for the radio stations" and that Defendant "submit written requests to the FCC to reinstate the broadcast

licenses and pay all arrearages within five business days from the date of said Order”

Defendant’s FCC Reply ignored and demonstrated utter contempt for Orders of this Honorable Court by continuing to oppose reinstatement of the radio licenses.

On March 8, 2018, this Court held a Preliminary Injunction Hearing and issued a Preliminary Injunction ordering Defendants to refrain from further attempts to terminate the licenses and to cooperate with Plaintiff and the FCC to honor Defendants’ obligations under the parties’ contracts to ensure the transfer of the licenses to Plaintiff, which would further serve the public interest to avoid adversely affecting the radio stations’ listeners and advertisers.

To date, Defendants have failed to cooperate or respond meaningfully to Plaintiff’s attempts to facilitate the transfer of the AM broadcast licenses, and as recently as March 7, 2018, opposed Plaintiff’s petition at the FCC to reinstate the broadcast licenses.

ANALYSIS

A. RECEIVERSHIP

R.C. 2735.01(A)(1) provides that a receiver may be appointed when “[A] party whose right to or interest in the property or fund, or the proceeds of the property or fund, is probable, and when it is shown that the property or fund is in danger of being lost, removed, or materially injured.”

The primary purpose of a receiver is to carry out orders of the court. *Clarkwestern Dietrich Bldg. Sys., LLC v. Certified Steel Stud Assn.*, 12th Dist. NO. CA2017–04–040, 2017-Ohio-8129, ¶12.

The decision whether to appoint a receiver is within the trial court's sound discretion. *State ex rel. Celebrezze v. Gibbs*, 60 Ohio St.3d 69, 73, 573 N.E.2d 62 (1991). In exercising that discretion, the trial court must generally consider all the circumstances and facts of the case, the

conditions and grounds justifying relief, the ends of justice, the rights of all the parties interested in the controversy and subject matter of the dispute and the adequacy and effectiveness of other remedies. *Haber Polk Kabat, L.L.P. v. Condominiums at Stonebridge Owners' Assn., Inc.*, 8th Dist. No. 105556, 2017-Ohio-8069, ¶23.

Moreover, R.C. 2735.01 does not mandate an evidentiary hearing before appointment of a receiver. *Leight v. Osteosymbionics, L.L.C.*, 8th Dist. No. 105101, 2017-Ohio-5749, ¶35. Where a court is “sufficiently convinced,” based on the evidentiary materials or arguments presented by the parties that the property is in danger, a decision appointing a receiver without a hearing “is not error.” *Id.*, quoting *Cawley JV, L.L.C. v. Wall St. Recycling L.L.C.*, 2015-Ohio-1846, 35 N.E.3d 30; *Pal v. Strachan*, 8th Dist. No. 91808, 2009-Ohio-730, ¶2, 12, 14–18 (trial court did not abuse its discretion in appointing receiver without a hearing where the trial court “became thoroughly familiar with the issues” based on its review of the pleadings, its review of affidavits and other evidence submitted with pretrial motions, and hearings); *see also, Leight, supra*, at ¶30–42 (appointment of receiver without a hearing, was not an abuse of discretion where trial court had held several pretrials, knew the parties, understood the claims and issues and had previously ruled on discovery motions).

For the following reasons, this Court finds Plaintiff’s Motion to be well taken and it is hereby GRANTED. The Court finds a receivership over Defendant Whiplash Radio, LLC is necessary in order to carry out Defendants’ contractual obligations to Plaintiff, honor this Court’s previous Orders, and prevent permanent deletion of the broadcast radio licenses in the FCC proceedings.

The Court finds that Attorney Michael Thompson is an appropriate and qualified receiver in this matter and hereby appoints him as receiver over Whiplash Radio, LLC to carry out all

powers of receivership articulated under R.C. 2735.01, *et. seq.* and specifically to participate in the aforementioned FCC proceedings in order to seek reinstatement of the AM broadcast licenses at issue and to facilitate the transfer of those licenses to Sagittarius Communications, LLC as required by the Parties' Contract and this Court's previous orders. Furthermore, this Court finds that appointing a receiver over Whiplash Radio, LLC is in the public's best interest to avoid further adversely affecting the WYCL and WHTX radio station listeners and advertisers if the AM broadcasting licenses are permanently deleted, despite Plaintiff's contractual entitlement to those licenses. Lastly, the receiver is authorized to make any necessary applications and/or filings to facilitate reinstating and assigning the broadcast licenses to Plaintiff Sagittarius Communications, LLC including negotiating and/or paying any regulatory fee arrearages from Whiplash Radio, LLC's funds.

Wherefore, Attorney Michael Thompson is hereby appointed as receiver of Defendant Whiplash Radio, LLC after giving proper oath and paying bond in the amount of \$100.00.

B. PERMANENT INJUNCTION

A party seeking a permanent injunction must show that the injunction is necessary to prevent irreparable harm and that the party does not have an adequate remedy at law. *Procter & Gamble Co. v. Stoneham*, 747 N.E.2d 268, 273 (2000). A party seeking either type of injunction must ordinarily prove the required elements by clear and convincing evidence. *Id.*

Based on the testimony and evidence presented at the hearing, the Court finds that a permanent injunction is necessary as Plaintiff meets all of the factors supporting the issuance of permanent injunction. This Court finds, by clear and convincing evidence, that a permanent injunction is necessary to prevent irreparable harm and that Plaintiff does not have an adequate remedy at law. Defendants are permanently enjoined and ordered to refrain from: (1) further

attempts to terminate the licenses and/or returning them to the FCC; (2) interfering with Plaintiff's contractual rights under the parties' Purchase Agreement and Settlement Agreement and committing further breaches thereof; and (3) interfering with Plaintiff's attempts to obtain FCC consent to assignment of the broadcast licenses. Defendants are further ordered to cooperate with Plaintiff and the FCC to honor Defendants' obligations under the parties' Agreements to ensure the transfer of the WYCL and WHTX licenses to Plaintiff.

Pursuant to Ohio Civil Rule 54(B), the Court finds that there is no just cause for delay.

IT IS SO ORDERED.

Date:

June 1, 2018


JUDGE ANDREW D. LOGAN

**FILED
COURT OF COMMON PLEAS**

JUN 08 2018

**TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK**

**TO THE CLERK OF COURTS: YOU ARE ORDERED TO SERVE
COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD
OR UPON THE PARTIES WHO ARE UNREPRESENTED FORTH-
WITH BY ORDINARY MAIL.**


JUDGE