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LUXURY ASSET LENDING, LLC	:	
	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
	:	MAY TERM, 2018
PHILADELPHIA TELEVISION	:	
NETWORK, INC., et al	:	
	:	No. 000074
Defendants	:	

STATEMENT OF ERRORS FOR APPEAL BY DEFENDANT PHILADELPHIA TELEVISION NETWORK, INC. PURSUANT TO PA R CIV P 1925(B)

Defendant Philadelphia Television Network, Inc. (“PTNI”) by its undersigned counsel sets out its Statement of Errors as ordered by the Court, pursuant to Pa. R. Civ. P. 1925(b). PTNI notes the proceeding under appeal occurred *ex parte* without prior notice to PTNI, and before consideration of any response or other filing by PTNI in this case. PTNI thereafter caused counsel to enter an appearance, and filed (i) a Response in Opposition to Plaintiff’s Emergency Petition for Appointment of Receiver (“PTNI Response”) on December 10, 2018 following which there has been no further action by the Court as to PTNI’s Response; (ii) a Petition to Strike, Vacate, Open or Stay Judgment and Prior Orders of this Court (the “Petition to Strike”) on December 4, 2018 and a Reply in Support of same filed December 28, 2018 (the “Reply”), on

which this Court has issued a Rule to Show Cause scheduling a hearing for February 6, 2018; (iii) an Emergency Motion for Stay filed January 7, 2018 (the “Stay Motion”), which the Court determined neither to grant nor deny by order entered January 8, 2018; and (iv) the instant Notice of Appeal, filed December 19, 2018.

Statement of Appellate Jurisdiction and Continuing Trial Court Jurisdiction:

This Court’s Order of November 19, 2018 creating a temporary receivership, appointing a receiver, and authorizing sale of all of PTNI’s assets subject to Federal Communications Commission (“FCC”) approval is appealable by right a[s] stated in Pa. R. Civ. P. 311 (a)(2), and to some extent under Pa R. Civ. P. 311(a)(4), even though such matters may otherwise be interlocutory. Pa. R. Civ. P. 311 (g) provides that the filing of the appeal does not suspend further proceedings in the trial court on the case, because Pa. R. App. P. 1701(a) does not apply when appeals are brought under Pa. R. Civ. P. 311(a)(2) or (a)(4).

Statement of Errors at Issue on Appeal

1. Should this Court’s Order be vacated and was it improper to grant the receivership order when the transferred default judgment and the alleged stipulation that was the basis for this Court’s orders were [based on] invalid, fraudulent, largely undocumented, unenforceable, unauthorized, and undisclosed alleged “loan” “agreements” – when **in fact there was never any loan to PTNI** and no proceeds went to PTNI, but instead a secret and fraudulent scheme to fund improper currency movements, transfers and activities in Ghana of purported Libyan oil money, and thereafter to conspire to take all of PTNI’s assets, and get Glanton out of personal bankruptcy when that scheme failed? See PTNI Response pp. 4-5 and ¶¶ 4 and p.9 ¶¶ 20-22; See Petition to Strike at ¶¶ 16, 71-75, 101-110, 134-144, 157 and Exhibits thereto.

2. Should this Court's Order be vacated and was it improper to grant the receivership order when the purported underlying "agreements" between Luxury Asset Lending or Newport Investment Group, LLC and PTNI and the purported stipulation with PTNI's former officer Richard Glanton were all the concealed, unauthorized, self-interested acts of a minority-interest shareholder in which the "lenders" actively participated, that were also contrary to and in breach of PTNI's bylaws, shareholders agreement, and Pennsylvania corporate law protecting shareholders against transfers of corporate assets and transfers for self-interested parties? See PTNI Response pp. 2, 3 and 6 and ¶18; See Petition to Strike at ¶¶ 45-57, 63-67, 79, 94-98, 101-110, 134-144; see 15 Pa. C.S. §§ 512 (a) and (c), 1712 (a) and (c), 1932(b) and (c) (provisions as to approvals needed for self-interested transactions, and as to rights of other shareholders to vote and have dissenting rights and to require approval by disinterested shareholders as to self-interested transactions, and transactions of all or substantially all assets of a corporation).

3. Should this Court's Order be vacated and was it improper for Newport to seek the receivership order because [it was] based on false statements by Newport that Richard Glanton was the majority shareholder in PTNI, when in fact he owned only 425 out of 946 issued shares of PTNI. See PTNI Response p.3, ¶13. See PTNI Petition to Strike 7-10 and Ex. 4 to Petition to Strike (copies of the applicable share certificates to all shareholders, signed by Richard Glanton).

4. Should this Court's Order be vacated and was it improper and a violation of due process for Newport Investment Group, LLC to seek and obtain an *ex parte* receivership and sale order, for lack of notice and service to PTNI, and where the contemporaneous attempted

and failed notice was upon PTNI at 1515 Market Street, which has not been PTNI's address since 2004, and which Newport Investment Group, LLC knew was not PTNI's address? See Response in Opposition p.1 n.1 ("PTNI Response"); see also the Cliett Affidavit[s] attached as Exhibit [12] to PTNI's Reply in Support of its Petition to Strike or Vacate filed December 28, 2018 and [Exhibit 2] to PTNI's Motion for Stay filed January 7, 2019] (the "Cliett Affidavits").

5. Should this Court's Order be vacated and was it improper and a violation of due process for Newport Investment Group, LLC to base its Petition for Receivership and obtain a receivership and sale order based on purported, but in fact invalid default judgment, orders and filings in California and Pennsylvania, including the filings before this Court of May 4, 2018 (entry of judgment by praecipe), May 10, 2018 (purported stipulation and assignment order) and November 19, 2018 (receivership), and also including all the pleadings and default filings in California, **none of which were ever** noticed to or served upon PTNI at its true business address known to Luxury Asset Lending and Newport Investment Group, LLC as shown in their own documents and files, being 2 Johns Lane, Lafayette, Hill, PA, which lack of notice deprived PTNI of knowledge of same and fair opportunity to defend, and rendering such purported judgments, orders and filings null and void and non-compliant with requirements of due process, notice requirements for defaults and default judgments in California and Pennsylvania, and 42 Pa.C.S. § 4306, and also rendered all of its certificates of service invalid before this Court and in California. See PTNI Response pp. 2, 5 and ¶¶5 and 7; See PTNI Petition to Strike ¶¶ 2, 4, 12, 58n.4, 81, 84, 87, 121-133, 145-147. See *Perkins v. TSG, Inc.*, 390 Pa. Super. 303, 306-07, 568 A.2d 665, 666-67 (1990); *Slusher v. Durrer*, (1977) 69 Cal. App. 3d 747, 755-756, 138 Cal. Rptr. 26.

6. Should this Court's Order be vacated and was it improper and a violation of due process for Newport Investment Group, LLC to base its Petition for Receivership and obtain a receivership and sale order based on a purposefully incomplete and misleading reference to one isolated and out of context suggestion in the FCC's November 13, 2018 decision letter of assignment [of] the FCC license to a court-appointed receiver, without advising this Court that the FCC also stated that it could not rely on the California judgment because it was based on foreclosure on an impermissible security interest in an FCC license, as collateral, and that by encouraging "the parties" to take steps for a proper state court resolution of the matter, the FCC anticipated a further court action in which all interested parties (including PTNI) would receive notice, be represented, and participate (and otherwise receive due process). See PTNI Response 6-8 ¶¶9-12 and 18; See PTNI Petition to Strike p.5 ¶and 37-39 ¶¶163-171.

7. Should this Court's Order be vacated and was it improper to grant the receivership order because there was no emergency or exigent circumstance faced by PTNI, and receivership was not "necessary to save the property from injury threatened loss or dissipation", in that (i) there was no immediate risk of the station losing its license by being off the air, and (ii) even the non-emergency issue raised by Newport as to the station's being temporarily off the air with permission of the FCC, was itself completely resolved by the station's having gone back on the air on November 25, 2018. See the Cliett Affidavit in Support of PTNI's Emergency Motion for Stay filed January 7, 201[9] (PTNI had already obtained extension from FCC out to April 2019 to achieve on-air status, which was already imminent and known to be so to Newport on November 18, 2019, and was achieved on November 25, 2019). See also Ex. 10 to PTNI Petition

to Strike (on air notice to FCC of November 25, 2018). *See Northampton Nat'l Bank v. Piscanio*, 475 Pa. 57, 61, 379 A.2d 870, 872 (Pa. 1977).

8. Was it improper for this Court to grant the Receivership Order without providing for the consideration of PTNI's response to the Petition, or under any Rule to Show Cause, such as is provided for in Local Rules 206.1(a)(2) and 208.3(a)(1), or to provide for a full record and consideration by this Court of PTNI's contentions raised before this Court in its PTNI Response and in its Petition to Strike and Reply in Support of Petition to Strike?

9. Was it improper for the receivership order to proceed indefinitely, without hearing and without articulated findings by this Court that provide for and uphold the specific existence, term, duration and continuation of the receivership and without specifying the time period or duration for the "temporary" receivership as is required by 15 Pa C.S. § 1533. *See* PTNI Response ¶¶34-37; *See Northampton Nat'l Bank v. Piscanio*, 475 Pa. 57, 64, 379 A.2d 870, 873 (Pa. 1977).

10. Was it improper for the Receivership Order to authorize an out-of-court sale without providing for any review or approvals or consideration of the terms or methods of such sale, or as to any proposed buyer, other than the approval of Newport Investment Group, LLC, and without specifying provisions for reporting, appraisal and inventory, compensation, reporting, determination of claims, method for realizing value, determination of recommendations and methodology for sale or liquidation as required by 15 Pa. R.Civ.P. § 1533(e), (f), and (g); and (iv), particularly given that the order authorizes the sale of all of PTNI's assets. *See* PTNI Response ¶¶34-37.

11. Should this Court's Order be vacated and was the appointment of a receiver improper, because the underlying transferred judgment could not have been properly entered before this Court in favor of Luxury Asset Lending, LLC, as occurred before this Court on May 4, 2018, given that, on the face of those papers, the judgment had already been purportedly assigned to Newport but nevertheless judgment was sought by praecipe of and entered in favor of Luxury Asset Lending, LLC, which was therefore not the applicable "judgment creditor" as is required by 42 Pa. C.S. § 4306?

12. Should this Court's Order be vacated and was the appointment of a receiver improper, and an abuse of discretion, because the irreparable harms to PTNI far outweighed any harms to Newport Investment Group, LLC, through the loss to PTNI and its shareholders and other creditors, of all of PTNI assets through a sale by the receiver, and at unknown and unsupervised terms by the receiver, and further with no showing that the receiver will be disinterested or fairly consider the rights of all interested persons. See PTNI Response pp. 7-8, ¶¶14-15.

13. Was it error to appoint a receiver without requiring a bond, when that appointment was made on the basis of alleged exigency, and done *ex parte* and without prior notice or hearing to Philadelphia Television Network, Inc., and when bond in such circumstances is expressly is required by Pa R. Civ. P. 1533 (a), and was it error to appoint and keep the receiver in place, without determining and setting an amount of bond, when setting of bond by court is required under Pa R Civ P 1533 (d)? See PTNI Response p. 10 ¶¶ 34-37; See *Pa R. Civ. P. 1533 (a) and Levin v. Barish*, 505 Pa. 514, 523-26, 481 A.2d 1183, 1187-89 (Pa. 1984) (describing bond

requirement as to emergency and ex parte appointments, bond is mandatory, in amount court must determine).

14. Was it improper for the receivership order to authorize a sale of PTNI's assets by the receiver, which is effectively a judicial sale, without determining the existence of or preserving the lien and other payment rights of the other creditors against PTNI and against PTNI's assets, or providing any mechanism to address their rights, and without making any finding that there is "reasonable prospect that a surplus will be left to be distributed among general creditors before such a sale is ordered"? See 31 P.L.E. Receivers § 19 and *Bogosian v. Foerderer Tract Committee, Inc.*, 399 A.2d 408, 414 (Pa Super. 1979)). PTNI does have other creditors, and some of those creditors have lien or judgment rights against PTNI and its assets.

15. Should this Court's Order be vacated and was it improper to grant the receivership order, when the purported "stipulation" of May 10, 2018 and also the purported "agreements" on which they were based themselves violated the Federal Communications Act and federal law and policy, by purporting to pledge and collateralize FCC license rights to a purported lender or its assignee, and also by purporting to transfer PTNI's assets without prior FCC approval. See PTNI Response p.7 and ¶¶ 10-12; see FCC Ruling of November 13, 2018 (dismissing Newport transfer application because of these violations); see also PTNI Petition to Strike ¶¶ 59-60 and 163-68.

16. Should this Court's Order be vacated and was the appointment of a receiver improper because the Petition for Appointment of a Receiver was improperly brought by a non-plaintiff and non-party to this case, Newport Investment Group, LLC, which procedure fails to comply with Pa. R. Civ. P 1533, which governs requirements for receivers appointed for

“plaintiff” and upon “plaintiff’s” bond, and also fails to comply with Pa. R. Civ. P 2002 and 2352, which require that actions be brought by the real parties in interest as parties, and by commencement or substitution as a named party plaintiff, and on the record before this Court judgment was entered in the name of Luxury Asset Lending, LLC on May 4, 2018, and without substitution of Newport as a party? *See Brown v Esposito* 42 A.2d 93 (Pa Super. 1945)(summarizing requirements for proceeding by assignee, including proof of derivation of its title and interest and that it is the real party in interest, so that defendant may demand proof of same and challenge position that the purported assignee owns that claim against it)

17. Should this Court’s Order be vacated and was the appointment of a receiver improper because Newport Investment Group, LLC did not even exist at the time of the purported assignment to Newport, or at the time of this Court’s prior Orders of May 4 and May 10, 2018, being formed as a California LLC only on July 25, 2018? *See* PTNI Response p.2; *See* Petition to Strike at ¶¶ 110-115 and Ex. 9 to Petition to Strike.

18. Should this Court’s Order be vacated and was the appointment of a receiver improper, because there was no lien being enforced thereby, there being no real estate that was subject to judgment, no writ of execution on any attachable personal property, and no ability under the Federal Communications Act and federal law to hold a lien by collateral agreements or financing statements or any enforcement of same on PTNI’s license and broadcast rights, as the Federal Communications Commission ruled on November 13, 2018. *See De Angelis v. Commonwealth Land Title Ins. Co.*, 467 Pa. 410, 415, 358 A.2d 53, 55 (1976) (holding of judgment without execution and lien is insufficient to support appointment of receiver).

19. Was it improper to appoint a receiver when Newport Investment Group, LLC's rights against defendant PTNI are not "free from doubt" and because there are other "safe, expedient, adequate and less drastic remedies" available? See PTNI Response p. 9 ¶23; See *Bogosian v. Foerderer Tract Committee, Inc.*, 399 A.2d 408, 411 (Pa. Super. 1979); *Northampton Nat'l Bank v. Piscanio*, 475 Pa. 57, 61, 379 A.2d 870, 872 (Pa. 1977).

Dated: January 10, 2019

Respectfully submitted,

/s/ Doron A. Henkin, Esq.

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