

FILED
11-15-2019
John Barrett
Clerk of Circuit Court
2019CV008498

DATE SIGNED: November 15, 2019

Electronically signed by David Swanson
Circuit Court Judge

STATE OF WISCONSIN, CIRCUIT COURT
MILWAUKEE COUNTY
BRANCH ____

IN RE:

UMS HOLDINGS, LLC
SCHULZ'S RECYCLING, INC.
UMS TRUCKING, LLC
UNITED MFR, LLC
UNITED MILWAUKEE SCRAP, LLC
UNITED MILWAUKEE SCRAP
INTERNATIONAL SALES CORP.

Case No. 19 CV ____
Case Code: 30304
Other Debtor Actions

ASSIGNORS.

ORDER APPOINTING RECEIVER

Based upon the Assignment for the Benefit of Creditors signed on November 5, 2019, and the Petition for Appointment of Receiver pursuant to Wis. Stat. § 128.08 for an Order Appointing Receiver for UMS Holdings, LLC ("UMS Holdings"), Schulz's Recycling, Inc. ("Schulz's"), UMS Trucking, LLC ("UMS Trucking"), United

MFR, LLC ("MFR"), United Milwaukee Scrap, LLC ("Milwaukee Scrap"), and United Milwaukee Scrap International Sales Corporation ("Milwaukee Scrap International"; and, together with UMS Holdings, Schulz's, UMS Trucking, MFR, and Milwaukee Scrap, the "Assignors") filed November [], 2019 (the "Motion"), and the Court having reviewed the Affidavit of Rebecca R. DeMarb ("DeMarb"), and the Assignment for the Benefit of Creditors, and it appearing that the appointing of DeMarb is in the best interests of the Assignors, their creditors and stakeholders, and all other parties-in-interest, and based upon all the files, pleadings, and other documents of record in the above-captioned case (the "Case"), and after due deliberation thereon and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

- a) The Court has jurisdiction over this matter and authority over all property of the Assignors (the "Assets") pursuant to Wis. Stat. § 128.01.
- b) The statutory predicate for the relief sought in the Motion is Wis. Stat. §§ 128 *et seq.*
- c) The relief requested in the Petition is in the best interests of the Assignors, their creditors and stakeholders, and all other parties in interest.
- d) The Assignors own and operate the assets necessary to operate a retail and industrial scrap business located in primarily Milwaukee and Merrill, Wisconsin (the "Business"). Assignors are all related to one another. UMS Holdings is the sole owner of Schulz's, Milwaukee Scrap and MFR. Milwaukee Scrap is the

sole owner of Milwaukee Scrap International. Milwaukee Scrap is the primary owner (99% of the outstanding equity interests) of UMS Trucking, and Schulz's owns 1% of the outstanding equity interests of UMS Trucking. UMS Holdings is the primary operating business and has approximately 105 employees. The remaining Assignors, some of which are no longer registered entities, own or may own assets necessary in the operation of the Business.

d) The Motion seeks the appointment of DeMarb of DeMarb Brophy LLC ("DeMarb Brophy") to serve as receiver of all of the property and Assets of Assignors, with all proceeds, products, accessions, and additions to such property (together, the "Receivership Property").

e) The Court finds that DeMarb is qualified to serve as the receiver of the Receivership Property and as an officer of the Court.

IT IS HEREBY ORDERED AS FOLLOWS:

Appointment of Receiver

1. DeMarb of DeMarb Brophy LLC is appointed pursuant to Wis. Stat. § 128.08 to serve as receiver (the "Receiver") of the Receivership Property, effective immediately upon the entry of this Order (the "Commencement Date").

Acceptance of Receivership

2. Within ten (10) days of the date of this Order, the Receiver shall file its acceptance of the assignment in writing pursuant to Wis. Stat. § 128.05.

Power of the Receiver

3. The Receiver shall have all the usual and customary powers vested in a

Receiver under Chapter 128 of the Wisconsin Statutes and the laws applicable thereto, including, but not limited to, the power to:

a) Use any federally insured institution as the Receiver so chooses as a depository for any funds which may come into its possession from the sale or liquidation of the Receivership Property, or for other funds received by it during the administration of the cases and such accounts will be in the name of UMS Holdings, in Receivership, and will use the existing tax identification number of UMS Holdings; *provided that* until payment in full of the liabilities owing to Associated Bank, N.A. and BMO Harris Bank, N.A. (together, the "Secured Lenders"), Receiver will use BMO Harris Bank, N.A. as the depository for all funds in this matter;

b) Commence or continue litigation or other proceedings regarding any claims or causes of action now existing in favor of Assignors or which arise during the course of the receivership and inure to the benefit of the estates;

c) Enforce, collect, settle, compromise, sell, or dispose of any accounts receivable, rents receivable, claims, demands, and causes of action existing in favor of Assignors, and to settle and compromise any and all claims against Assignors, in each case, after consultation with the Secured Lenders;

d) Assert rights, claims, causes of action, or defenses that relate to the Receivership Property;

e) Seek and obtain instruction from the Court with respect to any matter relating to the Receivership Property, the exercise of the Receiver's powers,

or the performance of the Receiver's duties;

f) Maintain in the Receiver's name or in the name of one of the Assignors any action to enforce any right, claim, cause of action, or defense;

g) Intervene in actions in which any of the Assignors are a party for the purpose of exercising the powers in this Paragraph 3 or requesting transfer of venue of any action to this Court;

h) Compel any person or party, including any party to this action, by subpoena pursuant to Wis. Stat. § 805.07, to give testimony or to produce and permit inspection and copying of designated books, documents, electronically stored information, or tangible things with respect to the Receivership Property or any other matter that may affect the administration of the Receivership;

i) Collect, control, manage, conserve, and protect the Receivership Property;

j) Conduct any business at or with the Receivership Property in the ordinary course of the business, including the use, sale, or lease of property of the business or otherwise constituting the Receivership Property, the incurring and payment of expenses of the Receivership Property and payment of expenses incurred prior to the Receiver's appointment;

k) Execute, acknowledge, and deliver all agreements, leases, contracts, bills of sale, assignments, releases, deeds, conveyances, transfers, and other documents necessary and proper to carry out the receivership;

l) Incur and pay expenses incidental to the Receiver's exercise of the powers or otherwise in the performance of the Receiver for the period from the Commencement Date through the discharge of the Receiver or the termination of the Case;

m) Seek the authorization of the Court, following notice and hearing, to use, improve, sell, or lease the Receivership Property other than in the ordinary course of business free and clear of all liens;

n) Operate Receivership Property using any and all of the existing sales, use, environmental, or regulatory operating licenses and permits of the Assignors;

o) Keep and maintain all deposit accounts, brokerage accounts, and investment accounts previously kept and maintained by the Assignors, including, without limitation, the power to act for all purposes as such company or its subsidiaries;

p) Succeed to all of the rights of the Assignors in any and all contracts in place as of the date of this Order, subject to the provisions of Wis. Stat. §§ 128 *et seq.*, but not the obligations of the Assignors;

q) Take all actions and execute all agreements, notices, declarations, applications, and other documents as reasonably necessary or appropriate to achieve and maintain compliance or resolve matters of noncompliance with applicable laws, including obtaining, preserving, amending, extending, and

maintaining any and all federal, state, and local governmental agency environmental, regulatory and tax permits, licenses, certificates and authorizations necessary to operate the Receivership Property;

r) Take all actions and execute all agreements, notices, declarations, and documents necessary to dissolve the Assignors under applicable law prior to the termination of the Case;

s) Hold priority as if it were a creditor that obtained a judicial lien at the time of appointment pursuant to Wis. Stat. § 128.08 on all Receivership Property, as more fully set forth in Wis. Stat. Ch. 128;

t) Abandon to the Assignors any Receivership Property that is burdensome or is not of material value to the Receivership, in the sole judgment of the Receiver;

u) Object to any claim; and

v) Enforce all provisions of this Order.

Bond

4. The surety bond from the Receiver shall be issued by an insurance carrier in the amount of \$10,000.00. The bond will be allowed to stand until assets come into the possession of the Receiver exceeding this value; the premium for such bond may be taken from the assets that come into the Receiver's possession. The Receiver will file proof of the bond with the Court upon issuance and within ten (10) days of the date of this Order, pursuant to Wis. Stat. § 128.09. The filing of the bond

shall not delay the appointment of the Receiver, and the Receiver shall take control of the Receivership Property immediately upon the entry of this Order.

Verified List of Assets and Liabilities

5. Assignors shall each file a verified list of their respective assets and liabilities within ten (10) days of the date of this Order, and shall turn over to the Receiver or her designee all of their respective books and records within three (3) days of the date of this Order, including, but not limited to, information regarding all outstanding obligations/contracts, including those that are pending, have been completed within the last six (6) months, and/or still have outstanding accounts with the Assignors, the corresponding names of all vendors, tenants, and contractors, if any, including address and the status of those obligations and copies of all contracts regarding same.

Notice and Filing of Claims

6. The Receiver shall give notice of this Order to all known creditors or owners of claims against the Assignors and all contract counterparties of the Assignors, by mail and by publication, as a Class III Notice under Wis. Stat. Ch. 985, in Milwaukee County, Wisconsin, and including notice to all relevant governmental agencies and taxing authorities.

7. The Notice required above shall direct all creditors and claimants to file their claims within three (3) months of the date of the Notice, with the Milwaukee County Clerk of Circuit Court. The Notice shall direct that all creditors and

claimants failing to timely file and serve their claims shall be barred from participating in any dividend payable to creditors.

Professionals

8. The Receiver is authorized to employ, at her discretion, without the prior approval of the Court, such appraisers, managers, liquidators, accountants, attorneys, financial advisors, management consultants, business and/or real estate brokers, and other professional persons (collectively, "Professionals") as shall be deemed necessary by the Receiver to the administration of the Receivership. In the event the Receiver retains Professionals, notice shall be given to the Court, and such other parties who make an appearance in this case, of the Receiver's intent to retain Professionals, and the type of work to be performed by the Professionals. Final compensation of Professionals shall be determined by an order of the Court after a proper motion by the Receiver or the Professionals requesting final approval of fees and costs, with due notice of the motion being sent to all interested parties. The Receiver is, however, authorized to pay Professionals subject to final approval of the Court, on an interim basis, subject to recoupment and disgorgement. As applicable, fees of all Professionals shall be treated as administrative costs pursuant to Wis. Stat. § 128.17(1)(b). Non-debtor entities paying such fees in advance of the distribution of creditors in this case shall have an administrative claim against the assets of the Receivership, pursuant to Wis. Stat. § 128.17(1)(b).

Stay

9. Assignors, along with their agents, directors, and officers are enjoined and restrained from transferring, encumbering, or otherwise disposing of any of the Assignors assets.

10. Except as specifically authorized by this Court, all creditors and claimants of the Assignors are enjoined and restrained, without further order of the Court, from (a) commencing or prosecuting any action or proceeding against any of the Assignors; (b) continuing to prosecute any action or proceeding currently pending against any of the Assignors, except for these proceedings; (c) creating, perfecting, or enforcing any judgement or lien against Receivership Property; (d) exercising control over Receivership Property; (e) taking any action to collect, assess or recover a claim against any of the Assignors that arose before the Commencement Date; (f) from setting off any debt owing by any of the Assignors that arose before the Commencement Date against any amounts owed to any of the Assignors (either owing before or after the Commencement Date). The Notice required above shall notify all creditors and claimants of this injunction.

Sale of Assets

11. The Receiver is authorized to negotiate with appropriate parties for the sale of all or a portion of the Assignors' assets, consistent with the best interests of the creditors and claimants. If the Receiver completes the negotiation of a sale and has received, in writing, an acceptable written offer to purchase all or a portion of

the Assignors' assets, then it shall give notice to all creditors and claimants of the existence of the proposed sale, the terms of the proposed sale, and the timing of any closing. The sale notice shall give creditors filing claims in the case and other interested parties as the Court may direct, at least fourteen (14) days from the date of the notice to object, in writing, to the proposed sale. If no objection is timely filed, the Court will enter an order authorizing the Receiver to sell the assets in accordance with the notice, without need for further hearing on the motion. If an objection to the sale is timely filed, the Court will schedule a hearing on the proposed sale at the earliest convenient date and time on the Court's calendar.

Duties of Assignors

16. Assignors shall assist and cooperate fully with the Receiver and its designees in the administration of the receivership and the Receivership Property, and otherwise perform those duties set forth in Wis. Stat. Ch. 128.

Turnover of Receivership Property and Effect of Order

17. Each and every person having possession, custody, or control of Receivership Property, and their agents, shall cooperate with the Receiver upon the entry of this Order by immediately:

a) Surrendering to the Receiver, or its designee, physical possession of all Receivership Property, and all books, records, documents, and information pertaining to the Receivership Property;

b) Providing the Receiver, or its designee, with all keys and other

access devices relating to the Receivership Property; and

c) Delivering to the Receiver, or its designee, all Receivership Property and all titles thereto, records, accounts, and cash in the parties' possession, custody, or control relating to the operations, ownerships, or management of the Assignors and the Receivership Property, including, without limitation, all files, maintenance files, employee records, insurance records, contracts, leases, financial books and records, security deposits, credit card receipts, advance payments, bank accounts, savings accounts, and checking accounts, including the electronic versions of any such property held in electronic form, and the Assignors' accounting systems.

18. Upon presentation of this Order, all persons or entities, including banks, controlling possession of any portion of the Assignors' property, shall cooperate with the Receiver in obtaining control over any such property.

19. Subject to the terms of any financing order entered in the Case, (i) all persons or entities, including banks, controlling possession of property of any of the Assignors or their receipts shall cooperate with the Receiver on obtaining control over the same and (ii) upon presentation of this Order, all persons or entities, including banks, shall turn over all funds, operating bank accounts and/or safe deposit boxes owned or controlled by the Assignors to the Receiver without delay and delete all designated signors on the bank account.

20. As of the Commencement Date, any insurance company making payment to any of the Assignors for any claims or for returns of any refund of

premium to any of the Assignors is ordered to pay the same to the Receiver, and the receipt by the Receiver of such amounts shall operate as a discharge to the said insurance company to the extent of the amount paid. Assignors, their representatives, and/or any other persons or entities in possession of such insurance payments received, but not cashed, prior to the date of entry of this Order, shall properly endorse any checks and send such insurance payments/proceeds via overnight delivery to the Receiver. In the event that any of the Assignors receive or come into possession of any such insurance payments, either claims based or representing a return of premium after entry of this Order, those payments shall be turned over to the Receiver immediately. All such insurance companies, whether named herein or otherwise, are hereby enjoined and restrained from paying such claims or making payments of premium refunds of any of the Assignors to any person other than the Receiver.

Instructions

21. The Receiver is authorized to seek instructions from the Court on an expedited basis regarding any matters which are not anticipated by the authority granted to the Receiver.

Payment of Pre-Receivership Obligations

22. The Receiver may, but shall not be required to, authorize the payment of any obligations of the Assignors which arose prior to the date of this Order if doing so is in the best interests of the Receivership Estate in the Receiver's best

business judgement. The Receiver shall not be obligated to advance any funds to pay any expense or other liabilities of any of the Assignors.

Liability of Receiver

23. The Receiver and its agents shall not be liable to any of the Assignors or to any of their creditors for anything that they may in good faith do or omit to do hereunder, or for any conduct whatsoever, save bad faith. The Receiver does not assume any liability under any executory contract(s) or expired lease(s) of any of the Assignors, including, without limitation, any lease of real or personal property or professional agreement.

24. The Receiver shall not be deemed personally in any way to be an owner of the Receivership Property. The Receiver shall not be personally liable for any obligations of the Assignors relating to the Receivership Property that arise after entry of this Order, including, without limitation, any contingent or unliquidated obligations. Liabilities incurred by the Receiver in its capacity as Receiver pursuant to this Order shall be liabilities of the Receivership and not personal liabilities of Receiver. The Receiver shall not be obligated to advance any funds to pay any such liabilities.

25. The Receiver, in the performance of its duties, shall not be deemed in any way to be a responsible person, owner or operator with respect to the operation or management of any of the Receivership Property, as such terms are used in the United States Comprehensive Environmental Response, Compensation and Liability

Act, 29 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute. In its capacity as Receiver, the Receiver shall have all protections available to a “fiduciary” under applicable federal and state laws, including, without limitation, derivative judicial immunity. Liabilities incurred by the Receiver in its capacity as Receiver pursuant to this Order shall be liabilities of the Receivership. The Receiver and its officers, directors, members, employees, agents, and representatives shall have no personal liability for any claims or damages, including, but not limited to, environmental claims, remediation, cleanups, or corrective actions, whether arising before or after the entry of this Order, or in connection with the Receivership Property, the operations thereof, or any of the Receiver’s duties. Nothing in this Order shall in any way be construed or interpreted to impose or allow the imposition upon the Receiver of any liability for any claims arising from the pre-commencement or post-commencement activities of the Receiver or its officers, directors, members, employees, agents, and representatives and their successors and assigns.

26. The Receiver shall not, by exercise of any authority under this Order, be deemed to possess or control, nor hold title to the subsurface of any property, nor any hazardous waste or hazardous substance. The terms “hazardous waste” and/or “hazardous substance” mean those substances which are regulated by, or form the basis of liability under, any federal, state, or local environmental laws, including, without limitation, asbestos, polychlorinated biphenyls (“PCBs”), and

radioactive substances, or any other material or substance which has in the past, or could in the future, constitute a health, safety, or environmental risk.

Receiver's Discretion

27. To the extent that the funds available to the Receiver as described in this Order are insufficient to pay the costs and expenses that the Receiver is directed or authorized to pay, and to perform its duties, under this Order, the Receiver is authorized to allocate available amounts to paying such costs and expenses and the cost of performing such duties as the Receiver may reasonably determine, and to the extent other costs and expenses are not capable of payment or duties are not capable of performance by reason of such lack of funds, the Receiver shall be relieved from paying or performing the same.

Effect of Other Orders

28. The authorizations in this Order regarding the disposition or sale of assets and the use, payment or disbursement of funds are subject to the terms and conditions of this Court's orders authorizing the use of cash collateral or authorizing the Receiver to obtain financing and enter into a financing agreement with the Secured Lenders, including any conditions that the use, payment or disbursement of funds be limited to expenditures included in an approved budget.

Services and Utilities

29. Subject to any financing order entered in this Case, all financial institutions, credit card processors, insurance agents or underwriters, utility

providers, vendors, suppliers, tradesmen, material men, service providers, franchisors, taxing agencies, and all government agencies and departments are hereby ordered to take direction from the Receiver as it relates to the accounts of the Receiver and to surrender any and all funds held on deposit or apply said funds as directed by the Receiver.

30. Utility companies and other providers of utility services, including, but not limited to, electricity, gas, water, sewage, garbage, television cable, and telephone are forbidden to discontinue, alter, or refuse service, or discriminate against the Receiver, or require payment of a deposit or receipt of other security from the Receiver, unless otherwise ordered by the Court.

31. The Receiver is authorized to open new customer accounts with each utility that provides services to the Receivership Property or the Receiver, to enter into agreements with utility service providers (including, without limitation, fuel supply agreements), or to require or cause the Assignors to name the Receiver as an authorized user of any of the existing utility accounts for the Receivership Property.

Fees and Expenses

32. Without the necessity of prior Court approval, the Receiver shall be compensated at its standard hourly rates, including the hourly rate for Rebecca DeMarb, which currently is \$385.00 per hour, and Olivier Reiher, which currently is \$295.00 per hour, and which are adjusted on an annual basis, and to charge for travel time at regular hourly rates. In addition to the Receiver's fees, the Receiver

shall be reimbursed for its reasonable business and travel expenses associated with the Receivership. Use of personal automobiles may be billed at the rate set forth in the Internal Revenue Code. Legal, selling costs, appraisal fees, parking, long-distance, telephone, cell-phone, photocopies, and other reasonable expenses shall be reimbursed at the Receiver's cost. The Receiver may pay and reimburse herself with funds generated through the operation, sale, and liquidation of the Receivership Property.

Taxes

33. Notwithstanding anything in this Order to the contrary, the Receiver will have no obligation to prepare or file any tax returns or reports with any governmental entity, which will remain the responsibility of the Assignors. The Receiver will provide information reasonably available to it to the Assignors for purposes of enabling the Assignors to prepare and file tax returns and reports.

34. The Receiver and the Assignors shall account for the revenue and expenses of all of the Assignors under UMS Holdings' tax identification number.

Discharge

35. Pursuant to Wis. Stat. § 128.20(2), the Receiver shall be discharged, and the Receiver's bond cancelled, upon compliance with the final order of the Court approving final settlement of the account.

Exclusive Jurisdiction

36. This Court shall retain exclusive jurisdiction to interpret, construe,

enforce, and implement the terms and provisions of this Order in all respects, including, but not limited to, retaining jurisdiction to (a) compel all of the Assignors' assistance and cooperation with the Receiver; (b) compel delivery of utility services to the Receiver and/or the Receivership Property; (c) compel the service entities listed in this Order to take direction from the Receiver as it relates to the accounts of the Assignors, and (d) resolve any disputes arising under or related to this Order.

Effectiveness of Order

37. In accordance with Wis. Stat. §§ 128.19(1) and 128.02, the Receiver took possession and exercised control of any and all of the real, personal, tangible, and intangible property of the Assignor on the date that the Receiver filed the Assignment with the Milwaukee County, Wisconsin Circuit Court, and this Order shall be deemed effective as of the date that this action was filed.

The Receiver may, from time to time, and as needed, apply for such other and further relief as may be deemed just and equitable.

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