

FILED
05-05-2022
Clerk of Court
Shawano County, WI
2022CV000079
Honorable Katherine
Sloma
Branch 1

STATE OF WISCONSIN CIRCUIT COURT SHAWANO COUNTY

In re:

ANNIE’S CAMPGROUND LLC,

Case No.: _____

Case Code: 30703

Debtor.

PETITION FOR APPOINTMENT OF RECEIVER

TO THE CIRCUIT COURT, SHAWANO COUNTY:

Petitioner, Bank First (“Petitioner”), by its attorneys Axley Brynson LLP by David M. Pelletier, respectfully alleges as follows:

PARTIES

1. Petitioner is a national banking association with a branch located at 402 N. 8th Street, Manitowoc, Wisconsin 54221.

2. Debtor, Annie’s Campground LLC (“Debtor”), is a delinquent Wisconsin limited liability company with a principal office of W12505 Roosevelt Road., Gresham, Wisconsin 54128. The registered agent for the Debtor is Ann Retzlaff (“Retzlaff”) at that same address.

VENUE AND JURISDICTION

3. Section 128.01, *et seq.*, of the Wisconsin Statutes confers subject matter jurisdiction upon this Court.

4. This Court has personal jurisdiction over the Debtor pursuant to Wis. Stat. § 801.05(1)(c).

5. Venue of this special proceeding is properly before the Circuit Court for Shawano County, Wisconsin pursuant to Wis. Stat. §§ 128.08(1), 801.50(2)(a) and 801.50(2)(c) in that

Shawano County is the county in which the indebtedness that is the subject of this petition arose and in which Debtor does substantial business and is located.

FACTS

6. The Debtor operates a campground, bar, and restaurant on property located in Gresham, Wisconsin. (Affidavit of David Ames (“Ames Aff.”) at ¶ 17.)

7. Specifically, the Debtor operates under the business name, “Annie’s Campground.” (Ames Aff. ¶ 17.)

8. Annie’s Campground offers seasonal and year-round accommodations. Seasonal campers may rent campground sites located on the campground premises. Additionally, the campground includes a number of cabins for rent. According to the Annie’s Campground website, the campground offers numerous amenities including shower and restroom facilities, games, swimming, and the bar and restaurant facilities. (Ames Aff. ¶ 17.)

9. Petitioner has issued two loans and advanced funds to Debtor in the principal amount of \$942,019.37 (“Note 1”) dated July 10, 2020, and \$586,997.17 (“Note 2”) dated November 10, 2015. A true and correct copy of Note 1 is attached to the Ames Affidavit as **Exhibit A**. A true and correct copy of Note 2 is attached to the Ames Affidavit as **Exhibit B**. (Ames Aff. ¶ 3.)

10. The loans to Debtor are evidenced by a Business Loan Agreement (the “Loan Agreement”) dated July 10, 2020. A true and correct copy of the Loan Agreement is attached to the Ames Affidavit at **Exhibit C**. (Ames Aff. ¶ 4.)

11. Petitioner is the lawful owner and holder of the Loan Agreement, Note 1, and Note 2. (Ames Aff. ¶ 5.)

12. As of April 25, 2022, Debtor was obligated to Petitioner, under the terms of the Loan Agreement and Note 1, in the principal amount of \$887,602.30, plus accrued interest in the amount of \$23,296.65, and charges and fees in the amount of \$11,035 (exclusive of attorneys' fees and costs of collection to which Petitioner is contractually entitled under the terms of the Loan Agreement and Note 1), for a total amount due on that date of \$921,933.95. (Ames Aff. ¶ 7.)

13. As of April 27, 2022, Debtor was obligated to Petitioner, under the terms of the Loan Agreement and Note 2, in the principal amount of \$286,997.17, plus accrued interest in the amount of \$249,463.61 (exclusive of attorneys' fees and costs of collection to which Petitioner is contractually entitled under the terms of the Loan Agreement and Note 2), for a total amount due on that date of \$536,460.78. (Ames Aff. ¶ 8.)

14. Pursuant to the terms of a Mortgage executed by Debtor, a copy of which is attached to the Ames Affidavit at **Exhibit D** ("Mortgage 1"), Debtor pledged the following real property ("Property") to secure payment of its obligations to Petitioner including (without limitation) its obligations under the Loan Agreement, Note 1, and Note 2.

Parcel 1:

The Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 11, Township 27 North, Range 13 East, Shawano County, Wisconsin.

Tax Parcel No.: 042-11140-0000

Parcel 2:

The Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 12, Township 27 North, Range 13 East, Shawano County, Wisconsin. Excepting the following:

a.) The East 200' of the West 225' of the North 130' thereof.

b.) Lot 1 of Certified Survey Map No. 2109 as recorded in the Shawano County Registry on April 11, 2000 in Volume 7 of Certified Survey Map pages 467-468 as Document No. 530955.

Tax Parcel No.: 042-12220-0010

Parcel 3:

The Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 12, Township 27 North, Range 13 East, Shawano County, Wisconsin.

Tax Parcel No.: 042-12230-0000

Parcel 4:

The Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 12, Township 27 North, Range 13 East, Shawano County, Wisconsin, excepting the South 20 rods thereof.

Tax Parcel No.: 042-12320-0000

Parcel 5:

The Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 11, Township 27 North, Range 13 East, Shawano County, Wisconsin, excepting the West 330' of the North 264' thereof.

Tax Parcel No.: 042-11110-0000

(Ames Aff. ¶ 8.)

15. Petitioner properly perfected a first priority lien upon the mortgaged real property described above by recording its Mortgage with the Shawano County Register of Deeds on August 3, 2010, as Document No. 664571. (Ames Aff. ¶ 9.)

16. Pursuant to the terms of a Mortgage executed by Debtor, a copy of which is attached to the Ames Affidavit at **Exhibit E** ("Mortgage 2"), Debtor pledged the Property to secure payment of its obligations to Petitioner including (without limitation) its obligations under the Loan Agreement, Note 1, and Note 2, and which added the following legal description to the Property (which parcel is included in the definition of Property used herein):

Parcel 6:

Commencing at the Northwest corner of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 12, Township 27 North, Range 13 East, thence South 20 feet; thence East parallel with North forty line, 25 feet; and there shall be the place of beginning; thence continue East on same line 200 feet; thence South parallel with East forty line 130 feet; thence West parallel with North forty line 200 feet; thence North parallel with West forty line 130 feet to the place of beginning.

Tax Parcel No.: 042-12220-0010

(Ames Aff. ¶ 10.)

17. Petitioner properly perfected a first priority lien upon the mortgaged real property described above by recording its Mortgage with the Shawano County Register of Deeds on January 4, 2011, as Document No. 668982. (Ames Aff. ¶ 11.)

18. Pursuant to the terms of a Mortgage executed by Debtor, a copy of which is attached to the Ames Affidavit at **Exhibit F** ("Mortgage 3"), Debtor pledged the Property to secure payment of its obligations to Petitioner including (without limitation) its obligations under the Loan Agreement, Note 1, and Note 2. (Ames Aff. ¶ 12.)

19. Petitioner properly perfected a first priority lien upon the mortgaged real property described above by recording its Mortgage with the Shawano County Register of Deeds on February 25, 2011, as Document No. 670440. (Ames Aff. ¶ 13.)

20. Petitioner is the lawful owner and holder of Mortgage 1, Mortgage 2, and Mortgage 3. (Ames Aff. ¶ 14.)

21. As security for all amounts owed to Bank First, Debtor executed a Commercial Security Agreement dated December 23, 2010, granting Bank First a security interest in Debtor's personal property including accounts, inventory, equipment all as further described in the Commercial Security Agreement. A true and correct copy of the Commercial Security Agreement

is attached to the Ames Affidavit as **Exhibit G**. Petitioner properly perfected and continued its security interest in the assets of the Debtor. (Ames Aff. ¶ 15.)

22. The Debtor's obligations under the Loan Agreement, Note 1, and Note 2 are further secured by a personal guaranty executed by Ann Retzlaff, a copy of which is attached to the Ames Affidavit at **Exhibit H**. (Ames Aff. ¶ 16.)

GROUND FOR APPOINTMENT OF CHAPTER 128 RECEIVER

23. In accordance with Section 128.08(1)(b) of the Wisconsin Statutes, a court may sequester the property of a debtor and appoint a receiver "[w]hen a corporation . . . is insolvent or is in imminent danger of insolvency"

24. The term "insolvent" is defined in Section 128.001(1)(a) of the Wisconsin Statutes. That Section provides in relevant part:

A person is considered "insolvent" whenever ... [t]he aggregate of the person's property ... shall not, at a fair valuation be sufficient in amount to pay the person's debts.

25. Upon information and belief, Debtor is insolvent as it has clearly demonstrated an inability to make timely payments of its obligations to creditors, including (among other things) its indebtedness to Petitioner.

26. Petitioner believes that the Debtor is insolvent or in imminent danger of insolvency. This belief is based upon the fact that:

- a. Debtor has been unable to meet its payment obligations to Petitioner under the terms of the Loan Agreement and Note 1, having failed to pay amounts due and owing under Note 1 for April 2022;
- b. Debtor has failed to pay property insurance on the Property, which has forced Petitioner to force place insurance on the Property; and
- c. Debtor is delinquent with respect to 2020 and 2021 real property taxes with regard to the Property.

(Ames Aff. at ¶ 18.)

27. Furthermore, Ann Retzlaff, the owner of the Debtor, is presently incarcerated on multiple charges regarding hostile encounters with law enforcement in the state of Wisconsin. Reports on these incidents state that Retzlaff has resisted arrest and, on multiple occasions, failed to appear for court appearances in violation of court orders and in violation of her bond orders. Given Retzlaff's incarceration and conduct in court proceedings Petitioner has substantial concerns about the operation of the campground, the bar and restaurant at the campground, and the potential dissipation of collateral during Retzlaff's incarceration and her reported and repeated confrontation with police and government officials. (Ames Aff. ¶ 9.)

28. Wisconsin law provides that "where waste has been committed, it is an abuse of discretion not to appoint a receiver 'unless there is some counterbalancing equity.'" *First Nat'l Bank v. Clark & Lund Boat Co.*, 229 N.W.2d 221, 223 (Wis. 1975); *Dick & Reuteman Co. v. Jem Realty Co.*, 274 N.W. 416, 421 (Wis. 1937); *Scharf v. Hartung*, 259 N.W. 257, 258 (Wis. 1935).

29. Wisconsin decisional authority makes it clear that the "failure to pay interest or taxes constitutes waste because it increases the debt and impairs the security by subjecting the property to liens superior to the mortgage." *Chetek State Bank v. Barberg*, 170 Wis. 2d 516, 489 N.W.2d 385 (Ct. App. 1992).

30. As a result of Debtor's defaults under the loan documents with Petitioner, the Petitioner has accelerated Debtor's indebtedness.

31. As of April 25, 2022, Debtor was obligated to Petitioner, under the terms of the Loan Agreement and Note 1, in the principal amount of \$887,602.30, plus accrued interest in the amount of \$23,296.65, and charges and fees in the amount of \$11,035 (exclusive of attorneys' fees and costs of collection to which Petitioner is contractually entitled under the terms of the Loan Agreement and Note 1), for a total amount due on that date of \$921,933.95. (Ames Aff. ¶ 7.)

32. As of April 27, 2022, Debtor was obligated to Petitioner, under the terms of the Loan Agreement and Note 2, in the principal amount of \$286,997.17, plus accrued interest in the amount of \$249,463.61 (exclusive of attorneys' fees and costs of collection to which Petitioner is contractually entitled under the terms of the Loan Agreement and Note 2), for a total amount due on that date of \$536,460.78. (Ames Aff. ¶ 8.)

33. Furthermore, pursuant to the loan documents executed by Debtor, Petitioner is entitled to collect its costs and expenses incurred in collecting amounts owed to Petitioner, including its attorneys' fees and costs.

34. Such a failure to pay amounts owed to Petitioner including accrued interest constitutes an event of waste since Debtor's obligations to the Petitioner continue to increase while the value of Petitioner's collateral remains stagnant.

35. Furthermore, the Debtor has failed to pay real estate property taxes due on the Property. (Ames Aff. ¶ 12.)

36. Such a failure to pay real property taxes constitutes an additional event of waste since the municipal tax liens upon the mortgaged properties effectively trump the mortgage interests of Petitioner upon said properties, thereby reducing the value of Petitioner's collateral by the amount of delinquent taxes.

37. Finally, the Debtor has failed to provide property insurance for the subject Property. This failure has put the Petitioner's collateral at risk and is further evidence of waste warranting the appointment of a receiver here.

38. Upon available information, Petitioner believes it to be in the best interest of all creditors that a receiver under Sec. 128.08(1)(b), Wis. Stats., be appointed by this Court to prevent further dissipation of the assets of Debtor and loss of collateral securing certain debts to Petitioner and Debtor's other creditors.

39. Petitioner requests the appointment of Seth Dizard as the Wisconsin Statutes Chapter 128 Receiver in this matter.

ALTERNATIVE REQUEST FOR RECEIVER PURSUANT TO WIS STAT. § 813.16

40. In the alternative and in the event that a Receiver is not appointed under Section 128 of the Wisconsin Statutes, Petitioner requests the appointment of a receiver under Wis. Stat. § 813.16.

41. Pursuant to Wis. Stat. § 813.16, a party having an interest in property may seek the appointment of a Receiver to protect the value of the collateral and the rents and profits from the property pending the prosecution of the action.

42. In the event that Mr. Dizard is not appointed as Receiver pursuant to Chapter 128 of the Wisconsin Statutes, Petitioner requests that the Court appoint him as Receiver pursuant to Wis. Stat. § 813.16, and permit Petitioner to amend its pleading to add a claim for mortgage foreclosure pursuant to its rights in the Property created by Mortgage 1, Mortgage 2, and Mortgage 3.

ACCORDINGLY, Petitioner requests the following relief:

A. An order appointing Seth Dizard as the receiver of the assets of Debtor under Chapter 128 of the Wisconsin Statutes.

B. Petitioner further requests:

i. That an Order be entered appointing Mr. Dizard as Receiver under a bond of \$10,000;

ii. That all creditors of Debtor be directed to file their claims with the Clerk of Court within three months from the date of the Notice of Appointment of Receiver;

iii. That all creditors be restrained and enjoined from (i) commencing any action or prosecuting any other action now pending other than these proceedings, (ii) enforcing against Debtor or its property any judgment and (iii) taking any action to collect or recover a claim against Debtor;

iv. That the Receiver be authorized to use a bank of his choosing as a depository for funds in this matter;

v. That the Receiver be authorized to employ appraisers and/or liquidators of his choice;

vi. That the Receiver be authorized to employ an accountant to prepare any necessary corporate tax returns with compensation to be determined at a later date;

vii. That the Receiver be authorized to sell all property of Debtor, outside of the ordinary course of business, free and clear of liens, with liens attaching to the proceeds, through public or private proceedings in any commercially reasonable manner, subject to the prior approval of this Court, upon notice to creditors;

viii. That the Receiver be authorized to borrow any money necessary to properly carry out the purposes of these proceedings and to pledge, hypothecate, mortgage or assign the assets of Debtor as security for said loan or loans; and

ix. For such other and further relief as the Court deems appropriate.

Respectfully submitted this 5th day of May, 2022.

AXLEY BRYNELSON LLP

s/ David M. Pelletier

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