

IN THE SUPERIOR COURT OF RABUN COUNTY  
STATE OF GEORGIA

UNITED COMMUNITY BANK,	:	
	:	
Plaintiff,	:	Civil Action
	:	
GC LOT LOAN, LLC, a Georgia limited liability	:	
Company and RL PROP 2011-1 INVESTMENTS	:	
LLC, a Delaware limited liability company,	:	
	:	
Intervenors and Plaintiffs,	:	
	:	File No. 2012-CV-0315-S
v.	:	
	:	
SELAF WATERFALL DEVELOPMENT CO.,	:	
LLC, SELAF WATERFALL COUNTRY CLUB,	:	
LLC, SELAF WATERFALL WATER AND	:	
SEWER, LLC, and SELAF WATERFALL	:	
HOLDING CO., LLC,	:	
	:	
Defendants	:	
_____	:	

**ORDER DIRECTING PAYMENT OF UNPAID OBLIGATIONS OF THE  
RECEIVERSHIP ESTATE**

This matter is before the Court upon the: A) Motion (the “Motion to Terminate”)<sup>1</sup> of Hays Financial Consulting, LLC, the Receiver (the “Receiver”) for the personal property (the “Personal Property”) and real property (collectively, the “Property”) of the above captioned Defendants (the “Defendants”), for: 1) approval of final report (the “Final Report”) regarding the administration of the Property of the Receivership Estate (the “Receivership”) and any unpaid debts (the “Obligations”) related to the Receivership or the Property; and 2) an Order: a) directing the payment of the outstanding Obligations; b) discharging the Receiver of any further liability or obligation; c) approving the final fees and expenses of the Receiver and its

<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Motion to Terminate.

professionals as set forth in the Final Fee Application filed by the Receiver (the "Final Fee Application") and directing payment of approved fees and expenses; and d) terminating the Receivership, and Memorandum of Law in support thereof; B) Motion (the "Motion for Authority") filed by the Receiver for: 1) authority to: a) relinquish possession of the real Property to the successful bidder at the foreclosure sale of the real Property of the Defendants (the "Foreclosure Sale"); b) close the Receivership and terminate its duties as Receiver; c) file a Final Report regarding the administration of the Receivership and any unpaid debts; and d) withdraw as Receiver; 2) instructions for the payment or non-payment of certain outstanding debts; 3) a discharge of any further liability or obligation; and/or 4) authority to file a petition seeking bankruptcy protection for the Defendants; C) Motion to Intervene and Dissolve Receivership (the "Motion for Dissolution") filed by the above styled Intervenor (the "Intervenor") seeking to intervene in this Proceeding (previously granted in part) and to dissolve the Receivership created by this Court pursuant to an Order of this Court dated August 2, 2012 (the "Appointment Order"); and D) the Response (the "Response") by the Receiver to the Motion for Dissolution. On December 3, 2012 (the "December Hearing"), the Court held a hearing to consider the Motion for Authority, Motion for Dissolution, and Response incident to which the Court granted certain relief requested in the Motion for Authority and Motion for Dissolution and continued the remaining relief requested therein until the hearing on the Motion to Terminate.

Upon appropriate notice to creditors and parties-in-interest entitled to notice, the Court held a hearing on the Motion to Terminate, Motion for Authority, Motion for Dissolution, the Response, the Final Fee Application, and any objections thereto (collectively, the "Pleadings") on February 4, 2013, at approximately 2:00 p.m. (the "February Hearing"). After thorough

consideration of the Pleadings, the record in this Proceeding, other pleadings and reports filed in the Receivership, the evidence presented at the February Hearing, and arguments of counsel for parties-in-interest, this Court having been fully advised hereby FINDS and CONCLUDES:

1. The relief set forth herein is in the best interests of the Receivership and all parties in interest; sufficient grounds and good cause exist for the entry of this Order without the necessity of further notice or a hearing thereon.

2. Appropriate and adequate notice of the Pleadings and the relief sought therein has been provided to all interested parties entitled to notice and such notice was reasonable and appropriate.

3. Plaintiff United Community Bank ("UCB"): a) received notice of the December Hearing and the February Hearing; b) did not file a response to any of the Pleadings, which were all properly served upon UCB; c) failed to appear at either the December Hearing or the February Hearing; and d) did not object to any status reports or notices of statement of account filed by the Receiver.

4. Pursuant to certain loan documents (the "Loan Documents") executed by and between UCB and the Defendants prior to August 2, 2012, UCB obtained a secured interest in certain real property of the Defendants that was being used as a country club and golf course facility (the "Club").

5. In order to protect the secured interest of UCB in the Club, UCB obtained the appointment of the Receiver to administer the Property pursuant to the terms of the Appointment Order.

6. The Receiver managed, preserved, protected, maintained, and administered the assets of the Receivership in a reasonable, prudent, diligent and efficient manner and in accordance with the Appointment Order.

7. Since the Club required monthly funding from a third party in excess of \$200,000 per month to pay the monthly operating expenses of the Club, UCB funded without objection the operating expenses incurred by the Receiver through October, 2012.

8. On November 29, 2012, the Receiver filed the Motion for Authority due to uncertainty regarding the payment of expenses of the Receivership for the period from November 1, 2012, through December 4, 2012.

9. At the December Hearing, this Court entered an oral ruling that was formally set forth in a written order entered on December 5, 2012, *nunc pro tunc* to December 3, 2012 (the "December Order"), in which the Court, among other relief, ordered: a) the Receiver to issue certain payments from funds available in the Receivership; b) the Intervenors and the Receiver to transfer certain funds into the Registry of the Court; c) the Receiver to file a Final Report, the Final Fee Application, and the Motion to Terminate by December 31, 2012; d) that the Receiver was authorized to transfer the Property of the Defendants to the successful bidder at the Foreclosure Sale; e) the recipient of the Property shall be prohibited from transferring any Personal Property, except in the ordinary course of business, until the termination of the Receivership or further order by the Court; and f) that further hearing on the Motion for Authority and Motion for Dissolution shall be continued until a hearing on the Motion to Terminate the Receivership.

10. The Intervenors subsequently purchased the real Property at the Foreclosure Sale initiated by UCB.

11. Pursuant to the December Order: a) the Receiver: i) disbursed certain payments from funds then available in Receivership; ii) subsequently paid the remaining funds available in the Receivership in the possession of the Receiver in the amount of \$77,230 into the Registry of the Court; iii) turned over possession and control of the Property in the Receivership to the Intervenor; and iv) filed by December 31, 2012, the Motion to Terminate, Final Report, and the Final Fee Application, which includes services rendered in November through December for which the Receiver and professionals of the Receiver have not been paid; and b) the Intervenor: i) paid \$104,000 into the Registry of the Court; ii) submitted to the Registry of the Court payments from accounts receivable in the form of Negotiable Instruments (the "Negotiable Instruments") received after December 4, 2012, in the amount of approximately \$21,258.32; and iii) assumed control and responsibility for the operation of the Property.

12. The Receiver has properly transferred all Property with the authority of this Court to the Intervenor and is no longer in possession of any Property or funds of the Receivership with the exception of certain insurance premium payment refunds received after the Final Report was filed by the Receiver as of December 21, 2013.

13. The funds and Negotiable Instruments currently held in the Registry of the Court related to the Receivership in the total approximate amount of \$202,488.32 are insufficient to pay all of the outstanding Obligations of the Receivership in the current amount of \$261,156 resulting in a shortfall of \$52,356 (the "Shortfall").

14. The Court has determined that UCB is responsible for the payment of any outstanding Obligations of the Receivership Estate, including the payment of the Shortfall.

15. "Courts generally are vested with large discretion in determining who shall pay the cost and expenses of receiverships. The court may assess the costs of a receivership against

the fund or property in receivership or against the applicant for the receivership, or it may apportion them among the parties, depending upon circumstances.”” *Handlan v. Handlan*, 360 Mo. 1150, 1169 (Mo. 1950) (*quoting* 45 Am. Jur. 224, Sec. 290.); *See also, Kawfield Oil Co. v. Illinois Refining Co.*, 169 Okla. 75 (Okla. 1934) (indicating that the court has discretion to order payments to be: a) made from funds available to the estate; or b) divided between parties on equitable principles). In instances such as the current circumstances where funds currently available to the Receivership are insufficient to pay the expenses of the Receivership, the party who sought the appointment of the Receiver, UCB, should be required to provide the means for payment. *See, e.g., First Nat'l Bank v. Dual*, 392 P.2d 463, 465 (Alaska 1964) (“Although the general rule is that a receiver's compensation and expenses are payable from the funds in his hands, and are not taxable against the party at whose instance the receiver was appointed, an exception arises when there is no fund out of which the expenses can be paid and such circumstances exist that it would be inequitable not to hold the party responsible who invoked the processes of the court to have the receiver appointed.”) (*citations omitted*); *Stanton v. Pratt*, 18 Cal. 2d 599, 603 (Cal. 1941) (if funds available to the estate are insufficient, the receiver may look to the party or parties who obtained his appointment and “any or all of the parties for whose benefit the receivership was created.” (*citations omitted*); *Brill v. Southerland*, 14 A.2d 408 (Del. 1940) (“Where there is no fund out of which expenses can be paid, or the fund is insufficient, the usual rule is that the party at whose instance the receiver was appointed should be required to provide the means of payment”) (*citations omitted*).

16. The Court will enter separate Orders regarding the Final Fee Application and other relief requested in the Motion to Terminate and Motion for Authority that is not granted herein.

Accordingly, for good cause shown, it is hereby:

ORDERED and ADJUDGED that the funds and Negotiable Instruments maintained in the Registry of the Court for the Receivership shall be paid and/or delivered by the Clerk of Court of Rabun County to the Receiver, the Receiver is authorized to endorse the Negotiable Instruments delivered to the Receiver from the Registry of the Court or any substitutes, replacements, or collections thereon, and the Receiver is authorized to distribute such funds as are in the possession of the Receiver to: 1) the payment in full of the allowed fees and expenses approved by this Court pursuant to the Final Fee Application; 2) the payment of the remaining outstanding Obligations of the Receivership; and 3) if any balance remains in excess of the outstanding Obligations, return such balance to UCB; and it is further

ORDERED, that any unpaid portion of the Obligations consisting of the Shortfall is hereby assessed to UCB, and, as such, UCB: 1) is hereby ordered and directed to immediately and not later than February 14, 2013, pay the Shortfall in the amount of \$52,356 to the Receiver for distribution pursuant to this Order by the Receiver in payment of the outstanding Obligations; and 2) shall indemnify and hold harmless the Receiver from any and all expenses of the Receivership; and it is further

ORDERED, that: 1) neither the Receiver nor the Receivership shall have any liability for the payment of the Obligations or any unpaid expenses of the Receivership, the Club, or the Property; and 2) any outstanding expenses related to the Receivership or the Property shall be the responsibility of UCB; and it is further

ORDERED, that the Receiver shall: 1) distribute in payment of the Obligations of the Receivership the funds from the Registry of the Court, the funds from the Negotiable

Instruments received from the Clerk of the Court, and the funds hereby ordered paid by UCB to the Receiver; and 2) file a Final Report of Distribution with the Court; and it is further

ORDERED, that the oral motion made by the Intervenors at the hearing is GRANTED in that this Court reaffirms its earlier Order of December 3, 2012, that the Receiver relinquish and abandon possession any real or personal property of the Defendants in the possession of the Receiver to the Intervenors, with the exception of any payments made by the Receiver during the course of the Receivership, the funds and Negotiable Instruments maintained in the Registry of the Court for the Receivership, any funds or Negotiable Instruments to be paid or delivered to the Receiver by the Clerk of Court or UCB, and any sources of funds and funds to be distributed by the Receiver to the payment of the Obligations of the Receivership Estate pursuant to the terms of this Order; and it is further

ORDERED, that to the extent any dispute arises concerning the administration of the assets entrusted to the Receiver or to the extent that any person or entity seeks to pursue or assert any claim or action against the Receiver arising out of or related to its duties as Receiver in this case, this Court retains jurisdiction to hear and resolve any such disputes or claims.

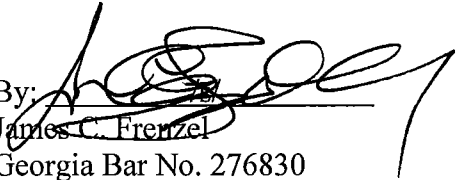
This the 8<sup>th</sup> day of February, 2013.



Judge Russell W. Smith  
Judge of Superior Court  
Rabun County, Georgia



Order prepared and presented by:

By:   
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