

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA

2008 JUN -9 AM 10:48

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA TOM LAWLER, CLERK

SUN NATIONWIDE, LLC,)
)
Plaintiff,)
)
v.)
)
NATIONWIDE FURNITURE, INC.,)
)
Defendant.)
_____)

CIVIL ACTION
NO. _____

08A 05299-8

ORDER APPOINTING RECEIVER

Plaintiff Sun Nationwide, LLC (“Plaintiff”), filed a complaint (“Complaint”) in this action seeking the appointment of a receiver over Defendant Nationwide Furniture, Inc., located in the DeKalb County, Georgia. Plaintiff also filed its *Emergency Motion for Appointment of Receiver* (“Motion”) on June 9, 2008. A hearing (“Hearing”) on the Motion was held June 9, 2008. This Court having reviewed Plaintiff’s verified complaint, the Motion, and this Order, and having considered the arguments of counsel at the Hearing,

IT IS ORDERED THAT:

1. The Motion is GRANTED.
2. Hays Financial Consulting, LLC (“Receiver”) is appointed as the Receiver over Defendant and its Property. Property shall mean all property of the Defendant, including but not limited to:

- A. all personal property of the Defendant, wherever located, including all cash; Accounts; General Intangibles including, but not limited to causes of action, whether known or unknown; all Chattel Paper, Documents, and Instruments and rights to payment evidenced thereby; all Inventory; all Equipment and Fixtures and Accessions; all Investment Property; all Deposit Accounts; all Letters of Credit and Letter of Credit Rights; all parts, replacements, substitutions, profits, products and cash and non-cash Proceeds of any of the foregoing (including insurance proceeds payable by reason of loss or damage thereto) in any form and wherever located. For purposes of this Section 2.A., all defined terms not otherwise defined in this Order shall have the meanings set forth in Georgia’s Uniform Commercial Code;
- B. All permits, licenses, and other contracts pertaining to the operations of Defendant or its personal property;
- C. All books, records, or documents, whether in hard-copy or electronic format (including e-mail files and accounts), that in any way relate to the operations of the Defendant;
- D. Any records relating to retirement, defined benefits, medical, or insurance plans or programs maintained for the benefit of Defendant's employees, whether written or electronically recorded, and copies of all documents Defendant is legally obligated to retain;

- E. All bank accounts maintained by Defendant, including any operating accounts and/or security deposit accounts;
- F. All computers and computer files, including e-mail files, along with all passwords for such files, cellular phones and PDAs;
- G. All keys, security cards, parking cards and other access codes for premises, vehicles, safety deposits boxes or accounts or assets;
- H. All pre-paid accounts, tax refunds, professional or other retainers, escrow deposits and security deposit or any other deposit accounts; and

3. Defendant and its current or former officers, directors, members, employees, partners, trustees, agents, representatives and/or any entity controlled by Defendant are directed to cooperate with the Receiver in the transition of the management of the Defendant and performance of the duties and responsibilities of the Receiver by making themselves reasonably available to assist the Receiver as requested and shall make immediately available for turnover to the Receiver, if requested, all of their records concerning the Defendant and its Property so that the Receiver may adequately account for any revenue collected or owing through the date the Receiver is appointed, including, but not limited to, all:

- A. Existing or pending customer, supplier, and contractor bids, contracts, jobs, work orders, purchase orders, receivables and sales data, and similar material, including communication and correspondence files;

- B. Current aged accounts receivable/delinquency reports;
- C. Documents identifying and summarizing all pending litigation;
- D. Documents and data identifying or evidencing all liabilities of the Defendant;
- E. Copies of all employee payroll records and employee files and applications to include number of employees on health or dental program by coverage (single, single plus, or family coverage), gender and age of each employee;
- F. Documents, books, records and computer files and records concerning the operations, management, and finances of Defendant and any retirement, defined benefits, medical, or insurance plans or programs maintained for the benefit of Defendant's employees; and
- G. Such other records pertaining to the management of the Property as may be reasonably requested by the Receiver.

4. The release of employee payroll records and files and records and files related to any retirement, defined benefits, medical, or insurance plans or programs maintained for the benefit of Defendant's employees to the Receiver is authorized by this Order.

5. Immediately upon entry of this Order, the Receiver has the sole authority to operate and wind-down the Defendant.

6. Defendant and any third-parties receiving notice of this Order shall surrender to the Receiver all monies that they currently or subsequently possess (and/or that is or becomes subject to their control) from revenue, profits, rents

and/or income collected from the operations of the Defendant or the Property, including any money held in accounts maintained by Defendant at any financial institution, and any and all other property of the Defendant.

7. Immediately upon entry of this Order, and continuing until expiration or termination of the receivership, the Receiver is authorized to take any actions that the Receiver deems reasonable and appropriate to take possession of, to exercise full control over, prevent waste of and to preserve, manage, maintain, secure, safeguard, liquidate, and distribute the Property, and to take such other actions as may be necessary and appropriate to take possession, exercise full control over, prevent waste, and to preserve, secure, and safeguard the receivership property, including taking possession of and copying, if necessary, all books, records, notes, memoranda, documents, loan documents, deeds, bills of sale, canceled checks, check ledgers, calendar notes, diary notes, notes, records, ledgers, electronically stored data, tape recordings, computer discs, or any other financial documents or financial information in whatever form belonging to Defendant that relate in any way to the Defendant's business practices or finances or the Property.

Without limiting the generality of the foregoing, the Receiver shall:

- A. Take all action determined by the Receiver to be necessary or appropriate to take possession, safeguard, and preserve all tangible and intangible assets comprising the Property and all licenses used in connection with the operation of the Property;

- B. Collect all revenues, profits, income, rents, and issues earned, paid to, recognized, or realized by the Defendant;
- C. Allow the Plaintiff and its counsel access to the Property at reasonable times to inspect the Property and all books and records related thereto;
- D. Collect any unpaid or delinquent rents, revenues, issues, profits, or other obligations owed to Defendant;
- E. Enforce, terminate, and perform all contracts of Defendant, subject to Plaintiff's approval;
- F. Retain, hire, or discharge employees of Defendant as necessary, subject to Plaintiff's approval;
- G. Pay all taxes, subject to Plaintiff's approval, and prepare, file, and distribute any tax returns, forms, or other documents as may be deemed necessary;
- H. Subject to Plaintiff's approval, manage, maintain, and operate the Defendant, including without limitation, the payment from funds received as Receiver of all of the following (collectively the "Operating Expenses"): (i) all ordinary and necessary operating expenses arising from the operation by the Receiver of the Defendant for the period after entry of this Order until expiration or termination of the receivership; (ii) all current real and personal property taxes and assessments (and delinquent taxes, with the prior written consent of Plaintiff); (iii) all premiums of hazard, liability and other insurance policies upon the Property for term of the receivership, and (iv) any other expenses determined necessary;
- I. Subject to Plaintiff's approval, have general power and authority to sue for and collect debts, demands, and receivables belonging to Defendant and to compromise and settle such as are of doubtful value. Subject to Plaintiff's approval, the

Receiver may also defend, sue, or undertake other judicial or non-judicial actions in the name of the Defendant where it is necessary or proper for him to do so, including in any action or proceeding involving Defendant under Title 11 of the United States Code, and to sue for and collect, recover, receive and take into possession all goods, chattels, rights, credits, monies, effects, lands, books and records of accounts and other papers, and any other Property;

- J. Have access to and control of any Deposit Accounts maintained by Defendant at any financial institution, and this Order shall constitute direction to any such financial institution to grant the Receiver full and complete access to all Deposit Accounts.
- K. Wind-down the affairs of the Defendant, liquidate all of its assets and, subject to the Plaintiff's approval, distribute all proceeds and any other Property to creditors or other claimants as interests may lie;
- L. Have authority to open and close bank accounts or other depository accounts in the name of the Receiver;
- M. Subject to Plaintiff's approval, have authority to abandon or dispose of any Property or records that are not necessary for the administration of the Receiver's duties or are burdensome to the receivership;
- N. Manage, assist, prepare necessary reports and make arrangements as required for the Plan Administrator to terminate any remaining benefits plans;
- O. Subject to Plaintiff's approval, have authority to file a voluntary petition for relief under Title 11 of the United States Code (the Bankruptcy Code) on behalf of the Defendant;
- P. Subject to Plaintiff's approval, have authority to employ and pay such competent personnel or professionals as may be necessary to perform Receiver's duties or responsibilities under

this Order including, but not limited to, consultants, licensed salespersons, property managers, attorneys, accountants.

8. The Receiver and his professionals shall receive reasonable compensation for their services, payable from the Property and funds realized from collection upon or liquidation of the Property. The Receiver's fee shall be based on the standard hourly billing rate of the employees of the Receiver plus reasonable out of pocket expenses until the date of the Receiver's discharge is effective. The blended hourly rate is expected to be approximately \$225.00. The Receiver may establish a segregated Retainer Account from Property of the Defendant. Every month thereafter, the Receiver shall submit an invoice to the Plaintiff for its services as Receiver and, from time to time, invoices for the services of its professionals. Invoices shall be submitted via overnight courier or tele-facsimile to Plaintiff at the following address:

Sun Capital Partners, Inc.
Mr. Todd Buchman
5200 Town Center Circle
Suite 600
Boca Raton, FL 33486
Fax: (561) 962-3422

Ten days after the submission of such invoice and, with no objection by Plaintiff, the Receiver shall be entitled to receive payment equal to the amount set forth in the invoice from the Retainer Account. The Retainer Account balance may

be replenished as necessary from the collection or liquidation of Property to maintain a balance in the Retainer account of no less than \$10,000 and, without Plaintiff's approval, no more than \$25,000.

9. To the extent the Receiver deems it necessary to obtain or maintain such insurance (and subject to Plaintiff's approval), Defendant and third-parties receiving notice of this Order shall cooperate with the Receiver in obtaining all insurance relating to the operation, management, or winding down of the Defendant or the Property, including but not limited to fire, extended coverage, property damage, general and professional liability, and workers' compensation. The Receiver shall be named as an additional insured on all such policies.

10. Neither Plaintiff nor the Receiver shall be liable for any claim, obligation, liability, action, cause of action, cost or expense of Defendant arising out of or relating to events or circumstances occurring prior to this Order, including without limitation, any contingent or unliquidated obligations and any liability from the delivery of goods or the performance of services rendered by, to, or on behalf of Defendant, and any liability to which Defendant is currently or may ultimately be exposed under any applicable laws pertaining to the ownership, use or operation of the Property and operation of Defendant's business (collectively all of the foregoing is referred to as "Pre-Receivership Liabilities"). Neither the

Receiver nor the Plaintiff shall be obligated to advance any funds to pay any Pre-
Receivership Liabilities. Notwithstanding the foregoing, with the prior written
consent of Plaintiff, Receiver may pay pre-Receivership Liabilities from
receivership property.

11. The Receiver shall file with this Court and serve on the parties who
have filed appearances a monthly accounting of all receipts and disbursements
concerning the performance of its duties under this Order, and a final accounting
within 30 days after termination of the receivership.

12. The Receiver shall have the power to enter into, modify, extend,
terminate, and/or enforce contracts, agreements, and leases in the ordinary course
of business; provided, however, in so doing the Receiver shall not concede, settle,
compromise, or pay any pre-Receivership Liabilities except as otherwise expressly
provided for herein.

13. In addition to the other powers and authority granted in this Order, the
Receiver shall have the full authority and power to wind-down the affairs of
Defendant and/or liquidate its real and personal property; provided, however, that
Receiver shall be required to obtain the approval of Plaintiff to undertake certain
actions as otherwise set forth herein.

14. The Receiver and its employees, agents, and attorneys shall have no personal liability, and they shall have no claim asserted against them relating to the Receiver's duties under this Order, except for claims due to their gross negligence, gross or willful misconduct, malicious acts and/or the failure to comply with this Court's orders.

15. This Court shall retain jurisdiction over this action, the Defendant, the Property, and the parties for the purpose of giving such other relief upon proper showing as is consistent with this Order and substantial justice.

16. Until further Order of this Court, Defendant, its agent and employees, and all other persons with notice of this Order (other than Receiver), are restrained and enjoined from directly or indirectly transferring, encumbering, removing, expending, distributing, concealing, destroying, mutilating, damaging, erasing, altering, disposing of or otherwise diminishing or causing harm to any of the Property, or any part of the Property, any proceeds from operations of the Defendant or use or sale of the Property, including all revenue, income and profits, or any documents relating in any way to the Defendant's business practices or finances or the Property. No security is required prior to issuance of this injunction, and the Receiver shall not be required to post a bond.

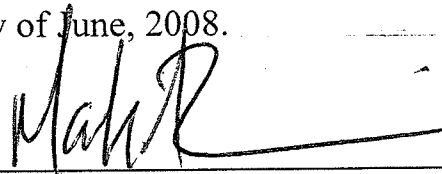
17. Except by leave of this Court, and except with respect to Plaintiff's rights to foreclose upon the Property, during the pendency of the receivership, Defendant, and all other persons, creditors, and entities are stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of Defendant, the Receiver, receivership assets, the Property, or the Receiver's duly authorized agent acting in their capacities as such, including but not limited to, the following actions:

- A. Commencing, prosecuting, litigating or enforcing suit, except that the actions may be filed to toll any applicable statute of limitations;
- B. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of Defendant that relates in any way to the Property, or attempting to foreclose, forfeit, alter or terminate any of Defendant's interest in the Property, whether such acts are part of a judicial proceeding or otherwise;
- C. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon the Property; and
- D. Doing any act or thing to interfere with the Receiver taking control, possession, or management of the property subject to the receivership, or to in any way interfere with the Receiver or the duties of the Receiver, or to interfere with the exclusive jurisdiction of this Court over the Property.

This paragraph does not stay the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

18. The Court finds that, by seeking the appointment of a receiver, Plaintiff has not nor has it attempted to "participate in management" as that term is defined in CERCLA, 42 U.S.C. § 9601 (a)(20).

SO ORDERED this 9 day of June, 2008.



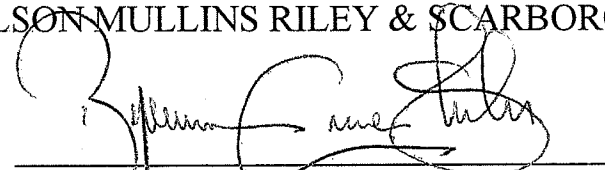
Gwinnett County Superior Court Judge

MARK A. LEWIS, JUDGE
presiding by designation

Order Prepared by and Consented to by:

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by: _____


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