

**Matter of Board of Mgrs. of 20 Pine St.
Condominium v MN Pine St., LLC**

2017 NY Slip Op 32403(U)

November 13, 2017

Supreme Court, New York County

Docket Number: 153901/2017

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42

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In the Matter of

BOARD OF MANAGERS OF 20 PINE STREET
CONDOMINIUM,

Petitioner

Index No.153901/2017

v

DECISION AND ORDER

MN PINE STREET, LLC, WELLS FARGO BANK,
N.A., successor by merger to WACHOVIA
MORTGAGE, FSB, NEW YORK CITY DEPARTMENT OF
FINANCE, and NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE,

Respondents.

MOT SEQ 001

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NANCY M. BANNON, J.:

The Board of Managers of 20 Pine Street Condominium (the petitioner) petitions pursuant to CPLR 6401(b) for the appointment of a receiver to sell Unit #1202 (the unit) in a condominium apartment located at 20 Pine Street in Manhattan. The petition is granted, without opposition.

The petitioner secured a money judgment against the unit owner, MN Pine Street, LLC (MN), in the Civil Court, New York County, in the sum of \$20,750.51, which remains unpaid, and MN remains indebted to the petitioner for an additional \$125,194.36 for additional common charges and fees. The petitioner, as judgment creditor, seeks the appointment of a receiver in order

to satisfy the judgment debt and recover all other indebtedness owed to it by MN.

The petitioner submits proof of service of the notice of petition and petition upon MN, mortgagee Wells Fargo Bank, N.A., and city and state taxing authorities. The petitioner, as manager of the condominium apartment building in which the unit is located, has adequately demonstrated its interest in the unit, and shown that there is a danger of irreparable loss and damage to that unit in the absence of a receiver, since MN is a limited liability company, and unless MN leases out the unit, which it has failed to do, there will be no one residing therein to maintain and care for the unit. In addition, since MN has failed to keep its obligations to the petitioner current, and the petitioner has shown that there is little or no likelihood that it will be able to collect the judgment against MN or recover the additional charges that have accrued since the entry of the judgment, the petitioner, in the absence of a receiver to effectuate a rental or sale, would have to forego income that is necessary to pay taxes, utilities, and building staff. Hence, the appointment of a receiver is warranted. See Dolgoff v Projectavision, Inc., 235 AD2d 311 (1st Dept. 1997).

Accordingly, it is

ORDERED that the petition is granted, without opposition, and Paul A. Shneyer, Esq., 5 Columbus Circle, Suite 710, New

York, NY 10019, 212-595-7575, be and hereby is appointed to act as the receiver of real property at Unit #1202, 20 Pine Street, New York, NY, with the usual powers and duties of a receiver during the pendency of this proceeding for the benefit of the petitioner of all the rents and profits now due and unpaid or may become due and issuing out of the subject property; and it is further,

ORDERED that the receiver is authorized to forthwith take charge and enter into possession of the subject property, and to place the property on the market for sale; and it is further,

ORDERED that the receiver is authorized to retain the services of a licensed real estate broker in connection with the marketing and sale of the subject property, such broker to be entitled to a reasonable commission to be paid from the proceeds of the sale of the property; and it is further,

ORDERED that, before entering upon his duties, the receiver shall be sworn to faithfully and fairly discharge the trust committed to him and shall execute to the People of the State of New York and with the Clerk of this court an oath and undertaking with sufficient sureties, in the sum of \$1,750,000, which may be in the form of an insurance policy or insurance bond, the costs of which shall be borne by the petitioner, conditioned upon the faithful discharge of his duties as such receiver; and it is

further

ORDERED that the receiver be and hereby is directed to demand, collect, and receive from the occupants, tenants, and/or licensees in possession of the subject property, or other persons liable therefor, inclusive of the owner, MN Pine Street, LLC, all the rents and license fees now due and unpaid or hereafter to become fixed and due; and it is further,

ORDERED that the receiver may institute and prosecute suits for the collection of rent, license fees, and other charges now due or hereafter to become due or fixed, and summary proceedings for the removal of any tenants or licensees or other persons therefrom; and it is further,

ORDERED that pursuant to the provisions of General Obligations Law § 7-105, anybody holding any deposits or advances of rental as security under any lease or license agreement affecting space in the subject property shall turn over such deposits or advances to the receiver within five days after the receiver shall have qualified, and the receiver shall thereupon hold such security subject to such disposition thereof as shall be provided by order of this court to be made and entered in this proceeding; and it is further,

ORDERED that if any of the respondents or their contractors, agents, and/or employees are in possession of expired or unexpired leases, agreements, correspondence, notices, and registration statements relating to the subject property, they

shall immediately deliver them to the receiver; and it is further,

ORDERED that the receiver shall not incur any expenses, including fees and commissions due to him or his attorney, in excess of \$2,500.00, and is prohibited from incurring obligations in excess of the monies in his hands without further order of the court or the consent of the petitioner's attorney, except, however, that the receiver is permitted to incur expenses above and beyond such monies collected for the purposes of procuring the necessary insurance, as described above, and in securing bond and surety, as described above, provided that, if the receiver expends money for the cost of obtaining that insurance, bond, and surety, that money shall be reimbursed to him by the petitioner; and it is further,

ORDERED that the receiver shall promptly deposit all monies received by him at the time he receives said money, in his own name as receiver, in a commercial bank of his choosing, provided that the commercial bank shall be authorized to do business in New York and the relevant account shall be opened at a branch located in Manhattan (the depository) and that no withdrawals shall be made therefrom except as directed by this court or on a draft or check signed by the receiver and countersigned by the surety on his undertaking; and it is further,

ORDERED that the depository shall send monthly statements of

deposits into and withdrawals from the account of the depositor receiver to the receiver and the attorney for the petitioner; and it is further,

ORDERED that the receiver is authorized to pay the taxes, assessments, water charges, sewer rents and charges, and charges for electricity, as well as the operational expenses of the subject property, and the cost of all insurance required by the terms of the condominium's operating agreement, provided that, if the receiver expends money for any of those expenses, that money shall be reimbursed to him by the petitioner, and the receiver may, after notice to the petitioner, (a) sell the subject property, (b) rent or lease the subject property for terms not exceeding two years, (c) make secure the subject property and safeguard it from the elements and from acts of theft or vandalism, (d) comply with all requirements of any department or other authority having jurisdiction, (e) take such further action that a prudent owner or manager would with respect to the subject property to preserve its value; and it is further,

ORDERED that the tenants, licensees, or other persons in possession of the subject property attorn to the receiver and turn over to him all rents, license fees, and other charges of such property now due and unpaid or that may hereafter become due; and that, during the pendency of this proceeding, MN Pine Street, LLC, and its agents be, and hereby are, enjoined and

restrained from (a) collecting the rents, license fees, and other charges of the subject property, (b) contracting to lease, rent, license, partition, or sell the subject property or any portion thereof, (c) interfering with the receiver or in any way with the subject property or its possession, (d) transferring or removing or in any way disturbing any of the occupants thereof or employees of the petitioner; and it is further,

ORDERED that all tenants, occupants, employees, and licensees of the property and other persons liable for the rents be and hereby are enjoined and restrained from paying any rent or license fees or other charges for such property to respondents, their agents, servants, or attorneys; and it is further,

ORDERED that MN Pine Street, LLC, turn over to the receiver all rents collected from and after the date of this order; and it is further,

ORDERED that all persons now or hereafter in possession of the subject property, or any part thereof, and not holding such possession under valid and existing leases or tenancies, do forthwith surrender such possession to the receiver, subject to emergency laws, if any; and it is further,

ORDERED that the receiver, after paying the expenses of the management and care of the subject property as provided above retain the balance of the monies that may come into his hands until the termination of the receivership; and that then, after

deducting therefrom his proper fees and disbursements in amounts approved by this court, retain said monies in his hands until the further order of this court and provide a final accounting to the attorney for the petitioner of all funds received and/or disbursed by the receiver; and it is further,

ORDERED that the receiver shall continue as receiver until further order of this court; and it is further,

ORDERED that, upon proper motion of the receiver to settle his final account, the fees of the receiver shall be paid in accordance with CPLR 8004; and it is further,

ORDERED that the receiver, or any party hereto may, at any time, on proper notice to the petitioner and all parties who may have appeared in the proceeding and who have not waived such notice, apply to this court for further and other instructions or powers necessary to enable the receiver properly to fulfill his duties; and it is further,

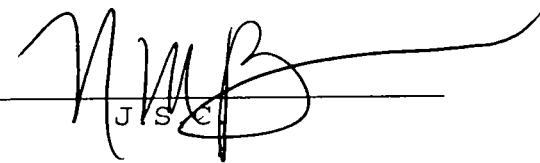
ORDERED that the appointee named herein shall comply with section 35a of the Judiciary Law and CPLR 6401-6404, RPAPL 1325, and Rule 36 of the Chief Judge, and file all reports, statements, oaths, or other documents as required by law or directive of the court or Chief Judge; and it is further,

ORDERED that the receiver shall not make any secondary appointments without the prior written approval of the court, and that the receiver shall apply in a separate application for the

appointment of a managing agent, landlord-tenant counsel, if applicable, or other management services professional pursuant to Rule 36.1 of the Uniform Court Rules.

This constitutes the Decision and Order of the Court.

Dated: 11-13-17

ENTER:  _____
J S C

HON. NANCY M. BANNON