

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

2020 NY Slip Op 34060(U)

December 11, 2020

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
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON **PART** **IAS MOTION 42EFM**

Justice

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THE BOARD OF MANAGERS OF THE 20 PINE STREET
CONDOMINIUM,

Petitioner,

INDEX NO. 153901/2017

MOTION DATE 8/17/2020

MOTION SEQ. NO. 003

- v -

MN PINE STREET, LLC, WELLS FARGO BANK, N.A.,
SUCCESSOR BY MERGER TO WACHOVIA MORTGAGE,
FSB, NEW YORK CITY DEPARTMENT OF FINANCE, NEW
YORK STATE DEPARTMENT OF TAXATION AND
FINANCE,

**DECISION + ORDER ON
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 56, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71

were read on this motion to/for AMEND/MODIFY DECISION/ORDER/JUDGMENT

By order dated November 13, 2017, the court appointed Paul A. Shneyer, Esq. (the receiver), to act as temporary receiver of real property at Unit #1202, 20 Pine Street, New York, NY (the property). Pursuant to the order, Shneyer was directed to execute an oath and undertaking, with sufficient sureties, in the sum of \$1,750,000.00, in the form of an insurance policy or insurance bond pending the sale of the property. The order also provided, in part, that Shneyer may apply to the court for further and other instructions or powers necessary to enable him to properly to fulfill his duties. Moreover, CPLR 6401(b) provides, in part, that upon motion of the receiver or a party, powers granted to a temporary receiver may be extended or limited.

The receiver now moves to reduce the bond from \$1,750,000.00 to \$80,000.00, *nunc pro tunc*, as of November 13, 2017, until a contract of sale is signed for the sale of the property. The receiver further seeks authorization for his (1) retention of real estate broker Lindiwe Gararirimo, *nunc pro tunc*, (2) payment of Gararirimo's real estate broker's fee for renting the property in the amount of \$5,750.00, the equivalent of one month's rent, (3) payment of monthly common charges and electric charges for the property from the date of appointment and continued payment of such charges, (4) reimbursement to the 20 Pine Street Condominium (20 Pine) of \$14,488.47 for the cost of repairs made to the property and \$8,750.00 for the cost of the receiver's bond for the year December 2017 through December 2018, (5) paying the Surety of the receiver's bond for the year December 2018 through December 2019, and December 2019 through December 2020, (6) maintenance of insurance for the property, and (7) payment to himself of 5% of the \$69,000.00 in rent collections from November 1, 2018, through October

31, 2019, as and for an initial commission, and his continued payment to himself of 5% of rent collected each month from November 1, 2019.

Non-party SureTec Insurance Company (the Surety), in its capacity as Surety for the receiver, opposes the portion of the receiver's motion seeking to reduce the penal limit of the bond it issued on December 13, 2017, *nunc pro tunc*. The Surety further requests that the court direct the receiver to pay the Surety \$17,500.00 in outstanding premiums. Wells Fargo Bank, N.A. ("Wells Fargo"), an apparent mortgage holder, opposes the receiver's motion insofar as it does not address the payment of property taxes, and requests that the court include payment of property taxes in any order issuing from the receiver's motion. The petitioner does not oppose the receiver's motion but requests a directive that outstanding common charges and expenses be paid first.

A. Reduction of Bond and Payment of Premiums

The portion of the motion seeking to reduce the receiver's bond, *nunc pro tunc*, is denied. As correctly noted by the Surety, as of the date that the bond was issued, and on each annual renewal date thereafter, the bond premium was fully earned. See Bullard Lindsay Contracting Co. v Universal Bonding Co., 303 AD2d 317 (1st Dept. 2003). The Surety assumed an exposure of \$1,750,000.00 pursuant to that bond for any acts or omissions that may have given rise to liability under the bond. Thus, reduction in the bond *nunc pro tunc* is improper.

However, the receiver has demonstrated that, pending the any sale of the property, he will not be holding any amount exceeding \$80,000.00, and that a reduction in the bond until a contract of sale for the property has been signed would lower the costs of administering the receivership. This, in turn, would protect the petitioner from incurring the needless additional cost of continuing a bond larger than what is required. Accordingly, the court authorizes the receiver to obtain a new bond in the reduced amount of \$80,000.00. Upon the filing of the new bond, the Surety on the former bond shall be discharged from liability on any future acts of the receiver under the former bond.

As to the portion of the receiver's motion seeking authorization to pay the Surety the cost of the receiver's bond, for the years December 2018 through December 2020, as modified by the requested reduction, such authorization is denied. The receiver is, however, authorized to pay the Surety the cost of the receiver's bond for the previous two years as it currently stands at \$8,750.00 per year.

B. Retention and Payment of Real Estate Broker

The portion of the motion seeking to authorize the receiver's retention of real estate broker Lindiwe Gararirimo, *nunc pro tunc*, and to authorize payment to Gararirimo is granted. Generally, a receiver is required to seek court approval when procuring services from counsel, accountants, auctioneers, appraisers, property managers, and real estate brokers for a receivership. See 22 N.Y.C.R.R. §§ 36.1(10), 36.2. However, a receiver's unauthorized retention of the services of such persons, if done in good faith and without harm to the property or the parties, can be ratified by judicial approval, *nunc pro tunc*, thereby avoiding reduction in

the receiver's fees or commissions. See e.g., David Realty and Funding, LLC v Second Avenue Realty Co., 14 AD3d 450 (1st Dept. 2005); Constellation Bank N.A. v Binghamton Plaza Inc., 236 AD2d 698 (3rd Dept. 1997).

Here, the receiver's retention of Gararirimo was done after a determination made by him and the petitioner that renting the property would be prudent given the potential difficulties in selling the property. There is no evidence that the receiver retained Gararirimo in bad faith, and the rent from the property has been the only money generated by the receivership. Moreover, no party has opposed this portion of the receiver's motion, further demonstrating that Gararirimo's retention caused no harm to the property or the parties. As such, ratification of the receiver's retention of Gararirimo and authorization to pay Gararirimo a real estate broker's fee of \$5,750.00 for renting the unit is warranted.

C. Payment of Electricity, Common Charges, Taxes, and Maintenance of Insurance

The portion of the motion seeking authorization to continue paying monthly common charges, and electric charges and to obtain and maintain insurance for the unit is granted. As stated in the court's prior order, "the receiver is authorized to pay the taxes, assessments, water charges, sewer rents and charges, and charges for electricity, as well as the operation expenses of the subject property, and the cost of all insurance required by the terms of the condominium's operating agreement." No opposition was submitted to this portion of the motion. Thus, there is no reason to limit, or otherwise modify, the powers granted to the receiver.

To the extent that Wells Fargo submits partial opposition seeking the authorization of the payment of property taxes, the court notes that pursuant to the prior order, the receiver is already authorized to pay taxes.

The petitioner's request for a directive that all outstanding common charges be paid first is denied. The petitioner cites, and research reveals, no authority for such a directive.

D. Payment of Commission

The receiver's application for a 5% commission on the rents collected from the property, \$69,000.00 from November 1, 2018, through October 31, 2019, and all rents collected thereafter is granted. CPLR 8004(a) provides that: "[a] receiver, except where otherwise prescribed by statute, is entitled to such commissions, not exceeding five percent upon the sums received and disbursed by him, as the court by which he is appointed allows..." Under CPLR § 8004(a), it is within the court's discretion to decide what percentage of the "sums received and disbursed" should be used to compute the receiver's commissions. Matter of Arenstein (Huston), 142 Misc 2d 491 (Sup Ct, NY County 1988). As to the sum upon which the commission is to be based, courts have generally held that the lynchpin is the dollar amount actually "handled" by the receiver. See id. (citing Mackenzie v Marine Midland Tr. Co. of New York), 247 AD 750, 750 [2nd Dept. 1936]; Madden v Rosseter, 117 Misc 244, 245 (Sup Ct, NY County 1921).

The receiver has demonstrated that he has handled \$69,000 in rent thus far and will continue to handle further rent amounts going forward. Further, no party has objected to the receiver's proposed 5% commission on the rents. Accordingly, the application is granted.

E. Reimbursement of 20 Pine for Repair and Payment of Receiver's Bond Premium

The remainder of the motion, seeking authorization to pay 20 Pine \$14,488.47 for the costs of repair to the property and \$8,750.00 for the cost of the receiver's bond for the year December 2017 through December 2018 is granted. Pursuant to the court's order, the receiver was authorized to "take such further action that a prudent owner or manager would with respect to the subject property to preserve its value." Payment for repairs to the property necessary to ensure that the property was suitable for rent or sale constitutes authorized action to preserve the property's value.

Moreover, as the initial Surety payment for the year of December 2017 through December 2018 was advanced to the receivership by 20 Pine prior to the receivership generating any money, the receiver is authorized to reimburse 20 Pine the \$8,750.00 advanced.

Accordingly, it is hereby

ORDERED that the motion of the court-appointed receiver, Paul A. Shneyer, Esq., is granted to the extent discussed herein; and it is further,

ORDERED that the receiver is authorized to file a new bond in the lesser amount of \$80,000.00 with the Clerk of Court; and it is further,

ORDERED that upon the filing of the new bond, the Surety on the existing bond is discharged from any future acts of the receiver under the existing bond; and it is further,

ORDERED that the Surety under the new bond shall become liable for future acts of the receiver only under the new bond; and it is further,

ORDERED that the Surety under the existing bond is not discharged from liability on the existing bond during the period it was in force until the termination of the receivership; and it is further,

ORDERED that at the time of the execution of a contract of sale for the subject property, the bond shall be increased to \$1,750,000.00 and the receiver shall file the increased bond with the Clerk of Court; and it is further,

ORDERED that the receiver is authorized to pay the \$17,500.00 in outstanding insurance premiums due to SureTec Insurance Company; and it is further

ORDERED that the receiver is authorized to retain real estate broker Lindiwe Gararirimo, *nunc pro tunc*, and is authorized to pay Gararirimo a real estate broker's fee of \$5,750.00 for renting the unit; 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 it is further,

ORDERED that the receiver is authorized to pay 20 Pine Street Condominium \$14,488.47 for the costs of repair to the property and \$8,750.00 for the cost of the receiver's bond for the year December 2017 through December 2018; and it is further,

ORDERED that the receiver is authorized to pay himself a 5% commission on the rents collected from the property, \$69,000.00 from November 1, 2018 through October 31, 2019, and all rents collected thereafter.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

12/11/2020
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE