

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202 Phone Number: 720/865-8301	
<b>Plaintiff(s):</b> CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado  <b>Defendant(s):</b> TELE COMM RESOURCES, Limited Partnership, a Nevada limited Partnership, also dba TELE COMM RESOURCE, LP	
<b>Attorney for Plaintiff:</b> Jacques A. Machol, III, #8382 Machol & Johannes, LLC 700 17th Street, Suite 200 Denver, CO 80202-3502 (303) 830-0075 Fax (303) 830-0047	Case Number: 2015CV30918 Division/Courtroom: 409
<b>PLAINTIFF CITY AND COUNTY OF DENVER'S          VERIFIED MOTION TO APPOINT A RECEIVER</b>	

Plaintiff City and County of Denver (the "City"), by and through its attorneys, Machol & Johannes, LLC hereby moves for the appointment of a receiver, and as grounds therefor, states as follows:

**FACTUAL BACKGROUND**

The City made the following allegations in its Complaint, none of which have been refuted. The allegations apply to the following properties:

601-609 Lipan Street, Denver Colorado, 80204; Legal Description: HUNTS ADDITION B41 L18 & 19; Parcel Number: 0504424035000; Owner: Tele Comm Resource LP, PO BOX 26018 Colorado Springs, Colorado, 80936-6018

3700 Gaylord Street, Denver, Colorado, 80205; Legal Description: CHEESMAN & MOFFATS B2 L1 TO 15 INC & W/2 OF VAC ALY ADJ PER ORD 2001-1017; Parcel Number: 0226101009000; Owner: Tele Comm Resource LP, PO BOX 26018 Colorado Springs, Colorado, 80936-6018

3701 York Street, Denver, Colorado, 80205; Legal Description: CHEESMAN & MOFFATS ADD B2 L16 TO 30 EXC NLY 179.75FT & E/2 OF VAC ALY ADJ ORD #2001-1017; Parcel Number 0226101011000; Owner: Tele Comm Resource LP, PO Box 26018 Colorado Springs, Colorado, 80936-6018

3749 York Street, Denver, Colorado, 80205; Legal Description: CHEESMAN & MOFFATS ADD B2 NLY 90.07FT OF L16 TO 30 & E/2 OF VAC ALY ADJ PER ORD 2001-1017; Parcel Number 0226101010000; Owner: Tele Comm Resource LP, PO BOX 26018 Colorado Springs, Colorado, 80936-6018

The property located on Lipan Street will be referred to herein as the “Lipan Property.” The three properties on York Street will be referred to herein as the “York Properties.” Collectively, the Lipan Property and the York Properties will be referred to herein as the “Properties.” All of the Properties have been on the City’s Neglected and Derelict Building List under Article IX - Neglected and Derelict Buildings, DRMC Sec. 10-138 (a) et seq. (the “Neglected and Derelict Buildings Code,” or the “Code”), and remain so today, notwithstanding repeated efforts by the City to compel Tele Comm Resources, LP (“Tele Comm”), the owner of the Properties, to abate the deficiencies of the Properties.

The Properties are on the Vacant and Derelict Building List of the Neglected and Derelict Buildings Code for good cause. All of the Properties are vacant and derelict. The City has had constant reports of transients breaking into, and living in, both of the Properties, which makes the Properties dangerous to public health and safety.

The Denver Buildings Code has the following provisions concerning unsafe properties:

#### SECTION 106 - UNSAFE BUILDINGS OR STRUCTURES

106.1 General. Structures, buildings or equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress facilities, or which constitute a fire hazard, or otherwise dangerous to human life or public welfare due to damage, vandalism, dilapidation or abandonment, or that involve illegal or improper occupancy, or inadequate maintenance or use inferior materials shall be deemed unsafe.

106.1.1 Additional Conditions. In addition, if any of the following conditions occur, the building or structure shall be deemed unsafe.

...

11. Any dilapidated building of whatever kind which is unused by the owner, or uninhabited because of deterioration or decay, which condition constitutes a fire hazard or subjects adjoining property to danger of damage by deterioration of structural building elements, storm effect, soil erosion or rodent infestation, or which

becomes a place frequented by trespassers and transients seeking a temporary hideout or shelter.

The purpose of the Neglected and Derelict Buildings Code is stated in DRMC Sec. 10-138 (a) (Neglected or derelict buildings or property prohibited) as follows:

Purpose. The purpose of this article is to prevent any property in the city from becoming or remaining neglected or derelict, as that term is defined in this article; to mitigate the blighting impacts of these properties; to provide for the regular inspection of properties that are or are likely to become neglected or derelict; and to assess fees for the costs of this program on those properties and owners who have and maintain any neglected or derelict property.

**The Lipan Property:**

The Manager of the Community Planning and Development, City and County of Denver, issued Notice of Violation(s) to the Defendant alleging the Lipan Property to be a Vacant and Derelict Building pursuant to DRMC § 10-139(b) to the Defendant for violations of the Denver Revised Municipal Code, and the requirement to submit a remedial plan and to take remedial action pursuant to DRMC § 10-139(c). Tele Comm was, and remains, the owner of the Lipan Property that is subject to the Notices of Violations and the failure to comply with the required remedial action.

A Notice of Order to Show Cause Hearing was issued by Community Planning and Development and served on the Defendant in accordance with DRMC §10-139(e), (f) and (g). A copy of the Notice is attached as Exhibit "1" to the Second Amended Complaint.

A Show Cause Hearing was conducted pursuant to the Notice of Order to Show Cause Hearing, in accordance with DRMC § 10-139(h), on February 6, 2014 at 10:00 a.m.

Pursuant to the Order entered on February 11, 2014, Plaintiff, City and County of Denver, Community Planning and Development was authorized to issue civil penalties *nunc pro tunc* to November 8, 2013, in accordance with DRMC § 139(m) against the Defendant, as the owner of 601 - 609 Lipan Street, Denver CO 80204, of \$999.00 per day. A copy of the Order is attached to the Second Amended Complaint as Exhibit "2."

The Defendant failed to appeal the Order under C.R.C.P. Rule 106(b) within 28 days of the date of the Order, in accordance with DRMC §10-139(k)(l). Accordingly, the Order is final and non-appealable.

City and County of Denver, Community Planning and Development assessed civil penalties against the Defendant for five (5) consecutive months, pursuant to the Order. Copies of the Invoices for the civil penalties are attached to the Second Amended Complaint as Exhibits "3", "4", "5", "6" and "7."

The civil penalties were not paid within thirty (30) days of the date of the Invoices assessing the civil penalties, and pursuant to DRMC § 10-142(b) and Section 2-294(d), the assessment liens were recorded against the Lipan Property, with priority over all other liens except general taxes and prior special assessments. Upon the assessment converting into a lien, a ten (10%) percent penalty for each assessment was added, pursuant to DRMC § 10-142(c), for a debt amount of \$134,269.93 as of December 15, 2015. That obligation will increase over time.

Pursuant to DRMC § 2-294, upon the failure of the Defendant to pay the civil penalties within thirty (30) days after the assessment of the penalties, the Manager of Community Planning and Development was authorized to refer the penalties and charges assessed for collection pursuant to DRMC § 2-294(b); and the City was authorized to pursue a civil action to collect the amounts owing, including interest and administrative costs, pursuant to DRMC § 2-294(e). Pursuant to DRMC § 53-4, the Plaintiff is entitled to recover a collection fee of thirty (30%) percent of each assessment.

### **The York Properties**

Community Planning & Development issued Invoice No. ND201300043 on August 27, 2013, pursuant to the Denver Revised Municipal Code, for listing of the property located at 3701 York Street, Denver, Colorado, 80205 on the Neglected and Derelict Building List as described on Exhibit "8" to the Second Amended Complaint.

The amounts Plaintiff claims from the Defendant, which are owed to the City and County of Denver, by virtue of the foregoing and by transfer for collection, are:

Account Description 3701 York Street, Civil Penalty Assessment

Principal \$1,000.00

Collection costs - DRMC §53-4(b) \$300.00

Interest at statutory 8% \$201.56

Community Planning & Development issued Invoice No. ND201300039 on August 27, 2013, pursuant to the Denver Revised Municipal Code, for listing of the property located at 3749 York Street, Denver, Colorado, 80205 on the Neglected and Derelict Building List, See Exhibit "9" to the Second Amended Complaint.

The amounts Plaintiff claims from the Defendant, which are owed to the City and County of Denver, by virtue of the foregoing and by transfer for collection, are:

Account Description 3749 York Street, Civil Penalty Assessment

Principal \$1,000.00

Collection costs - DRMC §53-4(b) \$300.00

Interest at statutory 8% \$201.56

A previous lawsuit was brought in this Court against this Defendant to recover civil penalties concerning buildings located at 3700, 3720, 3734, and 3746 Gaylord Street, Denver, Colorado and 3701, 3719, 3735 and 3749 York Street, Denver, Colorado, captioned *City and County of Denver City Treasurer v. Tele Comm Resources, LP and Jeff Wright*, 2013CV30444. In that case, the Hon. Shelley I. Gilman entered summary judgment in the amount of \$1,358,258.82 in favor of the City and County of Denver. The Judgment was upheld by the Colorado Court of Appeals, case number 14CA1626, and a Petition for Writ of Certiorari has been filed by Tele Comm Resources LP and Jeffrey Wright.

## ARGUMENT

The City seeks to have a receiver appointed to continue to operate the Properties and make them safe to the public while, at the same time: (1) collecting the fees, fines, and penalties that have been assessed by the City; and (2) either (a) abating the deficiencies of the Properties and making them compliant; (b) demolishing the physical structures on the Properties under the proper circumstances; or (c) selling the Properties at Judicial Sale, all as approved by this Court.

### **A Receiver Under the Neglected and Derelict Buildings Code**

The Neglected and Derelict Buildings Code specifically contemplates the appointment of a receiver under precisely the circumstances found here. The pertinent provisions of the Neglected and Derelict Buildings Code are as follows:

Sec. 10-140. - Court actions for abatement.

(a) If, after notice and hearing pursuant to this article and a finding of a violation of this article, the owner has failed to abate the violation or comply with abatement deadlines in the manager's final order or in an approved remedial plan, the city, an affected neighboring landowner, or any other person who has suffered damages due to the condition of the property and otherwise has legal standing to bring legal action, may commence an action in the district court pursuant to Rule 65 or 66 of the Colorado Rules of Civil Procedure for abatement under this article. These actions may request:

(1) An injunction ordering the owner of property to take whatever action the court considers necessary or appropriate to abate the violation;

(2) The appointment of a receiver to take possession and control of the property and to complete all work and to furnish material that reasonably may be required to abate the violation. All interested persons must be made parties to the action. [Emphasis added.]

(3) The court to appoint a receiver to exercise any of the powers listed below:

(A) Take possession and control of the property, operate and manage the property, establish and collect rents and income, lease and rent the property, and evict tenants. An existing violation of the Denver Building or Denver Housing Codes does not restrict the receiver's authority pursuant to this subsection.

(B) Pay all expenses of operating and conserving the property including the cost of electricity, gas, water, sewerage, heating fuel, repairs and supplies, custodian services, taxes, assessments, and insurance premiums and to hire and pay reasonable compensation to a managing agent.

(C) Pay pre-receivership mortgages and other liens and installments of pre-receivership mortgages and other liens.

(D) Perform or enter into contracts for the performance of work and the furnishing of materials necessary to abate the violations and obtain financing for the abatement of violations.

(E) Pursuant to court order, remove and dispose of personal property that is abandoned, stored, or otherwise located on the property, that creates a dangerous or unsafe condition, or that constitutes a violation of the Code, including the Denver Building, Denver Housing, and Denver Zoning Codes.

(F) Enter into agreements and take actions necessary to maintain and preserve the property and to comply with the Code, including the Denver Building, Denver Housing, and Denver Zoning Codes.

(G) Give the custody of the property and the opportunity to abate the violation and operate the property to the owner or to a mortgagee or lienholder of record.

(H) Issue notes and secure the notes by deeds of trust on the property on terms, conditions, and at interest rates all as approved by the court. [Emphasis added.]

(I) Obtain mortgage insurance for a receiver's mortgage.

(J) Any other action that the court considers appropriate.

(4) That all costs, including the costs of the receivership, expenses, penalties, and all fees, be assessed against the owner and made a lien against the property, taking precedence over and being superior to all other liens of record except liens for general taxes and special assessments.

(5) That, at the request of the party that applied for the receivership, the court discharge the receiver.

(6) That if repair and rehabilitation of the property are not found to be feasible, upon the written request of all known interested persons who have appeared in the action, to have the property or portions of the property demolished, the court order the demolition of all or part of the property. The court may require the receiver to determine the cost of demolition of the property or the portions of the property that constitute the violation, and after court approval, the receiver shall arrange for demolition in accordance with state laws, the Code (including the Denver Building Code and Chapter 30 Landmark Preservation), and any permit issued under these authorities. However, demolition must not be ordered unless the requesting persons have guaranteed or underwritten the costs of demolition, have paid the costs of the receivership, and have paid all notes and mortgages of the receivership. Nothing in this article or a court order arising out of a court action authorized under this section limits the city's right to demolish any property that the city is authorized to demolish pursuant to the provisions of the Denver Building Code.

(7) Nothing in this article limits or prohibits the city from exercising or using other remedies or procedures to enforce this article, the Denver Building, Fire, Housing, or Zoning Codes.

### **C.R.C.P. 66**

Colorado Rule of Civil Procedure 66 governs the appointment of a receiver by the Court. The Court may appoint a receiver before judgment on the application of a party when that party establishes an interest in property that is subject to the action and which is in danger of being materially injured or impaired. This Rule can and should be interpreted to include properties that are unsafe according to the Denver Municipal Code. C.R.C.P. Rule 66(a)(1) reads in pertinent part as follows:

A receiver may be appointed by the court in which the action is pending at any time:

(1) Before judgement, provisionally, on application of either party, when he establishes a prima facie right to the property, or to an interest, therein, which is the subject of the action and is in possession of an adverse party and such

property, or its rents, issues, and profits are in danger of being lost, removed beyond the jurisdiction of the court, or materially injured or impaired; or

...

(3) In other cases where proper and in accordance with the established principles of equity.

C.R.S. § 7-80-812(2) also provides that a Court “may appoint an individual authorized to do business in the state as a receiver or custodian” for a limited partnership.

The appointment of a receiver is a matter left to the discretion of the court, and is appropriate when the moving party can make a prima facie showing that:

- a. He has a right or interest in the property;
- b. The property is in the possession of the adverse party; and
- c. The property or its value is in danger.

*E.g., Rigel v. Caveny*, 133 Colo. 556, 559 (Colo. 1956); *GE Life and Annuity v. Ft. Collins Assemblage, Ltd.*, 53 P.3d 703, 704-705 (Colo.App. 2002); *Diaz v. Fernandez*, 910 P.2d 96, 97 (Colo.App. 1995). In *Diaz*, the court found that the claimant who owned 49% of a limited liability company could seek to have a receiver established, even when he did not also ask for dissolution of the company.

The appointment of a receiver has been found appropriate when necessary for the continued operation of a company. *Eureka Coal Company v. McGowan*, 72 Colo. 402, 404 (Colo. 1922).

There is very little reported case law in Colorado discussing the appointment of an equitable receiver, however, cases interpreting Fed.R.Civ.P. Rule 66 are ample.<sup>1</sup> See, *Matter of McGaughey*, 24 F.3d 904, 907 (7<sup>th</sup> Cir. 1994) (federal courts have inherent equitable power to appoint receivers to manage a defendants’ assets during pendency of litigation).

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<sup>1</sup> Fed.R.Civ.P. Rule 66 reads as follows:

Rule 66. Receivers

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule. An action in which a receiver has been appointed may be dismissed only by court order.

USCS Fed. Rules Civ. Proc. R. 66

It is hornbook law that where assets are abandoned, the Court may appoint a receiver to take the property into the custody of the Court. 3 Ralph Ewing Clark, *Clark on Receivers* § 747(d) (3d. Ed. 1959). *Toole-Tietze and Co. v. Colorado River Development Co.*, 38 F.2d 850 (S.D.Cal. 1930) (abandonment of property basis for appointing receiver); *Masterson v. Cavin*, 178 S.W.2d 662 (Tex. App. 1915) (same). This is obviously so the property will be preserved and distributed properly. Although an argument could be made that the Properties have not been abandoned, but are instead being operated as neglected and derelict, that would still bring the Properties squarely within the scope of the Neglected and Derelict Buildings Code.

Further, authorities are clear that a receiver can be appointed where a building presents a danger to the public health and safety. This is particularly true in instances, such as in the case here, where transient residents are squatting in the building.

The action by the Court appointing a receiver may be made on the papers alone. Rule 66, C.R.C.P., does not require the Court to hold a hearing. The Court may approve of the appointment of a receiver without a hearing where the record discloses sufficient facts to warrant it. *Citronelle-Mobile Gather, Inc. v. Watkins*, 934 F.2d 1180, 1189 (11<sup>th</sup> Cir. 1991). See, *Hanssen v. Pusey & Jones Co.*, 276 F. 296, 298 (D.Del. 1921) (“In granting temporary relief by the appointment of a receiver . . . courts merely recognize that a sufficient case has been made out to warrant the judicial preservation of the rights or property in controversy for the benefits of all parties in interest, until a hearing upon the merits shall have been had.”)

## **THE PROPOSED RECEIVER**

The Plaintiffs proposes Sterling Consulting Corporation, Richard A. Block, President (“Sterling”). Mr. Block and his companies have significant experience in management of distressed companies and assets, generally, and receiverships in particular. Sterling Consulting Corporation, Waverton Group, LLC (a wholly owned subsidiary of Sterling), and Mr. Block have been the Court-appointed receiver in numerous cases, including without limitation: an action styled *Jump, et al. v. United Memorial Service Corp.*, Case No. 90 CV 6368, District Court, City and County of Denver (a licensed preneed funeral company regulated by the Colorado Division of Insurance, successfully resolved), in the case of *In re Indian Motorcycle Manufacturing, Inc.*, U.S. District Court, District of Denver, Case No. 95-Z-777 (a national motorcycle company successfully resolved), in the action styled *FirstBank Holding Company of Colorado and Alpine Bank v. Town of Kiowa, Colorado and Town of Kiowa, Colorado Water Activity Enterprise*, District Court, Elbert County, Colorado, Civil Action No. 2012 CV 43 (as receiver over the water and sewer activity enterprise of the Town of Kiowa, Colorado, successfully resolved), and in the action styled *State of Colorado, ex rel. John W. Suthers, Attorney General v. Colorado Humane Society & S.P.C.A., Inc., Mary C. Warren, et al.*, Civil Action No. 2008 CV 2659, District Court for the County of Arapahoe, State of Colorado (appointed at the request of the Colorado Attorney General, successfully resolved). A resume of the Receiver together with the proposed Fee Schedule and Expense Reimbursement Policies is attached hereto as Exhibit “10”. Sterling Consulting Corporation is prepared to take the Oath of Receiver

submitted herewith and prepared to post a receiver's bond in an amount to be determined by the Court.

WHEREFORE, the City and County of Denver prays that this Court appoint Sterling Consulting Corporation, Richard A. Block, President as receiver, and grant it such other and further relief as the Court deems just and proper.

Respectfully submitted this 11th day of March, 2016.

/s/ Jacques A. Machol, III, #8382  
Original duly signed on file  
**MACHOL & JOHANNES, LLC**

**CERTIFICATE OF E-SERVICE**

I certify that a copy of the foregoing **PLAINTIFF CITY AND COUNTY OF DENVER'S VERIFIED MOTION TO APPOINT A RECEIVER** was served via ICCES e-file system on March 11, 2016, and addressed to the following:

Jeffrey L Wright, GP  
Tele Comm Resource, LP  
15 Lewis Drive  
Lowman ID 83637

Jeffrey Wright  
Tele Comm Resources, LP  
312 West Fourth Street  
Carson City, Nevada 89703

Tele Comm Resource, LP  
PO Box 26018  
Colorado Springs, Colorado, 80936-6018

/s/ Michele Imes

***This document was filed and served via the ICCES e-file system. The originally signed copy is on file at the office of Machol & Johannes, LLC.***