

District Court, Denver County, State of Colorado 1437 Bannock Street, Room 256 Denver, Colorado 80202 Phone Number: 720-865-8301	
Plaintiff(s): CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado Defendant(s): TELE COMM RESOURCES, Limited Partnership, a Nevada limited Partnership, also dba TELE COMM RESOURCE, LP	
Attorney for Plaintiff: Jacques Alan Machol Machol & Johannes, LLC 700 17 th Street, Ste. 200 Denver, CO 80202 303.539.3162 jm@mjfirm.com	Case Number: 2015CV30918 Division/Courtroom: 409
RECEIVER’S MOTION TO EXPAND RECEIVERSHIP TO INCLUDE UNIT 104, 3735 YORK STREET	

Plaintiff City and County of Denver, by and through its attorneys, Machol & Johannes, LLC, hereby moves this Court for an Order to Expand Receivership to Include Unit 104, 3735 York Street (“Unit 104”), and as grounds therefor states as follows:

Certification pursuant to Rule 121: Undersigned counsel and/or Sterling Consulting Corporation, as receiver, has consulted with those with standing to object to this motion. Defendant TeleComm Resources, LP is not represented by counsel, and undersigned counsel and the receiver have only

a street address in Idaho by which to contact Mr. Wright. The receiver mailed an inquiry, and has had no response. Mr. Douglas Bruce has entered his appearance in the Receivership Action and identified himself as the “real party in interest.” Mr. Bruce, individually, is the holder of record¹ of two deeds of trust purportedly encumbering the Properties and the Expansion Property.² The City assumes TeleComm Resources, LP will not and cannot

¹ Throughout this motion, the City refers to Mr. Bruce’s and his affiliates’ ownership and lenders’ interests in the Property and the Expansion Property (defined below) as reflected on the public record. Because the transfers of these interests inter se has been so frequent and circular, these references are not intended to confirm ownership or lenders’ interests, but rather to note the changes. Only fully-adjudicated Claims by all of the interested parties will determine true ownership and quantify the dollar amounts of the loans, if any.

² The capitalized term “Property” shall mean and refer to the following properties:

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

consent to this motion as it remains *pro se* and cannot object or consent as a matter of Colorado Court Rules. Mr. Bruce entered his appearance in the Receivership Action by means of his Objection to Receivership, Partial Submission of Claim Under Protest, and Motion for Continuance dated August 9, 2016 (the “Objection,” received August 16, 2016) and identified himself as the “real party in interest.”³ Mr. Bruce is currently in the Delta Correctional Facility until his projected parole on around September 6, 2016. Two-way written communications with Mr. Bruce take an estimated two weeks, so the counsel for the City does not expect a response until approximately September 9, 2016, but given the nature of the Objection, receiver’s counsel expects Mr. Bruce to object to this motion.

INTRODUCTION

The Property in this case is situated on most of the city block bounded by 37th Avenue, 38th Avenue, York Street, and Gaylord Street and includes

The capitalized term “Expansion Property” shall mean and refer to the following property:

3735 York Street, Denver, Colorado, 80205, Apartment 104; Legal Description: CHEESMAN & MOFFATS ADD; Parcel Number 0226101006006; Owner: TeleComm Resource LP, PO BOX 26018 Colorado Springs, Colorado, 80936-6018

³ Mr. Bruce, individually, is the holder of record of two deeds of trust purportedly encumbering the Properties and the Expansion Property. Mr. Bruce has not indicated precisely what he means when he refers to himself as the “real party in interest.” Mr. Bruce is presumed to be the real party in interest in connection with the two deeds of trust. It may be that Mr. Bruce is the real party in interest when referring to TeleComm Resources, LP, but that relationship has not been expressly claimed.

twenty eight abandoned units out of a total of thirty two units on the block. Attached as Exhibit A please find an aerial photograph of the block with notations. Three of the units not within the Receivership Estate (Units 101, 102, and 103, 3735 York Street) are owned by third parties, all of whom according to the receiver, have expressed interest in selling their units along with those *in custodia legis*, thus maximizing the recovery for all and allowing a blighted block to be redeveloped. The single remaining unit, Unit 104, 3735 York Street should have been included in the Receivership Estate in the first place, as it has a common ownership history with the 28 units now in the Receivership Estate and it is encumbered by the same deed of trust purportedly encumbering the Property, and is also subject to the judgment lien held by the City. By granting this motion, the Court will maximize the value of the property and thereby reduce waste.

RELEVANT HISTORY

The tenor of the cases against TeleComm, including the Receivership Action, was set at a hearing in an administrative action February 6, 2014 pursuant to the Order of December 6, 2013, by the Manager of Community Planning and Development, City and County of Denver, State of Colorado and the Notice and Order to Show Cause of November 27, 2013. In the Order dated February 11, 2014, the Administrative Officer noted that a witness testifying on behalf of the City at the hearing testified as follows:

Ms. Wilmoth concluded by noting the property has been the subject of numerous land transfers between the same parties to conceal the

ownership and prevent the enforcement of the Denver Revised Municipal Code, specifically as it concerns Article X § 10-138, Neglected and Derelict Buildings.

A quick review of the public record supports the conclusion of the witness at the hearing. A quick review of the administrative actions against the Properties reveals almost a decade of violations, none of which have been remedied.

Relevant History of the Lipan Property—Mr. Bruce stated in his Objection that “Douglas Bruce is the real party in interest (“RPI”). He is the owner of two first deeds of trust, one on the Lipan property and one on the York-Gaylord properties. Each was recorded over 10 years ago.” In fact, Mr. Bruce’s interest in the Lipan Property dates back to at least July 29, 1992 when he took title to the Lipan Property in his individual name.

Relevant History of the Cheesman Property⁴—Similarly, Mr. Bruce Claims to have had an ownership and lender’s interests of record since at least 2001 in the Cheesman Property. According to the public record, the title to the property has been conveyed among Mr. Bruce’s affiliates, purportedly for the same reason as the title to the Lipan Property—to “conceal the ownership and prevent the enforcement of the Denver Revised

⁴ For the purposes of this Motion, the capitalized term “Cheesman Property” includes the entire block of property between 37th Avenue on the south and 38th Avenue on the north, and Gaylord on the west and York on the east. The receiver adopted the term “Cheesman” to refer to all of the Cheesman Property because the subdivision is known as the “Cheesman and Moffats Addition to the City of Denver,” and because the condominium declaration for the Cheesman Property was named Villa Cheesman. For consistency, the City uses the same terminology in this motion.

Municipal Code, specifically as it concerns Article X § 10-138, Neglected and Derelict Buildings.”

Relevant History of Unit 104—By means of a Condominium Declaration on the Cheesman Property dated September 25, 2001, the four dwellings located at 3735 York Street were converted to condominiums and conveyed shortly thereafter to four different owners. One of the condominium units, Unit 104, was conveyed to TeleComm, and remains in the name of TeleComm to this day. Notably, the public record indicates that Unit 104 is encumbered by the same deed of trust as the remainder of the Cheesman Property and is subject to the same judgment lien as the remainder of the Cheesman Property.

ARGUMENT

In the Order Appointing Receiver, the Court granted the receiver powers, in part, as follows:

4. The Receiver shall have all the powers and authority usually held by receivers and reasonably necessary to accomplish the purposes herein stated including, but not limited to, the following powers and duties, which may be exercised without further Order of the Court . . .
 - h. To collect receivables and claims arising from the Property

The Court should expand the receivership estate to include Unit 104 as an Asset of the Receivership Estate. An extension of the Order Appointing Receiver to include Unit 104 as a receivership asset is essential to ensure that all available assets are brought within the receivership to be properly distributed to creditors.

The District Court has broad discretion to determine what assets should be included within the Receivership Estate. “First, a district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad.” *SEC v. Hardy*, 1986 U.S. App. LEXIS 32954 (9th Cir. Cal. 1986). “The term ‘discretion’ denotes the absence of a hard and fast rule. *The Styria v. Morgan*, 186 U.S. 1, 9.

When invoked as a guide to judicial action it means a sound discretion, that is to say, a discretion exercised not arbitrarily or willfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result.” *Langnes v. Green*, 282 U.S. 531, 541, 75 L.Ed. 520, 51 S.Ct. 243 (U.S. 1931). See also *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir 1992); *SEC v. First City Financial Corp.*, 890 F.2d 1215, 1230 (D. D.C. 1989).

Such discretion may be properly exercised in the form of expansion of a receivership where a party seeking expansion establishes, *inter alia*, a commingling of funds, intertwined business operations, utilization of an identical business address, identical offices and addresses, co-identity of officers, or co-identity of directors and principals. See *SEC v. Elmas Trading Corp.*, 620 F. Supp. 231,233 (D. Nev. 1985), *aff'd*, 805 F.2nd 1039 (9th Cir. 1986).

In determining whether or not to expand a receivership to include related assets, a court has broad discretion to disregard corporate separateness and form and give effect to the substance of the enterprise. *Id.* “Federal analysis gives less respect to the corporate form than does the strict common-law *alter ego* doctrine.” *Id.* The key goal behind a proposed receivership expansion should be “to ensure that all available assets are brought within the receivership and may properly be distributed to creditors.” *Id.*

There are a number of factors that gravitate heavily toward expanding the Receivership Estate to include Unit 104 as an Asset of the Receivership Estate. A few of the more significant factors are described below:

1. *Same Deed of Trust*—The Property and the Expansion Property are subject to the same Deed of Trust. This Deed of Trust is the subject of a defective Claim in the Receivership Estate filed by Mr. Bruce. It was included within the Objection as a Partial Submission of Claim Under Protest. Given Mr. Bruce’s statements about the Deed of Trust as true, there is an obligation in excess of \$5 million against the Properties and the Expansion Property and that obligation is in default. Mr. Bruce indicated in the Objection that he intends to foreclose the Deed of Trust. Because the Expansion Property is encumbered by this Deed of Trust, and if this Court allows Mr. Bruce to foreclose, the foreclosure should apply equally to the Expansion Property.⁵

⁵ Apparently, Mr. Bruce assumes that a foreclosure sale could only be conducted by the Public Trustee; however, the receiver is already in the process of conducting a receiver’s judicial sale, which is the functional equivalent of a judicial foreclosure sale. The problem with allowing Mr. Bruce to conduct a public trustee’s sale is that it would not address the City’s lien on the Property and Expansion Property, which pursuant to City ordinance is a senior obligation to the lien of Mr. Bruce’s Deed of Trust.

2. All on Condominium Declaration—All of the Property and the Expansion Property is subject to the Condominium Declaration. A foreclosure sale of the Property and Expansion Property (including a judicial sale) would affect the three other owners, possibly to their detriment. As noted above, the receiver has indicated that the three other owners have expressed affirmative interest in the concept of a sale of the entire block, which will maximize the value of their land as well.

3. City's Judgment Lien Encumbers Expansion Property—The City's judgment lien encumbers the Property and the Expansion Property. If the City were to foreclose its judgment lien,⁶ the foreclosure would apply to the Expansion Property.

4. Need for Judicial Supervision of Sale—If Mr. Bruce's representations in his pleadings are taken as true, the approximately \$3.5 million owed under his Deed of Trust, when added to the City's approximately \$2 million lien, almost certainly equals more than the equity in the Property and the Expansion Property. It is therefore essential to protect all interested parties that the sale of the Property and Expansion Property be conducted under the close supervision of the Court, and a receivership judicial sale of all properties is the safest way to do that.

5. Unit 104 is Derelict and Abandoned—A simple inspection of Unit 104 will quickly reveal that it is as derelict and abandoned as the rest of the Property. It is completely boarded up and has not had a resident for years.

The Receivership Order contemplates expansion of the receivership to include assets traceable TeleComm Resources, LP. Case law supports that which is contemplated in the Receivership Order. The purposes of the Receivership Order will be thwarted unless the Receivership Order is

⁶ Even if Mr. Bruce were to be allowed to foreclose through the Public Trustee, the City would be compelled to bring its foreclosure in a judicial action, and that would not be necessary as the receiver is in the process of doing the same thing in the Receivership Action.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served via Lexis/Nexis, by placing a copy in the United States Mail, postage prepaid, or via email, this 20th day of June, 2016, addressed to the following:

John M. Tanner
Fairfield & Woods, P.C.
1801 California St. #2600
Denver, CO 80202 (E-served)

Jeffrey P. Wright, GP
Tele Comm Resource LP
15 Lewis Drive
Lowman, Idaho 83637 (via U.S. Mail)

Courtesy copy
Douglas Bruce
Delta Correctional Facility
11363 Lockhart Road
Delta, CO 81416

By: s/_____