



Court: Finney County District Court
Case Number: 2019-CV-000143
Case Title: Central Plains Finance, LLC vs. Southwind
Broadcasting, LLC, et al.
Type: Order Granting Plaintiff's Motion to Appoint a
Receiver

SO ORDERED.

A handwritten signature in cursive script that reads "Ricklin R. Pierce".

/s/ Honorable Ricklin R Pierce, District Court Judge

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IN THE TWENTY-FIFTH JUDICIAL DISTRICT
DISTRICT COURT, FINNEY COUNTY, KANSAS
CIVIL DEPARTMENT

CENTRAL PLAINS FINANCE, LLC,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 2019-CV-000143
)	Title to Real Estate Involved
SOUTHWIND BROADCASTING, LLC,)	
)	
<i>Defendant.</i>)	
)	

Pursuant to K.S.A. Chapter 60

ORDER GRANTING PLAINTIFF’S MOTION TO APPOINT A RECEIVER

NOW on the date this Order granting Plaintiff’s Motion to Appoint a Receiver is filed, this matter comes before the Court on Plaintiff’s Motion to Appoint a Receiver, Plaintiff’s Verified Supplemental Motion to Appoint a Receiver, and Plaintiff’s Second Supplemental Motion to Appoint a Receiver (collectively the “Motion”) for the Collateral and the Mortgaged Property (as defined in the Motion). Plaintiff appears by and through its counsel of record, Shannon D. Wead of Foulston Siefkin, LLP. Southwind Broadcasting, LLC appears by and through its counsel of record, Debra E. James of Hampton & Royce, LC. There are no other appearances.

WHEREUPON, the Court, after reviewing the Motion and hearing the statements of counsel, finds as follows:

1. Plaintiff has sufficiently demonstrated its entitlement to the appointment of a receiver as set forth herein.

2. The Court hereby appoints Ron Metzinger as a receiver (the “Receiver”) in accordance with the terms of this Order Granting Plaintiff’s Motion to Appoint a Receiver (the “Order”). Consistent with the provisions of K.S.A. 60-1301, the Receiver shall have the duty to keep, preserve, and manage all property and protect any business or business interest entrusted to the Receiver pending the determination of any proceeding in which such property or interest may be affected by the final judgment.

3. The Receiver is appointed to manage and control the Defendant Southwind Broadcasting, LLC (“Southwind”), including, but not limited to, managing Southwind’s business affairs, conducting meetings of any of Southwind’s members or directors, and the filing of any tax returns or reports, including any federal, state, or local tax returns.

4. The Receiver shall be, and is hereby, further charged with the responsibility to: (a) take possession of, hold, keep, preserve, manage and protect Southwind’s assets and the business interests entrusted to the Receiver to the exclusion of Southwind and its members, including but not by way of limitation, all assets, files, papers, records, documents, monies, securities, keys, causes of action, books of account, bank accounts, wherever situated relating to the operation of Southwind and the Collateral and Mortgaged Property; (b) manage and operate Southwind, including, but not limited to, the Collateral and Mortgaged Property, and including, but not limited to, managing and operating Southwind’s radio broadcasting stations, collecting any rents, revenues, receipts, deposits, income, issues, profits, and receivables of Southwind; (c) protect and preserve Southwind and the business interests entrusted to the Receiver and the Collateral and Mortgaged Property; (d) enter into and ratify contracts in the ordinary course of business relating to Southwind and the Collateral and Mortgaged Property; (e) have all the usual incidental authority

customarily granted to receivers and reasonably necessary to accomplish the purposes stated herein and (f) promptly seek any necessary authority from the FCC for an involuntary transfer of the FCC Authorizations to the control of the Receiver pursuant to FCC Form 316 (<https://transition.fcc.gov/Forms/Form316/316.pdf>, *electronically filed*); and take reasonable steps to preserve the associated radio broadcast business (as a going concern, to the extent practicable) pursuant to the FCC Authorizations pending a Court ordered sheriff's sale or, if agreed in writing by Plaintiff and Southwind or if ordered by the Court, an arms'-length sale to a *bona fide* purchaser for value for which sale the Receiver shall obtain prior approval from the Court as a condition precedent to consummating such an arms-length sale, and at any sale Plaintiff is permitted to bid and to credit bid amounts that Southwind owes to Plaintiff; provided that the purchaser at any sale shall not be authorized to operate under the FCC Authorizations until the FCC shall have granted any prior consent of the FCC necessary under the Communications Act or the FCC's rules and policies for the assignment of the FCC Authorizations to such purchaser. The Receiver shall be compensated for his services at the rate of \$175.00 per hour and shall be reimbursed for the Receiver's out-of-pocket expenses to be paid from the funds held by the Receiver pursuant to the order of the Court

5. The Receiver is authorized to take control of all accounts of Southwind and to open an account or accounts at a financial institution in the name of the Receiver and deposit the proceeds, revenues, income, profits, accounts, accounts receivable, and other revenues in said account(s).

6. The Receiver is to pay all the operating expenses of Southwind incurred by the Receivership estate in the ordinary course of business, including to the extent funds are available,

the payments required under the Note, but subject to and subordinate to all operating expenses Receiver's fees and expenses of the receivership and all federal and state taxes presently due and owing. The Receiver shall fulfill the obligations of Southwind with regard to any existing contracts not otherwise subject to rejection pursuant to order of the Court and shall prevent possible waste, mismanagement and loss of income; provided however, that the Receiver shall not be permitted to make capital expenditures without an order of this Court after notice and hearing. If the Receiver believes an operating expense should not be paid, the Receiver may seek instructions from the Court concerning the same, provided the Receiver does so in a reasonable time. To the extent the operating revenues of Southwind are insufficient to pay the operating expenses of the Receivership estate (and/or capital expenditures authorized to be expended in accordance with an Order of the Court), Plaintiff may advance funds to pay such expenditures. Plaintiff recognizes that as the moving party for the appointment of the Receiver it may be obligated for payment of Court approved Receiver fees, expenses and operating costs. If Plaintiff advances funds to pay such expenditures, all sums so advanced or paid by Plaintiff shall be prior and superior to any and all other liens and encumbrances against or relating to the Collateral and the Mortgaged Property, and by advancing such funds Plaintiff shall not be considered an owner or operator of Southwind.

7. Southwind and its members, agents, and representatives are hereby ordered to deliver to the Receiver the Collateral and Mortgaged Property and all rents, revenues, receipts, deposits, income, issue, profits, receivables, property, books of account, keys, assets, records, documents, bank accounts or other property relating to the operation of Southwind and the Collateral and Mortgaged Property. Southwind, its members, agents, representatives, and anyone else acting at Southwind's direction, are hereby enjoined from interfering with the Receiver in the

performance of the Receiver's duties under this Order. Southwind and its owners, shareholders, members, managers, agents, representatives, and employees shall assist the Receiver by, *inter alia*, making available to the Receiver all books and records relating to Southwind, wherever located, including, but not limited to, any electronically stored information, and making all information available to the Receiver necessary to perform an accounting, executing all transfer cards and account assignments in favor of the Receiver as may be necessary to give the Receiver exclusive signatory authority and control over all of Southwind's deposit accounts, and otherwise cooperate with the Receiver to the fullest extent practicable in the fulfillment of the Receiver's duties. All insurance companies providing insurance to Southwind shall add the Receiver as a named insured and/or loss payee under such policies

8. The Receiver shall prepare monthly operating and status reports and balance sheets with respect to Southwind (the "Reports") within 15 days after the end of each month. The Receiver shall send the reports to Plaintiff on a monthly basis, shall file the Reports with the Court, and provide copies of the Reports to Southwind's counsel.

9 The Receiver is authorized to engage professionals to assist the Receiver in performing the Receiver's duties under the Order, including accountants, attorneys, and/or other professionals needed to properly affect this Order; provided, however, that the Receiver shall apply to the Court and obtain an order from the Court to approve and ratify the engagement of an attorney.

10. Upon the written agreement of Plaintiff and Southwind or upon order of the Court, the Receiver shall have the power to market the Collateral and/or Mortgaged Property in a commercially reasonable matter and, upon application to and order from the Court, to sell the

Collateral and/or Mortgaged Property, and the Receiver shall have the power to assign, subject to any required consent of the Federal Communications Commission, the FCC Authorizations relating thereto to the purchaser at such sale.

11. The Receiver shall be subject to the jurisdiction of this Court in the performance of the Receiver's duties under this Order and shall have the right to apply to the Court for instructions so long as this Order is in effect, and shall have such other and further powers as the Court by its order from time to time may grant and direct. The Court directs Southwind to immediately provide the Receiver or any designated representative of the Receiver with a true and accurate list of all current FCC electronic filing registration numbers and associated passwords associated with the FCC Authorizations and used for filings with the FCC (including but not limited to Federal Registration Numbers ("FRNs"), Consolidated Database System ("CDBS"), License Management System ("LMS"), and Antenna Structure Registration ("ASR") account numbers, each with associated passwords) for the purpose of facilitating the preparation and filing of any FCC applications or other filings necessary or useful for the performance of Receiver's duties hereunder. The Court directs the Receiver will provide notice to the Court and Southwind at such time as FCC filings are made. Southwind to cooperate promptly and fully in all respect with any reasonable request of the Receiver to discharge the Receiver's duties and effectuate the orders of the Court and make any submissions, requests, or other filings with the FCC in connection therewith. In the event Southwind should fail, refuse, or delay in the execution or submission of any application or other document necessary to obtain any governmental consent necessary for the discharge of the Receiver's duties, then the Court would authorize such application or other document, to the full extent permitted by the Communications Act and the FCC's rules and

policies, to be executed on Southwind's behalf by the Office of the Clerk of this Court for the limited purpose of placing such matter before the FCC for action or decision as necessary or useful for the discharge of the Receiver's obligations hereunder.

12. No provision of this Order relieves Southwind or the Receiver from their respective obligations to comply with the Communications Act of 1934, as amended, and the rules, regulations and orders promulgated thereunder by the FCC. Any transfer of control or assignment to the Receiver of any federal license or authorization issued by the FCC and any transfer or control or assignment of any such license or authorization by the Receiver to a *bona fide* purchaser for value following a public or private sale ordered by the Court shall be subject to the issuance of FCC regulatory approval for such transfer of control or assignment pursuant to applicable FCC regulations. The FCC's rights and powers to take any action pursuant to its regulatory authority over the transfer of control or assignment of any FCC authorization to the Receiver, including, but not limited to, imposing any regulatory conditions on such transfer or assignment, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority to the extent provided by law.

13. The Receiver shall file an Oath of Receiver herein. The Parties have agreed to waive the requirement that the Receiver shall post a Bond.

14. This Order shall become effective immediately upon the filing of this Order and the Receiver's Oath.

NOW, THEREFORE, IT IS BY THE COURT CONSIDERED, ORDERED, ADJUDGED AND DECREED that the foregoing findings constitute, are a part of, and are incorporated herein as the order of this court.

This Order is effective as of the date and time shown on the electronic file stamp.

Prepared and Submitted by:

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