UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. DETROIT MEMORIAL PARTNERS, LLC, and MARK MORROW, Defendants.	)	CIVIL ACTION NO. 1:13-cv-1817-WSD

RECEIVER'S RESPONSE TO BRIEF IN SUPPORT OF ST. AUGUSTINE'S PETITION

Jason S. Alloy, the Court-appointed Receiver for Defendant Detroit Memorial Partners, LLC ("DMP"), files this response to the brief in support of Cathedral of St. Augustine's ("CSA") Petition. (Doc. 226.) CSA's brief is frivolous, filled with speculation and innuendo that is not supported by the evidence, and seeks a hearing to explore "issues" that are not properly before this Court.

The Receiver briefly addresses CSA's main arguments in the order that they appear.

1. Response to CSA's request that it "be allowed to purchase the cemeteries for $12.5 million."

CSA continues, inexplicably, to request that this Court allow it to purchase "the cemeteries." As an initial matter, DMP never owned any cemeteries that it could sell to anyone. There were never any cemeteries in the Receivership estate or before this Court, and, DMP did not sell cemeteries to Park Lawn. The Receiver has alerted CSA of these facts multiple times, which CSA and its counsel should have known already. CSA's stubborn refusal to acknowledge these facts has resulted in baseless motions like the one at issue, which borders upon the frivolous and abusive.

When the Receiver was appointed, DMP owned a 49% interest in a limited liability company, Midwest Memorial Group, that owned the Michigan cemeteries that CSA apparently seeks to purchase. The 51% majority interest in MMG was owned by Westminster Memorial Group, LLC ("WMG"), an entity based in California that is not a party to this action. In March 2016, WMG and DMP sold each of their interests to Park Lawn in a transaction that CSA now seeks to unwind.

CSA's attempt to have the Receiver "rescind" that transaction is frivolous, as explained below. Yet even on its own terms, it makes no sense. If the Receiver "rescinded" DMP's portion of the transaction (which of course he cannot do), the

most DMP could possibly get back would be its 49% interest in MMG – not the cemeteries or WMG's 51% interest. CSA has never addressed how or why the Receiver could possibly "rescind" WMG's sale of its 51% interest in MMG to Park Lawn, because that is not even possible.

The only way for CSA to legitimately gain control of the Michigan cemeteries is to purchase them from their ultimate owner, Park Lawn. CSA is free to contact Park Lawn about purchasing them.

2. Response to CSA argument that "payments have not been made and Park Lawn is in breach of its obligations" to DMP.

This is a serious allegation against Park Lawn Corporation (a public company), and it has no basis whatsoever. Of course, if DMP had valid claims against Park Lawn, the Receiver would pursue them.

As set forth in pleadings before this Court, the sale of the 49% interest in Midwest Memorial Group ("MMG") closed on March 8, 2016. (Doc. 160.) DMP received and deposited its portion of the proceeds, which totaled $7,919,425. (Id.) After DMP received the funds, DMP distributed almost $13,000,000 to claimants in 2016-17. (See Doc. 184 and 185.)

To the extent CSA is complaining that DMP should have received *additional* funds from an earnout that was part of the transaction, DMP is only paid under the earnout provision if MMG's earnings exceed a certain agreed-upon amount in

2016, 2017, or 2018. MMG did not earn enough money in 2016 or 2017 to invoke the earnout for those years. We will not know if there will be an earnout for calendar year 2018 until next year.

CSA's attorney has been counsel of record in this case since filing CSA's Petition for Leave to Serve as Amicus Curiae in December 2015. [See Doc. 142.] Therefore, CSA should be aware that no payment was due in the first two years of the earnout, because the Receiver addressed that exact point in multiple pleadings. For instance, the Receiver's quarterly status report for the first quarter of 2017 provided:

> Under the terms of the earn-out provision, DMP is entitled to receive additional cash consideration if MMG meets certain earnings benchmarks (defined in the Agreement) in the years 2016, 2017, and 2018. Under the terms of the earn-out, DMP may elect to receive not less than 10% but up to 100% of its share of the earn-out for the 2016 calendar year. DMP may elect to receive not less than 33% but up to 100% of its share of the earn-out for the 2017 calendar year. For the 2018 year, DMP will receive the remaining percentage of its share of the earn-out.
>
> MMG sent DMP the potential earn-out calculation for the year 2016 on March 31, 2017, **and unfortunately it does not appear that MMG met the necessary benchmarks to trigger an earn-out payment for 2016**.

(Doc. 199) (emphasis added.) The Receiver's quarterly status report for the first quarter of 2018 made a similar disclosure because MMG did not meet its benchmarks for the 2017 calendar year to pay an earnout in 2018. (Doc. 217.)

The bottom line is Park Lawn currently does not owe DMP money under the earnout provision, and the Receiver is unaware of any breaches of the agreement by Park Lawn.

3. Response to CSA argument that "the Receiver has the power to rescind the contract."

CSA cannot seriously argue that the Court's Receivership Order permits the Receiver to rescind a $16,000,000+ transaction involving multiple parties, including a public company, two years after transaction was executed, because CSA is now purportedly offering more money (presuming CSA can even close on such a transaction). There is no basis for this in the Receivership Order.

First, the provision of the Receivership Order referred to by CSA is related to the Receiver being able to take actions on *past* (improper/invalid) contracts. That provision cannot possibly apply to contracts the Receiver voluntarily executes during the Receivership. If the Receiver could rescind contracts that the Receiver enters into during the Receivership, it would be virtually impossible to enter into *any* material contract – let alone a multi-million dollar transaction.

With regard to the transaction CSA seeks to rescind, the Receiver specifically sought approval from the Court to negotiate and close on the transaction, which the Court granted. (Doc. 119 and 120.) The Receiver subsequently notified the Court of the sale. (See Doc. 154.) The agreement, not counting schedules, was over 50 pages. It was negotiated for months. All parties had sophisticated counsel. There is, of course, no provision in that agreement to rescind it at the whim of the Receiver if a potentially better deal came along years later. This argument is without merit.

4. Response to "all aspects of the financial performance of the cemeteries should be reviewed."

CSA cites no legal authority for this request. CSA, who is a non-party, is literally raising a financial issue with Park Lawn and MMG, who are also non-parties. The cemeteries owned by MMG are in Michigan and are also outside of this Court's jurisdiction. There is no legal basis to make such a request in this action, and to do so is frivolous.

5. Response to "Park Lawn only recently filed to do business in the State of Michigan."

Putting aside that Park Lawn's business has no relevance to this matter, this allegation is also baseless. The Receiver's understanding is that Park Lawn owns MMG, and MMG owns and operates the cemeteries. If CSA has a licensing issue

with Park Lawn or MMG, it may raise it with the proper authorities in Michigan. This Court is not the proper forum.

CONCLUSION

DMP sold its 49% interest in MMG over two years ago. There is nothing for the Court to do with the 2016 transaction or to non-parties Park Lawn and MMG. CSA's petition should be denied.

Submitted this 23rd day of July, 2018.

/s/ Jason S. Alloy
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Court-Appointed Receiver for Detroit Memorial Partners, LLC

LOCAL RULE 7.1D CERTIFICATION

I hereby certify that the foregoing **RECEIVER'S RESPONSE TO BRIEF IN SUPPORT OF ST. PETITION** was prepared in Times New Roman 14 point, which is one of the font and point selections approved by the Court under Local Rule 5.1C.

This 23rd day of July, 2018.

/s/Jason S. Alloy
Jason S. Alloy

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing **RECEIVER'S RESPONSE TO BRIEF IN SUPPORT OF ST. AUGUSTINE'S PETITION** with the Clerk of Court using the CM/ECF system, which will send email notification of such filing to all attorneys of record.

I have also served the foregoing by U.S. Mail on Defendant Mark Morrow at the following address:

Mark Morrow
FCI - Ashland
PO Box 6001
Ashland, Kentucky 41105

This 23rd day of July, 2018.

/s/ Jason S. Alloy
Jason S. Alloy