

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

DR. WAYNE L. RYAN, derivatively on behalf of RYAN FAMILY LLC, a Nebraska limited liability company, TIMOTHY RYAN, derivatively on behalf of RYAN FAMILY LLC, a Nebraska limited liability company, CAROL RYAN, derivatively on behalf of RYAN FAMILY LLC, a Nebraska limited liability company, and STEVEN RYAN, derivatively on behalf of RYAN FAMILY LLC, a Nebraska limited liability company

Plaintiffs,

v.

CONSTANCE RYAN,

Defendant

and

RYAN FAMILY, LLC, a Nebraska limited liability company

Nominal Defendant.

and

STRECK, INC.

Intervenor,

v.

RYAN FAMILY, LLC, a Nebraska limited liability company.

Case No. CI 15-307

**APPLICATION FOR APPOINTMENT
OF RECEIVER
AND
NOTICE OF HEARING**

Streck, Inc. (“Streck”), by and through its counsel, pursuant to Neb. Rev. Stat. § 25-1081 *et seq.* hereby moves the Court for an order appointing a receiver (the “Receiver”). In support of its Application for Appointment of Receiver, Streck states as follows:

The Company is in Deadlock

1. Ryan Family, L.L.C. (the “Company”) is a Nebraska limited liability company.
2. The management of the Company is vested in a Management Board comprised of Dr. Wayne Ryan and Constance Ryan who have served as the only managers since the Company’s organization.
3. Plaintiffs and Defendant Constance Ryan have admitted Dr. Wayne Ryan and Constance Ryan are in a deadlock regarding management of the Company, which deadlock cannot be resolved pursuant to the terms of the Operating Agreement (Amended Complaint ¶ 20; Constance Ryan Answer ¶113).
4. The only asset of the Company is a parcel of property with improvements in Sarpy County which was leased to the intervenor Streck pursuant to that certain Lease with Purchase Option dated as of December 15, 1999, as amended by Lease Amendment dated November 7, 2007 (collectively, the “Lease”). The Lease provides an option (the “Option”) for Streck to purchase the property for “Fair Market Value” as of the date of Streck’s exercise of the Option. The Lease further provides that Streck may exercise the Option by providing written notice to the Company within 60 days of the expiration of the term of the Lease.
5. The Lease expired on June 30, 2015, and on July 1, 2015, Streck exercised the Option by providing written notice to the Company’s managers in accordance with the terms of the Lease.
6. Pursuant to the Lease, “[w]ithin thirty days after the date of the [notice of exercise of the Option], Landlord shall give Tenant a notice setting forth Landlord’s estimate of the Option Price (‘Estimate’)” (Lease Agreement, §25.01(g)). Accordingly, the Company was obligated to provide Streck with its Estimate no later than July 31, 2015. The Company failed to

provide Streck with its Estimate by such date as required by the Lease and has yet to provide Streck with the Company's Estimate.

7. Upon Streck's receipt of the Estimate from the Company, the Lease provides Streck with 30 days to dispute the Company's Estimate. If Streck disputes the Estimate and Streck and the Company cannot reach agreement on the Option Price during the 30 day period following Streck's dispute of the Estimate, the Lease provides that the parties "shall within twenty (20) days after the expiration of the thirty (30) day period, simultaneously submit to each other in a sealed envelope its good faith estimate of Fair Market Value of the Premises as of the date of the Exercise Notice and its designation of an appraiser . . ." (Lease Agreement, §25.01(h)).

8. The Lease then provides a mechanism by which the two appraisers determine which of the two Estimates "most clearly reflects the Fair Market Value of the Premises," and this Estimate becomes the Option Price (Lease Agreement, §25.01(i)). If the two appraisers cannot agree, the two appraisers select a third appraiser who determines "which of the two Estimates most closely reflects Fair Market Value and such Estimate shall be binding upon both Landlord and Tenant as to the Option Price." (Lease Agreement §25.01(g)).

9. Within 30 days after the Option Price is set, the Company must "(i) . . . convey the Premises to [Streck] by warranty deed free and clear of all liens, claims and encumbrances, (ii) shall execute such standard owner lien affidavits that may be required by the title company issuing the Title Commitment;" and Streck will be obligated to pay the Option Price (Lease Agreement, §25.01(j)).

10. The above provisions of the Lease demonstrate that the Company has significant obligations to Streck which it has failed and continues to fail to fulfill in a timely manner in

accordance with the terms of the Lease. Because the managers of the Company are in deadlock the Company has been unable to satisfy these obligations to date and will not be able to meet these obligations going forward absent the appointment of a receiver.

Entitlement to a Receiver

11. Pursuant to Neb. Rev. Stat. § 25-1081(8) the Court may appoint a receiver, where historically “receivers have heretofore been appointed by the usages of courts of equity.” *See, also Floral Lawns Memorial Gardens Ass’n v. Becker*, 284 Neb. 532, 538 (2012). Receivers have been appointed whenever shareholders (managers) have been deadlocked. *Drob v. Nat’l Mem’l Park*, 28 Del. Ch. 254, 272, 41 A.2d 589, 598 (1945), *Zottu v. Electronics Heating Corp.*, 334 Mass. 442, 444, 135 N.E.2d 920, 922 (Mass. 1956); *Assoc. Behavioral Servs. v. Smith*, 2011 NCBC 22, 2011 WL 2671809 (N.C. Super. Ct. July 8, 2011).

12. As previously noted, the managers of the Company admit they are in deadlock and there is no mechanism in the Operating Agreement to cure the deadlock. The Company has obligations in this litigation and under the Lease Agreement that it is unable to fulfill while the managers are in deadlock.

13. After Streck exercised its Option on July 1, 2015, counsel for the parties agreed to mediate this dispute. Yet after several weeks of negotiations regarding the procedure for the mediation and after a mediator had been selected by counsel for the parties, Plaintiffs refused to participate in the mediation.

14. A receiver is needed to take actions on behalf of the Company regarding this litigation, the Company’s obligations to Streck under the Lease with respect to Streck’s exercise of the Option and the disbursement of proceeds received by the Company upon the closing of the sale of the property to Streck.

15. Streck nominates Bryan Slone, Of Counsel at Koley Jessen P.C., L.L.O., as receiver (“Receiver”) for the Company. He significant experience in corporate, transactional, and financial matters, including representing clients in bankruptcy proceedings. Pursuant to Neb. Rev. Stat. § 25-2086, Mr. Slone is not a party, solicitor, counsel or in any manner interested in this lawsuit. Alternatively, Streck requests the Court, in the exercise of its discretion, appoint a receiver with similar qualifications.

16. Streck requests that the Court enter an order appointing a Receiver for the Company, and granting the Receiver the powers and authority usually held by receivers in the State of Nebraska together with those powers and authority necessary to accomplish the purposes of the receivership.

17. Streck proposes that Old Republic Surety be approved as the surety for Receiver and Applicant and give bond conditioned to faithfully discharge Receiver’s duties as receiver and obey all orders of the Court.

WHEREFORE, Streck respectfully prays that the Court enter an order: (1) appointing Bryan Slone of Koley Jessen P.C., L.L.O. or such other qualified person as Receiver of the Company with the powers specified herein, and (2) granting such other and further relief as the Court deems just.

Dated this 17th day of September, 2015.

STRECK, INC., Defendant,

By: /s/ Paul R. Gwilt
Thomas H. Dahlk, #15371
Paul R. Gwilt, #22660
KUTAK ROCK LLP
The Omaha Building
1650 Farnam Street
Omaha, NE 68102-2186

Phone: (402) 346-6000
tom.dahlk@kutakrock.com
paul.gwilt@kutakrock.com

Ronald E. Reagan, #13450
Reagan, Melton & Delaney, LLP
9826 Giles Road, Suite B
La Vista, NE 68128
Phone: (402) 932-9494
ron@rmdlaw.net

NOTICE OF HEARING

You are hereby notified that Defendants will call up for hearing its **MOTION FOR APPOINTMENT OF RECEIVER** in the District Court of Sarpy County, Nebraska, Courtroom 5, 1210 Golden Gate Drive, Papillion, Nebraska before the Honorable William B. Zastera, on the 12th day of October, 2015 at the hour of 1:30 p.m. or as soon thereafter as counsel may be heard.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing **MOTION FOR APPOINTMENT OF RECEIVER AND NOTICE OF HEARING** was sent via first class mail this 17th day of September, 2015 to the following:

Marnie A. Jensen,
Mark D. Hill,
Husch Blackwell LLP
13330 California St., Ste. 200
Omaha, NE 68154
Attorneys for Plaintiffs

Larry E. Welch, Jr.,
Larry E. Welch, Sr.,
Stephen Q. Preston,
Welch Law Firm, P.C.
Landmark Center
1299 Farnam St., Ste. 1220
Omaha, NE 68102
Attorneys for Defendant Constance Ryan

By /s/ Paul R. Gwilt

Paul R. Gwilt

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Dated this 17th day of September, 2015.

STRECK, INC., Defendant,

By: /s/ Paul R. Gwilt
Thomas H. Dahlk, #15371
Paul R. Gwilt, #22660
KUTAK ROCK LLP
The Omaha Building
1650 Farnam Street
Omaha, NE 68102-2186

Phone: (402) 346-6000
tom.dahlk@kutakrock.com
paul.gwilt@kutakrock.com

Ronald E. Reagan, #13450
Reagan, Melton & Delaney, LLP
9826 Giles Road, Suite B
La Vista, NE 68128
Phone: (402) 932-9494
ron@rmdlaw.net

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Marnie A. Jensen,
Mark D. Hill,
Husch Blackwell LLP
13330 California St., Ste. 200
Omaha, NE 68154
Attorneys for Plaintiffs

Larry E. Welch, Jr.,
Larry E. Welch, Sr.,
Stephen Q. Preston,
Welch Law Firm, P.C.
Landmark Center
1299 Farnam St., Ste. 1220
Omaha, NE 68102
Attorneys for Defendant Constance Ryan

By /s/ Paul R. Gwilt

Paul R. Gwilt

Certificate of Service

I hereby certify that on Friday, September 18, 2015 I provided a true and correct copy of the Application to the following:

The Ryan Family L.L.C. represented by Marnie Jensen (Bar Number: 22380) service method: Electronic Service to marnie.jensen@huschblackwell.com

Ryan,Carol, represented by Marnie Jensen (Bar Number: 22380) service method: Electronic Service to marnie.jensen@huschblackwell.com

Ryan,Stacy, represented by Marnie Jensen (Bar Number: 22380) service method: Electronic Service to marnie.jensen@huschblackwell.com

Ryan,Constance, represented by Welch,Lawrence,E,Jr (Bar Number: 20507) service method: Electronic Service to larryjr@welchlawfirm.com

Ryan,Dr. Wayne,L represented by Marnie Jensen (Bar Number: 22380) service method: Electronic Service to marnie.jensen@huschblackwell.com

Ryan,Timothy, represented by Marnie Jensen (Bar Number: 22380) service method: Electronic Service to marnie.jensen@huschblackwell.com

Ryan,Steven, represented by Marnie Jensen (Bar Number: 22380) service method: Electronic Service to marnie.jensen@huschblackwell.com

Signature: /s/ Gwilt,Paul Ruff (Bar Number: 22660)