

Ask The Receiver:

By Peter A. Davidson*

Q: I was appointed as the receiver to collect a judgment. I have not yet filed my final account and report, the court has not approved my final fees, and other creditors of the judgment debtor are demanding that I pay them, because they were not able to be paid from the judgment debtor's assets taken into receivership. However, the judgment debtor has paid the judgment creditor and is now demanding that the receivership be terminated. Must the court now terminate the receivership?

A: Not necessarily. The general rule is a receivership should be terminated as soon as the purpose of the receivership has been accomplished. 3, Clark, Treatise on the Law & Practice of Receivers, §691 (3rd ed. 1959) ("Clark"). However, that rule is not absolute and is subject to important exceptions.

First, the court must ensure that the receivership is terminated in an orderly fashion. As Clark states: the court "must retain jurisdiction of the res long enough to close up the receivership...and see that all receivership claims are properly paid or taken care of or provide for same." Id. at §695. "The appointing court pledges its good faith that all duly authorized obligations incurred during the receivership shall be paid." Id. at §637. This includes the receiver's and his counsel's fees. The court must also approve the receiver's final account and report. See, California Rules of Court, rule 3.1184.

Second, in some instances a court may continue a receivership for the benefit of other creditors, even though the claim of the party that sought the appointment has been satisfied. *Consol. Rail Corp. v.*

Fore River Ry. Co., 861 F.2d 322, 327 (1st Cir. 1988). This may occur when assets to pay other creditors have been in the receivership and, hence, beyond the reach of the creditors. These exceptions were illustrated in a recent case, *WB Music Corp. v. Royce Int'l Broad Corp.*, ___ F.4th ___ (9th Cir. 2022), 2022 U.S. App. Lexis 24548 ("Royce"). In *Royce*, the defendant radio stations and their owners were sued for copyright infringement, for playing music without authorization. A jury found the infringement was willful and awarded damages of \$330,000. The court added an additional \$900,000 in attorney's fees and costs. After unsuccessful efforts to collect the judgment, plaintiffs moved for a receiver. The court initially delayed the appointment, to give the debtors time to pay the judgment. But, when the debtors admitted the only assets they had sufficient to pay the judgment were their FCC broadcast licenses, the court appointed a receiver to operate the radio stations until he could arrange for a sale of the licenses.

Soon after the receiver's appointment, the debtors moved, *ex parte*, to terminate the receivership because, purportedly, one of the debtors now had enough cash in his account to pay the judgment. The court denied the motion, noting the debtors' had repeatedly stonewalled and delayed paying the judgment and failed to cooperate with the receiver.

Further, the debtors would also have to pay plaintiffs' post-judgment costs, which had not yet been determined. The debtors subsequently deposited the full amount of the judgment, plus interest, with the court. The court then granted plaintiffs' post-judgment fees and unpaid sanctions of \$384,000, which were added to the judgment.

The debtors deposited this additional amount with the court and again moved to terminate the receivership and enjoin the sale of the radio station licenses, contending they had now satisfied the judgment.

Plaintiffs opposed the motion arguing that while the debtors had deposited the funds, they refused to stipulate to their release, and the receivership should not be terminated without ensuring the receiver would be paid. The receiver also opposed the motion arguing that not only were he and his professionals owed hundreds of thousands of dollars, but a number of creditors were also owed significant sums, one of which had already obtained a judgment. The court denied the motion to terminate, citing *Consolidated Rail, supra.*, holding that the court could decline to terminate the receiver until the debts of non-party creditors had been paid. "In this way the court can ensure that the receiver will not deplete all of the debtor's assets on behalf of one creditor, leaving the other creditors without remedy." *Consolidated Rail* at 327-28. The court also noted that courts normally do not terminate receiverships until the receiver prepares his or her final accounting and the court ensures the receiver is paid. While the court acknowledged it could terminate the receivership, the facts did not support such action given the court had to appoint a receiver in the first instance and the debtors could not be trusted to pay any amounts the court might award the receiver. The debtors appealed and the Ninth Circuit affirmed, agreeing with the reasoning of the District Court and the First Circuit in *Consolidated Rail, supra.*

One argument the debtors made, for the first time on appeal, which the Ninth Circuit refused to address for that reason, was that the receivership was void ab initio because the receiver had never filed his oath and bond as required by C.C.P. §567. This was a major blunder by the receiver and could have been disastrous. As discussed in a prior *Ask the Receiver* (46, *Receivership News*, Winter 2013) while there is no reported California case on point, other states with similar statutes hold the failure of a receiver to file his or her oath deprives the receiver of the authority to act and renders the receiver's activities null and void. See, *Laron v. Kaley*, 138 Ohio App. 3d 120,122-123 (2000); *Zeigler v. Trio Realty Group. LLC*, 2011 WL 5119101 (2011).

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