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Bankruptcy

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Ninth Circuit Provides Clarity on the Scope of Receiverships

The US Court of Appeals for the Ninth Circuit affirmed an order denying the defendants' motion to discharge a receiver who had been appointed to aid in the execution of a judgment for violations of the Copyright Act. *WB Music Corp et al. v. Royce International Broadcasting Corp.*, Case No. 21-55264 (9th Cir. August 31, 2022) (Tashima, Watford, Friedland, JJ.)

Copyright Infringement Ruling Leads to Receivership

The receivership in this appeal arises from litigation that commenced in 2016 in the US District Court for the Central District of California by a cohort of music publishers for broadcasting the plaintiffs' music on radio networks in violation of the Copyright Act. In 2017, the district court found the defendants jointly and severally liable for copyright infringement.

A jury awarded the plaintiffs statutory damages totaling \$330,000 and the district court entered a judgment in that amount. The defendants continuously refused to satisfy the judgment, and after much litigation,

the court entered an amended judgment for an additional \$1.25 million and attorneys' fees of more than \$900,000.

The defendants' only assets were their Federal Communications Commission (FCC) licenses. The district court ultimately appointed a receiver who was entrusted with "the power and authority to take charge of and manage [the defendants'] [r]adio stations' assets, businesses, and affairs," as well as the ability to solicit offers for the sale of the stations. The court's order also provided that the receiver would incur a monthly fee and a commission on the sale of any of the radio stations.

The defendants moved *ex parte* for an order to compel the plaintiffs to accept payment of the amended judgment—asserting that they were prepared to wire funds in the amount sufficient to cover the amended judgment and post-judgment interest—but refused to agree to pay costs incurred by the plaintiffs' post-judgment proceedings. Per the district court's order, the defendants were to deposit with the court funds sufficient to satisfy the amended judgment. The order further provided that the receivership would not terminate unless the defendants paid all costs incurred post-judgment. The court entered a second amended judgment approximately four months later, which included additional unpaid sanctions and fees.

Defendants' Motion to Terminate Receivership

The defendants ultimately deposited the required funds with the district court; however, the funds were never released to the plaintiffs. The defendants then filed a motion to terminate the receivership and enjoin the sale of their radio stations on three grounds: (1) the receiver did not take an oath as required under California law; (2) the court lacked the discretion to refuse to terminate the receivership; and (3) the court abused its discretion in denying the motion. The motion was opposed by the plaintiffs, who argued that the receivership should not be terminated without ensuring that the receiver was compensated for his services. The receiver opposed the motion, arguing that terminating the position would enable the defendants to "evade a range of liabilities" as there were still large creditors with outstanding judgment liens. The district court denied the defendants' motion and the defendants appealed.

Ninth Circuit Uses Its Discretion to Extend Receivership

Agreeing with First Circuit precedent, the Ninth Circuit held that, even assuming that the defendants satisfied the judgment, it was within the district court's discretion to prolong the receivership. The Court further held that the district court did not abuse its discretion in denying the defendants' motion to terminate

the receivership. The district court offered valid reasons for not terminating the receivership, including protecting creditors, permitting the receiver to prepare a final accounting, ensuring that the receiver would be compensated for his time and seeing to it that obligations incurred during the receivership would be paid. The Court held that, given the defendants' history of nonpayment, the district court acted within its broad discretion.

The Ninth Circuit therefore affirmed the decision of the lower court, finding that the motion was denied for "legitimate reasons." The Court also recognized that, under California civil procedure, a receivership is ordinarily terminated once the judgment is satisfied. The Court noted however that this is

solely a "general proposition" that is not absolute and is subject to "some important exceptions." The Court listed several exceptions as to when a district court may prolong a receivership, including "for the benefit of other creditors." Courts must consider the totality of the circumstances when determining the termination of a receivership, and the Ninth Circuit found the receivership in question to be necessary based on the defendants' history of nonpayment, to protect creditors, to permit the receiver to prepare a final accounting, to ensure that the receiver would be compensated and to confirm payment of all obligations incurred during the receivership.

This appeal provides jurists with clearer guidance as to the scope of

receivership, including its terms, and expressly grants district courts broad discretion over determining the length, purpose and termination of receivership in the Ninth Circuit.

Practice Note

Bankruptcy may be an effective mechanism to efficiently distribute funds to creditors, prevent assertion of further claims and provide finality to the litigation.

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