

Civil Practice

Receivership - Arbitration - Lis Pendens

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Where a receiver was appointed to manage and sell assets which were the subject of a dispute between two business associates, the receivership should now be discontinued and the matter referred to arbitration.

Further, a lis pendens issued on Nov. 29, 1996 must be vacated and revoked.

The Receivership

"Although I think the decision to appoint the receiver was seriously flawed, the apparent lack of opposition from [defendant Michael J.] Rauseo at the outset might have misled the judge. Therefore, I will consider only the issue involving the continuation of the receivership.

"The judge's order continuing the receivership and authorizing the receiver to proceed to sell the receivership properties states that the receivership is necessary in order to bring an end to the plaintiff and Rauseo's business relationship as their respective positions are 'irreconcilable.' ...

"For the following reasons, the order continuing the receivership must be vacated. The judge's subsequent order continuing the appointment of the receiver and ordering the systematic sale of the entities' properties, clearly shows that the receivership also became the judge's primary method of resolving this dispute, rather than having the receiver merely preserve the property while the court determined the parties' rights and liabilities in regard to the underlying complaint.

"Other relief' was clearly available. The majority of the entities had active management agreements with Suffolk. Under these agreements the parties were bound to pursue arbitration of any disputes related to the management agreement.

"Agreements to arbitrate are enforceable in Massachusetts. General Laws c. 251 § 2 provides that the Court, upon application of a party to enforce an agreement to arbitrate, shall stay the action and order the matter referred to arbitration. When arbitration is the procedure chosen by the parties, it should 'not [be] subject to delay and obstruction in the courts.' ...

"The plaintiff is a signatory to the agreements that contained the arbitration clauses. The judge should have ordered the plaintiff and Rauseo to arbitrate their disputes prior to appointing a receiver, or at the very least, ordered arbitration after Rauseo filed his motion to compel arbitration. Therefore, the receivership must be vacated.

"There is another topic which I wish to comment on before leaving this matter. From the inception of this litigation, Rauseo claimed that the allegations in both the plaintiff's original verified complaint and his substitute verified complaint were patently false and that the plaintiff misled the court in order to procure the receivership. Rauseo also claimed that the plaintiff's real reason for seeking the receivership was to obtain an end to the parties' business relationship while avoiding his contractual obligations to pursue relief, such as arbitration and exercising share buy out provisions, as dictated by the terms of the various agreements which he assented to both when he entered into his association with Rauseo and in the furtherance of the various entities' business activities. Rauseo backed up his claims that the plaintiff made false allegations in his original verified complaint and his substitute verified complaint by affidavits and also with portions of the plaintiff's deposition testimony.

"The allegations made by Rauseo, that the plaintiff misled the Court in order to procure the receivership

are most serious especially in light of the difference between some of the plaintiff's answers in his deposition compared to his allegations in his verified complaints which formed the judge's basis for appointing a receiver. What Rauseo is alleging is that the plaintiff committed a fraud on the Court. ... 'Fraud on the court occurs where a party tampers with the fair administration of justice by deceiving 'the institutions set up to protect and safeguard the public' or otherwise abusing or undermining the integrity of the judicial process.' ...

"Here, Rauseo submitted materials which he claimed corroborated his charge that the plaintiff had committed a fraud on the Court by using falsehoods to obtain the appointment of a receiver. Because those allegations went to the heart of the issues before the judge, that is, the appointment of a receiver and the lis pendens matter, the judge should have held an immediate hearing to resolve the claims. Instead, the judge focused on the necessity of the receivership 'to bring the tangled and irreconcilable positions of these two talented men to a speedy conclusion.' In doing so, the judge ignored the serious allegations that he had been misled by the plaintiff in appointing the receiver in the first place. I hope and trust that the matter will be resolved as soon as possible."

Lis Pendens

"I have reviewed the material submitted by the plaintiff and Rauseo concerning the lis pendens issued by the court on November 29, 1996.

"In light of the documentary evidence submitted by Rauseo, I rule that the lis pendens is vacated. The matter may be resubmitted to a Superior Court judge but only after the judge has held a hearing on Rauseo's claims that the plaintiff committed a fraud on the court."

Orders

"Accordingly, the following orders are to be entered:

"1. That the Interim Order of the Superior Court dated December 2, 1996, denying defendant Rauseo's motion to compel arbitration and to vacate appointment of Receiver, is hereby reversed and vacated;

"2. That this matter shall be referred to arbitration with regard to all issues concerning or arising out the various entities' management agreements with Suffolk Company, Inc. and with regard to all outstanding issues or disputes arising out of the One Bulfinch Place limited partnership agreement and the Broad/Franklin limited partnership agreement;

"3. That the judge's January 15, 1997 decision continuing the receivership and allowing the receiver to proceed with the sale of the properties, to establish a proof of claims procedure, and to authorize the receiver to take action to handle eminent domain and variance approval issues is hereby reversed and vacated;

"4. That the Lis Pendens issued by the Superior Court on November 29, 1996, shall herewith be vacated and revoked, and notice of same may be recorded at the appropriate Registry of Deeds evidencing such revocation of lis pendens with regard to the property owned by Susan Rauseo."

Osinski v. Rauseo, et al. (Lawyers Weekly No. 11-041-97) (18 pages)(Smith, J., sitting as single justice) Michael Coppock for the plaintiff; Marc Redlich and Steven T. Sager for the defendants (Docket No. 96-J-899).

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