

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

**DEUTSCH BANK TRUST)
COMPANY AMERICAS, AS)
TRUSTEE FOR THE REGISTERED)
HOLDERS OF J.P. MORGAN)
CHASE COMMERCIAL)
MORTGAGE SERVICES CORP.,)
MULTIFAMILY MORTGAGE PASS-))
THROUGH CERTIFICATES,)
SERIES 2016-KW01,)**

Plaintiff,

vs.

Case No.: 22BA-CV04663

**NARKE ASHSTREET, LLC, A)
NEBRASKA LIMITED LIABILITY)
COMPANY,)
REGISTERED AGENT:)
MISSOURI CORPORATION #2,)
INC.)**

**1010 Walnut, Suite 500)
Kansas City MO 64106)**

Defendant.

RECEIVER’S MOTION TO COMPEL

COMES NOW Receiver Chris Neilson, by the undersigned attorney, and pursuant to Mo. Rev. Stat. § 515.550 moves the Court Compel Defendant-Borrower and Borrower’s Management Company, HomeRiver Group, to turn over all Rents including all security deposits, advances prepaid rents, and cash equivalents, as has been ordered by this Court already in its January 3, 2023, Order Appointing Receiver. In support of this Motion, Receiver so states:

1. Mo. Rev. Stat. § 515.550 states: “Upon demand by a receiver, any person, including the debtor, shall turn over any estate property that is within the possession or

control of that person unless otherwise ordered by the court for good cause shown. A receiver by motion may seek to compel turnover of estate property as against any person over which the court first establishes jurisdiction, unless there exists a bona fide dispute with respect to the existence or nature of the receiver's possessory interest in the estate property, in which case turnover shall be sought by means of a legal action. ["]

Mo. Rev. Stat. § 515.550 (emphasis added).

2. On January 3, 2023, this Court entered its Order Appointing Receiver ("Receivership Order"), which appointed Chris Neilson as the receiver of Defendant-Borrower's "Mortgaged Property," as defined by the Loan Documents in this matter. See Receivership Order ¶ 1(a) and generally.

3. The Receivership Order grants the Receiver the power: "To enter upon and take immediate possession of the Property, and to demand, collect and receive the rents, income, revenues, proceeds and profits derived from tenants at the Property, their sublessees or any occupants in possession, including maintenance fees, management fees, special assessments and/or other charges relating to the Property, which are now due and unpaid or which may become due hereafter (collectively, the "Rents"), and all personal property owned or utilized by Borrower that relates in any manner to the management or operation of the Property, including without limitation all books, records, bank accounts, reserve accounts, cash on hand, keys, and combinations for locks or other access information in the possession of or reasonably available to Borrower or its property manager[.]" Receivership Order ¶ 3(a) (emphasis added).

4. As part of the Receivership Order, this Court ordered the: "Borrower and its officers, directors, members, managers, general partners, agents, property managers, architects, contractors, subcontractors and employees, and all other persons with actual

or constructive knowledge of this Order and their agents and employees, shall, upon request and to the extent in their respective possession or control: []

(f) Turn over to the Receiver, or, at the election of the Receiver, pay into an account designated by Receiver and in which Plaintiff shall have a security interest (the “Rent Account”), all Rents received by Borrower, its property manager, or any other agent, assignee or nominee of Borrower, if any (including, without limitation, all security deposits, advances, prepaid rents, cash equivalents, storage fees, and parking fees) wherever and in whatsoever mode maintained, and cooperate with the Receiver to cause all future Rents to be deposited directly by the payors thereof into the Rent Account. []”

Receivership Order at ¶ 4(f) (emphasis added).

5. Also as part of the Receivership Order, this Court ordered the “Borrower and its officers, directors, members, managers, general partners, limited partners, agents, property managers, architects, contractors, subcontractors and employees, and all other persons with actual or constructive knowledge of this Order and their agents and employees, are enjoined from:

(a) Interfering with the Receiver, directly or indirectly, in the management and operation of the Property or in the collection of Rents;

[]

(c) Doing any act which will, or will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Property (including the Rents thereof) or the interest of Plaintiff in the Property or the Rents[.]”

Receivership Order ¶ 5 (emphasis added).

6. On January 9, 2023, pursuant to this Court's Receivership Order, Receiver Chris Neilson demanded the "Rents" and other things from Defendant-Borrower and its Property Management Company, HomeRiver Group. See attached Letter from Receiver to attorney for Defendant NARKE Ashstreet LLC, Justin Coke, which was CC'd to HomeRiver Group's attorney Kristina J. Kamler, at Ex. 1.

7. Defendant and HomeRiver Group have failed to comply with the Receiver's demand to turn over Rents. Instead, HomeRiver Group's attorney, Kristina J. Kamler, sent Receiver a Letter dated February 3, 2023, with a proposal. Receiver informed Kamler the proposal was not acceptable and asked for confirmation that the funds would be wired by February 6, 2023. Nothing further has been heard from HomeRiver Group or Defendant. See attached correspondence between HomeRiver Group's attorney Kamler and Receiver Neilson, dated February 3, 2019, at Ex. 2.

8. This refusal by Defendant and HomeRiver Group is in direct violation of this Court's Receivership Order and Mo. Rev. Stat. § 515.550, which also states that "failure to relinquish possession and control to the receiver shall be punishable as a contempt of the court."

9. Defendant and its Property Manager, HomeRiver Group, are deliberately obstructing the Court Appointed Receiver from carrying out his Court appointed duties as Receiver, and each should be ordered to comply with this Court's Receivership Order and be found in contempt of the Court.

WHEREFORE Receiver Chris Neilson requests this Court Order both Defendant-Borrower and its Property Manager HomeRiver Group turn over all Rents, incomes, revenues, proceeds and profits derived from the tenants, and other estate property contemplated in this Court's Receivership Order within three days, order both otherwise

comply with this Court's Receivership Order, find both Defendant-Borrower and HomeRiver Group in contempt of this Court, and for other such relief this Court deems appropriate at this time.

Respectfully submitted,

/s/ Theodore L. Lynch
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ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 10, 2023, the foregoing was filed electronically with the clerk of the above-captioned court, to be served by operation of the court's electronic filing system upon all counsel of record.

/s/ Theodore L. Lynch
Theodore L. Lynch