Wilmington Tr. v. TM Northlake Mall, L.P., 2024 NCBC Order 72.

STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 21CVS007997-590
WILMINGTON TRUST, NATIONAL ASSOCIATION, SOLELY IN ITS CAPACITY AS TRUSTEE FOR STARWOOD RETAIL PROPERTY TRUST 2014-STAR, COMMERCIAL MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2014-STAR, Plaintiff, v. TM NORTHLAKE MALL, L.P., Defendant.	**ORDER ON MOTION FOR LEAVE TO MAINTAIN CLAIMS AGAINST RECEIVER**

1. Since May 2021, Spinoso Real Estate Group DLS, LLC ("Spinoso") has served as the general receiver for Defendant TM Northlake Mall, L.P. in this action. Under the receivership order, no one may sue Spinoso with respect to the receivership estate "without first obtaining permission of the Court." (Receivership Order 27, ECF No. 3.) Earlier this year, nonparties Bianca Brown and the Estate of Armani Spencer sued Spinoso in Mecklenburg County Superior Court without having first obtained permission to do so. They now move for leave to maintain their claims. For the reasons stated below, the Court **GRANTS** their motion in part.

2. The background facts are tragic. In August 2022, an unknown assailant shot Brown, Spencer, and two others near Northlake Mall in Charlotte, North Carolina. Brown suffered major injuries; Spencer died. At the time of the shooting, Spinoso was managing Northlake Mall as part of its receivership duties. Brown and Spencer's estate recently filed separate civil lawsuits in which they blame Spinoso

and others for doing too little to stop violent crime in and around the mall. Both complaints assert claims against Spinoso for negligence, gross negligence, and premises liability. *See Brown v. TM Northlake Mall*, (Mecklenburg County 24CVS32386); *Estate of Spencer v. TM Northlake Mall*, (Mecklenburg County 24CVS32393).

3. In suing Spinoso, Brown and Spencer's estate skipped a step: neither sought this Court's permission before filing their complaints. When Spinoso moved to dismiss their complaints in the tort actions on that basis, they moved to obtain leave from this Court to maintain their claims. (*See* ECF No. 52.) Spinoso and Plaintiff Wilmington Trust, N.A., oppose that relief. Briefing is complete, and the Court held a hearing on 15 November 2024.

4. Few North Carolina cases discuss a trial court's authority to approve or disapprove a claimant's request to sue a receiver for claims related to the receivership estate or the performance of the receiver's duties. With so little guidance to go on, it is best to start with some basic principles.

5. A receiver is "an officer of the court." *Lowder v. All Star Mills, Inc.*, 309 N.C. 695, 701 (1983); *see also* N.C.G.S. § 1-507.25(a)(1) (stating that any "proposed receiver" must be "qualified to serve as . . . an officer of the court"). Indeed, the receiver's authority derives from the trial court's own equitable authority to impose a receivership and establish its bounds. *See, e.g.*, *Lambeth v. Lambeth*, 249 N.C. 315, 321 (1959) ("Courts of equity have original powers to appoint receivers and to make such orders and decrees with respect to the discharge of their trust as justice and

equity may require." (citation and quotation marks omitted)). Broadly speaking, the receiver must take its cues from the trial court, which has "exclusive authority" to supervise the receiver and "determine all controversies . . . arising in or relating to the receivership, the receivership property, the exercise of the receiver's powers, or the performance of the receiver's duties." N.C.G.S. § 1-507.22.

6. When acting under the court's aegis, the receiver enjoys special protections. "Generally, a receiver has no personal liability for actions performed within the receiver's official capacity and within the scope of the receiver's authority pursuant to the receivership order." 65 Am. Jur. 2d Receivers § 189. This is so, as courts around the country have held,[*] because receivers are endowed with a form of qualified judicial immunity as officers of the court. *See* N.C.G.S. § 1-507.27(a) ("A receiver shall be entitled to all defenses and immunities provided by the laws of this State for an act or omission within the scope of the receiver's appointment."); *Battles v. Bywater, LLC*, 2014 NCBC LEXIS 118, at *7–8 (N.C. Super. Ct. Dec. 11, 2014) (appointing receiver and, "[w]ithout limiting any other . . . immunities the Receiver may have," stating that "the Receiver shall have no liability for acts or omissions made by or on

[*] *See, e.g.*, *PF2 Leasing, LLC v. Galipeau*, 499 P.3d 556, 563 (Mont. 2021) ("[W]hen the question of judicial immunity for receivers has arisen, courts have generally concluded that receivers are protected."); *Maltz Auctions, Inc. v. Tannenbaum*, 98 A.D.3d 722, 723 (N.Y. App. Div. 2012) ("Generally, a receiver has no personal liability for actions performed within his or her official capacity and within the scope of his or her authority pursuant to the receivership order."); *Anes v. Crown P'ship*, 932 P.2d 1067, 1071 (Nev. 1997) ("A receiver who faithfully and carefully carries out the orders of the appointing judge shares the judge's judicial immunity." (citation and quotation marks omitted)); *New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1303 (9th Cir. 1989) (collecting federal cases that "start with the premise that receivers are court officers who share the immunity awarded to judges" (cleaned up)).

its behalf in its capacity as Receiver, so long as such acts and omissions are made in good faith, without gross negligence, and in a manner that the Receiver reasonably believes is in the best interest of the Companies").

7. Of course, the receiver may be sued in an official capacity. *See* N.C.G.S. § 1-507.38(a). In that event, the action is more aptly described as an action against the receivership. As the United States Supreme Court put it long ago, "[a]ctions against the receiver are in law actions against the receivership or the funds in the hands of the receiver, and his contracts, malfeasances, negligences, and liabilities are official, and not personal, and judgments against him as a receiver are payable only from the funds in his hands." *McNulta v. Lochridge*, 141 U.S. 327, 332 (1891).

8. But it is a timeless and universal rule that any suit against the receiver, whether in a personal or official capacity, may not go forward without the appointing court's permission. *See* N.C.G.S. § 1-507.27(b); *National Surety Corp. v. Sharpe*, 232 N.C. 98, 101 (1950); *Black v. Consolidated R. & P. Co.*, 158 N.C. 468, 471 (1912); *see also Barton v. Barbour*, 104 U.S. 126, 128 (1881) ("It is a general rule that before suit is brought against a receiver leave of the court by which he was appointed must be obtained."). This gatekeeping role goes hand in hand with the appointing court's supervisory role. It is an essential means to deter interference with the receiver's performance of its duties and to ensure that all claims concerning the receivership estate are resolved at one time, in one place, and on equal terms. *See National Surety*, 232 N.C. at 101 ("The law contemplates the settlement of all claims against the insolvent debtor in the original action in which the receiver is appointed . . . ."); *see*

also Barton, 104 U.S. at 128 ("The evident purpose of a suitor who brings his action against a receiver without leave is to obtain some advantage over the other claimants upon the assets in the receiver's hands.").

9. Here, in keeping with these principles, the receivership order immunizes Spinoso from personal liability for acts within the scope of its authority absent "gross negligence, fraud, illegal acts or willful misconduct." (Receivership Order 25.) Any liability "incurred by [Spinoso] in connection with the receivership (other than arising due to [its] gross negligence, fraud, illegal acts or willful misconduct)" is a "liability of the receivership estate, to be satisfied from the revenues and profits of the receivership estate." (Receivership Order 25.) And in no event may anyone "sue [Spinoso] with respect to" the receivership estate and the performance of its duties "without first obtaining permission of the Court." (Receivership Order 27.)

10. Through their motion, Brown and Spencer's estate seek leave to maintain claims for negligence, gross negligence, and premises liability against Spinoso in its official and personal capacities. Although Brown and Spencer's estate sued Spinoso prematurely without having obtained permission, they are not out of luck, as Spinoso contends. Claimants who fail to obtain leave before filing suit can cure the defect by obtaining "leave to further prosecute the action." *Wilson v. Rankin*, 129 N.C. 447, 449 (1901).

11. The Court concludes that there are good reasons to let Brown and Spencer's estate maintain their tort actions against Spinoso in its official capacity. Spinoso is not immune from claims against the receivership. And Brown and Spencer's estate

have no other way to seek relief. They could not, for example, submit a claim through the receivership because the Court has not yet established a claims process. *See* N.C.G.S. § 1-507.49 (discussing claims process). Terminating the tort actions would leave Brown and Spencer's estate in limbo. Worse yet, it might jeopardize their right to seek relief in the future due to the applicable statutes of limitations. Equity weighs heavily against such a harsh result.

12. Moreover, the Chief Justice recently designated both tort actions to this Court. (*See Brown*, (Mecklenburg County 24CVS32386), ECF No. 1; *Estate of Spencer*, (Mecklenburg County 24CVS32393), ECF No. 1.) As a result, those actions and the receivership are under the supervision of a single presiding judge, extinguishing even the remote possibility that Brown and Spencer's estate might secure an unfair advantage over other claimants by litigating in a different forum. That, too, favors allowing the tort actions to proceed against Spinoso in its official capacity.

13. Spinoso urges the Court to scrutinize the complaints' merits, using standards equivalent to those usually applied in the context of motions to dismiss under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. That would take the appointing court's gatekeeping role too far. To decide whether the claimant ought to be able to enter the courthouse doors, it is enough to screen out harassment, forum shopping, procedural gamesmanship, and obviously frivolous claims. *See National Surety*, 232 N.C. at 101 (suggesting that the appointing court may grant leave "for good cause shown"); *see also Conway v. Smith Dev., Inc.*, 64 F.4th 540, 542 (4th Cir.

2023) (reasoning, under federal bankruptcy law, that "[t]he appointing court should ordinarily allow the lawsuit to proceed unless it is clear that the claim is without foundation" (cleaned up)).

14. That leaves the request to maintain claims against Spinoso in its personal capacity. The receivership order answers this issue in no uncertain terms by immunizing Spinoso from personal liability for all but its own gross negligence or similarly egregious actions. Thus, Brown and Spencer's estate may maintain only their claim for gross negligence against Spinoso in its personal capacity.

15. For these reasons, the Court **GRANTS** the motion for leave in part. Brown and Spencer's estate may maintain their claims against Spinoso in its official capacity. Likewise, they may maintain their claim for gross negligence, but not their claims for ordinary negligence and premises liability, against Spinoso in its personal capacity. This decision is without prejudice to Spinoso's right to move to dismiss these claims as it may deem appropriate under applicable law in each tort action.

SO ORDERED, this the 10th day of December, 2024.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases