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| DISTRICT COURT, DENVER COUNTY STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202 | DATE FILED: July 12, 2022 10:56 AM CASE NUMBER: 2022CV31451 |
| Plaintiff: UNIVERSAL HERBS, LLC, by and through GARY SCHWARTZ in his capacity as Court-Appointed Receiver v. Defendant: TITAN HEALTH, LLC | COURT USE ONLY Case No.: 202231451 Ctrm./Div.: 209 |
| AMENDED ORDER APPOINTING RECEIVER | |

This matter is before the Court on Motion for Appointment of Receiver filed by plaintiff Universal Herbs, LLC, through Gary Schwartz as Receiver, (“Creditor”). The matter was heard on an expedited basis and an *ex parte* hearing¹ was conducted on May 25, 2022. At the conclusion of the hearing, the Court GRANTED the Motion. In addition to and consistent with the findings and conclusions made on the record during the hearing, as well as Plaintiff’s further unopposed request to amend the initial May 25, 2022 Order Appointing Receiver, the Court finds and orders:

FINDINGS:

1. Pursuant to orders dated September 30, 2019 and November 4, 2019 issued in Denver County District Court case no. 19CV33770 (“Ray Action”), Gary Schwartz was appointed the receiver of an estate (“Estate”) including all assets of

¹ At the hearing, John Kaweske appeared as a representative of Defendant Titan Health, LLC. Because C.R.S. § 13-1-127 prohibits business entities like Defendants from self-representation before the Court, and given that Mr. Kaweske is not an attorney, the Court considered the hearing an *ex parte* proceeding in the absence of any appearance by Defendant Titan Health, LLC. However, given the expedited nature of the proceeding and Mr. Kaweske’s clear interest in the outcome of the proceeding, the Court permitted Mr. Kaweske, on his own behalf, to present evidence and argument in opposition to the motion.

numerous entities, including Plaintiff Universal. At the time, Plaintiff Universal was a licensed marijuana business with three locations in the Denver area – a recreational and medical grow facility, and two dispensaries that sell both recreational and medical marijuana products. In connection with these facilities, Universal has state and local marijuana licenses to operate.

2. As receiver in the Ray Action, Schwartz is entitled to, among other actions, “investigate and prosecute, as appropriate, claims and causes of action of the Estate, including Universal, against third parties,” and “negotiate and enter into such . . . contracts as the Receiver may reasonably deem necessary to manage, preserve and liquidate the Estate.”

3. In or about May 2020, Universal (via Schwartz as receiver over Universal and the Estate) and Titan Health LLC (“Titan” or “Company”) entered into a series of agreements memorializing a transaction pursuant to which Titan purchased certain assets and properties of Universal for a total purchase price of \$4,000,000.

4. Specifically, Universal and Titan entered into (a) an Asset Purchase Agreement (“APA”), (b) a First Secured Promissory Note and Security Agreement in the amount of \$2,250,000.00 (“\$2.25M Note”), (c) a Secured Promissory Note and Security Agreement in the amount of \$1,000,000.00 (“\$1M Note” and, together with the \$2.25M Note, “Secured Notes”), (d) an Advances Promissory Note in the amount of \$600,000.00 (“Advances Note”), and (e) a Marijuana Establishment Management Agreement.

5. Section 12.1 of the APA provides: “In the event purchaser is in default, Seller may elect to treat this Agreement as terminated, in which case all payments and things of value paid by Purchaser to Seller shall be retained by Seller and/or Seller may recover such damages as may be proper.”

6. In addition, the Security Agreements attached to the Secured Notes grant Universal a security interest in all assets transferred to Titan pursuant to the APA, including without limitation all state (“MED”) and local (E & L”) marijuana licenses.

7. Each of the Secured Notes was accompanied by an executed security agreement between Universal (as the secured party) and Titan (as debtor).

8. The security agreement accompanying the \$2.25M Note (“\$2.25M Note Security Agreement”) grants Universal a security interest in MED License Nos. 403-00395, 402-01142, 402R-00573, and 403R-00808 as well as E&L License Nos. 2012-BFN-1061672, 2013-BFN-1068323, 2015-BFN-0000449, and 2016-BFN-003367, and all other assets transferred pursuant to the APA (collectively, “\$2.25M Note Collateral”).

9. Universal perfected its security interest in the \$2.25M Note Collateral.

10. The security agreement accompanying the \$1M Note (“\$1M Note Security Agreement”) grants Universal a security interest in MED License Nos. 402-00370 and 402R-00602 as well as E&L License Nos. 2010-BFN-1045803 and 2015-BFN-0000480, and all other assets transferred pursuant to the APA (collectively, “\$1M Note Collateral”).

11. Universal perfected its security interest in the \$1M Note Collateral.

12. The assets sold to Titan pursuant to the APA include “real property lease rights” with respect to the following three properties then-leased by Universal: 755 S. Jason St. in Denver, Colorado; 800 Park Ave. in Denver, Colorado; and 5959 E. 39th Ave. in Denver, Colorado (collectively, “Universal Properties”).

13. Together, all assets transferred to Titan pursuant to the APA, including but not limited to the real property lease rights in the Universal Properties, the \$1M Note Collateral, the \$2.25M Note Collateral, and all profits and revenue generated by or derived from these assets, are referred to here as the “Secured Collateral.”

14. Based on the prima facie case presented in the Motion and at the hearing, Universal established that Titan is in default of the Secured Notes and of the APA.

15. By virtue of its perfected security interests, and Titan’s default under the APA and Secured Notes, Universal has demonstrated a right to or an interest in the Secured Collateral in the possession of Titan.

16. The Secured Collateral is in danger of being lost, materially injured or impaired. Specifically, the MED licenses and the E&L licenses are in danger of being revoked or lost, to the detriment of Universal. This is shown by prima facie evidence that:

- a. Titan is in default of its leases on two of its three properties. Both landlords have indicated a willingness to pursue eviction proceedings.
- b. Titan owes material amounts of back taxes to various taxing authorities, some of which may be subject to memoranda of understanding between Titan and the taxing authorities.
- c. John Kaweske, the majority owner of Titan and one of its managers, testified that he is actively engaged in shutting down the grow operations with a goal toward surrendering the related licenses. Mr. Kaweske has directed the staff at the grow facility to begin destroying plants and other inventory, and to cease new production. He asserts that he is doing so because the grow operation was not profitable and was a detriment to his overall business enterprise, and that the shutdown is and was part of a larger restructuring of Titan and various business entities legally independent from Titan. Given the closely held nature of Mr. Kaweske's various businesses, the Court has serious concerns that Mr. Kaweske is willing to sacrifice the Secured Collateral for the benefit himself and his other businesses and creditors. Although, Mr. Kaweske explained various steps he is taking to improve the liquidity of his business enterprise and making it more profitable, the Court does not find it credible that these efforts are for the benefit of Universal or that doing so should be considered sufficient in lieu of the Secured Collateral once it is gone or substantially diminished. Indeed, the legal separateness of these other business entities within the business enterprise suggests the opposite.
- d. Mr. Kaweske has also borrowed additional money which is purportedly secured by the same assets that make up the Secured Collateral.
- e. Titan is in default of its secured obligations to Universal.

17. As a direct and proximate result of the foregoing conduct, the value of the Secured Collateral is being damaged, the MED and E&L licenses are in danger of being revoked or voluntarily surrendered, and Universal's secured position is being injured.

18. There is a real and immediate danger that if a receiver is not appointed the Secured Collateral will be materially and irrevocably injured or impaired.

19. Pursuant to C.R.C.P. 66(a)(1), the Court may appoint a receiver at any time when the moving party establishes a *prima facie* right to or an interest in the

property which is the subject of the action, such property is in the possession of an adverse party, and the property, or its profits, are in danger of being lost, materially injured or impaired.

20. Under established principles of equity, a receiver may also be appointed to preserve the assets of the debtor.

21. Gary Schwartz, CFE is qualified and properly licensed to be appointed as receiver for the Receivership Property (as defined below) and has specific experience with the Secured Collateral in this case.

22. Betzer Call Lausten & Schwartz, LLP is suitable to serve as an agent to Gary Schwartz, CFE and may do so at the Receiver's direction.

IT IS THEREFORE ORDERED THAT:

1. Gary Schwartz, CFE is appointed as Receiver for the Secured Collateral, and is hereby directed and empowered to take immediate control of the Secured Collateral and any and all property, assets, and on-going business operations at the Universal Properties used in or associated with the Secured Collateral (said assets including, but not limited to, the Secured Collateral, licenses, real property, leases, contracts, inventory, equipment, machinery, fixtures, appliances, goods, materials, supplies, rents, revenues, income, issues, profits, bank accounts, claims, certificates, permits and licenses, financial and business records, and any other tangible or intangible assets related to the Secured Collateral) (the "Receivership Property") and operate the Receivership Property on the Court's behalf *in custodia legis*. The Receiver shall manage, operate, and protect the Receivership Property subject to the supervision and exclusive control of this Court.

2. The Receiver shall have, but need not exercise, all of the powers and authority usually held by receivers which are reasonably necessary to accomplish the purposes stated in this Order, including, but not limited to, the following powers, each of which may be exercised without further order of the Court:

a. To hire, retain, and otherwise obtain the advice and assistance of legal counsel, accounting, property management, and other experts and professionals as may be necessary to the proper discharge of the Receiver's duties, with all reasonable expenses incurred in connection therewith deemed to be expenses of the Receivership Property, and to pay such professionals

from the revenues and proceeds of the Receivership Property without further application or Order of the Court;

b. To manage, operate, maintain, repair, and otherwise control the Receivership Property as necessary to prevent diminution of its value at the level the Receiver reasonably deems appropriate, which may be a limited-service level or may include the suspension of operations altogether which shall include the following: to exercise all rights and remedies with respect to proceedings brought to collect any accounts related to the Receivership Property, to file any claims for recovery of Receivership Property and prosecute such claims, to open, transfer, and change all bank accounts wherever located, containing funds associated with the Receivership Property, and to deposit all sums received by the Receiver in a financial institution insured by the federal government, or to the extent funds from a cannabis business are unable to be deposited in a financial institution insured by the federal government, in such other accounts as are available to hold cannabis business funds in the name of the Receiver, to write checks and make withdrawals on such accounts; contract for and obtain for and obtain such services, utilities, supplies, equipment and goods as are reasonably necessary to operate, preserve, and protect the Receivership Property; transfer and convey Receivership Property as approved by the Court, to adopt, reject, or ratify any contracts or agreements related to the Receivership Property; to obtain, renew, and terminate all insurance policies for the protection of the Receivership Property; provided, however, nothing executed by the Receiver shall extend beyond the termination of the Receivership unless authorized by the Court;

c. To account to this Court all sums received, and expenditures paid, and file periodic Receiver's reports to this Court, not less than every three months;

d. To apply for, maintain, obtain, renew, as necessary to prevent the loss of all trademarks, copyrights, patents, licenses, permits, and entitlements required for the preservation or operation of the Receivership Property;

e. To assist or settle any claims against the Receivership Property other than the claims in this case; and,

f. To preserve and protect the improvements located on the Receivership Property, secure against loss and damage, and preserve all construction claims

and warranties as necessary.

3. The Receiver is authorized to apply the rents, revenues, income, issues, and profits collected by the Receiver in connection with the management and operation of the Receivership Property in accordance with the following priority: (1) for the Receiver's compensation; (2) to pay Receiver's attorney fees; (3) to repay out-of-pocket expenses incurred by the Receiver in connection with the Receivership; (4) to pay the costs of preserving and repairing the Receivership Property; (5) to pay the other costs and expenses of the Receivership, including payment of real and personal property taxes, insurance, water and sanitation bills, utilities and other operating expenses; and, (6) all remaining funds shall be distributed per Court order.

4. The Receiver shall be compensated monthly at the hourly rate of \$400.00 for its services rendered hereunder and other professions retained by the Receiver shall be compensated on an hourly, weekly, or project basis. The Receiver's compensation for services under this Order and his reasonable out-of-pocket expenses shall be paid on a monthly basis or as otherwise deemed practical. The Receiver shall submit itemized billing statements for professional services and other expenses.

5. Within five Court days of the date of this Order, the Receiver shall execute and file with the Court an Oath of Receiver accepting the appointment and agreeing to fully and faithfully exercise all powers and discharges under this Order, any subsequent directives of this Court, and applicable law.

6. The Receiver shall post a \$10,000.00 receiver's bond.

7. The Receiver shall be entitled to immediate possession, custody, and control of the property of the Receivership Property, and all parties, attorneys, claimants, and prior receiver(s) shall ensure full cooperation with the Receiver to effectuate delivery of property to the Receiver.

8. All documents, contracts, financial data, communications, and files shall be turned over to the Receiver under this Order, and all claimants, attorneys, and other applicable persons shall fully cooperate with the Receiver to ensure all required information is delivered.

9. Except as may be expressly authorized by the Receiver or the Court after notice and hearing, any party, claimant, agent, assign, attorney, and any person

having notice of this Order, are enjoined from:

- a. Collecting any revenues from the Receivership Property or withdrawing funds from any bank account relating to the Receivership Property;
- b. Terminating, selling transferring or encumbering, or causing the same, any license, permit, lease, agreement, or contract relating to the Receivership Property;
- c. Otherwise interfering with the operation of the Receivership Property or the Receiver's duties hereunder.

10. Anyone in possession of records related to the Receivership Property shall respond in a timely fashion to the requests and inquiries of the Receiver concerning such records, record-keeping protocols, filing systems, information sources, passwords, algorithms, and processes used to administrate data and similar matters. With respect to any information or records located or stored on computers of the person in possession of the records, such person shall provide the Receiver full access to all media on which such records are located including all computers and the necessary application, system, password, and other software and information necessary to review, understand, print, and otherwise deal with such computerized records. For the purposes of the Department of Revenue, Marijuana Enforcement Division, the Receiver shall be licensed pursuant to all necessary regulations and granted full access to METRC.

11. Any debts, liabilities, or obligations incurred by the Receiver in the course of the receivership, including the operation or management of the Receivership Property, whether in the name of the Receiver, Receivership Property, shall be the debt, liability, and obligation of only the Receivership Property and not of the Receiver or any employee or agent personally.

12. In the event there are insufficient funds to repay any Receivership expenses as contemplated above, the Receiver's unpaid compensation and unpaid expenses shall have a lien encumbering the Receivership Property having a priority senior to that of any Receiver's Certificates or Deed of Trust. The Receiver or holder of any unpaid and past-due Receiver's Certificate are hereby authorized to execute and record, in the Clerk and Recorder's Office for any county in which the real property is located, Certificates of Lien putting third parties on notice of such liens. Any such lien may be released of record by the Certificate of Release of Lien

executed by the Receiver and recorded in the county where such Certificate of Lien is previously recorded. The Receiver or holder of any unpaid and past-due Receiver's Certificates shall be entitled to all costs and expenses associated with enforcing such lien and such amount shall also be secured by such lien.

13. Except as authorized by the Receiver or approved by the Court, no person may buy, sell, or otherwise transfer any Receivership Property in the control of the Receiver.

14. All actions that seek equitable, *in rem*, direct, or indirect relief against the Receiver Property or Receiver, are hereby STAYED, except that State Licensing Authority shall not be stayed from instituting or continuing any administrative licensure or disciplinary action(s) against the Receivership Property and/or the Receiver. Further, the Colorado Department of Revenue shall not be stayed from sending any notices, including but not limited to, notices of deficiency and notices of final determination and demand for payment pursuant to 39-21-103, C.R.S., to the Receiver on behalf of the Receivership Property. This Order also expressly stays any pending or future administrative (except for licensing actions by the Colorado Department of Revenue), foreclosure, and other actions, the remedy for which is a penalty, lien, taking, or other impairment against the Receivership Property absent express permission of this Court. Any party desiring such relief must bring that request before this Court by motion.

15. All who are acting on behalf of the Receiver at the request of the Receiver, are protected and privileged with the same immunities and protections of this Court as afforded to the Receiver.

DATED: July 12, 2022

BY THE COURT

A handwritten signature in black ink, appearing to read 'Alex C. Myers', with a stylized flourish at the end.

Alex C. Myers
District Court Judge