

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department P

24SMCV03940

October 31, 2024

CHURCHILL FUNDING I LLC, A DELAWARE LIMITED

9:00 AM

LIABILITY COMPANY vs 732 INDIANA, LLC, A

CALIFORNIA LIMITED LIABILITY COMPANY, et al.

Judge: Honorable Elaine W. Mandel

CSR: None

Judicial Assistant: E. Goldstein

ERM: None

Courtroom Assistant: A. Hamilton

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Andrew B. Still

For Defendant(s): Ilan Kenig; Peter Mbamalu by Eliezer Appel, appearing remotely via
LACourtConnect

NATURE OF PROCEEDINGS: Hearing on Motion for Preliminary Injunction; Case
Management Conference

The matter is called for hearing.

The motion is argued.

The Court rules as follows:

Plaintiff's Ex Parte Application for Appointment of Receiver and OSC Re: Confirmation of
Appointment of Receiver

Plaintiff Churchill Funding I LLC sues defendants 728 Indiana, LLC, 732 Indiana, LLC, Kenig, Los Angeles 104 Projects 2016 LP and Marom Kislev Projects 2016 LP for judicial foreclosure, breach of guaranty, appointment of receiver and injunctive/declaratory relief pursuant to defaults on two loans totaling over \$10 million. The loans were secured by property held by 728 Indiana and 732 Indiana which the loans were issued to develop.

Plaintiff moved ex parte for appointment of receiver, a TRO and OSC re: appointment of receiver. The court indicated on 8/21/2024 that it was inclined to grant the application but continued the hearing so defendants could file opposition and the parties stipulated to a temporary restraining order. Min. Orders 8/21/2024 & 8/28/2024. Defendants offer declarations of Appel and Kenig in support of their opposition. Plaintiff objects.

Defendants' 10/24/2024 CMC Statement

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The court notes defendants submitted a CMC status statement on 10/24/2024 in preparation for an informal meet and confer regarding the application, including authorities supposedly supporting their argument that plaintiff could not elect to pursue judicial and then non-judicial foreclosure simultaneously. See CMC Statement 10/24/2024 ex. F. The authority “California Federal Bank v. Kwong (1991) 231 Cal.App.3d 1467, 1472” does not exist. The authority “Security Pacific National Bank v. Wozab 231 Cal.App.3d at 1472-1473” was reported at 51 Cal.3d 991. The court will set an OSC re filing false pleadings with the court.

Plaintiff’s Evidentiary Objections

Plaintiff objects to the Kenig declaration, as it is not made under penalty of perjury per Cal. Code Civ. Proc. §2015.5. SUSTAINED. Plaintiff’s evidentiary objections: Objections 1-6 SUSTAINED (hearsay and speculation), objection 7 OVERRULED, objections 8-9 SUSTAINED (hearsay and speculation), objections 10-11 OVERRULED, objection 12 SUSTAINED (hearsay and speculation).

Plaintiff’s evidentiary objections to the Appel declaration: Objection 1 OVERRULED, objections 2-3 (hearsay and speculation), objection 4 OVERRULED.

Plaintiff’s Ex Parte Application for Appointment of Receiver and OSC Re: Confirmation

Cal. Code Civ. Proc. §564(b) permits the Court to appoint a receiver in the following instances: (1) In an action by a creditor to subject any property or fund to the creditor’s claim on the application of the plaintiff whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured. (2) In an action by a secured lender for the foreclosure of a deed of trust or mortgage and sale of property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt. (6) Where a corporation is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights. (9) In all other cases where necessary to preserve the property or rights of any party.

Plaintiff argues the appointment is necessary, as defendants failed to pay property taxes, insure the property and are insolvent. Plaintiff notes defendants consented to the appointment of a

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receiver over the property in the event of a default per their deeds of trust. Plaintiff holds a security interest in the 728 Indiana property and the 732 Indiana property by virtue of the 728 Indiana deed of trust and the 732 Indiana deed of trust in satisfaction of Cal. Code Civ. Proc. §564(b)(2). Plaintiff argues its interest in the properties is in danger of being lost due to defendants' failure to pay taxes and secure insurance and adequate leases. Cal. Code Civ. Proc. §564(b)(1). Plaintiff argues defendants are insolvent and are not protecting plaintiff's interests in the property or the property itself. Cal. Code Civ. Proc. §564(b)(9).

Defendants do not rebut plaintiff's arguments. Instead, they assert the property is in good shape, under guard and partially leased. Decl. Appel para. 3. Defendants also assert they are attempting to find a buyer for the property. Decl. Appel para. 8. Appel and other related parties are leasing the property, creating a conflict of interest. Decl. Appel para. 4.

Defendants do not deny being in default of their secured loans, nor do they deny consenting to appointment of a receiver in the event of default. These facts alone would be sufficient for the court to appoint a receiver. Plaintiff also alleged facts per Cal. Code Civ. Proc. §564(b) that support appointment of a receiver. Defendants' attempt to disprove those allegations with the Kenig declaration are unavailing, as the declaration was not made under penalty of perjury and objections were sustained. See Decl. Kenig generally.

The court disagrees with defendants' argument that plaintiff cannot elect to pursue judicial foreclosure, then seek the appointment of a receiver. A "receiver may be appointed in an action for judicial foreclosure ... even though the beneficiary is foreclosing under the private power of sale...." 5 Cal. Real Est. (4th ed.), Miller and Starr, § 13:65. Pursuing both judicial foreclosure and sale within a deed of trust is not a violation of the one-action rule under Cal. Code Civ. Proc. §726. "Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726." Cal. Code Civ. Proc. §564(d). Plaintiff may seek appointment of a receiver while reserving its right to pursue judicial foreclosure.

Plaintiff is entitled to relief under Cal. Code Civ. Proc. §526(a) and 564(b) and demonstrated a preliminary injunction is necessary to allow an appointed receiver to exercise control over the property. Plaintiff established the elements required for the appointment of a receiver. The ex parte application for appointment of receiver and OSC re: confirmation of appointment of receiver is GRANTED. Plaintiff's request for a preliminary injunction requiring all defendants named in this case, including principals, agents, officers, directors and assigns to cooperate with

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the appointed receiver is GRANTED.

The Court appoints Kevin Singer as receiver.

Counsel for Plaintiff will submit a proposed order detailing the rights and obligations of the receiver.

Ilan Kenig is the managing partner of the LLC. The LLC must be represented by counsel.

The Ex Parte Application for 1. Order Appointing Receiver; 2. Temporary Restraining Order; and 3. Order to Show Cause Regarding Confirmation of Appointment of Receiver and Preliminary Injunction filed by CHURCHILL FUNDING I LLC, a Delaware limited liability company on 08/20/2024 is Granted.

Status Conference is scheduled for 11/07/2024 at 08:30 AM in Department P at Santa Monica Courthouse.

Counsel for Plaintiff is to give notice.