

IN THE CHANCERY COURT FOR CUMBERLAND COUNTY, TENNESSEE
THIRTEENTH JUDICIAL DISTRICT, AT CROSSVILLE

TENNESSEE REGULATORY AUTHORITY

Petitioner,

v.

LAUREL HILLS CONDOMINIUMS
PROPERTY OWNERS ASSOCIATION

Respondent.

No. 2012-CH-560
Chancellor Thurman

Date 10-27 FILED 2016 at 10:55
AM PM

Entered: _____
SUE TOLLETT, CLERK & MASTER
Cumberland County, Crossville, TN
BY: _____

RECEIVER'S MEMORANDUM REGARDING THE PETITIONER'S
SHOW CAUSE PROCEEDING AND RESPONDENT'S MOTIONS TO DISMISS SAID
SHOW CAUSE PROCEEDING AND ENFORCE SETTLEMENT AGREEMENT

COMES NOW, Receivership Management, Inc. [hereinafter the "Receiver"], the court appointed Receiver of the Laurel Hills water system [hereinafter the "LHWS"] previously controlled by Laurel Hills Condominiums Property Owners Association [hereinafter the "Laurel Hills Condominiums POA"], and submits this, its memorandum regarding the Petitioner's Show Cause Proceeding and the Respondent's Motion to Dismiss said Show Cause Proceeding and Enforce the Settlement Agreement.

Background of the Show Cause Dispute

The Petitioner, the Tennessee Regulatory Authority, filed a Petition for an Order to Show Cause on or about May 23, 2016, seeking to require the Respondent, Laurel Hills Condominiums Property Owners Association, to appear before this Honorable Court and show cause why it should not be punished for contempt of court for failing to with the order appointing a receivership. That petition was scheduled for hearing on June 9, 2016.

However, the Respondent's counsel filed a motion to withdraw as counsel of record for the

Respondent prior to the hearing date. The Respondent's motion was granted on June 9, 2016, and, Respondent was given thirty (30) days to procure new counsel. Consideration of the show cause petition was delayed until Respondent procured counsel.

Once the Respondent secured substitute counsel, the Respondent filed a motion to enforce the settlement agreement and dismiss the show cause petition. In its motion, the Respondent claims to have fully complied with the settlement agreement entered into by and between the Petitioner and the Respondent. All matters related to the show cause petition are set to be heard by this Honorable Court on November 14, 2016, in Cookeville.

The Role of the Receiver

The Tennessee Regulatory Authority and the Laurel Hills Condominiums Property Owners Association are the parties to this action. They are the two (2) signatories on the settlement agreement and release.¹ They are the two (2) entities who agreed for the Laurel Hills Water System to be placed into a receivership estate in the first instance.

Rather than describe the Receiver as a party to this action, it is more accurate to characterize the Receiver as "an officer of the Court," and to be "regarded as the *hand* of the Court";² this characterization has long been acknowledged.³ The Receiver was not a signatory to the settlement agreement and took no part in the discussions, preparations or negotiations leading to its execution. In fact, the Receiver's Chief Operating Officer, Mr. Robert E. Moore, Jr., never saw the executed settlement agreement and release until October 26, 2015, the date the receivership estate was created.⁴

The Respondent's Representations

¹ This includes both the originally drafted settlement agreement and release that is dated July 27, 2015, as well as the first addendum to settlement agreement and release that is undated. This settlement agreement and release is attached to the Petitioner's show cause petition as Exhibit 1.

² *Gibson's Suits in Chancery* (8th ed.) (2004) at p.24-2, § 24.01 (emphasis in original) (citing *French v. Buffatt*, 161 Tenn. 500, 33 S.W.2^d (1930)). See also *KMC Co. v. Nabors*, 572 S.W.2d 255 (1977).

³ *Waters v. Carroll*, 17 Tenn. (9 Yer.) 102 (1836).

⁴ See Exhibit A, Affidavit of Robert E. Moore, Jr.

In its motion to enforce the settlement agreement and dismiss the show cause petition, the Respondent makes the following representations:

4. *The language and text of each of the above documents⁵ and their final preparation was coordinated with, discussed, and edited multiple times by legal counsel for the TRA, its Receiver, and Laurel Hills, and were the product of good faith efforts on the part of all such parties to document and effectuate the terms and conditions of the negotiated Settlement Agreement.*

As stated above, the Receiver was not a party to the settlement agreement and release, was not involved in its preparation, and had not even seen the executed document prior to the institution of the receivership estate. Thus, the Receiver would not be in a position to interpret the settlement agreement and release or provide any evidence as to the intent of the two (2) parties to the agreement, other than to read what is contained within the four (4) corners of the agreement. The documents speak for themselves.

Do the Assignment and Bill of Sale, the Quitclaim Deed, and the Irrevocable License comport with the settlement agreement and release? That is not for the Receiver to say. If there is a dispute as to whether the parties have complied with the settlement agreement and release, the resolution of that dispute is the task of this Court, not the Receiver. The Receiver did not engage in an effort "to document and effectuate the terms and conditions of the negotiated Settlement Agreement." It did not do so, and it could not have done so, as it was not a party to such agreement.

Conclusion

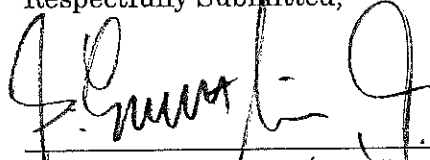
The Receiver's duties and obligations are to marshal and preserve the assets within the receivership estate and to carry out and implement the receivership plan adopted by this Honorable Court. As previously reported, Aqua Green Utility, Inc. [hereinafter "Aqua Green"] has submitted the preferred bid for the LHWS, and the Receiver is currently in

⁵ The Respondent refers here to (a) the Assignment and Bill of Sale; (b) the Quitclaim Deed; and (c) the Irrevocable License.

negotiations with Aqua Green and is attempting to resolve issues raised by Aqua Green, principally related to use rights and titling issues with the LHWS.⁶ Though the show cause proceeding relates to the issues raised by Aqua Green, the Receiver's tasks and interests are focused on rehabilitating the LHWS to the extent that it can be acquired by a properly licensed operator, and the receivership plan can be fulfilled.

DATED: October 24, 2016.

Respectfully Submitted,



G. Everett Sinor, Jr. (BPR#017564)
Attorney at Law
Counsel for Receivership Management, Inc.
3504 Robin Road
Nashville, Tennessee 37204
615-969-9027 (Phone)
Everett.Sinor@gmail.com (Email)

⁶ See Receiver's Eighth Report, filed October 3, 2016.

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing memorandum has been served upon the parties hereto and the other persons listed below, at:

James R. Layman, Esq.
Staff Attorney
Tennessee Regulatory Authority
502 Deaderick Street, Fourth Floor
Nashville, Tennessee 37243

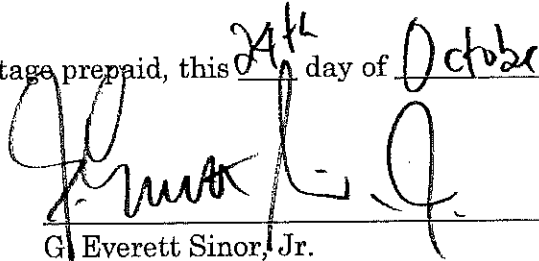
James L. Gass, Esq.
Ogle, Gass & Richardson
Counsel for Laurel Hills Condominiums
Property Owners Association
103 Bruce Street
Sevierville, Tennessee 37862

Melanie Davis, Esq.
Kizer & Black
329 Cates Street
Maryville, Tennessee 37801

Vance Broemel, Esq.
Consumer Advocate and Protection Division
Tennessee Attorney General and Reporter
Post Office Box 20207
Nashville, Tennessee 37202

Roger York, Esq.
York & Bilbrey
456 North Main Street, Suite 201
Crossville, Tennessee 38555

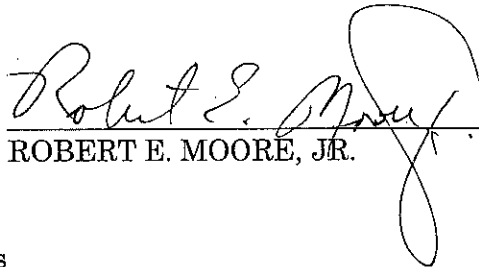
via the United States Mails, postage prepaid, this 24th day of October, 2016.


G. Everett Sinor, Jr.

3. The Receiver was not a signatory to that certain settlement agreement and release entered into by and between the Tennessee Regulatory Authority and the Laurel Hills Condominiums Property Owners Association, dated July 27, 2015 (with an undated first addendum) [hereinafter the "Settlement Agreement and Release"], and neither I nor any other official with the Receiver took part in discussions, preparations or negotiations leading up to its execution.

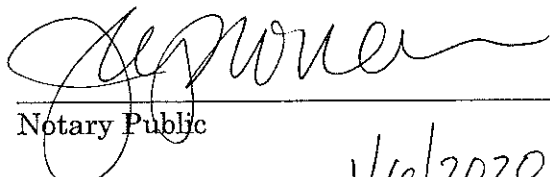
4. Neither I nor any other official with the Receiver saw the executed Settlement Agreement and Release until October 26, 2015, the date the receivership estate was created, when I received a copy.

FURTHER THE AFFIANT SAITH NOT.



ROBERT E. MOORE, JR.

Sworn to and subscribed before me on this
29th day of September, 2016.



Notary Public
Commission Expires: 1/6/2020



G. EVERETT SINOR, JR.
Attorney at Law

October 24, 2016

The Honorable Sue Tollett
Clerk and Master
Cumberland County Chancery Court
60 Justice Center Drive, Suite 226
Crossville, Tennessee 38555

*RE: Tennessee Regulatory Authority v. Laurel Hills Condominiums Property
Owners Association, Docket No. 2012-CH-560*

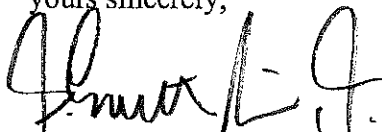
VIA UNITED STATES FIRST CLASS MAILS

Dear Ms. Tollett:

Please find enclosed herewith the Receiver's Memorandum Regarding the Petitioner's Show Cause Proceeding and Respondent's Motions to Dismiss Said Show Cause Proceeding and Enforce Settlement Agreement.

Please return to me a copy of these documents, once stamped filed with your office, in the self-addressed, stamped envelope. Thanking you for your consideration of this matter, I remain,

yours sincerely,



G. Everett Sinor, Jr. (BPR #017564)
Attorney at Law

Enclosures

ec: Receivership Management, Inc.
Kelly Cashman-Grams, Esq.
James Gass, Esq.
Melanie Davis, Esq.
Vance Broemel, Esq.
Roger York, Esq.