

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2022-007798-CA-01

SECTION: CA22

JUDGE: Beatrice Butchko

Ana Danton

Plaintiff(s)

vs.

Hammocks Community Association Incorporated

Defendant(s)

ORDER APPOINTING RECEIVER BY STIPULATION OF THE PARTIES

THIS CAUSE came before the Court on October 13, 2022, and November 17, 2022, and upon the stipulation of the parties and their counsel to the appointment of a receiver for Defendant HAMMOCKS COMMUNITY ASSOCIATION INCORPORATED (the “**Association**”), and the Court having entered a Preliminary Order Appointing Receiver by Stipulation of the Parties and being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. Findings. Plaintiff’s Verified Motion for Appointment of Receiver and Injunctive Relief is hereby **GRANTED** pursuant to the agreement and stipulation of the parties and their counsel. The Association for which the receiver is being appointed is a homeowner association subject to Chapter 720, Florida Statutes. The main sources of income for the Association are monthly assessments, special assessments, or fees established by the Association for payment by each member of the Association. The Court finds that to protect and preserve the assets of the Association from waste, to ensure compliance with this Court’s Orders, and to protect the rights of the members of the Association, a receivership is appropriate.

2. Appointment. David M. Gersten, Esq., whose address is Gordon & Rees Scully Mansukhani, 100 SE Second Street, Suite 3900, Miami, FL 33131, shall serve as this Court's appointed agent over the Association and its property with full and complete power and authority over the entire Association's business including but not limited to its properties, finances, staff, employees, and all other matters of the Association until further order of the Court (the "**Receiver**"). The Receiver shall serve without bond. The Receiver shall have all the powers and remedies granted to a homeowner association pursuant to Chapter 720, Florida Statutes, plus such additional power and authority designated by this Order, and full operational authority of the Association to act as a neutral, third party with all the power and authority granted to a board of directors pursuant to the Association's Declaration, By-Laws, Articles of Incorporation, and Florida law. The Receiver shall preserve and maximize the Association for the benefit of its membership and all lienholders. The Receiver shall prevent fraud, self-dealing, waste, and mismanagement of the Association's property and finances. The Receiver serves as an agent of this Court and must seek authority from this Court to act on such matters not authorized in this Order or Chapter 720.
3. Stay. A stay is hereby imposed, prohibiting all persons and entities from commencing or continuing any litigation against the Association or executing, garnishing, attaching, or levying on any assets of the Association during the pendency of this receivership without prior leave of this Court.
4. Advisory Committee Members: The Receiver's Advisory Committee includes the following individuals who will assist the Receiver:
 - i. Ana Danton
 - ii. Marco Antonio Real
 - iii. Jaime E. Staton
 - iv. Idalmen Ardisson

v. Donald Kearns

vi. Peter Cabrera

5. Term. The Receiver is appointed by this Court and shall continue until further Order from this Court.
6. Notice. Within ten (10) days of the date of this Order, the Receiver shall provide to all members of the Association written notice of his appointment as the Receiver.
7. Oath. Within twenty (20) days of the date of this Order, the Receiver shall file with this Court an Oath of Receiver accepting this appointment and agreeing to discharge faithfully the Receiver's duties and subsequent directives of this Court, and applicable law.
8. Inventory and Periodic Reports. Within forty-five (45) days of the date of this Order, the Receiver shall file with the Court an initial report and initial inventory of the Association's property coming under the Receiver's control or possession and of which the Receiver is hereby given custody. Additional monthly reports detailing the Association's bank account balances, lease revenues, assessments made and collected, and the payment of Association expenses will be prepared and filed by the Receiver, within 20 days following the close of each month.
9. Possession of Receivership Property. The Receiver shall take possession and control of the Association and its property. The Association and its representatives, prior board members and agents, whether purported or actual, shall immediately and forthwith turn over all books and records, including without limitation those records the Association maintains as required under section 720.303(4), Florida Statutes, bank accounts and statements, accounts receivable and payable, contracts, keys, permits, access to any platform for communication with the membership, passcodes, passwords, usernames, computers, digital devices, software, tangible and intangible property, claims, causes of action, and choses in action (the "**Receivership Property**"). All persons and entities in possession of any Receivership

Property shall immediately surrender possession to the Receiver and in no event later than five (5) days from the date of this Order. The Receiver shall collect rents, issues, assessments, profits, and revenues from the Receivership Property. The Receiver shall have unfettered access and inspection rights to any accounts, records, documents, files, and computer data, equipment, and systems, in any way related to the Receivership Property. The Receiver is empowered to break and/or change any locks necessary to gain access and entry to any of the Association's property. The local police department in the jurisdiction in which the property is located shall assist the Receiver in gaining access and entry or otherwise securing such access to property and securing peace where necessary.

10. Specific Receivership Duties. The Receiver shall have broad authority to manage, preserve, protect, and maintain the Receivership Property and the Association and to take any action the Receiver considers appropriate or expedient including setting the amount of assessments, special assessments, or fees due from the membership. Without limiting the Receiver's general duties in any way, the Receiver shall have at least the following specific duties and responsibilities to:

- i. investigate and review the Association's outstanding bills and expenses and determine the priority of items to be paid;
- ii. interview and retain the services of a professional management companies for the Association;
- iii. inspect the Receivership Property including the grounds, facilities, clubhouses, amenities, vehicles, equipment, boat docks, and all other Association property and ensure it all remains, or is returned to, and is maintained on the Association's property;
- iv. manage the financial and business affairs of the Association to ensure payment of all legitimate and necessary Association expenses;
- v. interview and retain a Certified Public Accountants to prepare monthly statements and

- audited financial statements as required by the Association's governing documents;
- vi. borrow funds, through conventional loans, lines of credit, receiver certificates of indebtedness, or other means and sources, to meet the ongoing administrative expenses or other liquidity needs of the receivership and pledge whatever assets of the Association are necessary to obtain such loans;
 - vii. pay any sum the Receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the Association has a lien or in which the Association has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property;
 - viii. institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the Association or in which the Association or its creditors or members have any interest, and represent in every way the Association and its members;
 - ix. investigate any matter related to the conduct of the business of the Association, including, but not limited to, any claim of the Association against any individual or entity, and institute appropriate legal or other proceedings to prosecute such claims;
 - x. investigate any matter related to the conduct of the business of the Association related to transfers of funds, or past payments resulting in the improper depletion of the Association's assets and finding any such improper payment, reversing said payments, and obtaining the return of said property;
 - xi. investigate the business relationship of Coco Landscaping and the Association and retain a replacement landscaping company for the Association;
 - xii. investigate the relationship among the Association and the purchasers of all member properties sold due to foreclosure by the Association to determine insider transactions

- or self-dealing;
- xiii. investigate the prior legal representation of the Association and recommend referrals to the Florida Bar or contempt proceedings if deemed necessary and appropriate;
 - xiv. institute and maintain a hotline to log all homeowner calls, complaints, and messages concerning the Association and employ staff to ensure all homeowner concerns are properly and timely addressed;
 - xv. investigate and replace any Association agent, employee, or independent contractor determined by the Receiver to be related to any prior board member of the Association since 2015;
 - xvi. secure affidavits from all current agents, employees, or independent contractors affirming no familial relation to any prior board member of the Association since 2015;
 - xvii. determine and appoint members of the Advisory Committee to assist the Receiver in complying with the provisions of this Order;
 - xviii. notify the members that the budget meeting will be rescheduled to a new, more convenient time to encourage maximum homeowner participation and permit the Receiver to make available a copy of the proposed budget to all members in advance of the budget meeting;
 - xix. attend a hearing before the Court on November 29, 2022, at 9:00am to conduct an initial “State of the Union” addressing the entire membership of the Association and provide the members with advance notice of same;
 - xx. notify the members that the December 2022 monthly assessment due shall be the amount previously paid for their property before the increase in March 2022;
 - xxi. execute, acknowledge, and deliver, in person or through a general or specific

delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effective as if it had been executed by the Association's officers by authority of its board of directors;

xxii. adopt a budget in accordance with the Association's governing documents;

xxiii. levy and adopt any special assessment required to fulfill the Receiver's duties;

xxiv. approve any occupancy or transfer of ownership of any units and issue corresponding estoppel certificates;

xxv. employ legal counsel or other professionals on behalf of the Receiver or the Association as deemed necessary by the Receiver; and

xxvi. prepare and file with the Court an inventory and periodic reports as set forth in paragraph 8 above.

11. New Election. The Receiver shall comply with the Association's governing documents and the pending Order from the Department of Business and Professional Regulation (DBPR) requiring a new election of the Association's board of directors as demanded by homeowners Idalmen Ardisson, Donald Kearns, Henry Pedroso, Zaida Nicholson, and Yves Lucas or as otherwise ordered by this Court.

12. Insurance. The Receiver and Gordon Rees Scully Mansukhani, LLP shall each be named an additional insured on all applicable Association insurance policies for the duration of the receivership and acquire insurance as necessary for the Association including additional coverage for the benefit of the Receiver in compliance with its duties for the Association. The Receiver has the authority to arrange insurance coverage for the Receiver customarily provided to Trustees.

13. Receiver and Professional Fees. The Receiver is specifically empowered to hire and employ legal counsel, contractors, accountants, investigators, and consultants (**"Outside**

Professionals”) to furnish legal, accounting, and other advice to the Receiver for such purposes as may be reasonable and necessary during the period of receivership. The Receiver and his Outside Professionals shall be compensated by the Association for the professional services provided pursuant to this Order. Additionally, the Receiver and his Outside Professionals shall be entitled to reimbursement of reasonable out-of-pocket expenses to the extent that same are reasonably and necessarily incurred by the Receiver and/or his Outside Professionals to carry out the provisions of this Order. The Receiver and his Outside Professionals shall be paid by the Association on a monthly basis. To be paid monthly, the Receiver must file a statement of account with the Court on behalf of the Receiver and his Outside Professionals together with the monthly reports, to be approved by the Court within ten (10) days of filing. The Receiver shall file proposed Orders with each submission. Such approval will be without hearing unless the Court requires a hearing on certain submissions.

14. Priority of Payments. The Association’s revenues are to be applied by the Receiver with respect to the items set forth below, generally in the following order of priority in a commercially reasonable manner to: (i) the actual reasonable fees and costs of the Receiver and his Outside Professionals, including, without limiting the generality of the foregoing, the expenses of the receivership, all as approved by the Court; and (ii) the reasonable costs and expenses of operating the Association, including employee salaries and benefits, the costs of supplies, reasonable and necessary repairs, maintenance, utilities, insurance premiums, and other similar current operating expenses of the Association. Pursuant to paragraph 19 below, the Association’s operating expenses may be paid by the Receiver in the ordinary course and do not need advance court approval.

15. Management of the Association. Subject to the terms of this Order, the Receiver is empowered and directed to manage the Association in his broad discretion, including conserving, protecting, maintaining, and repairing the common elements of the Association as reasonable prudence dictates, providing for the payment of and making arrangements for

necessary repairs and proper maintenance of the common elements of the Association, conducting inspections and, in general, managing the Association so that it is operated in accordance with generally accepted practices in the area, to enforce contracts and other agreements with respect to the Association and to compromise disputes regarding same, such actions to be taken in the Receiver's name in his capacity as the Receiver for the Association.

The Receiver shall have all powers generally and specifically vested in the Association's Board of Directors, plus any special powers hereby granted pursuant to this Order. The Advisory Committee shall provide counsel to the Receiver as the Receiver deems appropriate and necessary for the fulfillment of his duties.

16. Professional Management. The nature of the operations of a homeowners' association requires the services of professional management companies. The Association currently lacks satisfactory professional management, and given the immediate needs of the Association, the Receiver shall have the authority to negotiate a contract with a property manager for a commercially reasonable term with a 60-day termination provision. It is understood that many of the Receiver's duties under this Order shall be delegated by the Receiver to the property manager, subject to the Receiver's oversight and the Receiver being ultimately responsible for the management of the Association as set forth in this Order; however, the Receiver may not employ an attorney for the property manager. The Court acknowledges that the Receiver is deemed president, sole director, and CEO of the Association.

17. Contracts Entered into by the Receiver. All instruments or contracts executed by the Receiver shall be entered into on behalf of the Association and shall indicate that the Receiver is acting solely in his capacity as Receiver for the Hammocks Community Association Incorporated. The Receiver shall not enter into any lease or other agreement on behalf of the Association for a term longer than five (5) years.

18. Existing Contracts. The Receiver is empowered to honor or terminate existing contracts, and

to enter into additional contracts, for goods and services reasonably required for the operation of the Association to the extent the Receiver deems appropriate, except as otherwise specifically prevented by the Court.

19. Expenditures. The Receiver may make expenditures with respect to the Association that are necessary or desirable for its operation, maintenance, and repair, and the amount of each such expenditure shall, at the option of the Receiver, be paid out of current operating revenues of the Association. To the extent it is not in violation of any existing loan, banking, or other existing agreement of the Association, the Receiver may open any additional bank accounts deemed prudent, including but not limited to, a separate Receivership Operating Account, a Receivership Reserve Account, a Security Deposit Account, or a Money Market Account, so long as any such accounts are maintained with a bank whose deposits are FDIC insured.

20. Insufficient Revenues. In the event the Association's revenues are not sufficient to meet its monthly operating expenses, the Receiver may, but is not required to, obtain direction from the Court as to how revenues should be allocated to cover expenses. Otherwise, the Receiver is granted broad authority to determine, in his own reasonable opinion or upon advice of Outside Professionals, what expenses must be paid first. The Court acknowledges there are presently many outstanding invoices and bills requiring payment, and hereby charges the Receiver with determining what expenses are immediately crucial to the health, safety, and wellness of the Association. In the event of a shortfall, the Receiver bears no personal responsibility for funding the shortfall; however, the Receiver is permitted to levy special assessments and/or issue a Receiver's certificate to cover the expenses of the Association and any expenses under this Order.

21. Availability of Records. The Association's agents, servants, attorneys, accountants, employees, owners, managers, affiliates, representatives, and assigns shall promptly make available to the Receiver: (i) all books and records of account and records of vendor payables (with aging reports), records of receipts and disbursements, ledgers, journals, check registers,

check stubs, checkbooks, statements of operation, and all other accounting records of any kind or description in their possession or under their control relating to the Association; and (ii) all records relating to legal demands made upon the Association, any pending lawsuits or arbitration matters against or involving the Association, any pending tenant/purchaser applications, and any other outstanding requests made upon the Association. The Receiver shall be entitled to copy any such document at the expense of the Association.

22. Counsel and Legal Proceedings. The Receiver is empowered to employ independent legal counsel to provide legal advice to the Receiver for such purposes as may be necessary and appropriate during the period of receivership, including but not limited to initiating such legal proceedings reasonably necessary to assist the Receiver in performing his duties and collecting on amounts due to the Association. The Receiver is also specifically empowered to employ legal counsel on behalf of the Association [and, may but is not required to engage counsel on behalf of the Advisory Committee Members], with such counsel to be paid by the Association, subject to approval by the Court upon submission of statements of account.

23. No Litigation Without Court Permission. No individual or entity may sue the Receiver or the Association for actions taken by the Receiver in his capacity as Receiver or the Receivership Estate without first obtaining the permission of this Court.

24. Additional Receiver Powers. The Receiver may, at any time upon prior written notice to the parties in this action, apply to the Court for further and other instructions or powers, whenever such instructions or powers may be deemed necessary to enable the Receiver to perform properly and legally the duties of the office of the Receiver to maintain, operate, preserve, and protect the Receivership Property, the members of the Association, and the residents of the property.

25. No Interference with the Receiver. All homeowners, residents, tenants, prior Board members, purported Board members, and any other parties acting by, through, or under any

of the foregoing persons or entities, and those in concert or participation with them who receive notice of this Order, are hereby enjoined from interfering with the operations of the Association by the Receiver and the Receiver's agents and employees. All parties receiving notice of this Order are hereby notified that the Receiver has the sole, broad authority to act on behalf of the Association; no other person purporting to be an officer or agent of the Association shall have any authority to bind or speak on behalf of the Association unless and until this Order is modified stating otherwise or the receivership is terminated. The Court retains the right to hold any party on actual notice of this Order in contempt of court for interfering with or hindering the duties of the Receiver.

26. Termination of Receivership. The receivership established by this Order shall terminate on such date this Court determines that no just reason or cause for the continuation of the receivership shall exist. At the time the receivership terminates, the Receiver shall have caused an election of a new board of directors to occur and deliver all property of the Association to the newly elected board of directors, as directed by the Court including, without limitation, all net proceeds generated by the Association during the receivership (except such funds as the Court determines to be necessary to terminate the receivership), and all books and records of account, records of receipts and disbursements, ledgers, journals, check registers, check stubs, checkbooks, statement of operation, and all other accounting records of any kind or description relating to the income and receipts and expenditures relating to the Association. The Receiver shall turn over all other documents and contracts constituting the official books and records of the Association.

27. Final Accounting. Within thirty (30) days following the termination of the receivership, the Receiver shall submit his final accounting for approval by the Court and, upon approval thereof, the Receiver may be discharged from office.

28. Cooperation and Assistance. The offices, board members (whether disputed or undisputed), agents, employees, contractors, servants, and attorneys of the Association and those in active

concert or participation with them who receive actual notice of this Order shall cooperate and assist in the turnover of the Receivership Property as contemplated by this Order. The Receiver shall receive the complete cooperation of all non-parties in complying with the provisions of this Order, including banks and other financial institutions in possession, control, or with access to any assets, accounts, books, and records of the Association.

29. Expedited Discovery. The Receiver is authorized to set depositions or issue subpoenas to third-parties for expedited responses, if necessary, and obtain this Court's assistance to obtain documents and/or relevant information necessary to accomplish the purposes of this Order.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 21st day of November, 2022.



2022-007798-CA-01 11-21-2022 4:42 PM
2022-007798-CA-01 11-21-2022 4:42 PM

Hon. Beatrice Butchko

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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